



National Integrity Systems
Transparency International
Questionnaire

The Gambia 2004

Lead Consultants

Alan Doig and Stephanie McIvor
Fraud Management Studies Unit
Teesside Business School
Middlesbrough
TS1 3BA
UK

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Report Authors

Lead Local Consultant: Hawa Sisay Sabally, Legal Practitioner

Research Assistant: Demba A. Jawo

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Transparency International Secretariat
Otto-Suhr-Allee 97-99
10585 Berlin
Germany
<http://www.transparency.org>

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The Gambia

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue government for infringement of their civil rights?

Yes, Section 37 of the Constitution of the Republic of The Gambia, 1997, enables any person who alleges that his fundamental rights and freedoms enshrined in Chapter IV “has been, is being, or is likely to be contravened in relation to himself or herself”, to apply to the High Court for redress.

Section 4 of the State Proceedings Act makes the State liable in Tort.

Judicial Review of administrative action is also available.

Practice

During the 1st Republic which covers the period 18th February, 1965 to 22nd July, 1994, few people sued government for infringement of their civil rights. However, with the coming into power of the Military through a coup d’etat on Middy of 22nd July, 1994 The Gambian population have now become very litigious. The 2nd Republic after the Military interregnum have seen multiplicity of suits against the State simply because the Executive government mischievously disregards the rule of law and pays lip service of human rights promotion and protection.

Are there procedures for the monitoring of assets, including disclosure provisions, for cabinet and other government ministers?

Yes, but not backed by law. The General Principles Governing the Conduct of Secretaries of State issued by the office of the President is used to monitor assets of Secretaries of State.

Practice

Secretaries of State are required to declare their assets to the President. This is an administrative requirement imposed by the President.

The President declares his assets to the Independent Electoral Commission during the nomination period of candidates for the Presidential election which is once in every five years.

Are there procedures for monitoring of assets, including disclosure provisions, for high level officials?

Yes, Section 223 of the Constitution provides for declaration of assets by public officers to the office of the Ombudsman at the end of every two years whilst in office and upon

ceasing to hold public office. The Ombudsman is required to submit the declaration of assets to the Finance and Public Accounts Committee of the National Assembly.

Practice

This provision has never been invoked by the Ombudsman.

Are there any differences in procedures and disclosure provisions between elected minister, appointed ministers and high level officials?

Yes, Ministers in The Gambia are all appointed and there is no single piece of legislation which requires them to disclose their assets, however high level officials are required to make such disclosure to the office of the Ombudsman in accordance with Section 223 of the Constitution.

Are there conflict of interest rules for ministers?

Yes, Section 72 (4) (b) of Constitution prohibits the Vice President and Secretaries of State from undertaking any activity inconsistent with their official position or which is likely to expose them to any situation which carries with it the risk of a conflict developing between their private and official interests. Section 72 (4) (c) goes further to prohibit the Vice President and Secretaries of State from using information acquired in their official capacity to enrich themselves or any person. There is a directive from the office of the President which requires Secretaries of State to avoid conflict of interest situation.

Are there conflict of interest rules for high level officials?

Yes, Section 222 paragraphs 10 of the Constitution prohibits any public officer from putting himself or herself in a position where his or her personal interest will conflict with his or her official responsibilities.

Are there rules and register concerning gifts and hospitality for ministers?

No.

Are there rules and registers concerning gifts and hospitality for high level officials?

Yes, there are rules but no registers. The rules are contained in paragraphs 11 and 12 of Section 222. They are reproduced below:

"11. A Public Officer shall not ask for or accepts any property or benefits of any kind of himself or herself or any other person or account of anything done or omitted to be done by him or her in the course of his or her duties. The receipts of any gift or benefit from or on behalf of a commercial firm business enterprise or person having or negotiating a contract with the Government shall be in contravention of this paragraph unless the contrary is established."

"12. A Public Officer shall only accept gifts or benefits from relatives and friends to such extend and on such occasions as are customary. However the receipt of any gift or donation by a public officer on any public or official occasion shall, if surrendered to the office, department or agency represented by the public officer, not be treated as contravention of this code."

Practice

In practice the rule is not enforced.

If so, are these registers kept up to date? By whom?

N/A

Have they legal powers to enforce disclosure?

N/A

Have they staff to investigate allegations?

N/A

What powers of sanction are in place against high level officials?

N/A

Have they ever been invoked?

N/A

Are there restrictions on post ministerial office employment?

No.

Are members of the Executive obliged by law to give reasons for their decisions?

No.

Practice

Although members of the Executive are not obliged by law to give reasons for their decisions, such decisions may be reviewed by the courts in any case where a litigant seeks judicial review of an administrative action. In such a situation the state normally files affidavits which give the reasons for the decision being queried. It must be mentioned that the Immigration Act protects the Minister from giving reasons for a deportation if it is done in the public interest.

Do ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Yes, in circumstances provided by Statute in the case of Licences, and prior to 1st July, 2003 officials could do so for procurement contracts, although there were the Major and Minor Tender Boards established by government to award contracts. The areas where Secretaries of State or high level officials have power to issue licences are to be found in the Forest Act, Fisheries Act, Motor Traffic Act, Tourist Industry Licensing Act, Minerals Act to name a few. The Gambia Procurement Act, 2001 effectively abolished the tender boards and created an independent body to handle procurements. This system came into being on 1st July, 2003.

Practice

Government departments had prior to 1st July, 2003 made their own administrative decisions to award petty contracts to government registered vendors. It was also not uncommon to see a Department applying to the Secretary of State for Finance for a tender

waiver on a particular contract. This waiver was discretionary and was the absolute prerogative of the Secretary of State for Finance.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes, The Public Service Commission Regulations provides a chain of command for administrative redress. Further the Ombudsman and the National Audit Office both have roles to check on administrative or financial excesses of the Executive respectively.

Legislature

Is the Legislature required to approve the budget?

Yes, Section 152 of the Constitution requires the Legislature to approve the budget. The approval of the budget is followed by an Appropriation Bill which is enacted by the Legislature as an Act.

Are there significant categories of public expenditure that do not require legislative approval?

No.

Are there conflict of interest rules for parliamentarians?

No.

Are there rules and registers concerning gifts and hospitality?

No.

If so are registers kept up to date? By whom?

N/A

Have they legal powers to enforce disclosure?

N/A

Have they staff to investigate allegations?

N/A

What powers of sanction are in place against parliamentarians?

N/A

Have they ever been invoked?

N/A

Are there restrictions on post legislature employment?

N/A

Electoral Commission

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

Yes. There is an Independent Electoral Commission (I.E.C) established by Constitution (see Section 42. Section 43 of the Constitution gives the Commission the sole responsibility to conduct and supervise elections, conduct registration of voters as well as the registration of political parties.

Who appoints the head of Commission?

The Head of the Commission is appointed by the President in consultation with the Judicial Service Commission.

Practice

However, in practice, the appointment is far from impartial. It is a well known fact that only those who are known to be sympathetic to the ruling party stand the chance of being appointed. The former chairman (Bishop Solomon Tilewa Johnson), was sacked by the President when he wanted to steer an independent course; the President would not allow the Commission to contradict his government.

Political Parties

Are there rules on political party funding?

Yes. Section 104 (7) Elections (Amendment) Act. This Section prohibits a political party from receiving any contribution from any person who is not a citizen of The Gambia, or from any corporate or incorporate body.

Are substantial donations and their sources made public?

No.

Are there rules on political party expenditures?

No.

Are political party accounts published?

No.

Are accounts checked by an independent institution, are they published and are they submitted to Parliament?

No.

Does that institution start investigation on its own initiative?

N/A

Who appoints the head of the institution?

N/A

Supreme Audit Institution

Is the National Auditor General independent? i.e. is the appointment of the General Auditor required to be based on professional criteria/merit?

Yes, and no. The office of the Auditor General is created by the Constitution (Section 158) and is given independence and autonomy. The Auditor General heads the National Audit Offices. The Constitution does not prescribe any professional criteria for appointment of the Auditor General.

Is the appointee protected from removal without relevant justification?

Yes. The Auditor General can only be removed from office for inability to perform his or her functions, for misbehaviour or incompetence.

Practice

The former Auditor General was removed from office on the recommendations of a Commission of Inquiry set up to investigate certain allegations against her and some senior officers in the National Audit Office.

Are all public expenditures audited annually?

No, even though it is a constitutional requirement for this to be done annually.

Is reporting up to date?

No. The last audit report was in 1998.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

The Reports are submitted to the National Assembly for consideration and the last one was in 1998.

Are all public expenditures declared in the official budget?

No. There are certain off budget expenditures from time to time. There are also some Supplementary Appropriation Bills passed by the National Assembly from time to time. These Bills provide for monies to be taken from the Consolidated Revenue Fund to service certain activities which were not included in the Budget.

Judiciary

Have the Courts the jurisdiction to review the actions of the executive (i.e. Presidency the Prime Minister's or other ministers and their officials)?

Yes. The Courts have inherent power to review administrative acts or omissions brought before them. (The Gambia does not have investigative magistrates, but magistrates under the Subordinate Court Act to try civil and criminal cases).

Are judges/investigative magistrates independent?

Yes. The Constitution provides for an independent Judiciary.

Are appointments required to be based on merit?

Yes, qualifications for their appointments are prescribed by law particularly those of judges which is found in Section 139 of the Constitution. Magistrates other than lay magistrates are lawyers by profession.

Are appointees protected from removal without relevant justification?

Yes. Security of tenure is guaranteed under Section 141 of the Constitution for judges. The rules of natural justice operate in favour of magistrates.

Are recruitment and career development based on merit?

No. There is no clear-cut rule on who is to be appointed. Once the person is professionally qualified and applies for an existing vacancy, he or she is usually appointed. However, most of the lay magistrates are political appointees. They represent the ex-officio magistrates appointed by virtue of their offices as District Commissioners.

Practice

The Judicial Service Commission has the Constitutional responsibility to recommend fit and proper persons to be appointed judges by the President. The appointment of magistrates except ex-officios lay magistrates is done by the Judicial Service Commission alone. Lately, the Executive has been hiring and firing judges without justification. What is appalling to the Gambia Bar Association is that the Judicial Service Commission is by-passed in most

instances by the Executive, and in some instances it is reduced to a rubber-stamp. Instructions come from the Executive directly to the Judicial service Commission and they act on the instructions in accordance with the wishes of the Executive. Some magistrates, a former Master of the High Court and a former Judicial Secretary have all been sacked by the Executive with the concurrence of the Judicial Service Commission. No one has challenged his or her arbitrary sacking.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

No. Hardly anyone is ever taken to court. At worst, they are just dismissed.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Yes. The main laws are The Criminal Code, the Economic Crimes Decree and the Elections Decree. The General Orders of Government and Public Service Regulation.

The Criminal Code at Section 86 (a) prohibits any person employed in the public service and charged with the performance of any duty to corruptly solicit, receive or obtain, or agree to receive or attempt to receive or obtain, any property or benefit of any kind for himself or herself or any other person on account of anything already done, omitted to be done, or to be done afterwards, by him or her in the discharge of his or her duties as public officer. A penalty of imprisonment for seven years is prescribed. And the Economic Crimes Decree at Section 5 (g) provides that a person commits an offence if he or she while holding a public office, corruptly or dishonestly abuses the office for private benefit. A direct penalty provision is not provided but Section 3 (i) of the said Decree provides for the Decree to be read together with the Criminal Code and Criminal Procedure Code.

Are there rules requiring political independence of the civil service?

Yes. Section 170 of the Constitution places restrictions on Political activities by civil servants. It prohibits them from holding office in any Political Party, and requires them to take a year's leave of absence prior to nomination as candidate for any election for a political office. Any public servant who contests for an elective political office and wins is required to resign from his office in the public service. Section 91 of the Elections Decree prohibits campaign in public offices and Section 130 (a) and (b) guarantees a public servant his job if he loses in the election irrespective of his political affiliation.

Practice

Public servants who contested on an opposition ticket have been declared redundant after losing elections. Opposition sympathizers within the public service have been dismissed from the services of The Gambia government on account of their political affiliations.

Are recruitment/career development rules based on merit?

Yes and no. The power to make appointments within the public service excluding parastatals, is given to the Public Service Commission and the entire chapter XI of the Constitution deals with the public service, the mode of appointment powers and other functions of the Public Service Commission. However, the Public Service Commission under

the Constitution is a mere rubber stamp for the Executive government. Parastatals are controlled by their respective Boards of Directors.

Practice

There seems to be no clear-cut rules or standards for appointment, dismissal, career development for public servants. Constitutional institutions like the Public Service Commission receive directives from above to act in a particular manner in relation to any public servant. Political patronage now defines the nature of our public service. Morale is low, public servants poorly paid and live in constant fear of being dismissed at any time. There is no security of tenure.

Are there specific rules to prevent nepotism? Cronyism?

Yes. The Ombudsman Act empowers the office of the Ombudsman to investigate complaints of administrative malpractices which include nepotism.

Practice

Nepotism and cronyism are the order of the day. There is also a subtle tribal divide which is fast gathering momentum. There has never been any such inquiry by the Ombudsman as yet.

Are there rules (including registries) concerning acceptance of gifts and hospitality?

Yes. Section 222 paragraphs 11 and 12 prohibits public officers from asking or accepting gifts on account of work done in the execution of their duties. Public officers are however entitled to accept customary gifts or benefits from relatives or friends.

If so, are these registers kept up to date? By whom?

There are no registers. No administrative machinery has been created to handle the issue of gifts.

Have they legal powers to enforce disclosure?

N/A

What powers of sanction are in place against parliamentarians?

N/A

Have they been invoked?

N/A

Are there restrictions on post public service employment?

No. There are no restrictions for post public service employment.

Are procedures and criteria for administrative decisions published?

No.

Are there compliant mechanisms for public servant and whistleblower protection measure?

Yes. Section 169 of the Constitution protects public servants from victimization, discrimination and demotion for discharging their duties in accordance with the law. It provides further that a public servant cannot be punished without just cause. The Ombudsman Act also makes it possible for public servants to lodge complaints for any administrative abuses they may have suffered.

Are there means for complaints by members of the public?

Yes. Complaints may be lodged with the office of the Ombudsman.

Are there administrative checks and balances on decisions of individual public officials?

Yes. The Public Service Regulations, the General Orders, and the office of the Ombudsman.

Police and Prosecutors

Is the Commissioner of Police independent?

No. The Gambia has an Inspector General of Police and successive holders of this office have always been loyal to the government of the day.

Are appointees protected from removal with relevant justification?

Yes. Like all public servants, the Inspector General of Police is to be removed for cause and he has a right to be heard.

Practice

Dismissal at pleasure is commonplace in The Gambia. Orders come from above and they are executed with urgent dispatch.

Are public prosecutors independent?

No. The public prosecutors are from the State law office and police officers. They are all public servants who owe loyalty to the State.

Practice

As noted in the report, both public prosecutors and the police have been accused of showing partisanship in the conduct of cases involving opposition politicians.

Are there special units for investigating and prosecuting corruption crimes?

Yes. There is the Serious Crime Unit within the police which has a fraud squad which investigates serious criminal offences including corruption. Investigation files are submitted to the Office of the Director of Public Prosecutions for advice. Usually the office of the Director of Public Prosecutions determines who should prosecute a given case depending on its intricacies.

Is there an independent mechanism to handle complaints of corruption against the police?

No. If it does exist the public is not aware.

Does civil society have a role in such a mechanism?

No. Civil society is not active in this area.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

No. There has been no prosecution of police officers suspected of corruption. There is no information on any disciplinary measures taken against a police officer on account of corruption.

Are there any cases of corruption within the prosecuting agencies?

No.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of corruption cases?

The Criminal Code, Economic Crimes Decree and the Elections Decree.

Is the law applied?

No cases have been recorded over the past eight years (during military rule and post-military rule).

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

No case of corruption has been prosecuted in the past years.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Yes. The limited exceptions are those for which tender waivers have been given by the Department of State for Finance.

Are the rules laid down in documents publicly accessible?

No. The rules can only be accessed upon demand.

Are there strict formal requirements that limit the extent of sole sourcing?

No.

Are all major public procurements widely advertised to the private sector?

Under the new Gambia Public Procurement Act, 2001, any procurement above a specified amount must be widely advertised to the public. The amount is yet to be specified. There are those that are given tender waivers as a result of which they are not advertised.

Are procurement decisions made public?

No.

Is there a procedure to request review of procurement decisions?

No, presently. But under the Gambia Public Procurement Act 2001, a provision is made for review of procurement decisions made under the Act.

Can an unfavourable decision be reviewed in a court of law?

Yes. The High Court can review such decision under its inherent jurisdiction.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No.

Are there rules and procedures to prevent nepotism/conflict of interest in the public procurement?

Yes. The conflict of interest provision in Section 222 paragraph 10 of the Constitution is of general application to all public servants. The purchases are done by public servants.

Are assets, incomes and life styles of public procurement officers monitored?

No.

Ombudsman

Is there an Ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Yes. Section 163 of the Constitution creates the office of the Ombudsman whilst Section 164 provides for appointment and tenure of office.

Is the Ombudsman independent?

Yes. The independence of the Ombudsman is provided for in Section 165 of the Constitution. There is no reported case of any interference with the office of the Ombudsman.

Are appointments required to be based on merit?

Yes. Section 164 of the Constitution requires the appointee to have substantial administrative or professional experience.

Is the appointee protected from removal without relevant justification?

Yes. Security of tenure is guaranteed.

Has an Ombudsman been removed without relevant justification in the last five years?

No. The Ombudsman is a new position which is barely three years old.

Can petitioners compliant anonymously if they fear possible reprisals?

No. Petitioner must give their names and other relevant particulars to the office of the Ombudsman.

Are reports of the Ombudsman published?

No. The Ombudsman is required by law to send his reports to the office of the President and the National Assembly twice in the year. No report has been submitted so far.

Does the government act on the Ombudsman's recommendations?

Yes. The Ombudsman has since the inception of his office in 1999 dealt with four hundred complaints and claims that the government has acted on all the recommendation made in respect of those cases.

Investigative/Watchdog Agencies

Apart from the Fraud Squad of the Serious Crime Unit of the police there are no other known watchdog agencies on corruption in The Gambia.

Media

Is there a law guaranteeing freedom of speech and of the press?

Yes. Section 25 (1) (a) of the Constitution.

Is there censorship of the media?

Yes. The Media Commission Act provides for censorship as well as the Newspaper Act.

Is there a spread of media ownership?

Yes.

Does any publicly owned media regularly cover the views of government critics?

No.

Have journalists investigating cases of corruption been physically harmed in the last five years?

Yes, to some extent, reports of harassment, intimidation and torture by security personnel have been made by the independent press. Verification has been done, but victims of torture have not sought legal remedy.

Does the media carry articles on corruption?

Yes.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

No. Prior to the establishment of the National Media Commission, the Registrar General at the Attorney General's Chambers was responsible for the registration of newspapers and other publications. However, there had never been a transparent procedure put in place. The National Media Commission has been taken to court by The Gambia Press Union and four other journalists challenging the Constitutionality of some of the provisions of the Act setting it up including the provisions dealing with registration and licensing of journalists. The matter is presently before the Supreme Court.

Are libel laws or other sanctions (e.g. withdrawing of State advertising) used to restrict reporting on corruption?

No. but there exist laws such as the Official Secrets Act as well as the laws on criminal libel and sedition which can be used to restrict the media from functioning to their full capacity. There is also the problem of getting access to official information as well as the constraints placed on civil servants by a circular which forbids them to talk to the press without permission from the head of the civil service.

Practice

The State advertises mostly in State-owned media. However, there have been reported instances of arrests and detentions of journalist for publication of articles found to be libellous by the State.

Civil Society

Does the public have access to information and documents from public authorities?

No.

Do the public authorities generally co-operate with civil society groups?

No. There is always a high degree of reluctance to co-operate due to the prevailing nature of governance in this country.

Are there citizen's groups or business groups campaigning against corruption?

No. The vocal groups campaigning against corruption are the political opposition parties. TI Gambia is yet to make its presence felt in society.

Do citizen's groups make submission to the legislature on proposed legislation?

N/A

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No.

Regional and Local Government

Are there, at regional level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?

Yes. The rules on nepotism are to be found in Section 33 (3) of the Constitution which is the Supreme Law of the land and is a law of general application.

The Local Government Act, 2002 prohibits conflict of interests and provides sanctions in such cases. Section 29 makes conflict of interest a crime, and section 122 of the same Act requires officers to disclose any interest they may have in the award of any contract.

A local government council can receive gifts for the local government area and administer it for the benefit of the area. The Act is silent on local government officers or councillors receiving personal gifts. The constitutional provisions relating to public servants also apply to them.

There is no restriction on post public office employment.

What public officers at regional and local level are appointed by the national government?

At the regional and local levels, the government of The Gambia is responsible for the appointment of the following officers:

(a) District Commissioners, (b) hospital authorities, (c) teachers in public schools, (d) police officers, army officers, immigration officers and other security personnel, (e) all civil servants.

Is there a legal requirement that meetings of city/town councils to open to the press and public?

Yes. Section 30 of the Local Government Act 2002 makes it mandatory for every meeting, other than a committee meeting, to be held in public.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?

Yes, only committee meetings are to be held in camera.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsman, supreme audit institutions and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

The Ombudsman's jurisdiction extends to local governments. The same is true for the National Audit Office.

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

No.

How much of the strategy has been implemented?

N/A

Is the strategy at national level or regional/local level?

N/A

Is the government meeting its own timetable?

N/A

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?

UNDP, UNICEF, UNESCO, WHO, WFP, FAO, World Bank, IMF, KF, GTZ, JICA, EDF, DFID.

What types of anti-corruption initiatives have they supported?

- Capacity building for the National Audit Office
- Training for the Office of the Ombudsman
- Grants to develop the accountancy profession
- Monitoring projects which they are funding.

Are there any examples of donors cooperating or coordinating their programmes?

No material is available on this matter.

Future Research and Donor Support

- The Status of Gambia's governance and the impact of excessive presidential powers on governance,
- Developing mechanisms to trace assets of public officials and implementing the laws on disclosure of assets,
- The extent of decentralization under the Local Government Act, 2002,
- Developing civic education strategies to promote awareness of civic duties,
- Autonomy for the office of the Director of Public Prosecutions and the Central Bank.
- Research and assessment of the status of the Gambian Judiciary and donor support for an independent Judiciary. Research in these areas would assist in highlighting in detail problem areas in our governance programme and provide opportunity for solutions.