

**TRUTH, RECONCILIATION AND REPARATIONS COMMISSION
BILL, 2017**

ARRANGEMENT OF SECTIONS

Section

PART I – PRELIMINARY

1. Short title
2. Interpretation

**PART II – ESTABLISHMENT AND COMPOSITION OF THE TRUTH,
RECONCILIATION AND REPARATIONS COMMISSION**

3. Establishment of the Truth, Reconciliation and Reparations Commission
4. Composition of the Commission
5. Appointment of members
6. Independence of the Commission
7. Tenure of members
8. Remuneration of members
9. Resignation of members
10. Removal of members
11. Immunity of members
12. Filling of membership vacancies

**PART III – OBJECTIVES, FUNCTIONS, POWERS AND ANCILLARY
MATTERS OF THE COMMISSION**

13. Objectives of the Commission
14. Functions of the Commission
15. Powers of the Commission
16. Administration of oaths
17. Sittings of the Commission
18. Disclosure of interest
19. Establishment of committees
20. Amnesty
21. Reparations
22. Duty of impartiality
23. Rules of procedure

PART IV - ADMINISTRATIVE PROVISIONS

24. The Executive Secretary of the Commission and Deputy
25. Functions of the Executive Secretary

DRAFT

Truth, Reconciliation and Reparations Commission Bill, 2017

26. Other staff of the Commission
27. Immunity of the Executive Secretary and other staff
28. Staff regulations

PART V – FINANCIAL PROVISIONS

29. Funds of the Commission
30. Annual estimates, accounts and audit

PART VI - REPORT AND RECOMMENDATIONS OF THE COMMISSION

31. The Commission's obligation to submit a report at the end of its operations
32. Government's obligations
33. Dissolution of the Commission

PART VII– MISCELLANEOUS

34. Duty of confidentiality
35. Protection of informants
36. Protection of witnesses
37. Offences
38. Regulations

**TRUTH, RECONCILIATION AND REPARATIONS COMMISSION
BILL, 2017**

A BILL ENTITLED

AN ACT to provide for the establishment of a Truth, Reconciliation and Reparations Commission; to investigate and establish an impartial historical record of the nature, causes and extent of violations and abuses of human rights committed during the period July 1994 to January 2017 and to consider the granting of reparations to victims and for connected matters.

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Truth, Reconciliation and Reparations Commission Act, 2017..

2. Interpretation

In this Act, unless the context otherwise requires –

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Truth, Reconciliation and Reparations Commission established under section 3;

“Constitution” means the Constitution of the Republic of The Gambia;

“Government” means the Government of the Republic of The Gambia;

“human rights violations or abuses ” include-

- (a) The commission of acts of torture, unlawful killings, rape and other forms of sexual abuse, enforced disappearances of persons, inhumane and degrading treatment; whether committed in isolation or as part of a crime against humanity; whether committed individually or in concert with others;
- (b) the instigation, incitement, aiding and abetting, counselling or procuring any of the acts under paragraph (a).

“informant” means a person who discloses a human rights violation

DRAFT

Truth, Reconciliation and Reparations Commission Bill, 2017
or abuse to the Commission;

“member” means a member of the Commission and includes the Chairperson and the Vice-Chairperson of the Commission;

“Minister” means the Attorney General and Minister of Justice;

“National Assembly” means the National Assembly of the Republic of The Gambia;

“President” means the President of the Republic of The Gambia;

“reparations” shall include compensation, ex-gratia payments, restitution, rehabilitation, satisfaction, recognition or community reparations which is applicable to communities denied public services or deprived of State funding as a result of collective punishment;

“rehabilitation” shall include medical and psychological rehabilitation;

“witness” means a person who testifies about a human rights violation or abuse before the Commission; and

“victim” includes-

- (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of rights-
 - (i) as a result of a violation or abuse of human rights, or
 - (ii) as a result of the commission of a crime;
- (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of rights, as a result of such person intervening to assist persons contemplated in paragraph (a); and
- (c) the relatives or dependents of such victims as may be determined by the Commission.

PART II – ESTABLISHMENT AND COMPOSITION OF THE TRUTH, RECONCILIATION AND REPARATIONS COMMISSION

3. Establishment of The Gambia Truth Reconciliation and Reparations Commission

(1) There is established by this Act, the Truth, Reconciliation and Reparations Commission.

(2) The Commission shall operate for a period of two years and may be extended by the President for such further period as he or she determines by publication in the gazette.

(3) The Commission is a body corporate with perpetual succession and a common seal and may –

- (a) enter into contracts, acquire, hold, manage and dispose of property; and
- (b) do such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(4) The application of the common seal of the Commission shall be authenticated by the signature of the Executive Secretary, the Chairperson, the Vice-Chairperson, or any other member authorised by the Commission in writing to sign on behalf of the Commission.

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

4. Composition of the Commission

(1) The Commission shall consist of eleven members, all of whom shall be citizens of The Gambia from amongst persons of high moral character and integrity who have distinguished themselves in their respective fields of vocation or communities.

(2) The Commission shall include-

- (a) women;
- (b) at least one representative from each region of the country.

5. Appointment of members

(1) The President shall, after consultation with the Minister and each

D R A F T

Truth, Reconciliation and Reparations Commission Bill, 2017
of the following, appoint the members of the Commission–

- (a) The Association of Non-Governmental Organisations;
 - (b) Gambia Federation of the Disabled;
 - (c) National Youth Council;
 - (d) **Gambia Women's Federation** / Umbrella Women's Federation;
 - (e) Gambia Press Union;
 - (f) the Gambia BAR Association, and
 - (g) Regional Governors and Mayors.
- (2) The President shall designate the Chairperson and Deputy Chairperson from amongst the members of the Commission.
- (3) A person shall not be qualified for appointment as a member of the Commission if he or she–
- (a) is known to be actively involved in a political party;
 - (b) is an un-discharged bankrupt; or
 - (c) has been convicted of a felony.

6. Independence of the Commission

The Commission shall–

- (a) be impartial and fair in the performance of its functions; and
- (b) not be subject to the direction or control of any person or authority.

7. Tenure of office

A member of the Commission shall hold office for two years and is eligible for re-appointment.

8. Remuneration of members

- (1) A member of the Commission shall work full-time for the Commission and shall be paid such salary and allowances as determined by the Minister.
- (2) The Minister shall not vary the salary or allowances of a member to the member's disadvantage during his or her tenure of office.

9. Resignation of members

A member of the Commission may resign from his or her office by notice in writing addressed to the President, and a resignation shall take effect when the President receives the notice.

10. Removal of members

(1) The President may remove a member of the Commission from office only on the following grounds-

- (a) inability to perform the functions of his or her office arising from infirmity of mind, body or from any other cause;
- (b) misconduct, including failing or refusing to-
 - (i) participate in the work of the Commission without good cause, or
 - (ii) disclose an interest in a complaint made to the Commission as provided under section 18: or
- (c) disqualification pursuant to section 5(3).

(2) The President shall not remove a member of the Commission from office under paragraph (a) of sub-section (1) unless he or she receives a report submitted by a competent Medical doctor.

(3) The President shall not remove a member of the Commission from office under paragraph (b) and (c) of sub-section (1) unless he or she receives a report submitted by a committee appointed by the Chief Justice.

(4) The committee appointed by the Chief Justice under sub-section (3) shall comprise a-

- (a) Judge of the Court of Appeal, who shall be the chairperson;
- (b) member of the Gambia BAR with at least 10 years standing; and
- (d) a representative of The Association of Non-Governmental Organisations.

11. Immunity of members

A member of the Commission or a former member of the

Truth, Reconciliation and Reparations Commission Bill, 2017

Commission shall not be subject to civil or criminal proceedings for any act done or omitted to be done in the performance of his or her functions.

12. Filling of membership vacancies

- (1) A vacancy occurs in the membership of the Commission if-
- (a) a member's initial term expires;
 - (b) a member resigns from his or her office under section 9;
 - (c) a member dies; or
 - (d) a member is removed from office by the President under section 10.
- (2) Where a vacancy occurs under subsection (1), the President shall fill the vacancy in accordance with section 5.

PART III – OBJECTIVES, FUNCTIONS, POWERS AND ANCILLARY MATTERS OF THE COMMISSION

13. Objectives of the Commission

The objectives of the Commission are to –

- (a) create an impartial historical record of violations and abuses of human rights from July 1994 to January 2017, in order to-
 - (i) promote healing and reconciliation,
 - (ii) respond to the needs of the victims;
 - (iii) address impunity; and
 - (iv) prevent a repetition of the violations and abuses suffered.
- (b) establish and make known the fate or whereabouts of disappeared victims;
- (c) provide victims an opportunity to relate their own accounts of the violations and abuses suffered; and
- (d) grant reparations to victims in appropriate cases.

14. Functions of the Commission

(1) The Commission shall initiate and coordinate investigations into-

- (a) violations and abuses of human rights;
- (b) the nature, causes and extent of violations and abuses of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations and abuses;
- (c) the identity of all persons, authorities, institutions and organisations involved in such violations;
- (d) the question whether such violations were the result of deliberate planning on the part of the State, its organs or other groups or an individual;
- (e) the gathering of information and the receiving of evidence from any person, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims; and
- (f) determining what evidence have been destroyed by any person in order to conceal violations and abuses of human rights.

(2) The Commission may seek assistance from traditional and religious leaders to facilitate reconciliation and healing.

(3) The Commission shall-

- (a) prepare a comprehensive report which sets out its activities and findings based on factual and objective information and evidence collected, received by it or placed at its disposal; and
- (b) make recommendations to the President with regard to the creation of institutions conducive to the development of a stable and democratic society as well as the institutional, administrative and legislative measures which should be taken in order to prevent the commission of violations and abuses of human rights.

15. Powers of the Commission

DRAFT

Truth, Reconciliation and Reparations Commission Bill, 2017

(1) The Commission may –

- (a) gather by means it deems appropriate, any information it considers relevant, including the ability to request reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;
- (b) visit any establishment or place without giving prior notice, for any purpose which is material to the fulfillment of the Commission's mandate and in particular, for the purpose of obtaining information or inspecting any property or taking copies of any documents which may be of assistance to the Commission, and for safeguarding any such property or document;
- (c) interview any individual, group or members of organisations or institutions and at the Commission's discretion, to conduct such interviews, in private;
- (d) subject to adequate provision being made to meet his or her expenses for the purpose, to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel the attendance of any person who fails to respond to a request of the Commission to appear and to answer questions relevant to the subject matter of the session or hearing;
- (e) require that statements be given under oath or affirmation and to administer such oath or affirmation;
- (f) request information from the relevant authorities of a foreign country and to gather information from victims, witnesses, government officials and others in foreign countries;
- (g) issue summonses and subpoenas as it deems necessary in fulfillment of its objectives;
- (h) request and receive police assistance as needed in the enforcement of its powers;
- (i) recommend the conduct of prosecutions in particular cases;
and
- (j) recommend the granting of amnesty to persons in

appropriate cases upon application for amnesty.

(2) The Commission may undertake investigation and research into key events, causes, patterns of abuse or violations and hold public sessions on such themes and institutions as it considers appropriate.

(4) A person who fails to answer to a summons or subpoena issued by the Commission or fails answer questions of the Commission after responding to a summons or subpoena, or intentionally providing misleading or false information to the Commission shall be deemed equivalent to contempt of court and may, be referred to the High Court for trial and punishment.

(5) All persons, including public institutions shall cooperate with and provide unrestricted access for the Commission and its staff for any purposes necessary in the fulfillment of the Commission's mandate under this Act, as determined by the Commission.

16. Sittings of the Commission

(1) The Commission shall sit at such times and at such places, as the Chairperson shall determine.

(2) Subject to subsection (3) and..., the Commission shall hold its sittings in public.

(3) Where any government official notifies the Commission in writing that the giving of any information or the answering of any question or the production of any document or thing might prejudice the –

- (a) security or defence of The Gambia;
- (b) prevention, investigation or detection of offences; or
- (c) proceedings of Cabinet concerning matters of a secret or confidential nature.

it shall summon that government official to appear before it and provide the evidence in camera if the Commission is satisfied with the justification.

Special exceptions to public hearings

(3) The Commission shall at the request in writing of at least six members, convene a special sitting of the Commission at any other time.

(4) The Chairperson shall preside over sittings of the Commission

DRAFT

Truth, Reconciliation and Reparations Commission Bill, 2017

and the deputy-Chairperson shall preside over a sitting in the absence of the Chairperson. In the absence of both, Members shall appoint from amongst themselves a person to Chairperson.

(5) The quorum for a sitting of the Commission shall be seven members, including the Chairperson or the deputy-Chairperson.

(5) All decisions of the Commission shall be taken on the basis of a majority vote and the person chairing shall have a casting vote.

(6) The Commission may at any time request any person to advise or otherwise assist the Commission at any of its sittings but the person shall not vote on any matter.

(7) The Commission shall regulate its own procedure.

17. Disclosure of interest

(1) A member of the Commission who has an interest, in any complaint made to the Commission, shall -

(a) disclose to the Commission, the fact of such interest and the nature of it; and

(d) not take part in any hearing or decision of the Commission relating to the complaint.

(2) For the purposes of this section interest means any matter which has the potential to undermine or compromise the independence or judgment of any member.

(3) A disclosure of interest by a member shall be recorded in the minutes of the Commission.

(4) A member who contravenes sub-section (1) may be removed from the Commission.

18. Establishment of committees

(1) The Commission may establish such committees, it may consider necessary or expedient for the efficient performance of its functions.

(2) Committees established by the Commission shall include a Committee on –

(a) Human Rights Violations and abuses;

(b) Amnesty;

(c) Reparations; and

(d) Child Abuse and Sexual and Gender based violence.

(3) A committee shall consist of persons with the relevant knowledge and experience in the subject matter assigned to that committee and shall be headed by a person selected by the Commission.

(4) A committee may invite to its meetings, specialists or experts in the subject matter assigned to that committee as resource persons or in such other capacity as the committee shall determine.

(5) A committee shall make recommendations to the Commission for approval.

(6) The Commission shall regulate the procedure of its committees.

19. Amnesty

(1) The Commission may recommend Amnesty under the terms and conditions established by the Commission upon application by a person making full disclosures of their involvement in human rights violations or abuses and expressing remorse for their acts or conduct .

(2) Where the Commission has refused an application for amnesty, it shall as soon as reasonably practicable give reasons for its refusal in writing to the applicant and to any other person who in relation to the offence is a victim.

(3) Amnesty shall not apply to acts, which form part of a crime against humanity.

21. Reparations

(1) Where the Commission is of the opinion that the applicant is a victim upon consideration of the evidence received or obtained, it shall, having regard to the prescribed form grant reparations in an endeavour to restore the human and civil dignity of the victim.

(2) The Commission may make regulations to provide for reparations under the Act.

23. Rules of procedure

The Commission may make rules of procedure, consistent with the

Truth, Reconciliation and Reparations Commission Bill, 2017

rules of natural justice, for the –

- (a) filing of complaints;
- (b) admissibility of complaints;
- (c) conduct of investigations; and
- (d) Conduct of its hearings

PART IV - ADMINISTRATIVE PROVISIONS

24. The Executive Secretary of the Commission and Deputy

(1) The secretariat of the Commission shall be headed by an Executive Secretary.

(2) The President shall, after consultation with the Minister and the Public Service Commission, appoint the Executive Secretary of the Commission.

(3) The Executive Secretary shall hold office for two years on such terms and conditions as shall be determined by the Minister and he or she is eligible for re-appointment.

(4) The Executive Secretary shall –

- (a) hold formal qualifications in any profession; and
- (b) have at least ten years experience in administration or management .

(5) The Executive Secretary may only be removed from office due to –

- (a) inability to perform the functions of his or her office, arising out of physical or mental incapacity; or
- (b) misconduct or incompetence.

(6) Before the Executive Secretary is removed, he or she shall be informed of the case against him or her and be given adequate opportunity to defend himself or herself against any allegations..

(7) The Minister shall appoint a Deputy Executive Secretary after consultation with the Executive Secretary.

(8) The Deputy Executive Secretary shall assist the Executive Secretary in the performance of his or her functions.

25. Functions of the Executive Secretary

(1) The Executive Secretary shall –

Truth, Reconciliation and Reparations Commission Bill, 2017

- (a) be responsible for the day to day administration of the Commission;
- (b) supervise staff of the Secretariat;
- (c) arrange the business of the Commission;
- (d) keep all records of the Commission;
- (e) initiate and maintain contacts or relations with local interest groups and international human rights bodies or institutions; and
- (f) perform such other functions as the Chairperson may assign to him or her.

(2) The Executive Secretary or his or her representative shall attend all sittings of the Commission.

26. Other staff of the Commission

(1) The Executive Secretary may appoint, through a competitive recruitment process, such other staff as the Commission may require.

(2) The Executive Secretary shall in consultation with the Minister, determine the terms and conditions of service of the persons employed by the Commission.

(3) The Executive Secretary may engage such consultants and advisers as the Commission may require.

27. Immunity of the Executive Secretary and other staff

The Executive Secretary or any other staff of the Commission shall not be subject to civil or criminal proceedings for any act done or omitted to be done in the official performance of his or her functions.

28. Staff regulations

(1) The Executive Secretary shall in consultation with the Minister, make regulations generally for the conditions of service of the employees of the Commission.

(2) Regulations made may provide for –

- (a) the appointment, promotion and disciplinary proceedings including dismissal of employees;
- (b) appeals by employees against dismissal or other disciplinary measures; and
- (c) such other matters as may lawfully be provided for

PART V – FINANCIAL PROVISIONS

29. Funds of the Commission

(1) The funds of the Commission shall consist of –

- (a) moneys appropriated to it by the Government;
- (b) funds made available by donors; and
- (c) donations from any lawful source not inconsistent with the functions of the Commission under this Act .

(2) The Executive Secretary shall have control over the use of the Commission's funds.

30. Annual estimates, accounts and audit

(1) The Executive Secretary shall -

- (a) not later than two months before the commencement of operations of the Commission, submit to the Minister responsible for finance for approval, annual budget estimations in respect of its activities;
- (b) not later than three months before the end of each financial year, prepare and submit to the Minister responsible for Finance for examination, estimates of the income and expenditure of the Commission for the ensuing year;
- (c) in respect of each financial year, prepare a statement of accounts of the Commission; and
- (d) within three months after the end of each financial year, submit its statement of accounts to the Auditor General for audit.
- (e) keep proper records and books of accounts of its income and expenditure.

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

PART VI - REPORT AND RECOMMENDATIONS OF THE COMMISSION

31. Submission of Commission's report

(1) The Commission shall submit a report of its work to the President at the end of its operations.

(2) The report shall state the findings of the Commission and shall make recommendations concerning the reforms and other measures needed to achieve the object of the Commission.

(3)

32. Government's obligations

(1) Within thirty days of receiving the report, the President shall submit a copy to the -

(a) National Assembly; and

(b) United Nations Secretary-General.

(2) Upon the President submitting the report under subsection (1), the Minister shall in consultation with the Executive Secretary, make copies or summaries of it widely available to the public.

(3) The Government shall, within six months following the submission of the report, issue a white paper containing its proposed plan on the implementation of the recommendations in the gazette.

33. Dissolution of the Commission

(1) The President shall, not later than three months after the submission of the report of the Commission, dissolve the Commission by notice in the gazette.

(2) The Executive Secretary shall within three months after the submission of the report, among the final administrative activities of the Commission -

(a) organize its archives and records, as appropriate, for possible future reference, giving special consideration to -

(i) the materials or information that might be made available to the Gambian public, either immediately or when conditions and resources allow; and

(ii) the measures that may be necessary to protect confidential information;

(b) organise the disposal of the property of the Commission.

PART VII– MISCELLANEOUS

34. Duty of confidentiality

(1)

() Subject to the **Constitution**, a member of the Commission, the Executive Secretary or any other staff of the Commission shall-

(a) maintain confidentiality and secrecy of any complaint, document, report and other information relating to the implementation of this Act that is known to him or her or comes into his or her possession or control.

(b) not divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to Commission.

(2) A person appointed as a member of the Commission, the Executive Secretary or other staff of the Commission shall, before performing any function of his or her office, take the Oath for the Due Execution of Office and the Oath of Secrecy.

16. Administration of oaths

A witness who appears before the Commission take an oath administered by the Chairperson or his or her representative.

35. Protection of informants

(1) An informant shall not be subject to civil or criminal proceedings for disclosing a human rights violation or abuse.

(2) The Commission shall, if it determines that there is likelihood that the life or the property of the informant is in danger or is likely to be in danger, issue appropriate directions to safeguard the informant or his or her property.

36. Protection of witnesses

The Commission shall, if it determines that there is likelihood that the life or the property of the witness is endangered or is likely to be endangered, issue appropriate directions to the institutions that are capable of rendering protection to provide physical and other protection to the witness or his or her property.

(1) A witness shall not be subject to civil or criminal proceedings for

Truth, Reconciliation and Reparations Commission Bill, 2017
disclosing a human rights violation or abuse.

- (2) The Commission shall, if it determines that there is likelihood that the life or the property of the informant is in danger or is likely to be in danger, issue appropriate directions to safeguard the witness or his or her property.

37. Offences

A person who –

- (a) threatens or interferes with an informant or a witness, or
(b) willfully obstructs or otherwise interferes with work of the Commission in the discharge of its functions,

, commits an offence and is liable on conviction to a fine not exceeding one million dalasis or to imprisonment not exceeding three years or both a fine and imprisonment.

38. Regulations

The Minister may make regulations generally for the effective implementation of this Act and for any other matter, which is consistent with the purposes of this Act.

OBJECTS AND REASONS

It is imperative for The Gambia to carry out a thorough investigation of the human rights violations and abuses of the past 22 years. It is important to have an accurate and impartial historical record of the violations, document them for posterity to ensure that “never again” do we encounter a reoccurrence of such abuses.

The Truth, Reconciliation and Reparations Commission Bill seeks to establish a non-judicial mechanism for the investigation of violations and abuses of human rights in The Gambia between July 1994 and January 2017, in order to promote healing and reconciliation, respond to the need of victims, address impunity and prevent a repetition of the violations and abuses suffered. This Bill also seeks to establish and make known the fate or whereabouts of disappeared victims, provide victims an opportunity to relate their own accounts of the violations and abuses suffered as well as grant reparations to victims in appropriate cases.

Victims of human rights violations have a right to reparations as recognized under international law and Laws of The Gambia. This Bill reinforces the right not only to grant reparations but also restore the civil rights and dignity of victims.

The TRRC is envisaged to be an important vehicle for large-scale institutional, legal and administrative reforms in The Gambia. At the end of its operations, the Commission shall submit a report to the President of the Republic. The report will contain the findings and recommendations of the Commission, which are expected to strengthen and consolidate our burgeoning democracy.

.....
ABUBACARR M. TAMBADOU

DRAFT

Truth, Reconciliation and Reparations Commission Bill, 2017

ATTORNEY GENERAL AND MINISTER OF JUSTICE