

SPECIAL ACCOUNTABILITY MECHANISM (TRRC) BILL, 2024

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SPECIAL ACCOUNTABILITY MECHANISM (TRRC) ACT, 2024

A BILL ENTITLED

AN ACT to provide a framework and guiding principles for the establishment of a Special Accountability Mechanism for the investigation, prosecution and adjudication of cases of serious human rights violations and international and domestic crimes specified in or related to acts and omissions described in the report of the Truth, Reconciliation, and Reparations Commission (TRRC) that have occurred between July 1994 and January 2017.

ENACTED by the President and the National Assembly

PREAMBLE

Whereas the Truth, Reconciliation and Reparation Commission (TRRC) found that serious, human rights violations and international and domestic crimes were committed on a widespread or systematic basis throughout the territory of The Gambia and neighbouring countries between July 1994 and January 2017, and recommended the prosecution of the individuals responsible for them, including the former President;

And Whereas the Government by its White Paper has committed to implementing the TRRC recommendations and ensuring that these violations are never repeated in The Gambia;

And Whereas the victims of the violations and crimes committed during this period, including the non-Gambian victims, deserve justice and compensation for the harm caused;

And Whereas crimes uncovered by the TRRC, include murder, torture, enforced disappearances, rape and other forms of sexual violence, persecutions and other inhuman acts, committed on a widespread or systematic basis throughout the territory of the Republic of The Gambia or neighbouring countries, form part of Customary International Law, which is part of Gambian law, and that principles of International Criminal Law also apply to the prosecution of such crimes;

And Whereas the cooperation of regional organisations, such as the Economic Community of West African States, and other international partners is required to enable and facilitate full and effective prosecutions;

And Whereas addressing past atrocities through justice and accountability is a step towards victims' healing and national reconciliation, and a measure to preventing recurrence of similar atrocities and abuses;

And Whereas in order to ensure a full, independent and impartial prosecution of all those responsible for the crimes committed between July 1994 and January 2017, regardless of their rank or position, it is necessary that a special accountability mechanism be established in accordance with international law and practice, adapted

to the Gambian situation, context and needs, which may hold proceedings outside the country where necessary, in the interests of justice.

1. Short title

This Act may be cited as the Special Accountability Mechanism (TRRC) Act, 2024

2. Interpretation

In this Act, unless the context otherwise requires –

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

“**ECOWAS**” means the Economic Community of West African States;

“**High Court**” means the High Court of The Gambia established under section 131 of the Constitution;

“**Minister**” means the Minister responsible for Justice;

“**Special Accountability Mechanism**” refers to the accountability mechanism established in collaboration with ECOWAS and international partners for the implementation of the TRRC recommendations, to prosecute serious human rights violations and other crimes committed during the period covered by the TRRC Mandate, including crimes under Gambian law and international crimes, as well as other crimes that were committed in the context of or in connection with these crimes, and includes the Special Prosecutor’s Office;

“**Special Criminal Division of the High Court**” refers to the Division of the High Court established by the Chief Justice under section 131(3) of The Constitution of The Gambia 1997 [*Act No.1 of 1997*] to hear and determine TRRC-related cases, filed before it by the Special Prosecutor;

“**Special Prosecutor’s Office**” means the Office established under section 6;

“**TRRC**” means The Gambia Truth Reconciliation and Reparations Commission established under section 3 of the Truth, Reconciliation and Reparations Commission Act, 2017 [*Act No. 09 of 2017*];

“**TRRC Mandate**” refers to the period between July 1994 to January 2017 specified in section 13 of the TRRC Act;

“**TRRC Report**” means the Final Report published by the TRRC on the 25th November 2021 containing its findings and recommendations;

“**Special Tribunal**” means the body established under section 7;

“Victim” means a person or an entity that, subject to judicial determination, has suffered harm as a result of the commission of a crime within the Special Accountability Mechanism’s jurisdiction;

“Vulnerable persons” means women, children under 18 years of age, the elderly, persons who have been victims of sexual violence and other gender-based crimes or the crime of torture, persons with disabilities or showing signs of trauma, and persons in detention; and

“Witness” means a person whose name appears as a witness for the Prosecution on the Special Prosecutor’s Office Witness List with respect to cases filed or to be filed, a person whose name appears as a witness for the Defence on the Defence witness list or a person called as a witness before the Special Tribunal in accordance with the Rules of Procedure and Evidence of that Tribunal.

3. Establishment and Composition of a Special Accountability Mechanism

(1) A Special Accountability Mechanism shall be established for the investigation, prosecution and adjudication of cases of serious human rights violations and international and domestic crimes specified in or related to acts and omissions described in the report of the TRRC that have occurred between July 1994 and January 2017.

(2) The Special Accountability Mechanism shall consist of the following constituent parts –

- (a) a Special Prosecutor’s Office that will later become part of the Special Tribunal;
- (b) a Special Tribunal, modelled upon similar internationalised courts and tribunals;
- and
- (c) the Special Criminal Division of the High Court.

(3) The Special Accountability Mechanism shall employ both Gambian and non-Gambian judges, prosecutors, experts and staff with priority for appointment being given to qualified Gambians on a competitive basis, based on merit.

(4) Non-Gambian counsel appointed as prosecutors or appearing as defence counsel shall, for the purpose of proceedings involving the crimes referred to in section 3(1) be exempt from the requirements for enrolment under the Legal Practitioners Act. Other rules may be adopted to regulate their vetting and admission.

4. Applicable Law

Subject to section 8(1), the Special Accountability Mechanism shall apply international law, including customary international law, and Gambian law for the full investigation, prosecution and adjudication of the cases referred to in section 3(1), and shall be

guided by relevant international case law and procedure in ensuring fair, transparent and efficient proceedings.

5. Primacy of Jurisdiction

Each constituent part of the Special Accountability Mechanism shall have primacy of jurisdiction over any other equivalent investigative, prosecutorial or adjudicative body in The Gambia in relation to the crimes and persons falling within their respective jurisdiction.

6. Special Prosecutor's Office

(1) The Special Prosecutor's Office shall be established by an Act of the National Assembly as an independent and autonomous office. It shall be the first step in establishing the Special Accountability Mechanism. The Special Prosecutor's Office shall be headed by the Special Prosecutor who shall –

- (a) be independent in the performance of his or her functions and have full authority over the management of the Office;
- (b) have the mandate to investigate and prosecute cases referred to in section 3(1);
- (c) take custody of all materials, data and information gathered, received and produced by the TRRC; and
- (d) have the power to decide which cases to bring before the Special Tribunal and which ones before the Special Criminal Division of the High Court in accordance with their respective jurisdiction on the basis of pre-set criteria, including the gravity and nature of the crimes committed, whether they are international or domestic crimes, and the rank of the alleged perpetrators.

(2) Upon the establishment of the Special Tribunal, the Special Prosecutor's Office established pursuant to subsection (1) shall transition into a constituent component of the Special Tribunal and the Special Prosecutor shall become the Special Prosecutor of the Special Tribunal.

(3) The Acts establishing the Special Prosecutor's Office pursuant to subsection (1) and the Special Tribunal shall provide for the continuation of the Special Prosecutor's Office's mandate, powers, agreements, ongoing investigative and prosecutorial work, as well as the transfer of personnel and the chain of custody of evidence and records.

7. The Special Tribunal

(1) The Special Tribunal shall be established by an international treaty entered into with ECOWAS or another suitable regional or international organisation ratified and brought into force by an Act of the National Assembly.

(2) The Special Tribunal's constitutional setup shall include –

- (a) the Special Prosecutor's Office previously established pursuant to section (6);

(b) an independent adjudicatory authority comprising a Trial and an Appeal Chambers;

(c) an independent defence function; and

(d) a Registry which shall be responsible for the administration and servicing of the Special Tribunal.

(3) The Special Tribunal shall have jurisdiction over international and domestic crimes, and the power to adopt its own rules of procedure and evidence, which shall reflect international precedent and best practice, including witness protection and victim participation.

(4) The Special Tribunal shall have its seat in The Gambia but may hold hearings outside the country if the interest of justice so require.

8. Cases to be referred to the Special Criminal Division of the High Court

(1) The Special Prosecutor's Office shall determine which acts or omissions that constitute crimes under Gambian law, shall be prosecuted before the Special Criminal Division of the High Court.

(2) The Special Criminal Division of the High Court shall, pending the establishment of the Special Tribunal, have jurisdiction to hear and determine applications for interim measures necessary to preserve the integrity of ongoing investigations or prosecutions, protect the rights of witnesses, victims, suspects, accused or other persons, or to prevent irreparable harm, regardless of the gravity of the crimes under investigation or the rank or position of an alleged perpetrator.

(3) The Special Tribunal shall, with effect from its establishment, and on application by the Special Prosecutor or *suo moto*, extend, alter, suspend or lift an interim measure in the cases within its jurisdiction, including on any measures previously ordered by the Special Criminal Division of the High Court in such cases.

9. Defence

All suspects when being questioned and accused persons shall be entitled to counsel of their own choosing or, if they do not have the means to retain counsel, to have counsel assigned to them free of charge, and to adequate time and facilities to prepare their defence.

10. Victims and Witnesses

(1) The Special Prosecutor's Office and Special Tribunal shall make adequate arrangements for the protection and support of victims and witnesses, particularly vulnerable persons and those at risk of being harmed on account of their interaction with the Special Accountability Mechanism.

(2) For the purpose of subsection (1), the Special Prosecutor's Office and the Special Tribunal shall establish adequate victims and witness protection and support units based on international standard and practice.

(3) Victims shall have the right to participate in the proceedings for crimes under section 3(1) through counsel and under conditions determined by the Special Tribunal, to protect their rights and interests.

(4) A victim, recognised as such by the Special Tribunal and the Special Division of the High Court in a judgement, shall have the right to reparation, as ordered in the judgement.

(5) A judgement under subsection (4) does not preclude the right of other persons who have not participated in the proceedings and have suffered harm as a result of the commission of serious human rights violations or international or domestic crimes between July 1994 and January 2017 to seek compensation through other mechanisms.

11. Security and Confidentiality

(1) The Special Accountability Mechanism and each of its constituent parts shall protect the security and confidentiality of information, records and data gathered, received and created.

(2) Subsection (1) shall apply also to personal data and other sensitive information about witnesses, planned investigative activities and information provided to the Special Accountability Mechanism by third parties on condition of confidentiality.

(3) Personnel hired by or seconded to any of the constituent parts of the Special Accountability Mechanism shall undergo thorough vetting and an appropriate security clearance procedure. They shall be bound by the security and confidentiality provisions in this and any other Acts related to the Special Accountability Mechanism.

12. Implementation of this Act

(1) The Minister shall be responsible for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister shall have the power to take all measures deemed necessary to fulfil the objectives of this Act, including making proposals for legislative amendments and the signing of treaties aimed at –

(a) ensuring a full, independent and impartial investigation and prosecution; and

(b) securing the conditions for a fair and expeditious trial of those responsible for the crimes referred to in section 3(1).

Objects and Reasons

This Bill aims to provide a comprehensive framework for prosecuting individuals implicated in serious human rights violations identified by the TRRC between 1994 and 2017.

The Bill establishes the mechanism which encompasses the Special Prosecutor's office, the Special Tribunal designed in the form of internationalised Courts and Tribunals, and the Special Criminal Division of the High Court.

The Special Accountability Mechanism established in this Bill envisions to take advantage of regional and international support and expertise. Simultaneously, the mechanism aims to be as Gambian-driven as possible. To achieve this, a combination of Gambian and non-Gambian judges, prosecutors, experts, and staff will be employed, with a priority given to Gambians.

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HON. DAWDA A. JALLOW
ATTORNEY GENERAL AND MINISTER OF JUSTICE