



**The Commission of Inquiry**

**COMMISSION OF INQUIRY INTO THE FINANCIAL ACTIVITIES OF PUBLIC BODIES, ENTERPRISES AND OFFICES AS REGARDS THEIR DEALINGS WITH FORMER PRESIDENT YAHYA A.J.J. JAMMEH AND CONNECTED MATTERS**

**REPORT**

**VOLUME 7**

**GOVERNMENT PROCUREMENT**

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## The Commission of Inquiry

### CHAPTER 1

#### OVERVIEW

##### 1.1. Introduction

This Commission is mandated by its TOR to investigate the extent to which Ex-President Jammeh was involved in public procurement and whether any losses were caused to government by reason of such involvement<sup>1</sup>.

The evidence before the Commission shows that procurement was at the heart of the Ex-President's financial dealings. OP was involved in direct procurement of services and goods, particularly, in the funding and execution of projects; the award of contracts for the importation of petroleum products; the procurement of vehicles for government, which was largely centralized at the level of OP and the Ministry of Finance; civil works, mainly funded by grants from the Government of Taiwan; and procurement by SOEs.

It is impossible for the Commission to investigate all procurement which the evidence indicates involved the Ex-President. In this Volume, the Commission reviewed government procurement controlled from OP and which featured in the bank accounts investigated by it.

##### 1.2. Public Procurement Rules

Public procurement is the act of obtaining goods, works or services by public agencies. Due to its size, it is usual for governments everywhere to contract out procurement to business operators. From 1994-2016 government procurement was based on the following:

- 1994 – 31<sup>st</sup> January 2002, the Financial Instructions (FI), issued under the Finance and Audit Act<sup>2</sup>.
- 1<sup>st</sup> February 2002 - 8<sup>th</sup> October 2014, the Gambia Public Procurement Authority Act 2001 (GPPA Act 2001) and Regulations.
- From 9<sup>th</sup> October 2014-2016, GPPA Act 2014 and Regulations.

Before 1/2/2001 public procurement above the threshold of D10,000-D100,000 was the responsibility of a minor tender board; above D100,000, of the major tender board or ministry tender boards for specific projects. Both tender boards were chaired by the PS

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<sup>1</sup> See TOR clause 2(1)(e)

<sup>2</sup> Cap.75:01



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Finance<sup>3</sup>. Accountant General is required to be informed of all procurement exceeding D10,000 by accounting officers and to keep a register of such procurement.

The GPPA Act 2001 sought to put in place 'basic principles and procedures to be applied in the public procurement of goods, works and services and defined procurement to include the acquisition of all goods, works, services, or consultancy services funded wholly or partly by public funds. Public funds include aid, grants and credits made available to procuring organizations by local and foreign donors, and general revenue allocated from the Consolidated Revenue Fund (CRF). Procuring organization includes all government departments and agencies.

Public procurement<sup>4</sup> is required to be by open tendering proceedings. Restricted tendering may be used when the goods, works or services are available to only a limited number of bidders known to the procuring organization, or public tendering would be disproportionate to the value of the proposed procurement<sup>5</sup>. While procurement below the prescribed competitive threshold may be single-sourced; above the competitive threshold the need for it must be established using laid down criteria<sup>6</sup>. The competitive thresholds for competitive bidding are: D3,500 for goods, D10,000 for works; goods and services; and D3million for international procurement. Procurement with a value of D1,000,000 and above must be submitted to GPPA for approval<sup>7</sup>. Each procuring organization is required to set up a contracts committee as the unit responsible for procurement. Bidders are liable to debarment if they fail to comply with procurement rules.<sup>8</sup>

### 1.3. Procurement during the Transition (22/7/1994 to 16/1/1997)

The Commission found little by way of record for this period. The evidence shows that a number of projects were undertaken funded from the USD32.220 million (of the **USD35 million**) loan lodged in the CBG 3M account<sup>9</sup>. There is evidence to indicate that loans & grants were also received from the Government of Libya during this period and thereafter,<sup>10</sup>.

The Commission was told that the Taiwan Loan was intended for AFPRC projects. However, procurements from the CBG 3M account did not go through, or comply with any process. The Minister of Finance at the time, Bala Garba Jahumpa (witness no. 142) and his PS Alieu Ngum (Witness no.122), testified that Ministry of Finance was not

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<sup>3</sup> FI Chapter 6 – Procurement of Goods Services and Works.

<sup>4</sup> See Rule...FI, section 39 of the 2001 GPPA Act and Section of the 2014 GPPA Act

<sup>5</sup> Section 40 2001 Act & Section 47of 2014 Act.

<sup>6</sup> Ibid regulation 12 of the GPPA

<sup>7</sup> See regulation 13 (1) of GPPA Regulations 2003 &.....of the ...2014

<sup>8</sup> Section 29 of the Act & regulation 153-154

<sup>9</sup> See Vol.2 Chapter 1-4

<sup>10</sup> Transcript of Edward Singhateh dated 25<sup>th</sup> January 2018



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involved in any way in the disbursements of the funds from the account or procurement funded from the Loan<sup>11</sup>. The Accountant General was also not involved.

Thus, it appears there are no existing records of these projects as to how they were selected, awarded or funded, except what the Commission learnt from the AFPRC members. Lamin Kaba Bajo (Witness no.120) testified that there was a transition implementation committee, and Yankuba Touray chaired its project implementation committee. He said the committee was responsible for negotiating with contractors and awarding contracts during the period<sup>12</sup>; payments were effected based on consultants' completion certificates. Yankuba Touray (Witness No.119), who said he was the officer supervising the transition projects, told the Commission that his role was field officer and his responsibility was to go around and physically inspect the projects to determine whether they matched the Consultant's report. He said the monies were disbursed from the Office of the Chairman (the Ex-President) and administered from that Office, and there was no report or returns on the loan at the level of the Council or Cabinet<sup>13</sup>. Edward Singhateh (Witness No.131) confirmed some of the projects that were built.

From the testimonies of the foregoing witnesses, the projects that were funded included Arch 22, Banjul Airport Terminal building, and Supreme Court building (built by Pierre Kujabi & Amadou Samba through their companies Gamsen & ATEPA)<sup>14</sup>, the Farafenni General Hospital; Barra Highway; the Essau-Njaba Kunda Road, and Kaur, Fatoto, Kafuta schools. An inventory of these are not available and Yankuba Touray could not tell the Commission where records of them could be found. It would also appear that rice was imported from the funds distributed and sold with the Gambia Cooperative Union<sup>15</sup>.

The implementation of some of these projects continued after the 1997 Constitution came into force. The change to constitutional rule appeared to have little effect on the post AFPRC government as regards the approach to procurement. The Commission finds that the pre-existing mindset and total disregard of procurement rules continued. The AFPRC and, subsequently OP, spent the USD32,220,000.00 million loan funds at their absolute discretion, contrary to the requirements of the Constitution and the law. Of course, as already shown the USD2,780,000 cash outstanding never found its way into the CBG.

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<sup>11</sup> Transcript of Alieu Ngum dated 17<sup>th</sup> January, 2018

<sup>12</sup>

<sup>13</sup> See Transcript of Yankuba Touray of 16/01/18

<sup>14</sup> See Transcript of Amadou Samba of 13/11/17

<sup>15</sup> See the Transcripts of Bala Jahumpa Ibid page 12, Lamin Kaba Bajo of 16<sup>th</sup> January 2018, Amadou Samba of Yankuba Touray & Edward Singhateh.



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### 1.4 Period After Transition

Expenditure from the 3M account continued after the Transition. During the period that followed, procurements controlled by OP were funded from several sources including additional Taiwan loans and grants, OP controlled accounts in CBG and commercial banks; and monies appropriated from the Treasury Main Account into OP controlled accounts.

### 1.5. Taiwan Loans

Apart from the first loan from EXIM Bank of USD35 million, three other loans were given by Taiwan to finance major supplies of plant, works and services. These include:

USD5,000,000 for a **NAWEC Power Supply Contract Project** signed on the 28<sup>th</sup> December 2002 for the purchase of a 6 megawatt generator for Kotu Power Station. Interest rate of 4%, grace period of 5 years -matures in 25 years. Amount outstanding as at end 2017 is USD1,156,665.

USD25,542,000 for the supply of 3 units of 6 megawatt generator at the Kotu Power Station including a component for the transmissions and distribution network signed on 1<sup>st</sup> April 2002 interest rate 4%, grace period of 8 years and maturity 25 years. Amount outstanding at 2017 end- USD12,770,954.

USD3,600,000 from ICDF Taiwan for a technical and Vocational Education Training Project signed on 24<sup>th</sup> December 2008 not fully disbursed; USD1.7 million was cancelled when Gambia terminated its relations with Taiwan in 2013. The funds were meant for the construction of 2 workshops in Sifoe. The project was relocated to Ndemban and is an uncompleted building<sup>16</sup>.

### 1.6. Overdraft on the CBG 3M ACCOUNT

MS 114(G) provides details of the overdraft of US28.5 Million on the 3M Account<sup>17</sup> which was converted to a government loan in 2003. Of this sum, the evidence shows that at least USD19 million was spent on procurement of goods and services<sup>18</sup>. Between 16/06/00 to 30/11/01 USD5,100,129(D86, 345,183.97) was paid to one Manning Faye (a Senegalese national) of Sahel Industries for the Rehabilitation of the Yundum Camp; from 19/04/01 to 14/12/01 USD10,958,700 (D185, 530,791) was paid to Global Trading Group NV for generators supplied to NAWEC<sup>19</sup>; from 14/06/00 to 2/11/01 USD1,746,725.00 (D29,573,171.00) was paid to TK Motors for vehicles

<sup>16</sup> Transcript Abdoulie Jallow- 1<sup>st</sup> February 2018-p.7

<sup>17</sup> see Vol.2 chapter 1-4

<sup>18</sup> See Exhibit MS114

<sup>19</sup> See Vol.6 Chapter 5 on NAWEC.



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supplied to Government; on 22/11/00 USD500,000(D8,465,000.00) was paid to Deloitte and Touch for consultancy services; USD421,958.00 (D7,143,748.94) was paid to International Jet services and Executive Aviation Fuel Services for aviation fuel; and USD191,441.00(D3,241,096.13) to CSE for road construction works<sup>20</sup>.

### 1.7. TAIWAN Grants

In 1998, the Government signed a protocol of Agreement with Taiwan by which Taiwan undertook to make grants of USD9 Million per annum to the Government, this increased overtime to USD13 million by 2013. Former SG Njogou Bah testified that the grants were divided into two components: an Annual Grant (latterly) of USD13million and USD1million or USD2 million Small Grant. The evidence in fact shows that it was US2million. He said this was a special arrangement between the Ex-President and Government of Taiwan<sup>21</sup>. He confirmed that the grant from Taiwan was not accounted for through the usual Government accounting system. It was handled entirely at the level of OP and the Embassy<sup>22</sup>. A request or proposal would be sent to the Taiwanese Embassy and the OP would be given feedback as to the outcome of the request. The projects that the Ex-President wanted to embark on personally would be funded from the Taiwanese Grants. He said when moneys were received from Taiwan, in 90% of the cases, payment is made directly to owners (meaning beneficiary institutions and contractors) but in some cases the money would be kept by SG for payment to contractors. The balance would be kept in a safe for subsequent payments<sup>23</sup>. He said apart from SG the Secretary to Cabinet might be the only person involved in the payment process. It appears that this procedure was employed by all SGs, as the Ministry of Finance and Accountant General have confirmed that they have no records of how Taiwan Loans and grants were disbursed. The Commission was informed by former SG Kalidou Bayo that he did try to put in a system to monitor balances in the different accounts to guide the Ex-President<sup>24</sup> but this appears to be the only effort made to introduce sanity in the management

### 1.8. FINDINGS

- (1) Procurement rules were not applied during the Transition although not suspended and were therefore applicable.
- (2) None of the projects funded from a total loan portfolio of approximately USD70 million from Taiwan were subject to competitive bidding despite the existence of

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<sup>20</sup> See Transcript of Abdoulie Cham of 29/11/17

<sup>21</sup> Transcript of Njogou L. Bah 26<sup>th</sup> Feb. 2018 at 14:58

<sup>22</sup> Ibid Njogou Bah

<sup>23</sup> Ibid. Njogou Bah page 11.

<sup>24</sup> Transcript of Kalidou Bayo dated 8<sup>th</sup> November 2017





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the FI Procurement Rules and coming into force of the GPPA Act 2001 on the 1<sup>st</sup> February 2002.

- (3) None of the projects funded from the illegal overdraft of USD28.5 million on the CBG 3 M account were also tendered or subjected to the procurement rules in place.
- (4) We could not find a written record of the companies that benefited prior to 2001. The evidence however shows that the companies that have benefited most from contracts awarded by the previous Government without compliance with procurement are GAMSEN Company Ltd., Global Trading Group NV/Euro African Group Ltd, and TK Motors Ltd.

## CHAPTER 2

### PETROLEUM PRODUCTS

#### 2.1. Background

The availability of petroleum products MOGAS, Jet Fuel, LPG and Gasoil for domestic needs has always been a challenge for the Government because of its 100% dependent on imports, and therefore entirely subject to the vagaries of the foreign exchange market. Up to 2002, government secured supplies by putting out tenders. While the Oil marketing companies (OMC) were not many, it would appear that they together with Shell and Total actively competed for these contracts.

Mohamed Bazzi of GTG NV entered the Gambian market in 2000 introduced by Tarek Musa (the majority shareholder and chairman of TKM). Tarek Musa introduced Mohamed Bazzi to the Ex-President and Amadou Samba<sup>25</sup>. It would appear from the evidence that Mohamed Bazzi teamed up with Amadou Samba and Baba Jobe and successfully obtained pre-financing from CBG to supply NAWEC generators. In 2002, GTG was awarded the exclusive contract to supply NAWEC HFO needs<sup>26</sup>. The contract did not go through any tender process. In October 2004, Gampetroleum (another sister company) was granted permission by OP to build the Fuel Depot at Mandinary with the exclusive rights as sole importer of petroleum products when operation started<sup>27</sup>. The

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<sup>25</sup> See Transcript Amadou Samba pg.47

<sup>26</sup> See Vol.6 Chapter 5on NAWEC

<sup>27</sup> See Infra Vol. 6 Chapter 6.



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tender process for international bids under 2001 GPPA Act was not applied. The decision was at the absolute discretion of OP. From the evidence, the only contracts awarded to GTG that were tendered are those that were funded by international financing institutions, or from donor financing<sup>28</sup>.

### 2.2. Exclusive Agents for the supply of Petroleum Products

GTG had a sister company, Euro African Oil Company which entered the domestic market for the supply of petroleum products at least by 2002. The Registrar of Companies could not find the memorandum and articles of association of the company. However, the banking records of EAGL and other evidence show the existence of Euro African Oil Company from 2002, and Euro Financing Oil Ltd. with Mohamed Bazzi as signatory to their accounts. Fadi Mazegi was authorized by Mohamed Bazzi on GTG letterhead to become signatory to the two companies' TBL accounts in 2004<sup>29</sup>.

The evidence shows that in 2002, Mohamed Bazzi's company was awarded the exclusive rights to import petroleum products to supply the OMCs. The actual commencement date of this arrangement and how it came to be awarded to EAGL is unknown. Mr. Amadou Samba told the Commission that the exclusive arrangement was offered. What is certain is that it was a decision made by the Ex-President. According to Mohamed Bazzi the exclusivity contract started in March 2004 and was terminated in 2016<sup>30</sup>. Mr Mousa Bala Gaye who took over from Famara Jatta (deceased) as Minister of Finance from 2003 told the Commission that he found the exclusivity in place<sup>31</sup>. His letter of 5<sup>th</sup> September 2006, states as much.

Mohamed Bazzi entered the Gambia oil market sometime in 2002 by a tender (at short notice) launched by the Department of State for Finance for the supply of petroleum products. Shell and Total who had a presence, did not bid. Euro African Oil Company Ltd competed with Castle Oil, Muhammed Kebbeh etc. Euro African Oil Company won the bid at what is considered by competitors at the extremely low price based on PLATTS FOB Mediterranean for gasoil 0.2 plus a premium of USD28 Banjul; and PLATTS FOB Mediterranean plus a premium of USD32 per ton CIF Banjul. He made some supplies and obtained the exclusivity and thereafter increased his prices to USD120 per ton. These allegations, mainly anonymous, could not be put to Mohamed Bazzi because he declined to appear before the Commission after his last appearance on the 18<sup>th</sup> January 2018<sup>32</sup>. The Commission could not verify this allegation and makes

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<sup>28</sup> Ibid Vol.6 Chapter 5 on NAWEC.

<sup>29</sup> See Exhibit BB144- letter from GTG NV dated 21<sup>st</sup> January 2004.

<sup>30</sup> Transcript of 10<sup>th</sup>/10/17 at Pg. 5

<sup>31</sup> See Transcript of Musa Bala Gaye of 12/07/18 – para. 198-213

<sup>32</sup> 4 summonses were sent after this last appearance.



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no findings on it<sup>33</sup>. The Ministry of Finance has not produced its records on the awarding of the exclusivity contract.

### 2.3. EAGL takes Over the Exclusivity

EAGL was incorporated on the 26<sup>th</sup> March 2004. Its place of business was stated as Gamwater Office, Gacem Road, Kanifing. The original shareholders on record were Bilal Nabil Bazzi 51%, Amadou Samba 45% and Manhal Atef Oueidat 4%. Bilal Nabil Bazzi and Manhal Atef Oueidat, respectively, sold their shares to Muhammed Bazzi on the 30<sup>th</sup> June, 2005<sup>34</sup> and he became 55% owner. The share transfers show that the consideration for the transfers was at the nominal value of D1 per share and, altogether, he paid D55,000 for the shares<sup>35</sup>. At this time, EAGL had been awarded the sole agent status and was a valuable company, it is therefore probable that the Mr Oueidat and Nabil Bazzi were holding the shares for Mohamed Bazzi from the onset. From 2005 to 2018 EAGL was fully owned by Mohamed Bazzi - Gambian Passport No.D0000129 and British Passport No.099193177, and Amadou Samba Gambian - Passport Number: PC374586. They were both directors and signatories to the accounts. Subsequently, Fadi Mazegi - British- Passport Number: 510514832 was added. Mr. Amadou Samba resigned on the 15<sup>th</sup> December 2010.

Other persons appointed as director and signatory to the account included Ahmad Hodroj American (USA) Passport number: 027981524, Muhammad Bazzi<sup>36</sup> D0000129. British, Passport Number: 099193177, Walter Saul Espinoza Torricco (Nationality: Bolivian, Passport Number: 2362659), Manhal Oueidat Lebanese, Passport Number: RL 0557895, Bilal Bazzi Sierra Leonean, Passport Number: O290229, Hassan Ashmar Lebanese. Passport Number: RL 1068866, Wael Saad Lebanese, NIN number on residence permit card: 11097111357; Wael Bazzi : Nationality: Belgian, Pasport Number: EJ 272510

EAGL inherited the exclusive arrangement in place as sole importer of petroleum products after it was incorporated. We have not found, and EAGL directors have not produced, any document showing precisely when EAGL took over the importation. Letters written by Mousa Bala Gaye dated 5<sup>th</sup> September, 2006 and 5<sup>th</sup> January 2007 extending the exclusivity indicate that the exclusivity was in place from 2002<sup>37</sup>. At the time EAGL was created, Mohamed Bazzi and Amadou Samba had become partners in Gampetroleum, to build the fuel depot. Amadou Samba told the Commission that he

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<sup>33</sup> Anonymous statement.

<sup>34</sup> See the MS25, MS63, MS122 and Transcript of Fadi Mazegi 17/08/17

<sup>35</sup> See Exhibit MS 63

<sup>36</sup> Different from Mohamed Bazzi EAGL shareholder.

<sup>37</sup> Exhibit MS63



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was not involved in the arrangements. It was offered and 'like any business man' if he is offered such an arrangement he would not refuse it<sup>38</sup>.

### 2.4. Extension of the Exclusivity Contract

Mr. Mousa Balla Gaye has told the Commission that it was a Government decision for EAGL to be the exclusive supplier of fuel to NAWEC. He confirmed that the award did not go through any tender process<sup>39</sup> during the period he was Minister. He said it was not advertised because the other Oil Companies were benefitting. EAGL imported and supplied other Oil Companies, the Oil Companies had no risk and EAGL were giving them sixty (60) or ninety (90) days to sell and pay EAGL. The Commission assumes that this testimony was intended to apply to both exclusivity contracts (EAGL and GTG) and accepts it as such. He did not suggest that EAGL was the only company that could have provided this service. The Commission notes that even if it was, the Procurement rules set out the criteria and procedure for single sourcing any procurement. Moreover, the evidence shows that EAGL was appointed executing agent for the ITFC/IDB facilities of up to USD15 million, USD10 million, and USD8 million, respectively, thus minimizing its foreign exchange exposure. It is the Commission's view that they were given an unwarranted advantage.

Mr. Abdou Kolley explained to the Commission how he tried to break the **Exclusivity** which he was not in favour of because **EAGL** was not meeting their obligation in terms of financing the facility with **IDB**. He promoted GNPC as a viable alternative to EAGL but was unsuccessful.

In 2009, the Ministry of Petroleum entered into arrangements to import petroleum products from Venezuela at concessionary prices<sup>40</sup>. A directive had been given by OP for GNPC to be availed all facilities to import petroleum products to The Gambia including the financing facilities provided to The Gambia by IDB/BADEA. When Mohamed Bazzi learnt from Total Oil Trading S.A. that GNPC had been given the approval to import petroleum products by end of 2010, and was seeking a supply source, he wrote to the Ex-President directly pleading that the termination of the exclusivity had resulted in Total demanding payment of all loans borrowed for the building of the Gampetroleum depot, and had also withdrawn the non-secured facility EAGL enjoyed with TOTAL to store strategic stock without asking for an LC<sup>41</sup>. On the 10<sup>th</sup> August 2010 the decision to allow GNPC to import fuel and end the exclusivity was reversed by Ex-President and confirmation given that the extension would last until 2014<sup>42</sup>.

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<sup>38</sup> Transcript of Amadou Samba of 18<sup>th</sup> July 2018

<sup>39</sup> see the transcript of Mousa Gibril Balla - gaye of 12/07/18 at pg. 11 - Para 252-259)

<sup>40</sup> See Chapter Vol.4 Part 3 Chapter 3 letter dated 15<sup>th</sup> July 2009 (MOP1/11/01/(08)

<sup>41</sup> See letter dated 30<sup>th</sup> July 2010. Exhibit MS343A

<sup>42</sup> See Chapter Vol.4 Part 3 Chapter 3.



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The Commission notes that at this time the Ex-President had prevailed on Gampetroleum (owned by the same shareholders) to sell 48% shares to the 3 SOEs (SSHFC, GNPC, & GPA) at the total price of €16,800,000, which was fully paid by end of 2009<sup>43</sup>. The desperate position conveyed in Mr Bazzi's letter therefore lacked credibility.

The evidence shows that the exclusivity was extended several times on the application of EAGL. It was extended for 5 years from 1/1/2007-31/12/2011. In 2010, it was almost cancelled, but confirmed again by Ex-President on the 10<sup>th</sup> August 2010 to last until 2014.

The evidence that the exclusivity was maintained in place by the Ex-President is irrefutable from all the correspondence relating to it. Exhibit **MS235** shows letters dated 11/06/13, 14/06/13, 25/06/13, 8/07/13, 15/07/13 and 24/10/13 all relating to directives from the OP in connection to the exclusivity contract. They also reflect the struggle by the Minister of Finance (Abdou Kolley) to break the monopoly by availing one of the IDB facilities (USD8 million) to GNPC to import fuel while EAGL retained the USD15 million.

### 2.5. Pricing Structure

The position taken by Mohamed Bazzi and Fadi Mazegi before this Commission is that the price structure for their supplies was determined by Government, as such they were a government agent and not a monopoly. Mr. Bazzi said their importer margin was determined by the Minister of Finance each month and sometimes they even gave discounts on that<sup>44</sup>. Mr. Mazegi said they were sole agent but the pricing was not up to them. They brought in the fuel, provided evidence of the price which was plugged into the Price Structure published on a monthly basis<sup>45</sup>.

The evidence shows that before 2002 the pricing structure was administered by the Gambia Revenue Authority because it was seen as a revenue and tax administration matter<sup>46</sup>. From 2002, however, it appears Minister of Finance took over responsibility.

The investigations reveal that fuel price for both HFO and other petroleum products was based on PLATTS<sup>47</sup>. The information is accessed by subscription. It appears that during the exclusivity period, the Government was not a subscriber to PLATTS so they had no access to the primary information as published.

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<sup>43</sup> Infra Vol.6 Chapter 6 on Gampetroleum

<sup>44</sup> Transcript of Mohamed Bazzi dated 9<sup>th</sup> October 2007

<sup>45</sup> Transcript of Fadi Mazegi dated 13<sup>th</sup> June 2018.

<sup>46</sup> See Statement of Mod K, Ceesay & MS259A bundle

<sup>47</sup> S&P Global PLATTS is the leading independent provider of information and benchmark prices for the commodities and energy markets since 1909. PLATTS Energy Trader provides prices daily.



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Mr. Abdou Kolley, stated that when he was Minister of Finance, the Staff of the Ministry prepared the monthly price structure and presented it for his approval. He was told that the PLATTS prices and Supplier Premium were provided by the supplier. He said when he queried the premium as too high he was told it covered cost. When he queried the PLATTS he was told the information was available by subscription only.

The staff of Ministry of Finance have confirmed to the Commission that the key information needed to prepare the price structure (PLATTS and Supplier Premium) was usually sent to the Ministry in the form of an invoice by EAGL<sup>48</sup>. The difference between the structure during the exclusivity (old structure) and the structure from July 2014 (new structure) is that in the old structure the supplier premium is lumped together with other costs, while in the new structure it is broken down. The equivalent to the Supplier Premium in the old structure is the Importer 'Margin per Cycle'. The CIF Banjul in the old one is equivalent to Importer Cost in the new one. During the exclusivity period, invoices were sent in by EAGL and that is what was signed and passed to the OMCs. Thereafter GNPC provided the information for the price structure. When GNPC failed to renew its subscription, the Ministry started subscribing. We were told however that this was discontinued and the Ministry started obtaining PLATTS prices through Petrogaz Oil company Ltd<sup>49</sup>.

The evidence shows that GNPC went into the downstream oil business and obtained its supplies from EAGL. In 2013, GNPC was allowed to enter into a contract with a refinery in Morocco- Samir. They were subsequently stopped by OP from further importation on the grounds that they could not be both retailer and importer, and reverted to importing from EAGL.

Mr. Momodou O.S. Badjie (MD GNPC at the time)<sup>50</sup> said it was the Ministry of Finance that determined the price structure but the information to develop the price is provided by the supplier; that was the GNPC experience. He explained that the Supplier/Trader Premium is the premium that the Supplier or Seller adds on top of the PLATTS price agreed per metric ton for the product supplied. The Supplier Premium became part of the cost of the product imported. The higher the Premium the more expensive the product. All Suppliers may quote from the same PLATTS but the Premium added may differ from one Supplier to other<sup>51</sup>. The importer Margin is the margin given to the importer of the products into the country and was agreed with the Ministry of Finance until the price structure was standardized in 2014 and became 10% of all importer cost. The dealer margin on the other hand is the margin given to the petrol station owners.

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<sup>48</sup> See Statements from staff MS 59A

<sup>49</sup> A company majority owned by Fadi Mazegi

<sup>50</sup> As former managing director of GNPC involved in the importation and supply of fuel

<sup>51</sup> See the statement of Momodou O.S. Badjie attached to the investigator's report



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The table below tabulates the Premium charges from 2008 to 2017<sup>52</sup>. The price structure before 2008 was not provided by the Ministry of Finance despite various summonses. The Commission investigators were informed that the files could not be found.

### FUEL PRICING STRUCTURE 2008-2017

SUPLIER PREMIUM				IMPORTER MARGIN PER CYCLE			
2008	PMS <sup>53</sup>	AGO <sup>54</sup>	KERO <sup>55</sup>	2014	PMS	AGO	KERO
26/2-25/3	USD176.30	USD20 4.30	USD55 .00	JULY	<b>124.5</b>	107.03	114.88
26/3-25/4	USD193.00	USD22 1.00	USD55 .00	AUG	120.26	106.13	112.05
26/4-20/5	USD186	USD21 4.00	USD55 .10	SEPT	112.24	103.98	110.00
26/5- 25/6	USD195	USD22 3.90	USD55 .00	OCT	109.73	100.90	105.82
26/6 -25/7	USD197	USD22 5	USD55 .00	NOV	100.77	93.90	99.05
26/7-25/8	USD198.20	USD22 5.50	USD55 .00	DEC	92.36	89.20	94.27
26/8-25/9	USD183.40	USD21 1.40	USD55 .00				
26/9-25/10	USD176.80	USD20 4.80	USD85 .00				
26/10-25/11	USD168.80	USD19 6.80	USD85 .00				
26/11-25/12	USD154.10	USD18 2.10	USD85 .00				

2009	PMS	AGO	KERO	2015	PMS	AGO	KERO
26/12–25/1	USD150.2 0	USD17 7.20	USD85. 00	JAN	75.78	75.69	81.35
26/1 – 25/2	USD185.5 0	USD21 3.50	USD85. 00	MAR	68.12	67.17	71.03
26/2-25/3	USD182.9 0	USD21 0.90	USD85. 00	APRIL	74.40	69.09	70.84
26/3 -25/4	USD190.6	USD20	USD85.	MAY	77.65	68.13	70.06

<sup>52</sup> Exhibit MS59A

<sup>53</sup> Premium Motor Spirit –commonly known as petrol or fuel

<sup>54</sup> Automotive Gas Oil – commonly known as diesel

<sup>55</sup> Kerosene



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	0 -	8.80	00				
26/4- 25/5	USD197.37	USD213.15	USD85.00	JUNE	<b>373.37</b>	<b>329.22</b>	74.75
26/5- 25/6	USD202.08	USD216.56	USD121.47	JULY	<b>385.70</b>	<b>323.96</b>	74.02
25/6- 26/7	USD196.98	USD225.00	USD121.47	AUG		<b>310.94</b>	70.68
25/8- 26/9	USD196.98	USD225.04	USD121.47	SEP	<b>348.59</b>	<b>280.64</b>	63.39
26/9- 25/10	USD190.00	USD231.80	USD85.00	OCT	<b>348.59</b>	<b>280.64</b>	63.39
26/10- 25/11	USD206.06	USD220.46	USD209.46	NOV	<b>348.59</b>	<b>280.64</b>	63.39
26/11- 25/12	USD206.06	USD220.46	USD209.46	DEC	<b>348.59</b>	<b>280.64</b>	63.39

2010	PMS	AGO	KERO	2016	PMS	AGO	KERO
26/12- 25/1	USD202.95	USD222.86	USD127.95	JAN			
26/1- 24/2	USD202.95	USD222.86	USD127.95	MAR	115.00	110.00	100.00
25/2 - 26/3	USD206.50	USD219.10	USD213.73	APRIL	184.00	190.00	100.00
25/3 - 26/4	USD206.00	USD219.10	USD213.73	MAY	184.00	190.00	100.00
26/4- 25/5	USD206.00	USD227.20	USD213.73	JUNE	184.00	190.00	100.00
26/5- 25/6	USD206.00	USD227.20	USD213.73	JULY	184.00	190.00	100.00
26/6- 25/7	USD206.70	USD221.10	USD213.73	AUG	184.00	190.00	100.00
26/7- 25/8	USD206.70	USD221.10	USD213.73	SEP	172.68	178.03	100.00
26/8 - 25/9	USD206.70	USD222.30	USD213.73	OCT	166.56	171.72	100.00
DEC	USD208.04	USD226.99	USD213.73	NOV	164.00	169.08	100.00
				DEC	176.97	182.46	100.00

2011	PMS	AGO	KERO	2017	PMS	AGO	KERO
JAN	USD157.80	USD227.78	USD223.00	JAN	171.62	176.95	100.00





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					167.97	173.18	100.00
FEB	USD215.5 0	USD230 .86	USD223.0 0	FEB	167.97	173.18	100.00
MAR	USD215.5 0	USD239 .05	USD235.4 1	MAR	100	105	60
APRIL	USD215.5 0	USD240 .03	USD235.4 1	APRIL	100	105	60
MAY	USD234.9 2	USD242 .32	USD243.8 6	MAY	100.00	105.00	60.00
JUNE	USD234.9 2	USD237 .66	USD244.5 8	JUNE	100.00	105.00	60.00
JULY	USD234.9 2	USD240 .12	USD244.5 8	JULY	100.00	105.00	60.00
AUG	USD234.9 2	USD240 .12	USD244.5 8	AUG	100.00	105.00	60.00
SEP	USD161.0 1	USD241 .18	USD2366 6.36	SEP	100.00	105.00	60.00
OCT	USD224.4 4	USD241 .18	USD151.3 0	OCT	100.00	105.00	60.00
NOV	USD224.4 4	USD241 .18	USD237.6 9	NOV	100.00	105.00	60.00
DEC	USD221.1 8	USD239 .00	USD237.6 9	DEC	100.00	105.00	60.00

<b>2012</b>	<b>PMS</b>	<b>AGO</b>	<b>KERO</b>
JAN	USD221.1 8	USD239 .68	USD234.2 1
FEB	USD278.7 8	USD290 .58	USD148.8 2
MARCH	USD276.1 8	USD287 .56	USD287.9 5
APRIL	USD284.4 2	USD291 .51	USD292.2 1
MAY	USD291.5 1	USD291 .51	USD292.4 2
JUNE	USD284.4 2	USD287 .89	USD175.9 1

<b>2013</b>	<b>PMS</b>	<b>AGO</b>	<b>KERO</b>
JAN	USD272.0 1	USD284 .86	USD281.3 3
FEB	USD281.3	USD287	USD293.1



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	3	.22	2
MARCH	USD282.0 2	USD282 .71	292.89US D
APRIL	USD282.0 2	USD284 .45	USD292.8 9
MAY	USD282.9 5	USD282 .10	USD287.8 2
JUNE	USD282.9 5	USD281 .16	USD287.8 2
JULY	USD279.8 3	USD285 .25	USD287.8 2

The above Table shows that except for 7 months in 2015 (when the importer margin spiked and for which we received no explanation) the margin paid to the supplier declined by 30% to over 100% in some instances after the exclusivity period. This is consistent with the findings relating to NAWEC (in whose case the margin over PLATTS declined from USD110 to USD47). The Commission notes that the importer margin was based on 10% fixed margin after the exclusivity in comparison to the period of exclusivity which appeared to have been based on a negotiated sum.

### 2.6. Relationship between EAGL and GTG

EAGL was actually the importer of HFO and petroleum products for GTG<sup>56</sup>. GTG although awarded the exclusive contract to supply NAWEC fuel needs had no registered presence in The Gambia until 2015 when it registered as a foreign company. It did not open bank accounts. All payments for official fuel supplies and other contracts were made to either EAGL or Euro Financing Gambia Ltd. which had local bank accounts. Some of the supplies by GTG were in fact invoiced by Euro Financing Gambia Limited<sup>57</sup>. Mr. Fadi Mazegi told the Commission that there was an oral agreement between EAGL and GTG, and EAGL supplied on behalf of GTG. However, Mr Bazzi explained it differently:

*“We take it as **Euro African** as one business. We do the fuel for NAWEC and the light product. At one time if was not the light product was existing then we will not be able to supply NAWEC because NAWEC was not being paying. We have too much arrears with them. So, we were using all the facility even the light product to support the heavy fuel. (SIC)*

Q: *I thought it was another company, Global that was supplying fuel to NAWEC?*

A: *No, at the end it was all the same, it was **Euro African**.”*

<sup>56</sup> See Transcript of Fadi Mazegi of 13<sup>th</sup> June 2018

<sup>57</sup> see exhibit sc108 also Transcript of Amat Cham dated 18/06/18



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The Commission is of the view that this latter explanation is more consistent with the evidence.

### 2.7. Were EAGL and GTG Monopolies?

The definition for a monopoly situation under the Competition Act<sup>58</sup> is when a company or group of companies controls 30%<sup>59</sup> or more of the supply. Both EAGL and GTG respectively had 100% control of the supply of petroleum products/HFO and were therefore monopolies under Gambian law.

Were they engaged in conduct that prevented, restricted or distorted competition or did they in other ways exploit the monopoly situation, contrary to the Act? The Commission is of the view that they were and they did.

Mr. Mohamed Bazzi said they came in and solved the fuel supply problem because, at the time, there were only marketing companies who looked to government to give them 'monthly supplies'. They took responsibility for the foreign exchange problem and built a depot, which, he said, the other companies had an opportunity to do, but did not<sup>60</sup>.

The evidence however shows that the supply of fuel was very competitive before the sole supplier arrangement with GTG, Euro African Oil Co. Ltd, and EAGL, respectively. Both Shell and Total competed. The evidence also shows that, in fact, it was the sole supplier status which was leveraged by EAGL and GTG to obtain financing not only to secure reliable sources of supply, but to facilitate financing to construct the Depot, and not the other way around. The Government's proposal to build a depot attracted several investors but Mohamed Bazzi and Amadou Samba, this time as Gampetroleum, were given the permission by OP to build the depot without any contract or conditions, despite the preference shown by the SG and Commissioner of Petroleum for another contractor and the agreed pre-conditions of the GAMFUELS Project (which were disregarded)<sup>61</sup>. In other words, financing for EAGL group of companies was facilitated by the assurance of an exclusive market to supply to, and the exclusive right to store fuel for the whole country. This is clear from the letter of 30<sup>th</sup> July 2010<sup>62</sup> written by Mr. Bazzi to the Ex-President pleading for the retention of the sole supplier status.

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<sup>58</sup> Cap.96:01

<sup>59</sup> Section 31 of Competition Act.

<sup>60</sup> Transcript of 9<sup>th</sup> October 2018

<sup>61</sup> See Chapter Gampetroleum Vol.6.Chapter 6.

<sup>62</sup> Exhibit MS343A



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The Commission is in no doubt that both EAGL and GTG Sole supplier status, supported by financing from ITFC/IDB, guaranteed by government, created an exploitative monopolistic situation which, ordinarily, ought to have been investigated by the Gambia Competition Commission.

### 2.8. Anti-Competition Practices

The Competition Commission<sup>63</sup> submitted 3 Reports two of which are outside our mandate<sup>64</sup>. The Report captioned 'Liquified Petroleum Gas (LPG) Market Study concludes:

*“Impact of Monopoly on the Sector:*

*EAGL has had exclusive protection from the Government on the importation of LPG from 2009 – mid 2014. This was to curb the shortages of LPG and dependency on Senegal.*

*There were positive gains but also detriment. The embargo:*

- *Limited choice of retailers and reduced bargaining power to get LPG at a competitive price.*
- *The reduced price per ton now is still higher than in Senegal.*
- *Senegal has four major importers and the Gambia only has one, thereby affecting competition in terms of pricing and choices.*

The above finding shows that overall the country loses when monopolistic situations are created in any sector, and basically undermine the objectives of the Procurement laws.

### 2.9 Fraud & Corruption

Section 3 of the GPPA Act states that the objectives of the Act is to provide a system for ensuring a transparent, efficient and economy public procurement; accountability in public procurement; a fair opportunity to all prospective suppliers of goods, works, services and consultancy services; the prevention of fraud, corruption and other malpractices in public procurement, etc. and improvements in social economy capacity of The Gambia, facilitating the participation of local, small and medium enterprises and individuals to participate in a competitive and economic manners as suppliers, contractors and sub-contractors in public procurement.

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<sup>63</sup> Established under the Competition Act Cap.96:01 –came into force 1<sup>st</sup> January 2008

<sup>64</sup> Report captioned 'Liquified Petroleum Gas (LPG) Investigation Report covering the period January 2007-December 2017 which is outside our mandate and Report Caption 'Cement Tariff Impact Assessment Report, which is outside our scope.



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Our Commission has already made findings against EAGL and its directors that the payment of USD2,550,000 by EAGL into the Alhaji Yahya Jammeh Foundation for Peace **USD Account Number 10701930502** is more probably than not a bribe intended as an incentive for the Ex-President's favours in connection to contracts enjoyed by EAGL and affiliated companies<sup>65</sup>.

The Commission has also concluded that it is more probable than not that the purchase of the Potomac Property in the USA in the sum of USD3,500,000 from an account opened by the managing director of EAGL at the time, Mr. Ahmad Hodroj, was financed from EAGL as a bribe to continue to maintain the exclusivity.

The evidence also shows monthly payments of the equivalent of USD500,000 into the Ex-President's salary account in Trust Bank Ltd. No. 11002037701 from 30<sup>th</sup> June 2011 – January, 2013 equivalent of D14,750,000 for 3 months, and thereafter a fixed sum of D15 million monthly for 15 months and D16 million thereafter, totaling about **D240,280,000.00**<sup>66</sup>. Fadi Mazegi, (a director during the period of these illegal payments) said he did not know about them. Mr. Mohamed Bazzi takes responsibility for the arrangement and has given the same explanation and led the same evidence for these payments as he gave for the payments into the JFP account. He stated that the payments were made on behalf of Ali Sharara. Ali Sharara is the Chairman of Spectrum Investment Holding SAL<sup>67</sup>. According to Mr. Bazzi, Ex-President Jammeh demanded a monthly payment of USD500,000 from Ali Sharara as a precondition for TELL's management of the International Gateway. Mr. Bazzi said he served as intermediary between Ex-president Jammeh and Ali Sharara<sup>68</sup> and that part of the funds from Ali Sharara were monies paid into this account by EAGL. He said he received the funds in Lebanon from Ali Sharara<sup>69</sup>. Mr. Bazzi's statement to the Commission on this issue is set out below:

***“MATTER OF THE TRANSFERS FROM EURO AFRICAN GROUP LIMITED TO EX PRESIDENT JAMMEH'S ACCOUNT***

*I. The Ex-President repeatedly told me verbally, that he is capable of doing things to me that I will regret and nothing can come out it - he told me the minimum he can do to me is to lock me in Jail but that there are other things he can do to me. Several times he mentioned my employees and said one by one, he can deal with them. He knows all of them - he even said to me that when they go out at*

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<sup>65</sup> See Vol.4 Part 3 Chapter 1

<sup>66</sup> See Transcript of Ebrima Sallah MD TBL dated 28<sup>th</sup> September 2017 and Exhibit BB72

<sup>67</sup> A company that purchased 50% shares in Gamtel and Gamcel and TELL International Inc. More information on this company can be found on the Chapter ...on Gamtel/Gamcel

<sup>68</sup> The Witness sought to give evidence as a representative of TELL but he could not produce a Power of Attorney to show that he had authority to do so. The Chairman of the Commission ruled that the Witness cannot give evidence on behalf of TELL without showing a Power of Attorney from TELL.

<sup>69</sup> Vol.4 Part 3 Chapter 1.



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*Night to restaurants or Nightclubs here in Gambia - he has people watching them and he knows their every move in this country.*

*2. The Honourable Commissioners will see a letter dated in May 2013, marked ( 4) in the Bundle, where the ex President wrote to me making various threats to my persons and to my business.*

*3. He started carrying out the threats - he sent auditors to Gam Petroleum in 2013 and in 2014. The Reports are available from DT Associates.*

*4. I am also aware in his own handwriting, he wrote to the Minister of Finance at the time, Kebba Touray, that I should be charged with Economic Crimes and locked in Jail. That one the Minister Touray can testify to that.*

*5. I believe that he is capable of doing the things he said he would do, because he did it to so many other people in the Country. His own friends and relatives, he did it to. Who am I that he will not do it to me.*

*6. The problem all started in 2008/2009, my friend Ali Charara wanted to come to the Gambia to invest in telecommunications. He met with the Government and the President. They negotiated and agreed for 50% of Gamtel/Gamcel. After 7 months or so, they kicked SPECTRUM out.*

*7. From 2009, only problems - Mr Charara blamed me for the problem and the President blamed me saying I brought them to the country. Mr Charara wanted to take arbitration and sent his lawyer here. I know they amicably settled the problem. They ended up paying Mr. Charara about US\$5million and they did not pay anything else. If I am not mistaken, Mr. Bala Gaye was the Minister of Finance.*

*8. Later - through another European Company, Mr Charara set up Tell company. He came and negotiated with the Government. When this happened, after he was set up through Tell, he now said that the President said to him that he should give him US\$500,000 every month. He doesn't know what to tell the President. He told the President that he cannot do the transfer from Europe and the President told him to deal with me.*

*9. When Mr Charara told me this, we had some issue between us. I also spoke to the President and told him we cannot do this because of transfers from abroad will be a problem for us.*

*10. The President told me things to my face that if I did not co-operate with the instructions, that he will do certain things to me, to my staff, to my companies. There was no misunderstanding what he would do if I did not comply.*

*11. I went to Beirut and after sometime, I had to do it. This was something I could not discuss with Mr Mazegi because it would have caused us problems. When I spoke to Mr. Mazegi, I told him that I found a way to solve our Foreign Exchange problems. I told him we will issue out payment here for Mr Charara and he will deposit for us in Fransabank in Beirut so that we can pay our facilities/suppliers. This is how it was recorded in our books - and I personally instructed the accountant to liaise with me with those payments. I myself instructed the Bank as well.*



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12. I started to do the monthly transfer even before Mr Charara paid. I did not wait for Mr Charara and would reconcile with him. Mr Charara would make payments as and when he could. Sometimes in advance, other times bulk payments.

We received from TELL/ MR CHARARA to our BEIRUT ACCOUNT FRANSABANK a TOTAL OF \$10,434,000.00~

We paid from EAGL from TRUST BANK Account in DALASIS: D240,280,000.00  
· and IN DOLLARS: \$2,550,000.00

Between 30 June 2011 and January 2013 for which we paid Dalasis in Gambia is:

- WE RECEIVED: US\$7,514,000.00 (Seven Million Five hundred and Fourteen Thousand United States Dollars)
- WE PAID TO JAMMEH'S ACCOUNT: D240,280,000.00 (Two hundred Forty Million, Two Hundred and Eighty Thousand Dalasis)

From February 2013 to November 2013

- WE RECEIVED: US\$2,920,000.00 (Two Million Nine hundred and Twenty Thousand United States Dollars)
- WE PAID OUT TO JAMMEH FOUNDATION: \$2,550,000.00 (Two Million Five Hundred and Fifty Thousand United States Dollars)

-A summary of the payments we made in Gambia and the payments we received from Tell/Mr Chara deposit slips (1) -I have also provided the Bank Statements (2)

13. During those years, 2010 to 2013, I even wrote several times to the Government about our difficulties sourcing Dollars in the Country -(the letters are provided (3)

14. In January 2013, after I saw the President and told him we were all facing problems abroad because of these transfers - therefore, we cannot continue this. He was very mad and angry with me. I avoided him for two or three months. In the 3rd May 2013, I wrote to him a nice letter about our situation. He replied immediately to me a letter - which I did not even show to any one. I was so embarrassed by the things he said in that letter. I felt that this was it, he will carry out all the threats he made against me. I knew I had to avoid him. He even accused me of receiving money from Mr Charara and not passing it on to him. - See letter I wrote to him and the reply I received in May 2013 (4)

15. Immediately I instructed for a transfer to be made to him. After some months, I was contacted to make the transfers to the Foundation Account - I took out an overdraft from Trust Bank and made a transfer from Dollar account - See extract of Trust Bank account 1A and 1B.

16. In 2013/2014, I was hardly in the Country- I received a message that the President had given instructions to audit me and charge me with Economic crime. I left Mr Mazegi here to take care of our financial settlement with Nawec and if I came, it would be for less than a week, then I would go away.



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*17. I do not want to say these things on live tv because I strongly believe he has his people here - the things we went through the past years are still very much in my head and I really do not believe that these things I can say and he or his people will not carry out their threats. I therefore ask that I say this off live tv if this is possible. Otherwise, I am risking myself and my staff because I know that this man is capable of things and he was not joking when he said things to me about what he can do to me. I want to co-operate with the Commission but not to the extent that my life or the life of my staff or even my businesses is in danger.*

*SIGNED: Mohamed Bazzi*

*DATED: 9<sup>th</sup> October 2017 “*

The Commission made the finding that the payments of USD2,550,000 into JFP TBL account were made by EAGL for the personal benefit of the Ex- President and not by Ali Sharara based on Mr. Bazzi's own explanation that he took out an overdraft to make the payments.

EAGL Account in Fransabank Sal Beirut, Lebanon does show that payments were made into EAGL Accounts<sup>70</sup>.

As regards the USD7,514,000 (D240,280,000) paid into the Ex-President's account from June 2011 to January 2013, Mr. Bazzi's states that his actions were motivated by fear. In the Commission's view the protracted period during which these payments were made – 18 months- militate against such an assertion. The Commission makes no finding on the possibility of such a defence being available to the persons involved, including Mr. Bazzi. The Commission, however, finds that there is probable cause for holding that EAGL and its directors were parties to the corrupt giving of the sum of USD7,514,000 (D240,280,000) to the Ex-President.

Amadou Samba said he ceased to be a director of EAGL in December, 2010 and was not aware of these payments. There is no evidence that he was personally aware of these particular payments to the Ex-President or that he was a signatory to the accounts at this time.

Mr. Fadi Mazegi said he was not aware of these payments. As stated, Mohamed Bazzi took full responsibility. However, from the evidence, the Commission is of the view that, it is not possible that Fadi Mazegi was not aware of the payments to the Ex-President's account because, from his testimony, he was executive director holding the position of finance director and commercial director<sup>71</sup>. These payments were all reflected in the EAGL TBL bank statements. As finance director, he must be deemed to have been

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<sup>70</sup> Exhibit MS59

<sup>71</sup> Fadi Mazegi Transcript of 28<sup>th</sup> August 2017





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aware of the payments into the Ex-President's account, at regular intervals over a protracted period, whatever the explanation given to him by Mr. Bazzi for them may have been. Even if the Commission accepts that these payments were from TELL, channeled through EAGL, it would still be potentially criminal, and in the Commission's view, Mr. Mazegi would be complicit and potentially liable, as director of the company.

**Relationship between EAGL, KFF, KGI and Ex-President:** Of concern to the Commission was the relationship that apparently developed between the Ex-President and Bazzi/Samba Group of companies from 2000. Mr. Fadi Mazegi when asked whether EAGL had any relationship with KGI was very emphatic that they did not<sup>72</sup>. The evidence shows that the relationships between EAGL, and the Ex-President became so intertwined that they were doing business together through Kanilai Family Farms (KFF) and Kanilai Group International (KGI) as shown in the following Exhibits of TBL accounts:

BB118A, KGI Account No.11011116312,  
BB118A2 KGI Account No.11011116308,  
BB118A3 KGI Account No.11011116312,  
BB118B KGI Account No.1101116303,  
BB118C KGI Account No.11011116304,  
BB118D KGI Acc. No.11011116307,  
BB118F KGI Account No. 11011116305,  
BB118G KGI Account No 11011116306,  
BB118E.

All these accounts show numerous transactions between KGI and EAGL. KGI was selling rice on behalf of EAGL. Mr Bazzi testified that he imported rice to ease the suffering of the Gambian people and lost about USD5 million which he never recovered. The Commission however fails to understand the involvement of KFF and KGI with EAGL in the sale of rice, if the objective was purely altruistic

KGI BB118H Account No.110-11807901 and KFF (Bakery) Account No.11011807401, show that the managing director EAGL Ahmad Hodroj was joint signatory with the Ex-President. The Commission notes that Fadi Mazegi said that this is one of the reasons why Ahmad Hodroj was removed as the managing director of EAGL. The Commission is however of the view that the relationship between Ahmad Hodroj and the Ex-President was merely an extension of the relationship of the Bazzi group and the Ex-President.

The evidence in this Report shows that GTG was supplying the Ex-President vehicles and other merchandize, as early as 2004. According to GIA general manager Lamin Cham, the Bazzi Group may have been responsible for managing the Ex-President's

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<sup>72</sup> See Transcript of Fadi Mazegi of 24<sup>th</sup> January 2018-“We do not have any relationship with these people”.



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fleet of airplanes before 2013. This is in fact confirmed by the Report from GCAA which indicates that in fact the acquisition and registration of two of the three aircrafts used by the Ex-President was handled by Gampetroleum through Imperial Jet of Lebanon<sup>73</sup> at a time when the management of Gampetroleum was in the total control of EAGL.

Both shareholders of EAGL (Mohamed Bazzi and Amadou Samba) had direct access to the Ex-President. Most of the procurement contracts enjoyed by the Group was granted or approved by the Ex-President. There is copious evidence to show that Mohamed Bazzi's modus operandi was to go directly to the Ex-President on issues which arose concerning his companies. Amadou Samba referred to the Ex-President as "his friend" and acted also as his middleman in the purchase of many properties. He claims that the Ex-President borrowed money from him and did not pay him and it was, in fact, he who benefitted the Ex-President and not the other way around. The Commission does not find this position borne out by the evidence, having regard to the advantages a direct link to the Ex-President afforded Mr. Samba and his companies from 1995-2016.

### 2.10. Payment of Taxes

GTG's first contracts were the award of over USD30 million contracts with **NAWEC** to bring in generators financed by Taiwan and install a transmission line. They did not open an office. They did not open a bank account. So, on the face of things they had no presence since they handled all their payments through EAGL. Their directors were EAGL directors. They signed and executed over a hundred million dollars' worth of contracts apart from the HFO supplies contract. They did not register a presence until after the fuel exclusivities ended in 2015. GRA has submitted Returns which show that they did not know Global Trading Group NV. The only Global Trading Group they have on record is the Company registered as a foreign Company in 2015. The Income and Sales Tax Act which was enforced in 2004 and thereafter the Income and Value Added Tax which came into force in 2012 clearly indicates that a foreign company's Gambia source income is taxable. It is also subject to withholding tax<sup>74</sup>.

Other companies that were operated by the Group included: Global Power Systems whom they claimed to be subcontractors, and Multi Shipping Company Ltd. Also listed in their audited accounts as related parties are GAMICO; Gammobile; Gamveg; Royal Residence, GEG, Votrag, a Bakery business; Las Service; GMS; Ibrahim Bazzi and Sons; Gamilo; Gamcon; SPL; International Milling Corp/Gambia Milling Corp; WARD; and Africard<sup>75</sup>. The Commission could not investigate all these companies. However, they do require investigation and their Tax status determined.

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<sup>73</sup> See Post.

<sup>74</sup> See sections 2 and 92 of both Acts and the definition of permanent establishment.

<sup>75</sup> See Exhibit MS63- EAGL Audited Accounts.



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### 2.11. FINDING

- (1) The Commission finds that from a date unknown in 2002 first as Euro African Oil Company Ltd. then EAGL as from 2004 until the Exclusivity ended in 2014 imported all fuel supplies into the country except such imports as were undertaken by GNPC in 2013 before they were compelled to give way to EAGL by the Ex-President.
- (2) The monthly Fuel Price structure that was published by Ministry of Finance was primarily dependent on the information provided by the supplier because the Ministry of Finance did not subscribe to PLATTS during the exclusivity period and the inputs to construct the pricing were from costs invoiced by the supplier. Therefore, the supplier premium/importer margin was not based on independent objective criteria but depended on the price inputs of the supplier- first EAGL and subsequently, GNPC. This undermined the integrity of the process and made room for bribery and other corrupt practices.
- (3) The Commission finds that the basis for the sole agency status awarded to EAGL and GTG was a direct violation of the government procurement Rules, as it created 'a favoured status' founded on the personal relationship between the directors of EAGL and the Ex-President, which is shown to have been sustained by, and through, direct bribery and other corrupt practices.
- (4) EAGL directors, in addition to the USD2,550,000 paid into Alhaji Yahya Jammeh Foundation TBL account, illegally paid or facilitated the payment into the Ex-President's personal salary account over a period of 18 months the total sum D240,280,000. There is probable cause for holding that these payments were illegal and intended to bribe the Ex-President contrary to sections 360(b) and 361 of the Criminal Code and all directors and signatories to the account are deemed to have been aware of it. The Commission has probable cause for holding that they thereby became parties to the offence.
- (5) Bribery is also a tortious civil wrong and the State has a cause of action against the Ex-President for the restitution of the amount of the bribe, in the sum of D240 million or its USD equivalent at the time and against the directors of EAGL at the time of these payments, jointly and severally.
- (6) It is against government and the public interest for the Ministry of Finance to have relied upon and continue to rely upon suppliers for information to determine the price of any commodity particularly one of such crucial importance to the country and the economy, like fuel. This made room for corrupt practices that the procurement laws are designed to prevent. There ought to be no acceptable reason why Government, if it is responsible for approving the fuel price structure



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for the public benefit, does not obtain the necessary input from primary sources by subscribing for PLATTS and if necessary passing the cost to the OMCs.

- (7) The Commission finds that it is more probable than not that the fuel prices during the exclusivity period were inflated having regard to the abrupt decrease of prices which, generally, occurred after the exclusivity ended, even taking into account the 7-month spike in 2015.
- (8) Allegations have also been received that EAGL and the Bazzi Group of companies failed to pay the correct taxes on the volumes of fuel that were imported. This was not within the mandate of the Commission, and in any event required more extensive forensic investigation.

## CHAPTER 3

### SUPPLY OF GOVERNMENT VEHICLES

From the evidence reviewed by the Commission vehicles purchased by OP whether directly or through Ministry of Finance appear to have been mainly from 2 sources -TK Motors and GTG/EAGL. The Commission investigated these purchases.

#### 3.1 TK Motors

##### A. Period before 2009

T.K. Motors Ltd is a private Gambian company whose main activity is the importation, sales and distribution of motor vehicles and spares. The company acts as agent for Mitsubishi motors of Japan and Hyundai Corporation of South Korea<sup>76</sup>. Its directors are Tarek K. Musa, Musa K. Musa and Mrs. Neneh B. Gaye. Shareholders on record are Tarek Musa 95% and Isha Neneh Bala Gaye 5%<sup>77</sup>.

Musa Musa (Witness no.97) and Degain Nyang (Witness no.112)<sup>78</sup> testified that the company could not produce their records before 2009 because they keep the records

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<sup>76</sup> See Exhibit MS140A & Annual Reports and Accounts for the year ended 31<sup>st</sup> December 2016; Available: AA & CO Chartered Certified Accountants, [MS140D]

<sup>77</sup> Musa claims he is 25% owner and produced letters dated 28<sup>th</sup> July 2014 and 28 August 2014 from Mr. Tarik K. Musa to Ms. Dander Njie (counsel) indicating an intention to transfer 25% shares Musa Musa.

<sup>78</sup> Sales and marketing manager



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only for seven years<sup>79</sup>. However, as indicated above, a total of USD1,746,725.00 was paid to them from the overdraft of USD28.5 Million<sup>80</sup> illegally granted in the CBG 3M Account as follows:

- 14/06/2000 OP requested CBG to issue a cheque of USD646,725.00 (D8 million) in favour of TKM.
- On 29/11/2000, a HSBC cheque USD500,000 dated 29/11/00 was paid to TKM.
- On 2/11/2001 a letter from OP to CBG instructed the payment of USD600,000 to TKM Barclays Bank account at 51 Mosley Street, Manchester, UK letter dated.

These payments were made illegally at the absolute discretion of the Ex-President without regard to existing procurement rules.

### B. Period after 2009

From documents produced by TKM, a total sum of D431,502,702.00 was paid to them by Government/OP for the purchase of vehicles from 2009 – 2016<sup>81</sup>. According to them, the requests for the supply of vehicles from 2009-2012 were received from Ministry of Finance as follows:

- 2009, 83 vehicles - D83, 630,302.00
- 2010, 53 vehicles - D53, 630,302.00
- 2011, 80 vehicles - D68, 930,000.00
- 2012, 35 vehicles - D31, 505,000.00

In 2013, this changed and all requests were received directly from OP as follows:

- 2013, 16 vehicles - D23, 182,400.00
- 2014, 9 vehicles - D13, 820,000.00
- 2015, 13 vehicles - D24, 475,000.00
- 2016 79 vehicles - D132,870,000.00

The Commission was informed that the vehicles were supplied on credit and an outstanding balance of D69,800,000.00. was owed for 2016. The Commission reviewed the documents provided by year of Supply and observed the following:

### Year 2009 (MS143A 2009)

A review of the information submitted by TKM indicate fifteen more vehicles in excess of the amount stated by TKM. It is possible that the information is merely missing. Instead of D83, 630,302.00, the net total cost based on the requested total quantity of 98 vehicles was **D153,628,800.00**. It was further noted that out of these, 13 requests for vehicles for the total sum of **D21,916, 78000.00** was dated in 2008 financial year but

<sup>79</sup> transcript of Degain Nyang of 09/01/18

<sup>80</sup> see ms114(g)

<sup>81</sup> exhibit ms152a - summary statement of account of office of the president with T.K Motors and ms143



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included in the 2009.<sup>82</sup> While evidence of vehicle registration numbers & duty waiver approvals was submitted for a majority of the transactions, delivery notes for some 16 vehicles were not traceable in Exhibit MS143A 2009.

### **YEAR 2010 (MS143B 2010)**

The review revealed eight more vehicles in excess of the amount stated by TKM. There were 61 vehicles from 49 transactions requests by the Ministry of Finance with a net total cost of **D59,672,600.00** instead of D53,630,302.00 stated by the witnesses. D53,090,000.00 owed by the Government for the vehicles supplied on credit was settled fully. However, the review of RTGS Bank transfers to TKM from Standard Chartered Bank Account and cheques drawn on Treasury Main Expenditure Account held at the CBG indicate an overpayment of D25,444,897.70 suggesting an excess payment to be refunded by the TKM to Government<sup>83</sup>.

### **Year 2011 (MS143 2011)**

The review revealed the vehicles were two short of the TKM figures. These could be due to missing information. Delivery notes for 17 transactions were not traceable in Exhibit MS143C 2011. There were 78 vehicles from 23 transactions requests by the Ministry of Finance to TKM. All requests were traced in the transaction documents tendered.

### **2012(MS143D 2012)**

There were 40 vehicles from 29 transactions requests by the OP to TKM. The net total costs of the vehicles requested based on the requested total quantity of 40 vehicles was **D46,855,000.00** instead of D31,505,000.00 stated. The reconciliation revealed five more vehicles in excess of the amount stated by TKM. The total vehicle cost of D31,505,000.00 owed by Ministry of Finance for the vehicles supplied on credit was fully liquidated. However, the review further revealed that OP paid TKM D60,177,500.00 by a combination of RTGS Bank transfers to TKM Trust Bank account and Central Bank Treasury Main Account cheques. This indicates an overpayment of D13,322,500.00 as an excess to be refunded by the TKM to Ministry of Finance [MS143D 2012]. There is no evidence to show that the vehicles requested by OP were budgeted.

### **Year 2013 (MS143E 2013)**

There were 17 vehicles from 12 transactions requests by the OP to TKM. The review revealed 1 vehicle shortage. This may be due to missing documents. All the 12 written transactions requests were made by O.P. There is no evidence to show that these purchases were budgeted.

### **Year 2014(MS143F 2014)**

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<sup>82</sup> See Exhibit MS143A 2009 transaction

<sup>83</sup> See Exhibit MS143B 2010.



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9 vehicles from 8 transactions requests were made by OP to TKM. The net total costs of 9 vehicles was **D13,820,000.00**. There is no evidence to show that these purchases were budgeted.

### **Year 2015(MS143G 2015)**

8 vehicles from 8 transactions requests were made by the OP to TKM. The net total costs of based on the requested total quantity of 8 vehicles was D15,100,000.00 and not the D24,475,000.00 stated. However, it was noted that some vehicles invoices with 2014 financial year transaction details were included in MS143G 2015(2015 financial year) with a total cost of GMD 3,875,000.00. Thus, the Total Costs is D18,975,000.00. The figures indicate a shortage. There is no evidence to show that these purchases were budgeted.

### **Year 2016(MSI43H 2016)**

The review shows 76 vehicles from 26 transactions requests by OP to TKM. The Net total costs of the of 76 Vehicles was D 79,970,000.00. The figures suggest a shortage of three 3 vehicles. These could be merely missing. Delivery notes for some of the transactions were missing [MSI43H 2016]. There is no evidence to show that these purchases were budgeted.

### **C. Basis of the Arrangement.**

According to both witnesses (Mr. Musa and Ms. Nyang) TKM did not have a formal agreement for the supply of vehicles in place whether with Ministry of Finance or OP. The supply of the vehicles was based on requests sent to them by either MoFEA or OP<sup>84</sup>. No agreement has been found between the Government/OP and TKM for the vehicles to be supplied on a 0% custom duty fee, VAT exclusive or any applicable discounts to be given. TK Motors did not also trigger the 2% penalty charge for late payment indicated for the sales on credit. We assume this to have been a deliberate business decision to retain the patronage enjoyed.

### **E. Compliance with Procurement Rules**

Musa Musa has confirmed that none of these supplies were tendered for. There was no involvement of GPPA in any of the transactions reviewed by the Commission. There is also no evidence of a case for single-sourcing being made out at any time. The purchases did not go through any contracts committee. We have seen no evidence to show that a contracts committee even existed at OP of MOF for this purpose.

The Financial Instruction, GPPA Act and GPPA Regulations were never implemented in business dealings between Government and TK Motors. The Commission concludes that the supply of vehicles by TK Motors to government/OP was based on personal patronage and contravened the provisions guiding public procurement by Government.

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<sup>84</sup> Transcript of Musa Musa of 9/01/18



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Exhibit MS140 B shows that at least from 2011 TKM was registered with GPPA

### **D. Tax Waivers**

Prominently in evidence in all the TKM business dealings with government was the issue of waiver of duties and withholding of tax<sup>85</sup>. TKM supplied vehicles to Government on credit and duty-free basis and was exempt from paying withholding tax on vehicles supplied to government. There is no evidence showing that waiver enjoyed by TK Motors went through any formal process, of GRA involvement.

It was also observed that Value Added Tax (VAT) of 15% was added on the duty free prices for some vehicles sold on credit to OP specifically traceable to 4 transactions in 2013 financial year (MS143E). The inconsistent application of VAT raises concern as vehicles supplied on duty free prices ought to be VAT exclusive(Net) and also exempt of any Withholding taxes.

### **F. Non-Involvement of Accountant General**

The Accountant General who is responsible for all cash transactions and accounts of Government, and is further authorized to keep records of government assets, was not involved in vehicle procurement by OP. Without the involvement of the Accountant General these vehicles could not be recorded in a Register of Assets in compliance with Government Financial Regulations on stores.

## **3.2. TK Export LLC**

The Majority shareholder and chairman of TK Motors Mr. Tarek Musa was summoned on several occasions to appear before the Commission both in respect of TK Motors and TK Xports but did not<sup>86</sup>.

As already shown TK Motors supplied OP vehicles at least from 2001 and continued to be the main supplier of vehicles to Government. While it appears that from a date unknown Mr. Tarek Musa became based in Dubai the relationship between TK Motors and OP under Ex-President Jammeh continued not only with regard to the supply of

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<sup>85</sup> Exhibit MS143

<sup>86</sup> Mr. Tarek Musa left The Gambia after he was served a summons dated 19<sup>th</sup> December 2017 and sent a letter through his lawyer Mr. Sheriff Tambadou that he was suffering from ill health. He has sent in statements. On the 6<sup>th</sup> January 2019 he sent in another statement relating to Y2K in which he stated that he was still undergoing medical treatment.





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vehicles but also for the supply of other goods through TK Xports. TK Xports LLC is a company based in Dubai owned by Tarek Musa<sup>87</sup>. The Evidence shows that TK Xports supplied both the Ex-President and the Ex-First Lady with machinery, goods and other merchandise.

### **Purchase of Gold coins**

In September 2014, Tarek Musa was contacted by Mr Noah Touray on behalf of the Ex-President for the supply of 75 gold coins to commemorate the 20<sup>th</sup> anniversary of the 22<sup>nd</sup> July revolution. The unit price for each coin is USD,725 totaling USD129,375. The coins were to be inscribed with 'Babil Mansa'. TK Xports provided three samples for the Ex-President to choose from along with the invoice. Tarek Musa, Managing Director of TK Xport in his letter dated 28<sup>th</sup> September 2014 stated that he would be in the Gambia by 6<sup>th</sup> of October 2014 and would provide the gold coins and once the Ex-President made a choice they would need 45 days for production<sup>88</sup>.

TK Xports was given the contract to supply the gold coins. Payment for the coins was illegally made from the GNPC Dollar Account at GT Bank. USD129,375 was transferred from the GNPC Account 210 108 217 210 to TK Export Account AE81033000001 9100045112 in Dubai's Mashreg Bank<sup>89</sup>. These funds have been found to be stolen funds and Mr Tarek Musa must be deemed to have been aware that GNPC had no connections to gold coins.

The Secretary General Mr Kalidou Bayo has stated that he cannot remember whether these gold coins were delivered or not, but that they certainly were not delivered to his office<sup>90</sup>. Mr. Noah Touray believed the coins may have been delivered directly to the Ex-President through the Chief of Protocol<sup>91</sup>. While there is speculation from Noah Touray that the gold coins that the Ex-President gave the gold coins to visiting dignitaries in private, there is no evidence that these coins were given to any dignitary. What really happened to this gold coins remains unknown<sup>92</sup>.

### **T-shirts and material (Ashobi) purchased**

TK Xports was also given the contract for the printing of T-Shirts and the provision of group material at the 20<sup>th</sup> anniversary of the July 22<sup>nd</sup> revolution<sup>93</sup> and communications

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<sup>87</sup> Transcript of Musa Musa/Degain Nyang dated 10th January 2018

<sup>88</sup> Transcript of Kalidou Bayo

<sup>89</sup> Managing Director GT Bank 4th September 2017 and Exhibit BB53 C

<sup>90</sup> Transcript of Kalidou Bayo dated 8<sup>th</sup> November 2017

<sup>91</sup> Transcript of Noah Touray Dated 11th January 2018 and Exhibit MS87

<sup>92</sup> Transcript of Noah Touray Dated 11th January 2018 and Exhibit MS87

<sup>93</sup> Transcript of Noah Touray Dated 11th January 2018 and Exhibit MS87



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concerning materials and articles to be provided for the 20<sup>th</sup> July 22<sup>nd</sup> anniversary and samples being provided<sup>94</sup>.

### **APRC T-shirts and Paraphernalia for Elections**

Emails correspondence between Mr Tarek Musa and Worreh Njie Ceesay (managing director KGI) also indicate that Mr Musa was supplying textile materials and T-shirts and other election paraphernalia for the 2016 elections<sup>95</sup>. D10 million was paid from the KGI Japanese rice accounts at FI Bank.

### **Purchase of Five Bulldozers**

In June 2015, the Ex-President wanted to acquire 5 bulldozers. He instructed Sanna Jarju to get the phone number of Tarek Musa the owner of TK Xport. When contacted, Tarek Musa sent Invoices for the bulldozers to the Ex-President<sup>96</sup>. On the 26<sup>th</sup> of June 2015, USD3,642,000 was transferred from the Mobicell Blue Ocean Co. Ltd account at GT Bank No: 201-112651/210 to the TK Xport account at Mashreq Bank PSC No: AE810330000019100045112. The transaction documents states that the transfer was for "VISION 2016 farm equipment"<sup>97</sup>. This transaction was signed by Bala Jassey as sole signatory<sup>98</sup>. The Commission has already held that these monies were provided as a bribe to the Ex-President by MGI Telecom AG, Mobicell Blue Ocean Co. Ltd. and their directors.

Mr. Tarek Musa could not have failed to realise that the source of the finance was from a private company.

### **Transfers from the Operation Save the Children Dollar Account**

There were three transfers from the OSTCF dollar account No: 216/852479/110 at GT Bank to the TK Xport Bank account at National Bank Abu Dhabi No: 6206580438. They were for the following amounts: USD7,020 was transferred on the 17<sup>th</sup> August 2017 for the printing of office stationery for office of First Lady and OSCF and its shipment by air. USD5,050 was transferred on 23<sup>rd</sup> May 2016 for the payment for one olive green leather box and framing of one painting. USD4,190 was transferred on 20<sup>th</sup> October 2016 for payment of 2000 hand held flags (Gambia & UAE) for OSTCF Dinner<sup>99</sup>.

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<sup>94</sup> Exhibit MS87

<sup>95</sup> Exhibit MS 193 D

<sup>96</sup> Transcript of Sanna Jarju Dated 11th July 2018

<sup>97</sup> Exhibit BB128

<sup>98</sup> Transcript of Adesina Adebessin Managing Director of Guaranty Trust Bank & Executive Director Dated 18th July 2018

<sup>99</sup> Transcript of MD GT Bank Dated 11th December 2017 and Exhibit BB 83 A.



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### H. Undue advantage given to TKM by Government.

The Majority shareholder of TKM, Tarek Musa had a relationship with the Ex-President and had direct access to him. He also had a relationship with the Ex-First Lady. There is no doubt that there are many more transactions between TK Motors and TK Xports with the Ex-President that did not come to the attention of the Commission.

### 3.3. FINDINGS

#### **TK Motors Limited & TK Export LLC**

- (1) TKM was given unwarranted advantages over other suppliers. The Financial Instruction, GPPA Act and GPPA Regulations were never implemented in business dealings between Government and TK Motors. The supply of vehicles by TKM to Government/OP was based on patronage and characterized by total disregard of procurement rules and regulations in place and undermined the procurement system and its objectives.
- (2) While no specific evidence of bribery was found, the Commission is of the view that under the circumstances TKM could not have obtained and maintained the level of patronage it enjoyed for almost 2 decades without providing incentives to the Ex-President.
- (3) The role of the Ministry of Finance in the arrangements with TKM is reprehensible having regard to the fact that the Ministry is responsible for the administration of the Procurement Acts with the primary obligation of ensuring adherence by all Government Public Institutions to its provisions.
- (4) The records of TKM vehicle sale to Government from the period before 2009 were not produced. We note that the Minister of Finance from 2003-2009 was Mousa Bala Gaye and this posed a conflict of interest situation given that 5% ownership of the shares in TKM was closely related to him.
- (5) There are sufficient discrepancies and inconsistencies in the documents submitted by TKM to warrant an independent audit of all credit transactions between Government (Ministry of Finance & OP) and TKM. Some discrepancies suggest either an overstatement or understatement both in vehicles requested or payments effected towards the vehicles already supplied by Government as debtor or TKM as creditor. Instances were noted where invoices were raised for the requested vehicles but no delivery notes to confirm delivery. Additionally, some delivery notes and invoices were not supported by a written request from the Government. Tax exemption issues require further review.



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(6) (1) TKM had tax waivers but applied VAT on sale price for some vehicles. See D on Tax Waivers.

### PART 2

#### 3.4 Euro African Group Limited (EAGL) and Global Trading Group (GTG)

##### A. Purchases from TBL OP Controlled Education Account

As indicated elsewhere in this Report, the Commission investigations show that many vehicles were purchased from GTG through EAGL from public funds. Exhibit MS144 shows minutes dated 18<sup>th</sup> June 2004 in the handwriting of the Ex-President to the PS authorizing the payment of a pro-forma invoice from GTG for the sum of USD2,368,360 for 57 vehicles to be paid from the Education Account *“as the celebrations are around the corner”*. The details are set out in the Table.

##### GTG - PROFORMA INVOICE

	PRICE FOR USD	FREIGH T FOR UNIT USD	C&F COST PER UNIT	JNIT S	TOTAL C&F BANJUL
Double Cabin New Toyota Hilux Ex Dubai	17,200	3,500	20,700	18	372,800
Executive Bus Toyota Coaster Hi Ex Europe	43,000	3,600	45,500	10	466,000
V5 Lancruiser Ex Dubai	45,000	3,000	48,000	4	192,000
Long Wheel Base DAF Ex Europe	30,000	7,500	37,600	10	375,000
Refrigerated Trucks 10 Ton Ex Europe	25,000	4,500	29,500	3	88,500
Stretch Limousine Lincoln Full Option Open Roof	90,000	3,260	93,250	2	186,500
Stretch Limousine Mercedes Pullman full Option 2003 Model (6,000 km)	175,00 0	3,250	176,250	1	178,260



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Brand New Stretch Limousine Mercedes Pullman 0 km Full Option	210,000	3,260.00	213,250	1	213,250
Hummer H2 Europe	72,000	1,750.00	73,750.	5	368,750.00
Fuel tanker 30 Ton	89,000	7,600.00	46,500.	2	93,000.00
Water Bowser	28,750	7,500.00	35,500	1	35,500.00
<b>TOTAL</b>				<b>57</b>	<b>2,568,360.00</b>

This Order was paid from public funds without regard to process or procedure.

### A. Vehicles purchased from the CBG Carnegie Account<sup>100</sup>

OP authorized the payment of €607,000 equivalent of D30, 969,140.00 to EAGL from the above CBG Account. The proforma Invoice MS17 was addressed to Ministry of Tourism. Fadi Mazegi confirmed that Ministry did not participate in the transaction at all<sup>101</sup>. The money was paid to EAGL who paid the supplier. He said the arrangement was verbal. There was no requisition or tender process. Other anomalies are that the contract was between GTG and OP but EAGL is stated as the buyer in the Proforma invoice<sup>102</sup>. According to Mr Fadi MAZEGI, at that time GTG was not registered in The Gambia. EAGL and GTG used to render services to each other to avoid paying VAT in Belgium.

### B. Vehicles purchased from Additional Taiwan Grants

The SG Dr. Njogou Bah requested and received payments for the purchase of forty-three Bedford trucks and ten Mercedes Wagons in the sum of **USD545,578** from the ROC Grants<sup>103</sup>. These were trucks which were received and handed over to the army and the sister security agencies. These were also not subject to any tender process.

### C. State Aircraft Special Account – <sup>104</sup>

OP authorized the payment to GTG of €1,000,000.00 for the purchase of Boeing 757 Aircraft Invoice OP/0628. The only supporting document for this purchase is the Proforma Invoice, which indicated the purpose to be a deposit for securing the purchase of

<sup>100</sup> CB4

<sup>101</sup> Transcript of Fadi George Mazegi dated 24<sup>th</sup> August 2017.

<sup>102</sup> see Exhibit MS17

<sup>103</sup> Njogou Bah 21<sup>st</sup> May 2018. Also See Exhibit MS166H dated 2/8/2008

<sup>104</sup> Exhibit CB23A – CBG Statement of Account No.09201200525. Source of funds Kingdom of Qatar.



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the aircraft; that the buyer had 45 days to carry out the necessary checks on the aircraft and if the buyer decided to purchase the deposit would become a down payment. The evidence shows that an aircraft was not purchase and that the sum was diverted<sup>105</sup>. For the purpose of this Chapter however it was clear that GPPA rules were not complied with.

Fadi Mazegi admitted that GTG did not submit a tender for the aircraft. He said GTG was awarded contracts based on the relationship between Mohamed Bazzi and the Ex-President<sup>106</sup>. No other institution was involved in or consulted in the purchase. The rest of the funds were also diverted to settle outstanding invoices for vehicles supplied on credit to KFF. It is ironic that the diversion of the funds created a problem for GTG in Belgium and they had to make statements to the Belgian Police, yet seemed entirely normal for OP by the casual letter written by SG Njogou Bah for the funds to be diverted to KFF<sup>107</sup>.

### 3.5. FINDINGS

#### **EURO African Group Ltd. and Global Trading Group**

- (1) The Financial Instruction, GPPA Act and GPPA Regulations were never implemented in business dealings between Government and EAGL. The supply of vehicles by EAGL/GTG to Government/OP was based on patronage and characterized by total disregard of procurement rules and regulations in place and undermined the procurement system and its objectives.
- (2) The Commission is in no doubt that there are many more goods, works and services procured from EAGL and GTG and related companies which did not come to its attention.
- (3) Like Fuel, the supply of vehicles by EAGL was characterized by a total disregard of procurement rules and regulations. Their supplies were sourced from outside the jurisdiction and if considered specialized should have been subjected to International bidding.

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<sup>105</sup> See Vol.2 Chapter 1-1. In respect of this and other sums amounting to €975,000 paid from the account.

<sup>106</sup> Transcript of Fadi George Mazegi dated 28<sup>th</sup> September 2017

<sup>107</sup> Exhibit MS 153.



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### CHAPTER 4

#### STATE AIRCRAFT

##### 4.1. Overview

The Office of the President (OP) under Ex-President procured various aircraft from public funds and by January 2017 there were 6 aircraft 3 of which were operational under the joint management of Gambia International Airlines (GIA) and Gambia Civil Aviation Authority (GCAA). The 3 Aircraft were not used for commercial purposes<sup>108</sup>. They were kept and maintained purely for the use of the Ex-President and his family.

1. C5 RTG - ILYUSHIN IL – 62M operational from 2006-2016 when it was grounded for maintenance.
2. C5 GAF C5 – GAF – BOEING B727 – 100 – grounded since May 2013. Some of its parts were removed to service the C5-GOG and regarded by GCAA as **SCRAP**.
3. C5-GOG-BOEING B727-100 or Super 27, Operational up to December 2016. Its last flight was by the Ex-First Lady Zineb Jammeh to USA during the Political impasse in December 2016.
4. C5-AFT- CHALLENGER CL – 601 in Cologne Germany for maintenance around 2015<sup>109</sup>. It had been in Germany since about 2015. The Aircraft was visited in February 2017 in Germany by GCAA officials and the maintenance progress was almost complete. As at January 2017 a crew, insurance etc. were needed to bring it back. Temporary arrangements were negotiated for the aircraft to remain in Germany until the necessary costs for bringing it back could be paid. This arrangement was for 6 months and expired in October 2017. The aircraft was then moved to the commercial area and was incurring normal airport packing costs. The Commission was told that the cost of maintaining the aircraft in Germany would be sufficient to bring it back to Gambia.<sup>110</sup>
5. C5-DOA & C5-KSB - KSB-AIR TRACTOR 8T-802A – Regarded as **SCRAP**. Proposed for sale. These are the first aircrafts registered in the name of the Gambia Government used for spraying (agricultural) or firefighting. Not airworthy<sup>111</sup>.

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<sup>108</sup> Transcript of Mr. Lamin Cham dated 21/11/17

<sup>109</sup> Transcript of Mr. Lamin Cham dated 21/11/17

<sup>110</sup> The Aviation Safety Inspector of GCCA, Mr. Malick Njock Jagne of 21/12/17.

<sup>111</sup> See Exhibit SC53



## The Commission of Inquiry

### 4.2. Acquisition of the Aircraft<sup>112</sup>

Mr. Lamin Cham<sup>113</sup>, Managing Director GIA, testified that GIA was not involved in the acquisition of the aircraft. All these aircraft were acquired as used aircraft.

#### 1. AIR TRACTORS AT802A (C5-KSB & C5-DOA)

Cost of acquisition unknown

These are the first Gambian Government registered aircraft. They were registered on 27/7/2005. They are agricultural spraying aircraft which are also used for firefighting. Both were manufactured in 2004 and have flown less than 100 hours total. Due to lack of utilization, the aircraft are not airworthy and are due for various maintenance checks, which, we were told, would be very costly.

#### 2. ILYUSHIN IL- 62, C5-RTG

Cost of acquisition is not known.

This aircraft is Russian type aircraft and was registered in the Gambia on the 8/09/05. It is the first VIP aircraft for the Government of the Gambia. It is a four-engine aircraft configured VIP including a bedroom. The aircraft has a range of over ten hours flying depending on the load but its fuel consumption is high when compared to modern ones. The aircraft has been due for different maintenance programmes costing USD2 million as at 2016. This cost is found to be more than the aircraft is worth. The aircraft is currently parked at the Banjul International Aircraft. A few of this aircraft type is currently in use mainly for cargo operation. There are also very few maintenance service providers and spare parts are scarce<sup>114</sup>.

#### 3. BOEING B727 – 100, C5 – GAF

Cost of acquisition is not known.

This aircraft was manufactured in 1966 and registered by the Government of The Gambia on 4/09/08. The purchase/registration process was handled by Gampetroleum through Imperial Jet of Lebanon. The aircraft never operated because of engine problems and in 2010, it was taken to UK for maintenance. It came back in 2013 and finally retired from service due to its limited range and high maintenance cost.<sup>115</sup>

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<sup>112</sup> Exhibit SC53

<sup>113</sup> Witness No.89

<sup>114</sup> See Exhibit SC53

<sup>115</sup> See Exhibit SC53





## The Commission of Inquiry

The Commission notes that the date of the registration of this aircraft in The Gambia coincides with the sale of 48% of the shares in Gampetroleum to the three public enterprises- Social Security and Housing Finance Corporation (SSHFC), Gambia Ports Authority (GPA) and Gambia National Petroleum Company Ltd. (GNPC). Between the period June 2008-April 2009 the total sum of €16.8 million was paid to Gampetroleum for the benefit of its shareholders- Mohamed Bazzi and Amadou Samba<sup>116</sup>. The Commission concludes that it is more probable than not that the aircraft was purchased from funds paid by the public enterprises for the sale of the shares. The Commission has already found that the purchase price for the shares in the sum of €35 million was most probably inflated.

### **4. CHALLENGER CL601, C5-AFT**

The aircraft was manufactured by Canadair Bombardier in 1985 and was the second VIP State aircraft. It was registered in The Gambia on 1/10/2010. The purchase and registration process of the aircraft was also handled by Gampetroleum through Imperial Jet of Lebanon. The aircraft is stored in Cologne, Germany as indicated above.

The Commission notes that as October 2010, although the Public enterprises (SSHFC, GPA and GNPC) had fully paid the purchase price for the 48% shares, the management of Gampetroleum, including its finances, remained in the total control of Euro African Group (EAGL). The Commission also notes that no dividend was paid to shareholders during this period and no accounts have been submitted by EAGL for the period either. In the absence of any other evidence to the contrary, the Commission infers from the evidence that this Plane was purchased from Gampetroleum resources and from whatever benefit ought to have accrued to the Public Enterprise shareholders.

### **5. Boeing B727- 100, C5 – GOG**

Purchased from Social Security and Housing Finance Corporation (SSHFC) funds for the sum of USD4.5Million as a loan to Government that was never paid<sup>117</sup>. The aircraft was manufactured in 1971 and registered by Government of The Gambia on 23/10/12. It is the last series built by the company (Boeing). It's a VIP brand. A few of the aircraft type are in operation and spare parts, crew, training and maintenance facilities are becoming less available in the market.<sup>118</sup>

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<sup>116</sup> See Vol.6 Chapter 6 of this Report.

<sup>117</sup> See Exhibit SC21

<sup>118</sup> See Exhibit SC53



## The Commission of Inquiry

### 4.3. Maintenance & Management of the Aircraft

GCAA was responsible for the maintenance of the aircraft. Periodic maintenance was arranged at maintenance facilities around the world when due. Quotation for maintenance programs were obtained when an aircraft was due for maintenance which were forwarded to GIA for onward submission to OP. The evidence shows that these were paid for by OP from any funds available under its control. A significant amount was taken from Taiwan Grants and Central Bank Accounts.

Mr. Cham testified that the management of the State Aircraft was transferred to GIA in 2013 and believed that they were managed by the Bazzi Group before 2013, but was not sure. Exhibit SC53 (Report from GCAA) in fact shows that the aircraft were initially managed by Gampetroleum with GCAA providing technical support in terms of maintenance planning and airworthiness certification. In 2013, all State aircraft were transferred to the custody of GIA who took over operational control. The Commission notes that it was in 2013 that the Ex-President decided to end the exclusivity contracts for petroleum products and HFO enjoyed by EAGL and GTG and finds the coincidence striking.

The Commission has found numerous withdrawals of funds from all accounts under the control of OP to meet expenditure relating to aircraft maintenance and charter. It is clear to the Commission that the aircraft were maintained at public expense whether directly or indirectly through Gampetroleum.

From 2013 GIA became responsible for managing the operation of the aircrafts including taking care of crew accommodation when they were recruited, preparing an operating budget which is submitted to OP and, obtaining navigational clearance working together with Ministry of Foreign Affairs.

GIA maintained two files for the aircraft billing, a USD and Euro file for cost of maintenance of the crew, salaries, fuel and travel expenses. The total cost of maintaining the 3 operational planes from 2013 is **USD9,363,054.64 and Euros454,609** as shown in table below:

#### STATE AIRCRAFT EXPENSES -2013 TO 2017<sup>119</sup>

NAME OF AIRCRAFT	REGISTRATION	AMOUNT USD	EURO
B727/SUPER – 27	C5 – GOG	2,671,920.05	219,880.65
ILYUSHIN – 62	C5 –RTG	2,360,664.65	27,005.07
CHALLENGER –	C5- AFT	1,66.680.94	207,723.93

<sup>119</sup> See Exhibit SC52E



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601			
<b>TOTAL</b>		<b>6,693,265.64</b>	<b>454,609.70</b>

### TOTAL CREW SALARIES FOR THE AIRCRAFT – B727/SUPER – 27 AND ILYUSHIN-62

NAME OF AIRCRAFT	REGISTRATION	AMOUNT USD
B727/SUPER – 27	C5 – GOG	1,281,904.00
ILYUSHIN – 62	C5 –RTG	1,387,885.00
<b>TOTAL</b>		<b>2,669,789.00</b>

B727/SUPER – 100- C5-GAF AND ILYUSHIN – 62-C5-GNM were not serviceable.

#### 4.4. Disposal of State Aircraft

A Cabinet decision was taken that the aircraft be disposed of<sup>120</sup>. This is considered a wise move.

The Ministry of Works by letter dated 3/07/17 informed GCCA of Cabinet's decision to dispose of the State Aircraft fleet and instructed them to engage an expert to conduct a valuation of all the aircraft taking into consideration the prescribed procedures for disposal of government assets in line with Financial Instructions. Furthermore, GCCA was to contact the Ministry of Agriculture to see whether they will need Agricultural Spraying Aircraft (C5-DOA & C5-KSB AIR TRACTOR8T-802A)<sup>121</sup>. GCCA was subsequently directed by another letter dated 12/09/17 to engage a Valuer.

A Task Force was set up on the sale of the Aircraft whose members were Office of the President, Ministry of Finance and Economic Affairs, Ministry of Justice, GCCA and GRA. The Task force first met on the 16/10/17 and tasked GCCA to prepare an agreement to look for a broker for the disposal of the aircraft. The Attorney General's Chambers prepared a contract which was forwarded to brokers<sup>122</sup>.

Mr. Malick Njock Jagne, the Aviation Safety Inspector of GCCA<sup>123</sup> testified that the aircraft have not been valued. GCCA wanted to carry out an assessment first to determine what price could be expected. According to him, the options were a desk top valuation which could be done on line and would cost about USD5000 per asset, or an asset valuation by a specialist which could cost about €10,000 per asset. He said the information was communicated to the Government because it was responsible for paying. Mr. Jagne also said that he had reservations about a valuation because it would mean additional cost and loss. He said this was because the aircraft were vintage and the best that could be hoped for is to find someone interested, otherwise they would

<sup>120</sup> Transcript of Mariama Ndure Njie

<sup>121</sup> Exhibit Ms129 (cabinet conclusion)

<sup>122</sup> Exhibit Ms129

<sup>123</sup> Witness no 109



## The Commission of Inquiry

become scrap. His view is that the aircraft should be sold 'as is' because a situation could arise whereby the valuation of the aircraft could far exceed what the market offered<sup>124</sup>.

Mr. Jagne testified that offers had been received for some of the aircraft. There was an offer for the fighter jet from the manufacturers. There were also offers to dispose of the whole fleet for a commission from a broker.

Mrs. Mariama Ndure Njie, Permanent Secretary Ministry of Work, confirmed that the aircraft had not been valued, and a brokerage agreement was drafted and sent to brokerage companies identified by GCAA. GCAA had by letter dated 4/09/17 informed the Ministry that offers were received in respect of some of the aircraft. An offer was received from Omega Initiative for the Sukhoi Su 25 Jet fighter) for €140,000 and Air Tractor AT 8029 (agricultural aircraft). Another was received from West Africa Services (WAAS) for the Air Tractors from €100,000 to €240,000. Other buyers had shown interest but only WAAS put in a formal offer.

The Commission did not receive any further information on the progress made for the disposal of the aircraft.

### 4.5. FINDING & Recommendation

- (a) These aircraft were purchased from public funds, whether directly or through Gampetroleum (at the time of acquisition 48% owned by public enterprises) and therefore belong to the State.
- (b) The aircraft were purchased to maintain the Ex-President's ostentatious and grandiose lifestyle funded by public funds and did not have any public benefit. The evidence shows that they are extremely expensive to maintain.
- (c) It was unnecessary for the Ex-President to have maintained 3 aircrafts. One aircraft was sufficient. He was already spending large sums of money on airport charter. Once the SSHFC Boeing B727- 100, C5 – GOG was acquired, the others should have been disposed of to avoid wastage of public resources. He ought to be held accountable for the sums spent on 2 of the aircraft and their maintenance costs.

### Recommendation

- (a) All aircraft must be disposed of without delay.

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<sup>124</sup> Transcript of Malick Njock Jagne



## The Commission of Inquiry

- (b) The sum realized for the sale of the SSHFC Boeing B727- 100, C5 – GOG shall be paid to SSHFC. Any shortfall should be recovered from the Ex-President.**

## CHAPTER 5

### PROCUREMENT THROUGH GAMBIAN USA EMBASSY

#### 5.1 Overview

The earliest record of procurement through the Gambian Embassy before the Commission is dated 2005. It appears one Madikay Jallow was responsible for procurement for the Ex-President. He was later to be replaced by Mr. Lamin Sanyang, the Financial Attaché of the Embassy. At first OP would make requests via email, fax or telephone call. Mr. Sanneh would source for quotations from different suppliers and forward them to the Chief of Protocol Alhagie Ousman Ceesay and OP would then deal directly with the suppliers. When the requests became too many, the Embassy opened a Procurement Account for OP. The signatories to the account were the head of mission and first secretary.



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According to the testimony of Dodou Bammy Jagne (Ambassador 13th January 2004-27th December 2007), it was the Deputy Head of Mission (DHM) who had oversight of all the Embassy accounts under the Foreign Service Regulations (FSR) and was the accounting officer. The Ambassador's responsibility for finances was limited and on a need to know basis. He said OP procurement took place without the knowledge of the rest of the staff especially the Ambassador and his deputy. Ambassador Jagne pointed to an incident when the US Federal Bureau of Investigations (FBI) visited the Embassy with regard to the purchase of Limousine cars/vehicles for the President by the Financial Attaché which were then armored<sup>125</sup>. He was not aware of it and had to call in the Financial Attaché.

The DHM, Mr. Abdul Rahman Cole (DCM from 2005-2009) was signatory to the three Accounts of the Embassy namely, Expenditure Account, Revenue Account and the Procurement Account with the Financial Attaché. Mr. Cole testified that he was responsible for administrative and financial matters of the Embassy by virtue of FI & FSR. He said the Financial Attaché, Mr. Lamin Sanyang (also known as Sabi), managed the Books of the Embassy and reported to the DCM or at times to the Ambassador if there was any need. It is the evidence of Mr. Cole that the request for procurements came from OP Banjul. He said all negotiations were done in Banjul and sometimes Mr. Sanyang would travel to Banjul to better understand requests. He would then return to USA, collect the necessary invoices and send them to OP and correspond with them until approval was given<sup>126</sup>. Once funds were sent by OP Mr. Sanyang proceeded on his own. Mr. Sanyang was secretive about the procurement and when asked about the procurement, would say, it was highly confidential and was for the President<sup>127</sup>.

Mr. Lamin Sanyang is known to be in the USA and was summoned to testify. He declined to do so but submitted documents in his possession to the investigators which were confirmed by Mr. Cole.

The evidence shows that numerous purchases were made from public funds as shown below:

1. From the CBG 2<sup>nd</sup> DIVESTITURE ACCOUNT also known as (GAMTEL/ GAMCEL SHARES SALE ACCOUNT) – a/c no. 03201200386 in the total sum of **USD5,254,989** was spent on expenses which the Commission has already found to be unlawful<sup>128</sup>.

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<sup>125</sup> See Transcript of Dodou Bammy Jagne 6/02/18

<sup>126</sup> See Transcript of Abdul Rahman Cole of 25/01/18.

<sup>127</sup> See Transcript of Abdul Rahman Cole of 31<sup>st</sup>/12/18.

<sup>128</sup> See Vol. 2 Chapter 1



## The Commission of Inquiry

- **USD2,344,065<sup>129</sup>** to purchase 31 new Blue Bird buses handed over to Ms. Laly Feryale Diab to operate as a bus service under the Ex-President's company Unique Transport Service Company Ltd. (UTSCO).
- **USD60,000** to pay legal fees to Charles A Queen and Associates 19/09/07 for an unknown case.
- **USD159,599** to Siemens Medical Solutions Diagnostic to purchase materials for Ex-President's Aids Programme confirmed by Dr. Njogou Bah <sup>130</sup>.
- **USD1 million** to Doctor Buba Badjie – Brommadjurklinik, Sweden for a poultry project in The Gambia. Mr. Alhagi Ousman Ceesay, (Chief of Protocol) testified that Doctor Buba Badjie is a Veterinary Doctor based in Sweden. The money was for him to buy some materials<sup>131</sup>.
- **USD250,000** was mostly spent on tuition fees to sponsor American female students in various institutions across the USA following a Miss Black USA Pageant they attended in The Gambia organized and hosted by the Ex-President. Dr. Njogou Bah testified that the Ex-President hosted the Miss Black USA Pageant in the Gambia and promised the participants scholarships. The money was used for the payment of their tuition fees. Lamin Sabi Sanyang the Finance Attaché at the Embassy dealt directly with the students that were sponsored. Details of some of these students paid for from this account and other sources as shown on the Embassy accounts are set out below:

### TUITION FEE PAID IN RESPECT OF MISS BLACK USA CONTESTANT<sup>132</sup>

	Name	University	Amount remitted by OP	Balance
1	<b>Latasha Seliby</b>	Alabama	\$17,271.00	
2	<b>Lauren parkes</b>	Delaware	\$7,034.00	
3	<b>Carlisa Williams</b>	Oklahoma	\$4,531.00	
4	<b>Adonica Shaw</b>	California	\$2,782.50	

<sup>129</sup> Exhibit MS155

<sup>130</sup> Transcript of Dr. Njogou of 29<sup>TH</sup> January 2018

<sup>131</sup> Transcript of 25<sup>th</sup> January 2018

<sup>132</sup> See MS276 (A-J)



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5	<b>Takiyah Knur Amin</b>	Temple	\$8,145.00	\$2,511.27
6	<b>Chenoa Greene</b>	University of arts	\$13,760.00	
7	<b>Ayesha k. Faines</b>	Yale	\$34,580.00	\$17,315.00
8	<b>Kola brown</b>	Arkansas	\$1,711.80	
9	<b>Natasha Saunder</b>	Walden	\$4,175.00	\$4,175.00
10	<b>JACQUEINE ECHOLS</b>		\$3,077.00	
11	<b>ERIKA L. DUNN</b>		\$13,783.00	
12	<b>DESIREE LEWIS</b>		\$2530.00	
13	<b>RACHEL D. WILSON</b>		\$16,523.00	
14	<b>ADA DLEKE</b>		\$4,177.06	
15	<b>PERPETUA PHILIPS</b>		\$18,697.00	
16	<b>KOLA BROWN</b>		\$2,781.00	
17	<b>LAUREN PARKES</b>		\$21,620.00	
18	<b>VENTRA BOYKIN</b>		\$15,720.00	
19	<b>LASHA SELIBY</b>		\$22,205.50	
20	<b>CARLISHA WILLIAMS</b>		\$23,805.00	
21	<b>TONI MARTIN</b>		\$3,678.70	
22	<b>SHADE OGUNIEYE</b>		\$2,500.00	
23	<b>CAZOSHAY WARD</b>		\$1315.00	
24	<b>CELI MARIE DEAN</b>		\$11,694.50	
25	<b>IVY MCCONNELL</b>		\$670.00	
26	<b>NATASHA SANDERS</b>		\$2,204.00	
<b>TOTAL</b>			USD260,968.8	





## The Commission of Inquiry

Other purchases from the USD250,000 are:

<b>27</b>	<b>SHIPMENT OF 2 BOXES OF SEEDS</b>	<b>\$1,408.00</b>
	<b>SHIPMENT OF BOXES OF SEED</b>	<b>\$1,405.78</b>
<b>24</b>	<b>PURCHASE OF DIFFERENT VOLUMES OF ENCYCOPEDIA</b>	<b>\$16,413.65</b>
<b>25</b>	<b>PURCHASE OF SEEDS</b>	<b>\$13,660.96</b>
<b>26</b>	<b>FREIGHT OF SEEDS AND BOOKS</b>	<b>\$,6,435.00</b>

- USD 46, 325.00 paid to Ams Corporate Risk Ltd. to armored vehicles purchased from the said account and other public funds.
  - USD 300,000.00 paid Cash for transport aircraft due in Banjul signed by Dr. Njogou Bah for SG. 29/10/08
  - USD615,000, USD455,000 to Dr. Huja Gass Jaiteh Njie in South Africa to purchase medicines for the Ex-President's aids programme.
2. The Commission also found other Transfers to the Embassy procurement account made by protocol officers from Cash given to them by the Ex-President. as shown in the following tables:

### PRINTOUT OF THE STATEMENT OF ACCOUNT OF THE PROCUREMENT ACCOUNT FROM 1<sup>ST</sup>/03/11 TO 1<sup>ST</sup>/02/18<sup>133</sup>

<b>Date</b>	<b>Amount</b>	<b>FUNDS TRNASFERRED BY</b>
11/03/16	\$15,942.68	OP
18/03/16	\$21,493.00	BUBA I. DEMBA
31/03/16	\$1000.00	BUBA I. DEMBA
6/04/16	\$7,945.00	OP
18/04/16	\$9814.31	OP
31/08/16	\$2,000.00	BUBA I. DEMBA
28/09/16	\$18,000.00	BUBA I. DEMBA
17/11/16	\$1,300.00	BUBA I. DEMBA
17/11/16	\$20,500.00	BUBA I. DEMBA
10/6/15	\$100,000.00	DEPOSIT
9/07/15	\$9,000.00	DEPOSIT
4/08/15	\$11,000.00	SANA JARJU
24/08/15	\$41,596.00	BORRIE LSB COLLEY
1/09/15	\$42,070.00	BORRIE LSB COLLEY
17/08/15	\$7,300.00	BORRIE LSB COLLEY

<sup>133</sup> See MS276 (A-J)



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30/09/15	\$20,000.00	BORRIE LSB COLLEY
5/10/15	\$10,000.00	DEPOSIT
3/11/15	\$40,000.00	DEPOSIT
24/11/15	\$8,000.00	ALHAGI CEESAY
27/11/15	\$8,000.00	ALHAGI CEESAY
10/12/15	\$16,000.00	ALHAGI CEESAY
23/01/12	\$5,101.00	OP
24/01/12	\$200.00	DEPOSIT
24/01/12	\$6,800.00	DEPOSIT
16/03/12	\$9,980.00	OP
28/03/12	\$15,700.00	
14/03/11	\$9,680.00	OP
24/01/11	\$6,735.00	OP
<b>Total</b>	<b>\$475,056.99</b>	

**MS 276(K) – STATEMENT OF MR BORIE LSB KOLLEY, FORMER DEPUTY CHIEF OF PROTOCOL, OP of money given to him cash to transfer to the Gambian Embassy he said he was told that the money was for Gambia students.**

NAME	DATE	BENEFICIARY	AMOUNT
BORRIE LSB KOLLEY	24/8/15	GAMBIAN US EMBASSY	\$41, 596.00
BORRIE LSB KOLLEY	1 <sup>ST</sup> /09/15	GAMBIAN US EMBASSY	\$42,070.04
BORRIE LSB KOLLEY	30 <sup>TH</sup> /9/15	GAMBIAN US EMBASSY	\$20,000.00
BORRIE LSB KOLLEY		A VISITING LECTURER	\$7,300.00
<b>TOTAL</b>			<b>USD110,966.04</b>

### STATEMENT OF ALHAGIE O. CEESAY CHIEF OF PROTOCOL, OP<sup>134</sup>

Instruction were received from Ex-President Jammeh for the transfer of these funds to the Gambian Embassy Procurement Account. Purpose unstated.

Name	Date	Beneficiary	Amount
<b>ALHAGIE O.CEESAY</b>	<b>24/11/15</b>	Gambian US Embassy	<b>\$8,000.00</b>
<b>ALHAGIE O.CEESAY</b>	<b>10/..../15</b>	Gambian us embassy	<b>\$16,000.00</b>
<b>ALHAGIE O.CEESAY</b>	<b>27/11/15</b>	Gambian us embassy	<b>\$8,000.00</b>
<b>ALHAGIE O.CEESAY</b>	<b>2<sup>nd</sup> /02/16</b>	Gambian us embassy	<b>\$16,000.00</b>
<b>ALHAGIE</b>	<b>10/03/16</b>	Gambian us embassy	<b>\$16,000.04</b>

<sup>134</sup> See Exhibit MS276(L)



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<b>O.CEESAY</b>			
<b>ALHAGIE O.CEESAY</b>	4 <sup>th</sup> /04/16	Gambian us embassy	\$8,000.00
<b>ALHAGIE O.CEESAY</b>	24 <sup>th</sup> /08/15	Gambian us embassy	\$41,596.00
<b>TOTAL</b>			USD113,596

**STATEMENT OF OMAR S.M GIBBA - FORMER CHIEF OF PROTOCOL, OP<sup>135</sup>. He said it was for tuition fees.**

<b>Name</b>	<b>Date</b>	<b>Beneficiary</b>	<b>Amount</b>
<b>Omar SM Gibba</b>	<b>18/07/07</b>	Gambian us embassy	<b>\$19,785.00</b>
<b>Omar SM Gibba</b>	<b>28/11/07</b>	Gambian us embassy	<b>\$88,000.00</b>
<b>Omar SM Gibba</b>	<b>18/12/07</b>	Gambian us embassy	<b>\$49,484.55</b>
<b>TOTAL</b>			<b>USD157,269.55</b>

3. Other Transfers to Gambian Embassy main account on behalf of the Ex-President are shown in the table below:

TRANSFERS INTO MAIN ACCOUNT OF THE EMBASSY<sup>136</sup>

<b>Date</b>	<b>SENDER</b>	<b>Amount</b>
14/11/14	OP	\$9,702.90
10/06/15	OP	\$100,000.00
26/08/15	PROTOCOL OFFICE , OP	\$41,596.00
14/09/15	PROTOCOL OFFICE , OP	\$42,070.00
12/11/15	PROTOCOL OFFICE , OP	\$290,000.00
19/11/16	PROTOCOL OFFICE , OP	\$314,463.00
19/11/16	PROTOCOL OFFICE , OP	\$39,803.00
19/04/16	PROTOCOL OFFICE , OP	\$21,493.00
3/10/16	PROTOCOL OFFICE , OP	\$9,814.31
28/11/16	PROTOCOL OFFICE , OP	\$21,800.00
<b>Total</b>		<b>\$910, 742.00</b>

## 5.2. FINDING

<sup>135</sup> See Exhibit **MS276 (0)**

<sup>136</sup> See MS276 (A-J)



## **The Commission of Inquiry**

(1) The Ex-President used the unique position of the Financial Attaché in the Embassy to procure goods from USA. He made no distinction between his personal needs and government requirements. He used funds available to him from any source to make these purchases. The Commission is in no doubt that other Gambian Embassies were used in similar fashion for the Ex-President's personal needs. This can only be determined if a comprehensive forensic investigation of all Gambia Embassies as regards their relationship with the Ex-President's Office is undertaken.

(2) All the purchases that the Commission reviewed made through the Embassy by OP were made outside the Government accountability framework without regard to the existence of FI or existing procurement rules.

(3) More than any other public officers the Protocol officers at OP were used by the Ex-President to make illegal cash transfers from public funds under OP control. They have shown to be his most consistent facilitators.



## The Commission of Inquiry

### CHAPTER 6

#### WORKS CONTRACTORS

OP was engaged in many civil works projects both for the State House, Kanilai and other government projects, many of which were financed from OP controlled funds. The accounts reviewed showed that a number of contractors were engaged from OP, some routinely to perform contracts for OP or the Ex-President. The contracts that came to the attention of the Commission through its review of CBG and other Government accounts from about 2012 are reviewed in this Chapter.

#### PART 1

##### 5.1. COMPETENCE COMPANY LIMITED

Competence Company Limited (CCL) is a Gambian company owned by Sheriff Sawaneh<sup>137</sup>. Its Directors are Mr. Sheriff Sawaneh (witness no. 73) and Mr. Joachim Nielelect.<sup>138</sup> Mr. Sheriff Sawaneh was the managing director of the company. A sister company is Protein Production Gambia Ltd.<sup>139</sup> CCL was awarded several contracts from OP which were funded from public accounts held at CBG and commercial banks. The Commission investigated how these contracts were awarded.

##### A. Renovation Works- Attorney General's Chambers (Ag Chambers).

Mr Sawaneh said he was called either by SG (Momodou Sabally) or Secretary to Cabinet (Noah Touray) to cost renovation works for Ministry of Justice (MOJ) which he did and submitted a bill of quantities (BOQ) to OP. He was thereafter called by the MOJ to sign a contract. The contract was signed on 31<sup>st</sup> July 2013 for the rehabilitation of MOJ for **D4, 868, 365.00** between CCL and Ministry of Works with PS of Works (Mr. Camara) and the then Solicitor General (Mr. Mahoney)<sup>140</sup>. Neither MOJ nor Ministry of Works appear to have had any say in the decision. Mr. Sawaneh was paid a further **D3, 421, 462 (USD85, 880)** for extension works at MOJ in 2014 from the International Gateway account for extra works<sup>141</sup>.

##### B. Battery Flat Renovation

The Battery flats are a 3 story building comprising about 6-8 furnished apartments just outside the State House Grounds. He said he was again called by Commander Lamin

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<sup>137</sup> Exhibit BB25 Certificate of Incorporation

<sup>138</sup> Exhibit MS111B-Financial Statements of Competence for the year ended 31<sup>st</sup> December, 2012

<sup>139</sup> Exhibit BB13 & MS 68 refers

<sup>140</sup> Exhibit ms70

<sup>141</sup> Transcript of Sheriff Sawaneh on 16/11/17



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Sanneh of State House to cost the works<sup>142</sup>. He inspected the building and submitted a BOQ. He was later called to sign the contract. The value of the contract was D9, **996, 260, 00**<sup>143</sup>. The contract was signed with Madi Jatta, the Deputy SG and Commander Lamin Sanneh as witness.

### C. Old Medical and Health Building (Bulldozer/Republican National Guard Office)

The former Medical and Health building was taken over to expand the State House premises and became the Offices of the Republican Guard, which according to the evidence was headed by General Sulayman Badjie. Mr. Sawaneh said he was called by General Badjie to cost the works. He submitted a BOQ to General Badjie. He was later called and signed a contract dated 23<sup>rd</sup> August 2012 with General Badjie<sup>144</sup>. The value of the contract was **D13,887,729** and was financed from Taiwan Grants. He was paid by cheque from Taiwan Embassy but the project was not completed when Government terminated relations with Taiwan. Thereafter he was paid in cash from OP<sup>145</sup>.

### D. Minor Contract at State House

- Upgrading of driveway, swimming pool areas, walkways and fountains around the Presidential Residence at the State House costing **D1,687,613.00**<sup>146</sup> for which he was paid cash by General Ansumna Tamba- Contract dated 16<sup>th</sup> August 2012
- Contract dated 17<sup>th</sup> November 2012 for the refurbishment of a building at State House around the perimeter wall of the State House for **D403,500.00 (MS98C)**;
- Contract dated 19<sup>th</sup> September 2012 for relocation of external air-conditioning unit, tiling the exterior walls of the Presidency Residence at State House for **D581, 620.00**<sup>147</sup>.

### E. Fish Smoking Shelves (Sanyang & Kartong) Contract

Contract was awarded to the CCL by OP for construction of fish smoking shelves at Sanyang and Kartong. The contracts were signed between Ministry of Works and CCL on the 20 /05/13 for **D2,400,000.00**<sup>148</sup>. Contracts were not tendered.

### F. Bwiam Market

According to Mr Sawaneh this was his first contract in 2008/9 from OP. It was supervised by Gamworks, he did not have the details<sup>149</sup>.

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<sup>142</sup> Exhibit MS71

<sup>143</sup> Exhibit MS71

<sup>144</sup> Transcript of Sheriff Sawaneh of 16<sup>th</sup>/10/17 on pg. 18-19

<sup>145</sup> Exhibit MS72

<sup>146</sup> Exhibit MS98C

<sup>147</sup> Exhibit MS98C

<sup>148</sup> Exhibit 98B



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### G. Tendered Contracts.

Mr. Sawaneh said the only public works awarded to him through a tender was GAMTEL works at Kerewan. He said he bid for other government contracts tendered by Education Department (Ministry of Basic Education) for school buildings but lost to other companies. He said he never had to bid for any of the works contracted by OP. He submitted tenders for other government works at Ministry of Education but lost.

### H. Monies Received

The value of works contracted to Sheriff Sawaneh of CCL is about D35,073,756.00. While he claims that Withholding tax of D3, 507,374.80 was paid, this could not be confirmed. For Withholding tax (WHT). The evidence shows that he was paid from: TBL Tax Recovery Account **D1, 947, 346** 4/10/13, **D730, 254** 8/01/14, and **D4, 485, 000** 14/04/14<sup>150</sup>; Carnegie Mining Account<sup>151</sup> - **D795, 000** 26 June 2014; Sand Mining Account of **D245, 000** 2/02/16; **D1, 175, 000** 23/02/16<sup>152</sup>; and International Gateway Account **D3, 421, 462 (USD85, 880)**<sup>153</sup>.

### Personal Works for the Ex-President

Sheriff Sawaneh carried out works for the Ex-President and was paid cash. These a three story building renovated in Kanilai for D4.5 million in 2015/16; and works at Farato Farms in 2011/12.

## PART 2

### 5.2. HADIM GAI of GAI Enterprises

Gai Enterprise is a registered business (**MS208C**) and Mr. Hadim Gai is the proprietor. The Company is involved in construction (road and building construction).

This Company was also awarded contracts by the OP. Mr. Gai also said he was called by Former State Guard Commander one Essa Tamba and taken to meet Ex-President Jammeh on State House grounds. He was then given an area to measure (70M x 65M). The Ex-President explained the type of building he wanted and for him to provide

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<sup>149</sup> Transcripts of Sheriff Sawaneh 16<sup>th</sup>/10/17 on PG. 29

<sup>150</sup> Exhibits BB12, 24 & 30.

<sup>151</sup> Exhibit CB3&4

<sup>152</sup> Exhibits CB5, 6&7

<sup>153</sup> Exhibits CB17&18



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drawings and costing. He submitted the drawings and costing and a week later he was called and awarded the contract<sup>154</sup>. A contract dated 23<sup>rd</sup> June 2015 between State House and Gai Enterprise for the Construction of two Storey Buildings was signed<sup>155</sup>. The value of the contract was D27 million. An advance payment of D10 million was made from the GNPC Access Bank Account and D5 million<sup>156</sup>; and from the GNPC Skype Bank Account another D5 million<sup>157</sup>. The Ministry of Works was not aware of the contract and the work was supervised by the State Guard Commander and the Ex-President.

Mr. Gai however maintained that all his works for government went through tender except this State House contract<sup>158</sup>. However, minutes dated 24<sup>th</sup> June 2015 (Ref: 294/303/01/Part VI (70-NT) from Ex-President to SG responding to Noah Touray's minute about the advance payment to Mr. Hadim Gai indicated that Mr Gai had "offered to do the project free of charge as a token of his appreciation for the contracts that were awarded to him" but the Ex-President declined his offer.

The evidence shows that payment for the contract was completed by the Barrow Government.

Mr. Hadim Gai admits that normal procedure in awarding him the contract was not applied, but said as a businessman if he is offered, a contract of a certain amount he would take it. Gai Enterprise also received payment of D200,000.00 from the Tax Recovery Account at Trust Bank Limited<sup>159</sup> 22/9/13, which he said was for the renovation of the Kotu Bridge. In awarding the contract he said he was called by Bala Garba Jahumpa the then Minister of Works to carry out the works.

### **5.3. Yeriwa Construction (Abdourahman Jaiteh) - Kanilai Institute Of Science & Technology/Kanilai Academy**

Gambia Technical Training Institute (GTTI) was invited by the Ex-President to over-see the construction of the Kanilai Institute of Science & Technology (KIST) after the contract was awarded to a contractor called Abdourahman Jaiteh of Yeriwa Building Construction Company.<sup>160</sup> They were not privy to the negotiation of contract. GTTI was directed to sign the contract on behalf of the Former President. The project was initiated

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<sup>154</sup> See Transcript of Hadim Gai of 8/05/ 18 on pg.3

<sup>155</sup> see Exhibit BB66 & MS208c

<sup>156</sup> see Exhibit BB63

<sup>157</sup> see Exhibit BB66

<sup>158</sup> Ibid HADIM GAI

<sup>159</sup> SEE BB30

<sup>160</sup> see transcript of Fatou Mbye of 27<sup>th</sup>/02/18 on pg. 4





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by the Ex-President. The objective was to improve the teaching of Science, Mathematics, and Technology in The Gambia. The total contract sum was **D47,398,749.75**<sup>161</sup>.

The only contract produced to the Commission is an undated document titled – Addendum but stated to be between the OP and Yeriwa Construction signed by GTTI on behalf of OP. According to Fatou Mbye there is no other contract<sup>162</sup>

The technical team of GTTI was tasked to do the Drawings and Bill of Quantities and to supervise the works<sup>163</sup>.

KIST was later renamed Kanilai Academy.

The Government of Taiwan was to finance the project. They issued a cheque of USD1,723, 590.90(D37,139,721.46) which was received by GTTI<sup>164</sup>. The money was insufficient to complete the project. Mrs. Mbye said several letters were written to Ministry of Education and OP requesting for the balance of funds needed to complete the project to no avail. GTTI still continues to pay the watchmen.

The Commission visited the project which has a number of substantial buildings, some complete, some near completion. The Ex-President appeared to have lost interest in the project after spending D37 million.

The works for the project were never tendered, nor were the requirements for single sourcing met. The President in awarding the above contract paid no regard to any procurement rules.

### 5.4. CONSTRUCT Company Ltd.

Construct Company Limited is a registered business in The Gambia. The company is owned by Fara Shams who is also its managing director<sup>165</sup>. The company was awarded a contract to renovate Old Police Lines for the total contract sum of USD865,790 financed by the Government of Taiwan. The contract was signed between the Construct Company Ltd and Ministry of Works<sup>166</sup>. Exhibit MS 256 shows that the project was one of the few Taiwan projects tendered.

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<sup>161</sup> see transcript of Fatou Mbye of 27<sup>th</sup>/02/18 on pg. 6

<sup>162</sup> see Exhibit MS171

<sup>163</sup> see Transcript of Fatou Mbye of 27<sup>th</sup>/02/18 on pg.5

<sup>164</sup> Ibid Fatou Mbye of 27<sup>th</sup>/02/18 on pg.7

<sup>165</sup> see MS256 - Order dated 7<sup>th</sup>/08/18 and affidavit dated 1<sup>st</sup> /08/18.

<sup>166</sup> See MS256 in particular GTBank bid security dated 30<sup>th</sup>/09/11



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### 5.5. GAMSEN Company Ltd. & EXCEL Construction Co. Ltd.

GAMSEN construction was initially started by Amadou Samba and Pierre Kujabi, each owning 50% of the shares. During this partnership they built the Airport Terminal, The Arch and the Bwiam Hospital. After the constructions of Bwiam Hospital, Mr Kujabi asked Mr. Samba to buy him out. He did, and Mr Samba became 99% owner of the Company. Mr Samba has stated that he cannot remember who owned the 1% after Mr Kujabi left<sup>167</sup>.

Excel Construction Limited – shareholders Amadou Samba 40%, Kaba Samba 30% and Patrick Richetti 30%<sup>168</sup>. According to the evidence of Amadou Samba, Excel is in partnership with Gamsen.<sup>169</sup>

Excel received **D16,192,330.60** payments from 3 CBG accounts namely Sand Mining account (CB6) D7,892,330 in 5 installments; Carnegie Mineral (CB3&4) D520,000 and Heavy Mineral Account (CB10 & 11) D7,780,000 in 2 installments. According to Mr. Samba<sup>170</sup> the payments were for the extension of the State House fence after the 30<sup>th</sup> December 2014 attack on State House to make it higher. A contract (undated) was signed in 2015 with government represented by Mr Noah Touray and one Mr. Flahaut (managing director) signed on behalf of Excel.

According to Mr. Samba, Excel was contracted to do the work because it is Mr. Flahaut's area of expertise, having built the State House fence under Gamsen during the Transition period (1994-1997)<sup>171</sup>.

Mr. Samba also testified that it was a direct contract awarded by the Ex-President himself to the Company<sup>172</sup>.

MS115C represent the invoices presented by Mr Flahaut to Noah Touray. The contract was divided into three phases. The first phase was completed and cost D11,766,012. The third phase cost D21,000,000.00 and was 75% complete, amounting to D16, 955,625. D2, 180,645 is outstanding according to Mr Samba. The work was not completed.

The works for the project were never tendered, nor were the requirements for single sourcing met. The President in awarding the above contract paid no regard to any procurement rules.

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<sup>167</sup> Transcript of Amadou Samba dated 25TH OCTOBER 2017...Pages 16 and 17.

<sup>168</sup> See MS115 A&B

<sup>169</sup> Transcript of Amadou Samba dated 13/11/17 AT PG. 18

<sup>170</sup> Transcript of Amadou Samba of 21<sup>st</sup>/11/17

<sup>171</sup> Ibid Amadou Samba Transcript of 21<sup>st</sup>/11/17

<sup>172</sup> Amadou Samba Transcript of 21<sup>st</sup>/11/17 at pg. 32-40



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### 5.6. FINDING

#### A. Competence Co. Ltd.

CCL received most favoured preferential treatment from OP in the award of contracts from OP over an extended period of time without compliance with Procurement rules.

#### B. HADIM GAI – GAI Enterprises

The contract awarded to Gai Enterprise for works at the State House was not in compliance with procurement rules. There is no evidence of other works awarded to Gai Enterprises contrary to procurement rules.

#### C. Gamsen Company Ltd

The Evidence shows that Gamsen enjoyed the Ex-President's patronage since 1995. It is a company that has obtained most favoured preferential treatment over a protracted period of time without compliance with procurement rules.

#### D. EXCEL Construction Co. Ltd.

Excel is a related company to Gamsen. It is clear that Excel obtained the contracts through the Ex-President's relationship with Gamsen. There is no evidence of other works awarded contrary to procurement rules.

#### E. Yeriwa Construction (Abdourahman Jaiteh)

The contract awarded to Yeriwa Construction to construct the KIST/Kanilai Academy was not in compliance with procurement rules. There is no evidence of other works awarded to Yeriwa Construction contrary to procurement rules.



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### CHAPTER 6

#### MISCELLANEOUS CONTRACTS

##### 6.1. BOAT BUILDING/PURCHASE

In May 2014, the Ex-President after a Nationwide Tour directed the Gambia Navy to commission the building of boats/canoes he had seen in the North Bank on his way. The Permanent Secretary then Mr. Yusupha Dibba (Witness no. 92) testified that he did not know the genesis of the whole project but it appeared the Ex-President wanted to create a Fishing Unit at the Gambia Navy and as the line Ministry they just facilitated the process and worked with Commodore Mandani Senghore of the Gambia Navy.

Commodore Senghore was put in charge of the project by a letter from the Ministry of Defense (**MS108A**) instructing him to engage the boat builder one Alhaji Jass Sam to 6 canoes 6 of various sizes: 2 x 18m, 2 x 21m; and 2 x 22m.

An Agreement dated 6<sup>th</sup> June 2014 was signed with Mr Sam<sup>173</sup>. Mr. Yusupha Dibba (PS Ministry of Defence) and the Commodore signed on behalf of government and Mr. Sam signed on his own behalf<sup>174</sup>. The first set of 6 costing D2, 250,000 was completed and delivered. The six boats were all equipped by the Ministry of Defense for D7,666,356.00 with Yamaha Outboard Engines plus accessories<sup>175</sup> paid for from the CBG Sand Mining and Carnegie Accounts<sup>176</sup> purchased from the following:

- CFAO Motors Senegal, D986,82;
- Cheikh Ndiaye of Darou Minam Mbour, Senegal D1,519,794. The request came from the OP dated 11<sup>th</sup> June 2015<sup>177</sup>
- Modou Njie, Albert Market, Banjul – D5,160,000

Further instructions were given to the Commodore for MOJ to draft an agreement between the Gambia Navy and the OP to operate the boats on 50/50 profit sharing basis. Instructions were also received to hand over three boats to Ousman (Rambo) Jatta (witness no. 97) and the other three to State Guard<sup>178</sup>.

The Commodore was thereafter instructed to contract Mr. Sam for another fourteen boats for D3,220,000. Mr Jass Sam said he received part payment of D1, 900,000<sup>179</sup>.

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<sup>173</sup> See the transcript of Commodore Mandani Seghore of 27/11/17 on pg. 5

<sup>174</sup> See exhibit ms108a

<sup>175</sup> Exhibit MS113

<sup>176</sup> See Exhibit CB4 & 7

<sup>177</sup> SEE CB15 AND THE EVIDENCE OF KARAMO JAWARA ON 17/08/17

<sup>178</sup> See the transcript of Commodore Mandani Senghore of 27/11/17 On pg. 9

<sup>179</sup> See MS 109B and Transcript of Alagie Jass Sam of 27/11/17



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He built 12 and could not complete the two without further funds. The boats were not delivered and they are still in his custody.<sup>180</sup>

Mr. Ousman Rambo Jatta, a private citizen was given three boats to manage as the youth mobilizer of APRC Party. According to him the boats were given to him in 2014 by General Badjie for youth employment. We have no evidence of any youth who benefitted from the project. The boats were handed over to Mr. Jatta on the 21<sup>st</sup> of October, 2015 after receiving a call from General Badjie that he should go to the Naval Command to receive three (3) Fishing Boats on behalf of the Ex-President. Mr. Jatta alleged that he received the boats in a leaking state and one of the boats sank and it remains two boats with him. The remaining two he also alleged that were not doing well but was reporting to General Badjie of their progress.

Furthermore, it was alleged by Mr. Jatta that the profit was supposed to be shared 50/50 i.e.50% to the Crew and 50% for maintenance after subtracting the expenditures. Mr. Jatta also alleged that he was not getting anything from the whole project. He said that one of the boats had stopped operating since last year and when they are operating they were not bringing income.

The Commission on the 9<sup>th</sup> July 2018, upon the application of the Fisheries Ministry that the boats were required for a proposed joint venture by the Department of Fisheries and the Ministry of Youth and Sports to educate youth on artisanal fishing, has ordered that the Director of the Department of Fisheries shall:

- (a) Make an inventory and take custody of all fishing boats built by the Ex-President Jammeh and given to the Navy, Ousman Rambo Jatta, and otherwise sand-docked, as claimed;
- (b) Engage with Alhaji Jass Sam to take delivery of the number of boats the money received from the Ex-President Jammeh shall cover;
- (c) All boats recovered shall be leased to the Joint venture at such rent as shall be agreed;
- (d) Proceeds of paragraph (c) shall be paid to the recovery account already opened by the Accountant General;
- (e) The Secretary shall supervise the implementation of this Order pending the Report of this Commission.

### 6.2. FINDING

It was the Ex-President's sole decision to make this procurement as he did. A case for single sourcing could have been made given the specialized nature of the works required, if the Ex-President had considered himself bound by the Procurement rules.

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<sup>180</sup> Ibid Alagie Jass Sam Transcript pg.3



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Mr. Ousma Rambo Jatta was give boats purchased from public funds for political reasons. He has failed to account for the money realized from his management of these boats.

### CHAPTER 7

#### GENERAL FINDINGS AND RECOMMENDATIONS

##### 7.1. Findings

###### A. General

(1) Government procurement under the Ex-President's government was generally characterized by none compliance with public procurement rules. Major procurement reform occurred in 2001 and 2014 by the establishment of The Gambia Public Procurement Authority and the setting up of contract committees in procuring organizations. OP and to, to some extent, the Ministry of Finance, operated as if the procurement law was not applicable to them. From the evidence, certainly, the Ex-President did not consider himself subject to the procurements law and rules. The Ex-President, from his actions, reserved the right to appropriate funds from wherever they were available to him, for procurement (whether for goods, services, or works) and made no distinctions as to whether the project was for his personal benefit or for public purposes.

(2) None of the projects funded from a total loan portfolio of approximately USD70 million from Taiwan were subject to competitive bidding despite the existence of the FI Procurement Rules and the coming the into force of the GPPA Act 2001 on the 1<sup>st</sup> February 2002.

(3) None of the projects funded from the illegal overdraft of USD28.5 million on the CBG 3 M account were also tendered or subjected to the procurement rules in place.

(4) It is estimated that from 1998 to the breaking of diplomatic relations, Taiwan gave Gambia at least **USD250 Million** as grants that is unaccounted for because it was not paid into, or accounted for, as part of the Consolidated Revenue Fund. There does not therefore exist at the level of Accountant General a register of the assets financed from Taiwan loans or grants. From the evidence, very few of the projects funded by Taiwan were actually submitted to competitive bidding. The Commission notes that from the evidence a sum of USD2 million was paid to the Ex-President each year without pre-



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condition and appeared to be for his personal benefit and use. The Commission has already found this to be unlawful<sup>181</sup>.

(5) Apart from the correspondences in the OP files, there is no accounting record of procurement from OP controlled bank accounts. The Accountants who are posted by the Accountant General to OP keep records of procurement of funds allocated from the Treasury Main Account only. They were not involved in expenditure from Taiwan loans or grants or accounts opened or taken over by OP whether kept at CBG or commercial banks.

(6) The Secretaries General as accounting officers responsible for the financial management of all public funds of OP, failed in their duty to put in place a system that would ensure that any funds controlled from OP intended for the public benefit were properly accounted for even where wrongly appropriated by the Ex-President.

(7) We have no evidence that the various Ministers of Finance at any time attempted to put in place an accountability process for funds they were well aware were being provided by Taiwan, as the various projects launched and managed from OP showed.

(8) We have not found any records of an audit by the Auditor General's office of the extensive procurement that was carried out outside the Government accountability framework having regard to his duty under the Act to carry out *'regular auditing...to ensure that public funds are expended for their intended purpose, and with a view to maximizing value received by the public purchaser, ensuring that proper and accountable systems are in place and adhered to, and identifying any weaknesses in procurement.[1]'*

(9) The Commission notes the various positions taken by some contractors that they were businessmen and that if they are offered a contract they would accept it. This position the Commission finds reprehensible. The procurement rules are clear and not only meant for Government and public officers but for contractors as well. It should be in the interest of all to ensure that these rules are given effect, otherwise our entire governance system would be undermined and, ultimately, it is the ordinary citizen that pays, in the price of goods, works and services.

### **B. Procurement of Fuel**

(7) It is against government and the public interest for the Ministry of Finance to have relied upon and continue to rely upon suppliers for information to determine the price of any commodity particularly one of such crucial importance to the country and the economy, like fuel. This made room for corrupt practices that the procurement laws

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<sup>181</sup> See Vol.5 Chapter 2



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are designed to prevent. There cannot be any acceptable reason why Government, if it is responsible for approving the fuel price structure for the public benefit, does not obtain the necessary input from primary sources by subscribing for PLATTS, and if necessary passing the cost to the OMCs.

(8) The grant of an exclusive contract to EAGL/GTG to supply all the fuel needs of the country was unlawful. For it to have lasted from 2002-2013 is only comprehensible in terms of the personal benefits the Ex-President derived from it.

### **Government Vehicles**

(8) Numerous vehicles were purchased by OP at random from all funds available to it and even the Treasury Main Account without compliance with procurement rules. The Ministry of finance was just as culpable in regard to credit sales from TK Motors. The Commission is in no doubt that under the none compliant system that prevailed more vehicles were procured than came to its attention.

(9) The role of the Ministry of Finance in the arrangements with TK Motors is reprehensible having regard to the fact that the Ministry is responsible for the administration of the Procurement Acts with the primary obligation of ensuring adherence by all Government and Public Institutions to the procurement laws.

### **Gambian Embassy in Washington D.C. USA**

(10) The Ex-President used the unique position of the Financial attaché in the Embassy to procure goods from USA. He made no distinction between his personal needs and government requirements. He used any funds available to him to make these purchases. Embassy Audits were carried out by the Auditor General's Office during the period. However, none of the anomalies were reported.

### **Works Contracts**

(11) The Ex-President granted contracts of works for various projects based on patronage. Accountant General's Office-Treasury failed in its duties as instructions were given to CBG to effect payment for some of these contracts.

## **7.2. RECOMMENDATIONS**





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### **General**

Strict compliance of procurement rules must be observed to promote the objectives of the GPPA Act. The Ministry of Finance should ensure Government compliance with procurement and promote the application of sanctions to ensure compliance.

An independent mechanism outside of the Government system is recommended for monitoring and reporting on compliance with public procurement to the National Assembly because of its high susceptibility to corrupt practices. This mechanism should be incorporated into the GPPA law.

The Accountant General working with the Auditor General should endeavor to trace and register all vehicles and other assets purchased from public funds, in particular the Taiwan loans and grants, during the previous Government.

### **Procurement of Fuel**

The practice of the Ministry of Finance relying on any OMC or other private company for the PLATTS price must be immediately discontinued. If necessary, the cost of subscription should be passed on to the Oil Marketing Companies.

(8) A more comprehensive and forensic investigation of the EAGL exclusivity contract is required in order to determine how much loss the country suffered as a result. The PLATTS prices during the entire exclusivity period must be accessed for this purpose.

(9) An independent assessment of the taxes paid by EAGL on the volumes of fuel imported into the country during the exclusivity period should be carried out.

### **Government Vehicles**

The practice of obtaining vehicles on credit undermines budget integrity and should be immediately discontinued.

### **Boats taken over**

The boats handed to Department of Fisheries should remain with them and continue to be used as proposed to train youth in artisanal fishing.

### **Sanctions**

The Commission notes that the sanction provisions under the GPPA Act of 2001 and prior did not provide for the possibility that the procurement rules may be entirely bi-passed or circumvented. The offences and penalty provisions focused more on failure to comply with the bidding process. The Act provided that a violation of any provision of



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the Act or Regulations shall be referred to the relevant authorities for applicable administrative, civil and criminal sanctions<sup>182</sup>.

The Act also provided for debarment of bidders and suppliers from participation in public procurement for a minimum period of one year and a maximum period of five years on the grounds set out which relate to bids, or the conviction of an offence or economic crime<sup>183</sup>.

However, S115 of the Criminal Code, Cap.10, Vol.3, Laws of the Gambia, 2009 provides punishment for such Act, as follows:

“Any person who willfully disobeys any Act by doing an act which it forbids, or by omitting to do an act which requires to be done, and which concerns the public or any part of the Public, commits a misdemeanor, and is liable on conviction, unless it appears from the Act that it was the intention of the Legislature to provide some other penalty for the disobedience, to imprisonment for a term of two years.”

Section 69 of the Gambia Public Procurement Authority Act, 2014 Act that came into effect on 9<sup>th</sup> October 2014 provides that a person who contravenes a provision of the Act commits an offence and is liable to a fine not exceeding D1million or imprisonment not exceeding 5 years or to both.

The Commission recommends that:

- (1) the following companies and their directors that have shown themselves to be consistent in colluding with OP or the Minister of Finance officials by willfully circumventing and contravening the Procurement rules should be charged under section 115 of the Criminal Code for all procurement contracts from which they benefitted before 9<sup>th</sup> October 2014, and under the section 69 of the Gambia Public Procurement Authority Act, 2014 for contracts after October 2014. They should be banned from participation in any Government procurement for a period of 5 years:
  - a. Euro African Group Ltd
  - b. Global Trading Group NV
  - c. TK Motors Ltd.
  - d. TK Xport Ltd
  - e. Competence Company Limited

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<sup>182</sup> See section 28.

<sup>183</sup> Section 29



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- (2) The following companies and their directors shown to have been involved in not only collusion but also corrupt practices shall be permanently banned from participating in any Government procurement:
- a. Euro African Group Ltd
  - b. Global Trading Group NV
  - c. Related companies - Global Power Systems, Multi Shipping Company Ltd. GAMICO; Gammobile; Gamveg; Royal Residence, GEG, Votrag, Las Services; GMS; Ibrahim Bazzi and Sons; Gamilo; Gamcon; SPL; WARD; Africard; Royal Atlantic Residence, and GAMSEN
- (3) The following companies and their directors should be issued with a warning by the GPPA:
- a. GAI Enterprises (Hadim Gai);
  - b. Yeriwa Construction (Abdourahman Jaiteh);
  - c. EXCEL Construction Co. Ltd.
- (3) All persons who have served as PS Finance from 2008 – December 2016 should be reprimanded for their failure to ensure adherence to Procurement Rules.
- (4) Having regard to the lack of compliance with procurement rules that has been shown, a much stronger sanction regime should be put in place against circumvention of the rules.
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