



# GAMBIA

Whistleblowers in The Gambia : overview of the  
legal framework and practices

DECEMBER 2023

# PARTNERSHIPS



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To this end, OCWAR-M works with civil society actors involved in the AML/CFT field. In partnership with PPLAAF, the project is implementing a training activity for investigative journalists and lawyers on whistleblower protection and cooperation with these key actors in the fight against financial crime, as part of which this report is published.

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# LIST OF ACRONYMS

AML/CFT - Anti-Money Laundering and Countering the Financing of Terrorism

CPI - Corruption Perception Index

ECOWAS - Economic Community of West African States

EU - European Union

GIABA - Inter-Governmental Action Group against Money Laundering in West Africa

NGO - Non-Governmental Organization

NIA - National Intelligence Agency

OCWAR-M - Organised crime: West African response to money laundering and terrorist financing

PPLAAF - Platform to Protect Whistleblowers in Africa

RSF - Reporters Sans Frontières (Reporters Without Borders)

# INTRODUCTION

In West Africa, transnational organized crime, including financial crime, poses a threat to the stability and security of states. Whistleblowers are essential in combating these crimes. They are individuals who disclose information about illegal, illicit, or contrary-to-public-interest activities that they have witnessed, particularly in the course of their duties, in order to stop them and bring about change. However, these disclosures can put their careers, freedom, and even lives at risk, and whistleblowers are often threatened or prosecuted by the individuals or organizations implicated by their revelations.

Although they play a key role in fighting financial crime, there are few laws in Africa protecting whistleblowers. To date, only about ten out of the continent's fifty-four states have enacted legal instruments to protect these actors, and even those may not always be effective.

Furthermore, to encourage whistleblowing and ensure its effectiveness, it is necessary to have robust laws governing several key areas, such as combating financial crime, freedom of the press, and access to information.

In the field of combating financial crime, the adoption and implementation of specific laws are necessary to enable authorities to rely on whistleblower disclosures to conduct investigations, prosecute offenders, and prevent future offenses. The existence of strong legislative mechanisms for fighting financial crimes enhances the credibility and legitimacy of whistleblowers.

Laws guaranteeing media freedom and freedom of expression are also essential to create an environment conducive to whistleblowing. These disclosures can only have a significant impact if they are disseminated to the public by free and independent media. The establishment of laws protecting media freedom creates an environment conducive to the dissemination of critical information and raises public awareness of the issues raised by whistleblowers.

Finally, laws guaranteeing access to information play a crucial role in promoting transparency and enabling whistleblowers to legally share the information they possess. Access to reliable and relevant information is essential for whistleblowers to document their allegations and provide tangible evidence of the wrongdoings they expose.

The purpose of this report is to assess the legal framework in The Gambia in all these areas and analyze the whistleblowing environment in the country. It provides a detailed and critical legal analysis and proposes ways to improve existing legislation.

Through this report, PPLAAF also emphasizes the need for African states to establish progressive laws on whistleblowers to protect them and encourage potential whistleblowers to come forward.

This work is intended for whistleblowers, journalists, civil society organizations, anti-corruption agencies, lawyers, magistrates, professionals in the sector, and all stakeholders concerned or interested in whistleblowing and the fight against financial crime.

The Gambia report is one of fourteen reports drafted and published by PPLAAF as part of the OCWAR-M project.

# LEGAL SOURCES

Constitution of the Second Republic of The Gambia, 1996

Labour Act, 2007

Information and Communications Act, 2009

Access to Information Act, 2021

Criminal Code, 1933

Official Secrets Act, 1922 (not available online)

Public Security Act (not available online)

The Gambia Anti-Corruption Bill, 2019 (not available online)

The Money Laundering Act, 2003 (not available online)



# EXECUTIVE SUMMARY

Hopes were high that the end of the 22-year dictatorship of Yahya Jammeh in January 2017 would represent a turning point for human rights, media freedoms and civil liberties in The Gambia. However, while the government of Adama Barrow had hinted at plans to amend draconian restrictions of freedoms, these laws remain still in effect.

Since January 2017, human rights have improved slightly under Barrow's administration, including respect for fundamental freedoms such as the rights to freedom of assembly, association and expression.

The Access to Information Act was adopted in August 2021. Its goal is to foster greater government transparency and accountability.

Although anti-corruption legislation exists, whistleblowing mechanisms remain very limited, and there is no dedicated law on the matter.

The Gambian Constitution provides "a fundamental law, which affirms our commitment to freedom, justice, probity and accountability". Freedom of "speech and expression, which includes freedom of the press and other media" are specifically guaranteed. However, restrictive media and secrecy laws contradict the Constitution and have resulted in Freedom House ranking the Gambian press as "partly free" in the 2022 Freedom of the Press index.

# 1. ANALYSIS OF THE LEGAL FRAMEWORK

## 1.1 WHISTLEBLOWER LAWS AND POLICIES

Whistleblower protection is a crucial aspect of the fight against financial crime. This section explores the laws, measures, and mechanisms implemented in the Gambia to ensure the protection of whistleblowers. It examines the rights and guarantees afforded to whistleblowers, the protection mechanisms in place, as well as the persistent challenges related to this protection.

- Protection of employees against unfair dismissal and victimisation

The 2007 Labour Act states that “the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulations or collective agreements” does not constitute valid grounds for dismissal or disciplinary action. In the event of a dispute, it falls on the employer to prove that a dismissal was justified. When a complaint of unfair dismissal is found by the tribunal to be “well founded,” the Industrial Tribunal may order reinstatement of the employee and/or “award such compensation as the Tribunal considers just and equitable,” based on the “loss sustained by the employee in consequence of the dismissal.”

The Act prohibits the victimization of employees for “anything done in pursuance” of the administration of the Act and notes that employers shall “grant an employee every opportunity and necessary facilities for communicating freely” with officers of the Department of Labour responsible for investigating alleged breaches of the Act. Officers are obliged to “treat as absolutely confidential the source of any complaint” and refrain from informing the employer that an inspection was made “in consequence of a complaint”.

- Limited Protection for Witnesses, Victims, and Experts

The Gambia Anti-Corruption Bill of 2019 provides some protection for witnesses, victims and experts from retaliation. Indeed, Section 80 of this law reads as follows: "The Gambia Anti-Corruption Commission shall provide for the effective protection from retaliation or intimidation for witnesses, experts and victims who give testimony concerning offences relating to Corruption and, as appropriate, for their relatives and other person close to them, and make provision for evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means." The Anti-Corruption Bill has been pending in Parliament since 2019 and was finally debated in September 2023. However, currently, it appears that the law is still pending, and there is no online information available to confirm its effective adoption.

No further legal protections for whistleblowers are available.

## 1.2 LAWS AND MEASURES RELATED TO COMBATING FINANCIAL CRIME

This section focuses on the measures taken by the Gambian government to combat financial crime. It examines legislative reforms, policies, and initiatives aimed at promoting transparency, integrity, and accountability in the management of public affairs. While acknowledging the efforts made, it also highlights persistent challenges and prospects for improvement in the fight against financial crime in The Gambia.

- Anti-Corruption Laws and Measures in The Gambia

In its [2022 Global Corruption Perception Index \(CPI\)](#) report, Transparency International[1] ranks The Gambia 110th out of 180 countries ranked with a score of 34/100.

Despite the high level of corruption in the country, the [Criminal Code](#) punishes corruption of public sector employees in articles 86 to 94 of Chapter X entitled "Corruption and the Abuse of Office".

Furthermore, when he took office in 2017, the president Adama Barrow initiated an anticorruption law, which, after two years of drafting, was tabled for the first time in the National Assembly in 2019, and is still pending. This law defines corruption as including "bribery, fraud, embezzlement, diversion of public funds, trafficking in influence, illicit enrichment, abuse of power and other related offences".

The law establishes 'The Gambia Anti-Corruption Commission,' a body with significant authority. This Commission has the power to address issues related to corruption, abuse of power, and misconduct by public officials. It can also take preventive measures against unethical behavior and conduct investigations on its own or based on complaints. The Commission is empowered to use special investigative techniques, like intercepting communications, with court oversight. It can summon individuals for questioning, seize property, and is independent from external influence.

Additionally, the Commission can recommend legal action to the Attorney General, assess government agency practices, provide guidance to public officials on preventing fraud and corruption, and educate the public about these issues."

However, as of September 2023, the anti-corruption bill is still pending. According to Transparency International, "the fact that lawmakers have not yet passed this critical piece of legislation should be a source of worry".

- Money Laundering Legislation and Enforcement

The Gambia also has the Money Laundering Act 2003, which aims to prevent and punish money laundering and other related offenses. Article 17 of the Act states that "a person commits the offence of money laundering if he or she

- (a) acquires, possesses or uses a property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions

- or (b) renders assistance to another person for

- (i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of the property, or of aiding any person involved in the commission of the offence to evade the legal consequences of the offence, or

- (ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of a property derived directly or indirectly from those acts or omissions."

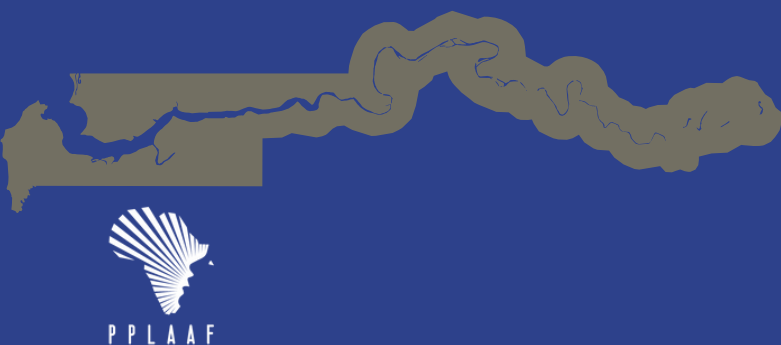
The penalties for this offence are: in the case of an individual, a minimum fine of one hundred thousand dalasis and/or five to fifteen years of imprisonment; in the case of a body corporate, a minimum fine of five hundred thousand dalasis.

A person who, knowing or suspecting that an investigation into money laundering has been, is being or is about to be made, divulges to another person a fact or other information that is likely to prejudice the investigation commits an offence (article 20). This person is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term of not less than five years or more than fifteen years or to both the fine and imprisonment.

The High Court may, on application by the competent authority, by order, freeze the property in the possession or under the control of a person wherever it may be, if the Court is satisfied that a person has been charged or is about to be charged with a money laundering offence (article 28).

The AML/CFT Act of 2012 establishes the Financial Intelligence Unit, an independent body that aims to prevent, reduce and combat money laundering and financing of terrorism. However, in its [2022 mutual evaluation report](#), GIABA found that the system put in place by the Gambia is of limited effectiveness because of gaps in the legal framework, risk assessment, coordination, utilization of financial intelligence, investigations and prosecutions, asset confiscation, counter-terrorism financing, international cooperation, prevention and supervision, and transparency of beneficial ownership information.

A new AML/CFT Act is currently before Parliament.



## 1.3 MEDIA RIGHTS AND FREEDOM OF EXPRESSION

Freedom of expression, press freedom, and media rights play a crucial role in whistleblowing. These fundamental rights enable whistleblowers and journalists to disclose sensitive information safely, shed light on wrongdoing, and protect the public interest. Respecting these rights promotes an environment conducive to transparency, accountability, and the disclosure of information in the public interest.

- Restrictive Media Laws and Amendments

In June 2017, Adama Barrow declared that the press is “already free” under the new regime and that his cabinet is in the process of amending media laws. However, restrictive media laws remain in place. Sedition, defamation and the publication of false news all remain offenses under the Criminal Code, and each is punishable of a prison term of “not less than one year,” and/or a fine. In 2013, knowingly providing false information to a civil servant became punishable by up to five years in prison, having previously been a misdemeanor punishable by 6 months in prison.

In addition, the 2009 Information and Communications Act was amended in 2013 to provide for a 15-year prison term and a fine for anyone convicted of using the internet to spread false news, make derogatory statements, incite dissatisfaction, or instigate violence against the government or public officials. The then-Information and Communications Minister, Nana Grey-Johnson, is reported to have justified the amendment by claiming that “some Gambians had tried to set the people and security officials against the government... by inciting the people to engage in unpatriotic behaviour, spreading false news and engaging in criminal defamation against government officials”.

- Progress and challenges in Press Freedom in The Gambia since the end of Jammeh's Regime

Since the end of Yahya Jammeh's dictatorship in January 2017, working conditions of journalists have improved. As a result, Reporters Without Borders (RWB) [2] ranks The Gambia 46 out of 180 countries in its 2023 World Press Freedom Index, an improvement of 97 places since 2016. In addition, Freedom House [3] rates The Gambia as "partly free" in the 2023 Freedom In the World index. The Gambia received a Press Freedom Score of 48 out of 100 (0 indicating maximal freedom).

RWB believes that since the end of Yahya Jammeh's regime, journalists have gained unprecedented freedom, even if efforts must still be made. In its 2022 report, Freedom House also highlights that the media environment has improved under Barrow's presidency. Indeed, more people are entering the profession, exiled journalists have returned to the country, and there has been a proliferation of private print, online, radio, and television outlets. Nevertheless, a number of laws that restrict freedom of expression remain in effect and still carry prison sentences for journalists. Moreover, in January 2020, journalists Pa Modou Bojang and Gibbi Jallow were arrested along with two radio technicians, and radio stations Home Digital FM and King FM were shuttered for reporting on demonstrations against President Barrow's continued tenure in office. All four individuals were released from custody, though Bojang and Jallow were charged with incitement.

Regarding freedom of assembly, Article 5 of the Public Order Act bidding citizens to get an authorization to demonstrate has been used to forbid demonstrations. As a consequence, in January 2021, authorities forcefully dispersed a Banjul demonstration against President Barrow's decision to remain in office beyond a three-year timetable. Authorities arrested 137 people including high-ranking members of the Three Years Jotna (Three Years Is Enough) civic group; the group was banned that month and eight members were charged, including for rioting.



## 1.4 THE ACCESS TO INFORMATION ACT AND SECRECY LAWS

In this section, we will discuss the importance of access to public information for whistleblowers and journalists. These individuals who expose illicit behaviors within the public administration require reliable information to support their disclosures. The right to access public information ensures transparency and accountability, thereby providing enhanced protection to whistleblowers and journalists who can rely on concrete facts when disclosing sensitive information.

- The Access to Information Act: enhancing transparency and accountability

A law on access to information was enacted in 2021. This was a historic moment in a country which, for the first time, recognized information access as a human right. The law is a key instrument in increasing transparency and accountability of power holders. Citizens of the Gambia now have a legal basis to hold their leaders and political actors accountable on different subjects of public interest. Once fully implemented, it will enable journalists and Gambian citizens to obtain information from public institutions.

The law emphasizes the importance of disclosing information that would “reveal misconduct or deception”. Indeed, Article 25 (2) (c) of the Act stipulates that “a request should not be refused if the disclosure of the information would reveal misconduct or deception”.

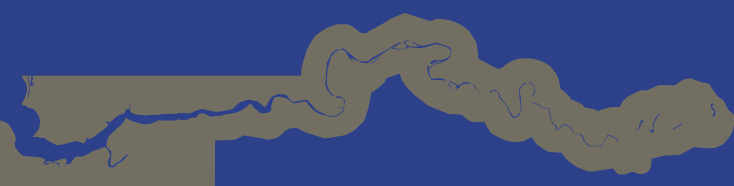
Thus, the Act compels public workers to reveal that information when they are requested to. However, most government institutions still feel reluctant to release basic information because of the fear that when information lands in the hands of citizens it may harm the government.

- Challenges and Limitations: secrecy laws and reluctance to disclose

The Gambia's Official Secrets Act is not available online. According to Gambian news sources, the Act was originally introduced in 1922 by the British Colonial administration to prevent unauthorized disclosure of official documents and information. The law was amended in April 2008 and it became illegal to publish or communicate "any secret official code, word, sketch, plan, article, note or other document" which may be useful to an enemy. The Jammeh government also increased the penalties for the offences of disclosure of official information and set a minimum sentence of 30 years and a maximum term of life imprisonment.

Thus, Journalists reporting on security issues run the risk of contravening the Official Secrets Act without any criminal intention on their part. Furthermore, the Public Security Act can be invoked to compel journalists to reveal their sources or face a heavy penalty or jail time.

Despite the liberal reform which led to the adoption of the Access to Information Act in August 2021, the secrecy laws have not been repealed.



## 2. WHISTLEBLOWER CASES

The objective of this section is to list known and public cases of whistleblowers to assess the treatment afforded to whistleblowers in the country.

- The 2017 Detention of a Whistleblower and its Implications for Whistleblower Treatment in the Post-Jammeh Era

The 2017 detention of a legal adviser of the National Intelligence Agency (NIA) accused of breaking the country's secrecy laws has garnered a great degree of media attention, as it is the first of its kind in the post-Jammeh era and seen to be indicative of how the Barrow government may treat whistleblowers and dissidents. Angered by the alleged lack of meaningful reform under the Barrow administration, Bubacarr A.M.O Badjie accused the agency of having a workforce that is 60% "functionally illiterate" and claimed that the "usefulness of such people as NIA agents is very insignificant". In a letter to President Barrow which he also provided to the media, Mr. Badjie also claimed that a large percentage of the staff had close ties to former-President Jammeh's family and were recruited into the agency by past and present directors. Reports claim that Mr. Badjie had his employment terminated and was arrested in June 2017 by agents of the NIA (recently renamed the State Intelligence Service and having theoretically been stripped of arresting powers), which alleges that Mr. Badjie's claims "constitute violations of the official secrets and code of conduct binding on all active and serving officers of this intelligence service."

## 3. RECOMMENDATIONS : WEAKNESSES AND NEEDED REFORMS

In this section, the focus will be on suggesting areas for improvement for the State regarding the protection of whistleblowers, current legislation against financial crime, the government's commitment to combating this problem, and the respect for individual liberties, including the right to information, freedom of the press and expression, as well as media rights.

### Whistleblowing Protection Law

The Gambia's whistleblowing protections are extremely limited. There is no evidence that such reforms are planned, despite calls from the media and civil society to implement comprehensive whistleblowing legislation. Neither has President Barrow indicated that such legislation is a priority.

- The Gambia should consider passing a Law that effectively protects whistleblowers.

### Anti-Corruption Law

Also, despite the drafting of the country's first anti-corruption bill, that was completed in 2019, this legislation remains ineffective as it has not been passed.

- The passing of this bill, which has been debated again by the Parliament in September 2023, would allow to step up the fight against corruption in the country.

## 4. RESOURCE, SUPPORT AND ACTION CENTER

In this section, we will explore the landscape of civil society organizations, NGOs, and citizen movements that actively engage in promoting good governance. These entities represent valuable sources of knowledge and expertise, playing a crucial role in strengthening democratic practices.

In The Gambia, no organization has been identified yet.

[1] Transparency International is a non-governmental organization (NGO) dedicated to combating global corruption. Founded in 1993 and based in Berlin, Germany, the organization advocates for transparency, accountability, and integrity in both public and private sectors. It conducts research, publishes reports, and promotes policy changes to address corruption worldwide. Transparency International is renowned for its Corruption Perceptions Index (CPI), which ranks countries based on perceived levels of corruption within their public sectors.

[2] Reporters Without Border is an international non-governmental organization founded in 1985 with the mission to defend press freedom, promote independent journalism, and protect journalists worldwide. The organization actively works to denounce censorship, repression, and infringements on freedom of expression. RWB yearly publishes a World Press Freedom Index, which assesses the state of media freedom in each country based on criteria such as pluralism of opinions, access to information, and safety of journalists.

[3] Freedom House is an American non-governmental organization founded in 1941. Its main objective is to promote and defend democracy, human rights, and fundamental freedoms worldwide. Freedom House evaluates the state of political rights and civil liberties in each country and produces reports and indices to measure the degree of freedom and democracy.



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