

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

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**TRUTH, RECONCILIATION AND REPARATION COMMISSION
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A BILL ENTITLED

AN ACT to provide for the establishment of a Truth, Reconciliation and Reparations Commission; to investigate and establish a 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 such 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 and shall come into force on the date of assent of this Act.

2. Interpretation

In this Act, unless the context otherwise requires –

“Chairperson” means –

(a) except in section 20 (3), the Chairperson of the Commission; and

(b) in section 20 (3), the Chairperson of a thematic committee of the Commission;

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

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

“human rights violations or abuses ” includes-

(a) acts of torture, unlawful killings, rape and other forms of sexual abuse, enforced disappearances of persons, inhumane and degrading treatment; whether committed in

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isolation or as part of a crime against humanity; whether committed individually or in concert with others;

- (b) the commission, instigation, incitement, or aiding and abetting in the commission, instigation, incitement, or aiding and abetting any of the acts under paragraph (a).

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

“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; and

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

“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) who were in distress or to prevent victimization of such persons; and
- (c) such relatives or dependents of such victims as may be determined by the Commission.

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

3. Establishment of The Gambia Truth Reconciliation and Reparation 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 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 membership of 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 of the following organizations, 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;
- (e) Gambia Press Union; and
- (f) all registered political parties.

(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 a registered member of a political party;
- (b) is an un-discharged bankrupt; or
- (c) has been convicted of a felony.

6. Independence of the Commission

In the performance of its functions, the Commission shall not be subject to the direction or control of any person or authority.

7. Tenure of members

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, allowances or retirement benefits as determined by the Minister.

(2) The Minister shall not vary the salary, allowances and retirement benefits 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 under his or her hand 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 19;

(c) incompetence; or

(d) disqualification pursuant to section 5(4).

(2) The President shall not remove a member of the Commission from office under paragraph (a) of sub-section (1) unless he 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 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) the Ombudsman; and

(e) a member of a registered civil society organization.

11. Immunity of members

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A member of the Commission or a former member of the 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 by notice in writing under his or her hand addressed to the President under section 9;
- (c) a member dies; or
- (d) a member is removed from office by the President under section 10.

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

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(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 resolve local and individual conflicts arising from past violations or abuses or in support of healing and reconciliation.

(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

(1) The Commission may –

- (a) recommend the conduct of prosecutions in particular cases;
- (b) recommend the granting of amnesty to persons in appropriate cases upon application for amnesty;
- (c) 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;
- (d) 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;
- (e) interview any individual, group or members of organisations or institutions and at the Commission's discretion, to conduct such interviews, in private;
- (f) 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;
- (g) require that statements be given under oath or affirmation and to administer such oath or affirmation;
- (h) request information from the relevant authorities of a foreign country and to gather information from victims, witnesses, government officials and others in foreign countries;
- (i) issue summonses and subpoenas as it deems necessary in fulfillment of its objectives; and

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(j) request and receive police assistance as needed in the enforcement of its powers.

(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.

(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.

(4) A person who fails to respond 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 members and officers of the Government and political parties, 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. Administration of oaths

The Chairperson, a member of the Commission, or staff of the Commission authorized by the Chairperson, shall administer an oath taken or an affirmation made by a witness.

17. Sittings of the Commission

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

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

(3) The Chairperson shall preside over sittings of the Commission and the deputy-Chairperson shall preside over a sitting in the absence of the Chairperson.

(4) The quorum for a sitting of the Commission shall be three 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 co-opt any person to advise or otherwise assist the Commission at any of its sittings but the person co-opted shall not vote on any matter for decision by the Commission.

(7) The Commission shall regulate its own procedure.

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

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

19. Establishment of committees

(1) The Commission may establish such committees, as the Commission 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) Institutional Reforms;

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(d) Reparations; and

(e) 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 Chairperson 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.

20. Amnesty

(1) Amnesty shall be recommended 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 committed as part of a crime against humanity .

21. Reparations

(1) A person who has suffered harm as a result of a violation or abuse of human rights may apply to the Commission for reparations in the prescribed form.

(2) 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.

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

22. Duty of impartiality

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The Commission shall be impartial and fair in the conduct of an investigation and its functions.

23. Rules of procedure

The Commission may make rules of procedure, consistent with the rules of natural justice, for the –

- (a) filing of complaints;
- (b) admissibility of complaints; and
- (c) conduct of investigations.

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 Minister shall, after consultation with the Commission, appoint the Executive Secretary of the Commission.

(3) The Executive Secretary shall hold office for one year 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 made against him or her.

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

(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) Subject to such directions as the Commission may give, the Executive Secretary shall –

- (a) be responsible for the day to day administration of the Commission;
- (b) supervise and discipline other staff of the Commission;
- (c) arrange the business of the Commission;
- (d) take minutes of the meetings of the Commission and keep them as a public record;
- (e) initiate and maintain high level contacts or relations with local interest groups and international human rights bodies or institutions; and
- (f) perform such other functions as the Commission 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 Commission 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 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 control

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including dismissal of employees of the Commission;

- (b) appeals by employees against dismissal or other disciplinary measures; and
- (c) such other matters as may lawfully be provided for under this Act.

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 Commission shall have control over the use of its 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.

(2) The Commission shall keep proper records and books of accounts of its income and expenditure.

(3) 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) Upon submitting the report to the President, the Minister shall in consultation with the Executive Secretary, publish it in the gazette and make copies or summaries of it widely available to the public.

32. Government's obligations

- (1) Within thirty days of receiving the report, the President shall submit a copy to the -
 - (a) United Nations Secretary-General; and
 - (b) National Assembly.
- (2) 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.

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) what materials or information might be made available to the Gambian public, either immediately or when conditions and resources allow; and
 - (i) what measures may be necessary to protect confidential information;
 - (b) organise the disposal of the property of the Commission.

PART VII– MISCELLANEOUS

34. Duty of confidentiality misinterpret

(1) Every member of the Commission, the Executive Secretary and every other staff of the Commission shall 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.

(2) Subject to the Constitution, a member of the Commission, the Executive Secretary or any other staff of the Commission shall not divulge-

- (a) any information contained in the discharge of a duty, the performance of a function or the exercise of a power under this Act; and
- (b) the source of such information or the identity of any informer or the maker, writer or issuer of a report given to Commission.

(3) 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.

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 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 informant or his or her property.

(3) Where an informant is found to have given false information, he or she shall be prosecuted and punished under section 114 of the Criminal Code.

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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.

37. Offences

A person who willfully obstructs or otherwise interferes with the Commission or any of its members or officers in the discharge of the Commission's functions under this Act, 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 Commission 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.

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HON. ABUBACARR M. TAMBADOU
ATTORNEY GENERAL AND MINISTER OF JUSTICE

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