

THE GAMBIA

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

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1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

- Civil society organisations have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal

1.3 Legal basis under which citizens have legal standing

Gambia Criminal Procedure Code Chapter X (CAP. 37 1275 Criminal Code) Ibid section 276.

1.4 Citizens or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

Citizens or civil society can intervene in corruption cases in other capacities.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens.

The country is yet having an anti corruption agency

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf this country's citizens

No foreign governments or foreign-based non-governmental institutions have legal standing to bring corruption cases on behalf this country's citizens.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

There are corruption-related cases brought to Court by civil society organisations, journalist of citizens. Supplement "A" to the Gambia Gazette No. 32 of 16th September 2019. Legal Notice No. 17 of 2019: Title: "The Gambia Government White Paper on the Report of the Commission of Enquiry into the Financial Activities of Public Bodies, Enterprises, and Offices as regards their Dealings with Former president Yahya A.J>J> Jammeh and Connected Maters" - ISSN 0796 - 0271

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

The Gambia government defines corruption as a crime against the state, according to the laws of the Gambia, the criminal procedure code, the Criminal Code, and the Constitution. The Gambia is a dualist state, when international treaties are adopted, it have to be domesticated by the National assembly into our domestic laws for it to have an effect. The Anti-corruption bill is still yet to be endorsed by the National assembly in our domestic laws since 2015. The most relevant anti-corruption legislations are as follows:

- The Constitution,
- The Criminal Code(CC),
- The Criminal Procedure Code(CPC)
- The anti-money laundering and combating of terrorist financing Act f2012 (AML/CFT Act)
- The economic Crimes Act (ECA), the National Intelligence Agencies Act, and the evidence Act.

The Gambia deals with corruption and the solution or remedies available for the victims. Corruption and abuse of office are defined in the Gambia Criminal Procedure Code Chapter X Section 86, "Any person

1. Being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, by him in the discharge of the duties of his office; or

2. Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed, is guilty of a felony and is liable to imprisonment for seven years.

Corruption may lead to annulment or rescission of contracts at common law. CPC grants the courts the power to order the convicted person to pay compensation to persons who suffered material loss or personal injury as a consequence of the Offence committed (sect.145).

The common law on tort also allows to seek redress for Anyone who suffered damage as a result of corruption.

Under the CC, criminal sanctions for corruption offences include imprisonment, fines, payment of costs, payment of compensation, and forfeiture. Forfeiture applies only to a limited number of corruptions offences such as corruption of officials (sect.86), Extortion by public officers (sect. 87), and public officers receiving property to show favour (sect.88). Courts have the discretion to substitute any imprisonment with a fine (sect.29).

Thirdly, does the laws of the Gambia have provision for extortion, the Gambia Criminal Procedure Code provides extortion by public officers in Section 87, which states: "Any person who, being employed in the public service, takes or accept from any person for the performance of his duty as such officers, any reward beyond his proper pat and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for three years.

3.2 Procedures for advancing class-actions

- The Constitution,

- The Criminal Code(CC),
- The Criminal Procedure Code(CPC)

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

The Gambia government defines corruption as a crime against the state, according to the laws of the Gambia, the criminal procedure code, the Criminal Code, and the Constitution.

4. 2 Cases that recognize the role of victims

None to the best of my knowledge.

4. 3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

Not to my knowledge.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

Not to my knowledge.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

Information is not published by enforcement authorities.

5.2 Feasible access to information on ongoing or concluded cases

Gambia is listed as a secretive nation, and information is not easy to come by.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

This information is difficult to obtain.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

The secrecy act.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

Corruption constitutes criminal offences in the Gambia, although the precise definition of the offense refers to a crime against the state. This is also established by law as a criminal offence both in the Criminal Procedure Code, and the Criminal Code of The Gambia