

SPECIAL PROSECUTOR'S OFFICE ACT, 2024

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AN ACT to establish an independent and autonomous Special Prosecutor's Office as the first phase in establishing the Special Accountability Mechanism for the investigation, prosecution and adjudication of cases of serious human rights violations and international crimes and domestic crimes specified in or related to acts and omissions described in the report of the Truth, Reconciliation, and Reparations Commission (TRRC), which occurred between July 1994 and January 2017; to provide for the protection of witnesses, victims and whistle blowers; to promote and foster a national culture of accountability and respect for human rights; and to enforce The Gambia's obligations under national and international law.

ENACTED by the President and the National Assembly

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Special Prosecutor's Office Act, 2024

2. Interpretation

In this Act, unless the context otherwise requires –

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

“**Division Head**” means the professional appointed to head a Division of the Special Prosecutor's Office created under section 21;

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

“**ECOWAS Treaty**” means the treaty between The Gambia and ECOWAS setting out the terms of collaboration for the establishment of the Special Accountability Mechanism Framework for the implementation of the TRRC Report;

“**Establishing Act**” means the Act by which the Special Tribunal is established as part of the Special Accountability Mechanism Framework;

“**High Court**” means the High Court of The Gambia established under section 131(3) of the Constitution of the Republic of The Gambia 1997 [*Act No. 1 of 1997*];

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

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“Oversight Committee” means the Special Prosecutions Oversight Committee established under section; 37;

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

“Selection Panel” means the persons convened under section 23 to constitute a panel for the purpose of selecting candidates for appointment by the President;

“Senior Management Team” means the Deputy Special Prosecutor and the Division Heads who support the Special Prosecutor in the carrying out of his or her functions;

“Special Accountability Mechanism” refers to the accountability mechanism, consisting of the Special Prosecutor’s Office, the Special Tribunal founded in collaboration with ECOWAS and international partners, and the Special Criminal Division of the High Court, established to investigate, prosecute, and adjudicate 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), which occurred between July 1994 and January 2017;

“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 to hear and determine TRRC-related cases, filed before it by the Special Prosecutor;

“Special Prosecutor” means the person appointed under section 5 to head the Special Prosecutor’s Office;

“Special Prosecutions Fund” refers to the Fund established under section 27;

“Special Prosecutor’s Office” means the Office established under section 3;

“Special Tribunal” refers to the autonomous judicial body established as part of the Special Accountability Mechanism, operating in parallel to and independent from the Gambian courts in accordance with the provisions of the Establishing Act;

“Special Tribunal Effective Date” refers to the date on which the Special Tribunal announces formally that it has become operational;

“TRRC” means The Gambia Truth Reconciliation and Reparations Commission established under section 3 of the Truth, Reconciliation and Reparations Commission Act, 2017;

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

“Victim” means a person who, subject to judicial determination, has suffered harm as a result of the commission of a crime falling within the mandate of the Special Accountability Mechanism;

“Vulnerable persons” means women, children under 18 years of age, the elderly, 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.

PART II - ESTABLISHMENT AND PURPOSE OF THE SPECIAL PROSECUTOR'S OFFICE

3. Establishment and Purpose

(1) There is established by this Act the Special Prosecutor's Office for the purpose of investigating and prosecuting cases of serious human rights violations and international and domestic crimes specified in or related to acts and omissions described in the TRRC Report, which occurred between July 1994 and January 2017.

(2) The Special Prosecutor's Office shall be headed by the Special Prosecutor in whom shall be vested the functions, powers and authority to be carried out and exercised by him or her in accordance with this Act, other relevant legislation, rules and guidelines made under this Act.

(3) The Special Prosecutor's Office shall be a corporate entity with a common seal with power to enter into contracts, acquire, hold, manage and dispose of property and do such other acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(4) The Special Prosecutor's Office shall exercise its prosecutorial and investigative powers in the name of the State.

4. Independence and autonomy

(1) The Special Prosecutor's Office shall be independent and autonomous and shall not, except to the extent provided in this Act, be subject to the direction or

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control of any other person or authority in the exercise of his or her powers or carrying out of his or her functions.

(2) To ensure independence and impartiality, the Special Prosecutor and all other personnel of the Special Prosecutor's Office shall not during their tenure in office:

- (a) hold any other public office; or
- (b) engage in political, commercial or any other professional activity that is incompatible with the office.

5. Appointment and qualifications of Special Prosecutor

(1) The Special Prosecutor shall be appointed by the President on the recommendation of the Selection Panel pursuant to section 23.

(2) The person appointed as Special Prosecutor shall be an individual of high moral character, impartiality and integrity, highly competent in and possessing extensive practical experience in the prosecution or trial of domestic and international criminal cases and a strong reputation for commitment to justice and human rights.

6. Deputy Special Prosecutor and Division Heads

The Special Prosecutor shall, in the discharge of his or her functions, be assisted by a Deputy Prosecutor and Division Heads with the requisite character, integrity and qualifications to be appointed by the President on the recommendation of the Selection Panel.

7. Procedure for appointment

(1) The Selection Panel shall recommend the appointment of the Special Prosecutor, Deputy Special Prosecutor, the Division Heads and the Chairperson of the Special Prosecutions Fund based on a transparent, competitive and non-partisan procedure to be agreed at their first meeting.

(2) The Special Prosecutor shall be consulted by the Selection Panel in the selection of the Deputy Special Prosecutor and Division Heads.

8. Tenure of office of Special Prosecutor

The Special Prosecutor shall be appointed for a fixed term of four years and may

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be extended for one further term.

9. Appointment of other staff

- (1) All other staff of the Special Prosecutor's Office whether appointed on a permanent or temporary basis shall be appointed by the Special Prosecutor in consultation with the Senior Management Team in accordance with section 34 with due regard to the objectives of this Act and the guiding principles specified under section 10.
- (2) Staff of a government or relevant international institution may also be seconded to the Special Prosecutor's Office after appropriate vetting and assessment of their qualification for a particular position.
- (3) Seconded staff shall, for the period of the secondment:
 - (a) be under the full authority of the Special Prosecutor and shall not report in any way to their office of origin; and
 - (b) receive such financial compensation and other benefits to which they may be entitled in accordance with the conditions of their secondment.

10. Guiding principles for appointments

- (1) In considering candidates for appointment as Special Prosecutor, Deputy Special Prosecutor, Division Heads, or other office, the Selection Panel or Special Prosecutor, as the case may be, shall be guided by principles of independence, transparency, inclusivity, professional competence and merit.
- (2) Priority for appointments to any office shall be given to qualified Gambians and persons with experience in mass crime investigations or prosecutions or gender-related offences on a competitive basis.

PART III - JURISDICTION AND AUTHORITY

11. Jurisdiction and scope

- (1) The Special Prosecutor shall have the power to determine which cases falling within the scope of his or her mandate as specified under section 12 to prosecute before the Special Tribunal and which ones before the Special Criminal Division of the High Court.
- (2) Without limiting the general power conferred by subsection (1), the Special Prosecutor may, in the exercise of his or her authority in respect of cases falling

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within his or her mandate:

(a) initiate prosecution before:

- (i) the Special Criminal Division of the High Court; or
- (ii) the Special Tribunal;

(b) with the approval of the Attorney General, refer cases for prosecution before any international court or tribunal with relevant jurisdiction; or

(c) after consultation with the Director of Public Prosecutions, refer a case to the latter for prosecution before the Special Criminal Division of the High Court, and take over the prosecution of such cases at any time where this is deemed necessary or appropriate for the efficient conduct of the proceedings or the interest of justice, subject to section 14(1)(d).

(3) In considering the appropriate judicial body before which to file a case, the Special Prosecutor shall take into account the nature and gravity of the alleged offence, whether it constitutes a crime under international or domestic law, the leadership or position previously held by the suspect or accused person concerned, the interests and needs of the victims and the community, or the applicable law.

12. Mandate

(1) The mandate of the Special Prosecutor shall extend to cases of serious human rights violations and international and domestic crimes specified in or related to acts and omissions described in the TRRC Report, which occurred between July 1994 and January 2017 -

- (a) which were recommended by the TRRC Report for prosecution; and
- (b) which come to the attention of the Special Prosecutor during investigations of TRRC findings;

(2) In the case of subsection (1) (b), the Special Prosecutor shall seek the approval of the Attorney General to prosecute any person who was not recommended for prosecution by the TRRC.

13. Conflict in mandate

(1) The Special Prosecutor shall have primacy of jurisdiction over cases falling within the mandate of the Special Prosecutor under section 12.

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(2) In the event of a potential conflict over any case, the Special Prosecutor and the prosecuting or investigative authority concerned shall engage in a timely communication to resolve the matter through consultations and dialogue in good faith and shall base their decision on:

- (a) the principles of fairness, justice, the public interest, and the merits of the case; and
- (b) the nature and gravity of the alleged offence, applicable law and legal framework, the strength and availability of witnesses and other evidence and, and the paramount need to attain the overall objectives of this Act.

(3) Any dispute arising from the interpretation or implementation of this section shall be resolved by the process referred to in subsection (2) and in case of disagreement, the matter shall be referred to the Attorney General, whose decision shall be final.

PART IV - FUNCTIONS AND POWERS OF THE SPECIAL PROSECUTOR

14. Functions of the Special Prosecutor

- (1) The Special Prosecutor shall in pursuit of his or her mandate:
- (a) initiate, conduct and supervise investigations using any method or technique permitted by applicable law;
 - (b) provide yearly updates on the progress of investigations to the Minister, ECOWAS and the Oversight Committee insofar as possible in view of the confidentiality of the investigations and the presumption of innocence;
 - (c) initiate and conduct prosecutions for offences falling within his or her mandate based on the findings of its investigations;
 - (d) after consultation with the Director of Public Prosecutions, refer cases to the latter for prosecution before the Special Criminal Division of the High Court, and may, with the consent of the Attorney General, take over the proceedings for good cause after reasonable notice to the Director of Public Prosecutions and the Court;
 - (e) provide regular updates and reports to the public and relevant authorities on investigations, insofar as possible, and prosecutions initiated and other activities;

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- (f) establish effective and appropriate programmes for the protection and support of victims and witnesses and for protecting the integrity of the evidence and its internal procedures;
 - (g) develop guidelines for the sensitive handling of witness testimony and other evidence involving vulnerable persons in order to minimize the risk of their further traumatization;
 - (h) develop rules, criteria or guidelines for the performance of any function or the exercise of any power conferred by this Act;
 - (i) review, organise and re-organise, as appropriate, the functioning of the Office to optimise its operations with a view to completing its mandate timeously and with efficacy;
 - (j) design public outreach and communications strategies to keep the public and the media informed about the Special Prosecutor's mandate, functions and activities in order to build public trust and confidence in the process;
- (2) The Special Prosecutor shall carry out his or her mandate with independence, impartiality, fairness and the paramount need to develop and inculcate a culture of accountability.
- (3) The Special Prosecutor may in carrying out his or her mandate under subsection (1) collaborate with relevant international institutions with a view to drawing on their expertise and relevant practices.

15. Powers of the Special Prosecutor

For the effective carrying out of his or her functions, the Special Prosecutor shall have the powers and authority specified in sections 16 to 20.

16. Investigations

- (1) The Special Prosecutor shall, in carrying out investigations on any matter falling within his or her mandate –
 - (a) have the unlimited authority to independently initiate, conduct and supervise investigations, including the gathering of potentially exculpatory evidence, using any method or technique permitted by law;
 - (b) have the discretion to refer any matter for investigation to any other authority;

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- (c) have access to all relevant information, potential evidence wherever located in The Gambia, including TRRC records, classified documents and intelligence, for a comprehensive and unbiased investigation of any matter;
- (d) have the authority to summon witnesses and compel the production of documents and other evidence relevant to the investigations;
- (e) collaborate with or request assistance from any domestic or international law enforcement agency or other relevant authorities in the execution of its investigative and prosecutorial powers or request international judicial cooperation or mutual legal assistance, including to invoke the ECOWAS Convention on legal assistance in criminal matters;
- (f) take over all records, data and materials collected by the TRRC subject to such guidelines as to safe custody and archiving as the Minister shall issue;
- (g) have the authority to conduct searches and seizures in accordance with applicable laws; and
- (h) undertake any other lawful action that enables him or her to investigate fully and impartially the alleged crimes falling within its mandate in accordance with this Act, other relevant legislation and international agreements entered into by The Gambia.

(2) The Minister shall upon the appointment of the Special Prosecutor, promptly hand over all records, other data and materials from the TRRC to the Special Prosecutor's Office, in accordance with guidelines issued by him or her.

(3) The Inspector General of Police and other law enforcement agencies with investigative powers shall, if required by the Special Prosecutor, provide all necessary support to the Special Prosecutor and shall promptly without delay provide any assistance requested by the Special Prosecutor.

(4) In the exercise of his or her investigative powers, the Special Prosecutor and staff of his or her Office shall adhere to the highest ethical and professional standards, ensuring transparency, fairness, and the protection of the rights of all persons involved in or affected by the investigations.

17. Prosecutions

- (1) The Special Prosecutor in carrying out his or her prosecutorial functions shall –

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- (a) select and prioritise cases for prosecution based on clear criteria which shall be published;
 - (b) determine the appropriate judicial body before which to prosecute an offence, subject to section 11(3) and other guidelines as it shall develop and publish;
 - (c) institute criminal proceedings, appear to prosecute and present evidence by its prosecutors before any court in which it has jurisdiction subject to the applicable laws or legal framework, and legal procedures;
 - (d) enter into arrangements it deems beneficial, including joint prosecutions with domestic, or subject to the consent of the Attorney General international authorities, for the effective prosecution of any case; and
 - (e) take over proceedings pending before the Special Criminal Division of the High Court in any case falling within its mandate in accordance with section 14(1)(d).
- (2) The Special Prosecutor shall in the exercise of his or her discretion under subsection (1) be guided by principles of fairness, impartiality, and independence, taking into consideration the gravity of the alleged offence, the availability of witnesses and other evidence, the applicable law, the legal framework and the needs of victims.

18. Victim and witness protection

- (1) The Special Prosecutor shall, pending the establishment of the Special Tribunal and the assumption of this responsibility by its Registry, establish an effective programme for the protection of victims and witnesses as it deems appropriate for guaranteeing their safety and security prior, during and after trial, as well as providing logistical, psychological and legal support and take measures for protecting the integrity of the evidence.
- (2) The victim and witness protection and support programme established under this section shall focus on measures to ensure the protection, safety, dignity and privacy of persons who participate in the investigation and prosecution process, including:
- (a) arrangements for receiving testimony in camera based or through virtual means on established rules and criteria;
 - (b) requests for protective measures to ensure the confidentiality, dignity,

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security and safety of victims and witnesses;

- (c) counselling and medical care;
- (d) any other support considered reasonable and appropriate for the well-being of a victim or witness and for upholding the integrity and fairness of the investigation and prosecution process.

19. Ancillary Powers

The Special Prosecutor may –

- (a) where appropriate, and in accordance with applicable rules, and upon the approval of the relevant court, enter into plea agreements with any person cooperating in investigations or prosecutions, in exchange for their truthful testimony or assistance;
- (b) apply to the relevant court for the revocation of a plea agreement entered into, if appropriate;
- (c) request the assistance of, and collaborate with, relevant authorities, including government institutions, other public agencies, non-governmental agencies and, through the Minister, international institutions in the carrying out of its functions or exercise of any authority or power conferred to it by this or any other Act;
- (d) seek interim measures from the relevant court when necessary to preserve evidence, the integrity of ongoing investigations or prosecutions, protect the rights of witnesses, victims or other persons, or to prevent irreparable harm;
- (e) apply to the relevant court for leave to take testimony or a statement from a witness or to examine, collect or test evidence before a Judge, which may not be available subsequently for the purposes of a trial, where the Special Prosecutor considers an investigation to present a unique opportunity to do so;
- (f) make the application in paragraph (e) in respect of evidence favouring the defence; and
- (g) exercise any other ancillary powers for the purpose of attaining the purpose of this Act or as may be necessary for the effective and efficient operation of the Special Prosecutor's Office.

20. Application for interim measures

- (1) An application for interim measures under section 19 (d) and measures pursuant to a unique investigative opportunity under section 19 (e) and (f) shall be made to the Special Criminal Division of the High Court in accordance with the procedures of that Court.
- (2) The Special Criminal Division of the High Court shall have jurisdiction to hear and determine applications for interim measures in cases within the jurisdiction of the Special Tribunal prior to the establishment of that Tribunal.
- (3) An application for interim measures under subsection (1) shall specify the specific measures sought, the grounds for seeking the measures and the duration for which they are requested.
- (4) The Special Criminal Division of the High Court shall review an application for interim measures promptly, considering the merits of the case. The grounds for granting or denying the measures sought shall be based on principles of necessity, proportionality and the interests of justice.
- (5) Interim measures granted by the Special Criminal Division of the High Court shall remain in force for the specified duration determined by the Court and may be reviewed or extended upon application if circumstances so warrant.

PART V - ORGANISATION AND STRUCTURE

21. Organisation of Special Prosecutor's Office

The Special Prosecutor's Office shall be organised in divisions each of which shall discharge a specific function and shall be headed by a qualified professional as Division Head, including:

- (a) the Office of the Special Prosecutor which shall be organised into units including –
 - (i) Management and Coordination Unit responsible for the development of policies and strategies and coordination of the various components,
 - (ii) Victims and Witness Support Unit responsible to provide assistance and support to victims and witnesses and to ensure their protection and wellbeing,

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- (iii) Legal and Policy Unit which shall provide legal advice to all aspects of the Special Prosecutor's Office operations, to serve as a liaison between the Special Prosecutor's Office and other professional bodies and ensure compliance with established standards and best practices,
 - (iv) Outreach and Communications Unit to ensure transparency and engender public confidence in the work of the Special Prosecutor, and
 - (v) other units as the Special Prosecutor shall consider necessary,
- (b) the Investigation Division which shall consist of teams of experienced investigators, forensic experts, analysts and other specialised personnel to carry out all investigating functions;
- (c) the Prosecution Division which shall consist of the Deputy Special Prosecutor, and other prosecutors and legal professionals to be responsible for developing prosecution strategies and the filing and conduct of prosecutions; and
- (d) the Finance and Administration Division headed by a highly qualified professional to provide the necessary financial, administrative and logistical support for the effective functioning of the Special Prosecutor's Office.

22. Senior Management Team

- (1) The Special Prosecutor, together with the Deputy Special Prosecutor and Division Heads, shall constitute the Senior Management Team which shall be chaired by the Special Prosecutor.
- (2) In the exercise of the powers conferred on the Special Prosecutor by this Act and performing of his or her functions, the Special Prosecutor shall consult the Senior Management Team in periodic meetings to be held at least once a month and in such other manner as shall be efficient.

23. Independent Selection Panel

- (1) Within 60 days of the coming into force of this Act, the Minister shall

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convene the Independent Selection Panel, which shall ensure gender balance and comprise of members of high moral character and integrity, with a proven track record as a judge, prosecutor or counsel in court proceedings or as a senior court administrator, serving in a personal capacity, as follows –

- (a) a member appointed by the Government;
- (b) a member appointed by ECOWAS;
- (c) a member appointed by the Gambian Bar Association;
- (d) a representative of the Public Service Commission; and
- (e) two high-level experts in international criminal law appointed jointly or separately by the Government and ECOWAS.

(2) The Independent Selection Panel shall –

- (a) at its first meeting, elect a Chairperson and Deputy Chairperson and agree on the procedure for the selection of the Special Prosecutor, Deputy Special Prosecutor and Division Heads, as well as the specific qualification requirements for the positions;
- (b) proceed to publish Vacancy announcements for these positions and ensure their wide distribution in professional circles, including internationally;
- (c) proceed to review all applications received by the established deadline, interview candidates and identify the most suitable candidate for the position of Special Prosecutor based on the criteria specified in section 5 and in accordance with the procedure agreed in subsection 2(a);
- (d) determine the remuneration of the Special Prosecutor and members of the Senior Management Team;
- (e) select the Chairperson of the Special Prosecutions Fund Management Committee established under section 27; and
- (f) determine its own procedures.

24. Capacity building and Training

The Special Prosecutor's Office –

- (a) shall support the continuous professional development of its personnel through training, workshops, and access to relevant resources and updates on emerging best practices and advances in investigation and prosecutorial techniques and other emerging legal developments;

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- (b) may seek technical assistance and enter into cooperation and partnership agreements with relevant international organisations and institutions specialising in international criminal prosecutions and human rights law in order to continuously enhance the skills of its staff.

PART VI - FINANCE AND ADMINISTRATION

25. Governance and Administration

The Special Prosecutor shall design and develop internal structures and management tools including policies that are required for the efficient functioning of the Office.

26. Finance

The Special Prosecutor shall prepare the Special Prosecutor's Office budget as the basis for the allocation of adequate financial resources from the Special Prosecutions Fund to ensure the effective functioning of the Office including funding for investigations, prosecutions, personnel salaries, and necessary infrastructure and logistical support.

27. Establishment and Purpose of the Special Prosecutions Fund

(1) There is established by this Act, an Independent Fund for Special Prosecutions.

(2) The monies in the Special Prosecutions Fund shall be applied solely towards financing the operations of the Special Prosecutor's Office and the execution of its mandate.

28. Sources of the Fund

The monies in the Special Prosecutions Fund shall consist of –

- (a) monies appropriated by the National Assembly to the Fund;
- (b) publicly declared donations or gifts of land, money or other property from any *bona fide* national or international entities with a proven track record of supporting justice initiatives, if the conditions attached by the entity donating or making the gift are not inconsistent with the functions of the Office under this Act or any other enactment of the National Assembly; and

(c) any penalties imposed by the courts by way of sanction.

29. Application of the Fund

The Special Prosecutions Fund shall be used to finance the operations of the Special Prosecutor's Office, including the payment of salaries and other remuneration and the defraying of all expenses, capacity building and training based on the annual budget estimates prepared by the Special Prosecutor, and the management of the Fund.

30. Management of the Fund

(1) The Fund shall be managed by a Fund Management Committee consisting of –

- (a) the independent Chairperson appointed by the President on the recommendation of the Selection Committee under section 23(2)(e);
- (b) the Special Prosecutor;
- (c) a representative of Government;
- (d) a representative of ECOWAS; and
- (e) the Accountant General.

(2) The Fund Management Committee shall –

- (a) determine the procedure for the management of the Fund;
- (b) review and approve the budget submitted by the Special Prosecutor; and
- (c) prescribe a reporting mechanism for periodic accounting to contributors of monies to the Fund.

31. Audit of the Fund

(1) The accounts of the Fund shall be audited by the Auditor General or an auditor appointed by him or her.

(2) A copy of the audited financial statements shall be submitted by the Special Prosecutor to the Minister of Justice for onward submission to the National Assembly and the ECOWAS Secretariat.

32. Tax Exemption

The Fund shall be exempt from payment of all taxes.

33. Financial Management and Accountability

(1) The Special Prosecutor shall prepare and submit an annual budget proposal outlining the estimated financial requirements for the ensuing fiscal year, to the Fund Management Committee, the Minister, and the Oversight Committee.

(2) The Minister and Oversight Committee may send their comments on the proposed annual budget to the Chairperson of the Fund Management Committee within fifteen days of the receipt of the budget.

34. Staffing Requirements

The Special Prosecutor in consultation with the Senior Management Team shall determine staffing requirements, including the number and qualifications of prosecutors, investigators and support staff.

35. Remuneration

The salaries and other remuneration of the Special Prosecutor's Office personnel shall be determined by the Oversight Committee and approved by the Minister.

36. Procurement

The Special Prosecutor's Office shall apply the principles, procedures and rules set by The Gambia Public Procurement Act, 2022 in all its procurements.

[Act. No. 5 of 2022]

PART VII - REPORTING AND ACCOUNTABILITY

37. Establishment and Composition of the Special Prosecutor's Office Oversight Committee

(1) There is established by this Act the Special Prosecutor's Office Oversight Committee which shall consist of –

(a) a representative from Government;

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(b) ECOWAS;

(c) civil society organisations selected by The Association of Non-Governmental Associations; and

(d) two international experts selected by the Minister.

(2) The members of the Oversight Committee shall be persons of integrity with knowledge and experience in matters relevant to the functions of the Special Prosecutor's Office.

(3) The members of the Oversight Committee shall hold office for three years and may be re-appointed for one more term.

(4) A member of the Oversight Committee who has an interest in a matter for consideration by the Committee shall –

(a) disclose the nature of that interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) recuse himself or herself from the deliberations of the Committee in respect of the matter.

(5) A member of the Committee who –

(a) fails to disclose his or her interest; and

(b) participates in the deliberations of the Committee in respect of that matter of interest, shall be removed from office.

38. Functions of the Oversight Committee

(1) The Oversight Committee shall –

(a) put in place an accountability oversight mechanism through which it shall monitor and evaluate the performance of the Special Prosecutor's Office to ensure that it is operating in an independent, transparent, accountable and effective manner;

(b) ensure that the Special Prosecutor's Office submits periodic reports for assessment and provides regular updates to the public on the progress of its activities and outcomes;

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- (c) establish a fair and impartial mechanism for the removal of the Special Prosecutor and Members of the Senior Management Team or other disciplinary action against them, which shall define the standards to be followed during any investigation of allegations against them, including their rights to fairness of the proceedings, confidentiality and the right to challenge or appeal any findings made; and
- (d) develop guidelines and standards to be followed by the Special Prosecutor in the appointment of other personnel of the Special Prosecutor's Office and disciplinary measures to be applied in their regard.

(2) Without prejudice to section 31(1) and in addition to the powers of the Auditor General, the Oversight Committee may appoint independent external auditors to audit the operations of the Fund, the financial management of the Special Prosecutor's Office and receive the audited financial statements.

39. Appearance before the Oversight Committee

The Special Prosecutor and other officers shall, if required to do so, appear before the Oversight Committee to answer questions and address any concerns of the Oversight Committee relating to any aspect of its operations, subject to the confidentiality of investigations and the presumption of innocence, as well as the Special Prosecutor's investigative and prosecutorial independence.

40. Other Reporting Requirements

In addition to reports submitted to the Oversight Committee, the Special Prosecutor shall submit annual reports to the President, the National Assembly, ECOWAS, the Attorney General, and any other authority designated by the Oversight Committee, detailing the activities, progress, and challenges faced and the recommendations to address the challenges where appropriate.

41. Implementation of Recommendations of Oversight Committee and Audits

Subject to the Special Prosecutor's Office's independence and autonomy, the Special Prosecutor shall implement and give effect to recommendations of the Oversight Committee and address all audit queries and report on such implementation in its annual report.

PART VIII - MISCELLANEOUS

42. Removal of Special Prosecutor and Division Heads

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(1) The Special Prosecutor may be removed from office in accordance with the procedures prescribed by the Oversight Committee under section 38 on the following grounds –

- (a) misconduct, gross negligence or other ethical violations in the discharge of duty;
- (b) inability to perform the functions of the office due to mental or physical incapacity;
- (c) serious breach of the obligations and responsibilities of the Office or the commission of a crime;
- (d) abuse of power following any investigation sanctioned by the Oversight Committee;

(2) Removal proceedings under this section may be initiated by the Oversight Committee *proprio motu* or on information received from third parties, including the Government of The Gambia or ECOWAS, in accordance with the procedures prescribed by the Oversight Committee.

43. Protection and Immunity

The Special Prosecutor and other staff of the Special Prosecutor's Office shall not be subject to civil or criminal liability for acts undertaken in good faith and within the scope of their official duties.

44. Professional Privileges and Protections

In addition to the immunity granted under section 43, and without prejudice to the applicable rules on disclosure, the Special Prosecutor, other prosecutors and professional staff shall in the execution of duties under this Act be entitled to invoke any legal professional privilege to which they are ordinarily entitled by virtue of their profession.

45. Succession

(1) In the event the position of the Special Prosecutor becomes vacant due to resignation, incapacity, retirement, or other reason the Deputy Special Prosecutor shall assume the duties and responsibilities of the Special Prosecutor until a substantive holder of the office is appointed or the Special Prosecutor resumes office, as the case may be.

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(2) A successor to the Special Prosecutor shall be selected and appointed in accordance with the procedure established under section 7 of this Act.

(3) The Deputy Special Prosecutor while acting under subsection (2) shall have the authority to perform all functions and exercise all powers of the Special Prosecutor.

(4) The Special Prosecutor shall develop a succession plan for all senior or critical positions to ensure continuity of operations in case of absence whether temporary or permanent.

46. Confidentiality Obligations

(1) All personnel, including employees, contractors, and third-party service providers working for or with the Special Prosecutor's Office, shall maintain strict confidentiality regarding any information obtained or accessed during the course of their duties.

(2) Confidential information includes, but is not limited to, case details, investigative techniques deployed, witness and victims' statements, evidence, and any other information marked as or understood to be confidential.

(3) Former personnel with substantive knowledge of the Special Prosecutor's Office's investigative or prosecutorial work in a specific case shall not act for the Defence in the same or related cases, unless it is established by the Special Prosecutor that there is no actual conflict of interest.

(4) Personnel shall not disclose confidential information to a person not authorised by this Act or any rules, regulations or guidelines made under this Act, unless required by law, authorised by a judicial decision, or with the express written consent of the Special Prosecutor.

(5) Personnel that breach subsection (4) shall be liable to summary dismissal.

47. Data Protection

(1) The Special Prosecutor's Office shall implement appropriate technical and organisational measures to safeguard confidential information, records and data, including personal data against unauthorised access, accidental loss, destruction, or alteration.

(2) Personal data shall be collected, processed and stored only for legitimate purposes relating to an investigation or prosecution and handled in a confidential and responsible manner and retained for no longer than necessary for the purpose

for which it was collected.

(3) Individuals shall have a right to information about the processing of their personal data.

48. Compliance and Training

Personnel shall regularly receive training and guidance on their confidentiality and data protection obligations.

49. Non-Disclosure Agreements

Third-party institutions and agencies dealing with the Special Prosecutor's Office may be required to sign non-disclosure agreements that bind them to observing the obligations imposed by sections 47 and 48.

50. Offences

(1) A person who without sufficient cause and with regard to any investigations by the Special Prosecutor –

(a) refuses or omits to attend at the place and time specified in a summons served on him or her; or

(b) refuses or omits to produce any document or other evidence in his or her possession or control specified in a summons served on him or her,

commits an offence and is liable to a penalty not less than two hundred thousand dalasis to be recoverable in a summary way before a subordinate court of appropriate jurisdiction.

(2) A person summoned by the Special Prosecutor under this Act to give or produce evidence shall be entitled to all the immunities and protection afforded by law.

PART IX - FINAL PROVISIONS

51. Transition to the Special Tribunal

From the date the Special Tribunal comes into operation and subject to the provisions of the Establishing Act –

(a) the Special Prosecutor shall become the Special Prosecutor of the Special Tribunal and all his or her functions, responsibilities and powers shall

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continue without interruption;

- (b) all the assets, personnel, and operations of the Special Prosecutor's Office shall be deemed to be transferred to, taken over, assumed and continued by the Special Prosecutor's Office of the Special Tribunal established under the Establishing Act without interruption, including all –
 - (i) functions, responsibilities, duties and powers,
 - (ii) rights, properties, and interests both tangible and intangible owned or held by the Special Prosecutor's Office,
 - (iii) financial resources and bank accounts, unless otherwise provided under the treaty establishing the Special Tribunal,
 - (iv) evidence, records and data, and
 - (v) other obligations and liabilities of whatever nature;
- (c) all cases filed and pending; and
- (d) all organs, committees and bodies established under this Act shall continue to operate as if established under that Act with any modification and amendments introduced or required by that Act.

52. Employees and Personnel

The employees, officers, personnel employed by the Special Prosecutor's Office shall be deemed to be transferred without loss of benefit or accrued rights, except that the conditions of their employment shall be governed by any new policies and rules put in place.

53. Pending proceedings and cases

The legal proceedings, cases, and matters filed by the Special Prosecutor and pending before any court on the Special Tribunal's Effective Date shall be proceeded with as if filed under the Establishing Act.

54. Continuity and References

From the Special Tribunal Effective Date, reference to the Special Prosecutor and the Special Prosecutor's Office in any statute, regulation, contract, agreement or other legal document shall be deemed to refer to the entity established under the Establishing Act.

55. Implementation

The Special Prosecutor shall be responsible for overseeing the implementation of this Part including the transfer of assets, liabilities, personnel and ongoing proceedings.

56. Periodic Review

(1) The provisions of this Act and its implementation shall be subject to periodic review at such intervals from its commencement date as shall be determined by the Oversight Committee with effect.

(2) The scope of a periodic review referred to in subsection (1) shall be agreed between Government and ECOWAS and shall be conducted by independent experts selected by the Oversight Committee with the effective participation of all relevant stakeholders.

(3) The review shall –

- (a) evaluate the Special Prosecutor's performance and shall take into account reports of the Oversight Committee and External Auditors;
- (b) identify gaps and shortcomings in Special Prosecutor's Office operations, this Act and any subsidiary legislation or rules, and policies;
- (c) evaluate the responsiveness of the Special Prosecutor's Office to the evolving needs and priorities of the truth-seeking process; and
- (d) recommend improvements to enhance the effectiveness of the Special Prosecutor's Office as an organ of the broader Special Accountability Mechanism, incorporating lessons learned, best practices, and emerging trends in transitional justice and international criminal law.