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 6

STATE OWNED ENTERPRISES (SOE'S)

10th AUGUST 2017 - 29th MARCH 2019

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INTRODUCTION

This volume focuses on Clause 2(1) (b) of the Commission's Terms of Reference (Legal Notice No.17 of 13th July 2017), which authorizes the Commission to:

Inquire into and investigate the involvement of the Executive arm of Government under former President Jammeh regarding the withdrawal and use of funds or resources of public bodies, enterprises, offices or projects (collectively, the "Resources"), including Social Security Housing and Finance Corporation (SSHFC), Gambia Ports Authority (GPA), Gambia Telecommunications Company (GAMTEL), National Water and Electricity Company (NAWEC), Assets Management and Recovery Corporation (AMRC), and Gambia National Petroleum Corporation (GNPC). Specifically, the Commission is to:

(i) **Ascertain whether applicable policies and procedures were followed;**
(ii) **Ascertain whether funds or resources withdrawn or applied were properly applied to budgeted and lawful purposes;**
(iii) **Identify the institutions persons and groups of persons directly involved in the withdrawal and application of the said funds or resources.**

Under Clause 3(d), the Commission is also authorized to investigate any other matter that may be reasonably related to its inquiries.

These matters are each discussed separately in the eight chapters that follow.

CHAPTER 1 - GAMBIA NATIONAL PETROLEUM COMPANY (GNPC)

INTRODUCTION

The GNPC was incorporated as a Company in 2003 to serve as the business arm for Government in relation to all petroleum related activities in the Gambia. The GNPC is a distributor of petroleum and petroleum products. The company is predominantly engaged in the business of selling petroleum products. Its objects include the business of mining, refiners, storers, suppliers and producers. It has a reserved participating interest of up to 15% in all Gambia's oil blocks. As per the Memorandum and Articles of the Association[1] the shareholders of the Company were:

- the Government of the Gambia (GOTG) - 80%
- Managing Director of National Water and Electricity Company Limited (NAWEC) - 10%
- Managing Director of Gambia Telecommunications Company Limited (GAMTEL) - 4%
- Managing Director Gambia International Airlines (GIA) Limited - 3% and;
- Managing Director of Gambia Ports Authority (GPA) - 3%.

The said shares were never paid up according to Mr. Momodou O.S. Badjie (Witness no. 21) the former Managing Director of GNPC (from January 2008 to June 19th, 2016)[2]. The setting up of GNPC was initially funded from the Republic of China on Taiwan (ROC) Grant. In addition, on the 6th May 2008, USD550,000 was given to GNPC as reimbursement for payments made in 2007 for the academic programs in Taiwan and the remuneration of GNPC's Technical Consultant for the period April 2008 to March 2009. A cheque in the name of GNPC was handed over of USD333,788 and the remaining balance of USD216,212 retained and paid to the Technical Consultant directly[3]. On the 25th January 2010, USD409,067 was given to them towards the GNPC Office building[4].

Subsequently funding received was from Surface Rentals fees, Bonuses and Data Sales. GNPC also received a loan of USD5 Million Dalasis from the Central Bank of the Gambia (CBG) following a government directive to finance a 3D data survey system - seismic. This loan remains unpaid.[5]

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[1]Exhibit SC1 – Memorandum and Articles of Association dated 11th June 2003
[2]Transcript of Mr. Momodou O.S. Badjie dated 29th August 2017 – pg.3 & 4
[3] Exhibit MS166H
[4] Exhibit MS166A
[5]Transcript of Mr. Momdou O. S. Badjie 14th September 2017 – pg. 13

The company was initially managed from the Office of the President (OP) State House by Mr. Lamin Njie[6] until 2006 when it commenced proper operation with a Board and management under Mr. Siaka Camara (now deceased) as Managing Director up to 2008. The Secretary General was Board Chairman until 2014 when the company was incorporated as a Public Enterprise.

In 2010, GNPC started its downstream activities, and opened its first petrol service station at Kanifing. Subsequently, eight (8) additional petrol stations and the Petroleum House at Brusubi, Kombo North Region were built from funds derived from Rentals i.e. yearly Surface rentals paid by licensees, Bonuses and Data Sales and business activities carried out at its petrol service stations.[7]

In 2014, the company was changed to a Public Enterprise – Gambia National Petroleum Corporation. The PE is now 100% owned by GOTG. Funds of the Corporation since 2014 includes funds appropriated to it by the National Assembly, Government grants, endowment, subvention etc[8]. When it was a Company its Memorandum and Articles of Association vested the power of management of its properties, business and funds in the Board of Directors; same is now provided in its Act.

Under Section 7 of the Public Enterprise Act, major investments by a Public Enterprise are done by the public in consultation with its Line Ministry. GNPC's line ministry between 2003 to 2012 was the Office of the President when Ex-President Jammeh was the Minister for Energy/Petroleum.

BANK ACCOUNTS

GNPC operates bank accounts with four local Banks. Below is the list of Accounts operated by GNPC from inception to 2017.

BANK	ACCOUNT NUMBER	ACCOUNT TYPE	Signatories
GTB	10108217110[9]	Dalasi	- Momodou Badjie (MD) - Malick Jarju (Accountant)

[6] Exhibit SC131 – Witness Statement of Mr. Momodou O.S. Badjie
[7] Transcript of Mr. Momodou O. S Badjie 14th September 2017
[8] Gambia National Petroleum Act 2014, Funds of the Corporation Part V, Section 6
[9] Exhibit BB56

			- Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Tenneng Mba Jaiteh SG, OP, - Madun Sanyang, - Tsung Wen Shiao, - Alfred G. Belford, - Baboucarr Njie - Lamin Manneh - Abdoulie TB Jarra - Cany Jobe Taal.
GTB	2011082171550[10]	Dalasi interest bearing.	- Momodou Badjie MD, - Malick Jarju, the Accountant, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Tenneng Mba Jaiteh SG, OP, Medoune Sanyang, - Tsung Wen Shiao. - Alfred G Belford, - Baboucarr Njie - Lamin Manneh, - Abdoulie TB Jarra, - Cany Jobe Taal.
GTB	201108217210[11]	USD	- Momodou Badjie MD, - Madun Sanyang Finance Manager until 14/08/2013 signatories changed to - Ex President and

[10] Exhibit BB55
[11] Exhibits BB53 & BB53A

			- Momodou Sabally, and - later Momodou Sallah, - Kalilou Bayo.
GTB	201108217211[12]	USD	- Momodou Badjie MD, - Malick Jarju, the Accountant, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Teneng Mba Jaiteh SG, OP, - Madun Sanyang, - Tsung Wen Shiao.
GTB	2011082174610[13]	Euro	- Momodou Badjie MD, - Malick Jarju, the Accountant, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Tenneng Mba Jaiteh SG, OP, - Madun Sanyang, Tsung Wen Shiao.
Access	0010010008883[14]	Dalasi	- Momodou Badjie MD, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Madun Sanyang.
Access	00100400177[15]	Dalasi Call A	- Momodou Badjie MD, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum,

[12] Exhibit BB54
[13] Exhibit BB54
[14] Exhibit BB67C
[15] Exhibit BB67B

			- Madun Sanyang.
Access	0011010003101[16]	USD	- Momodou Badjie MD, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Madun Sanyang. - Signatories changed to Ex President and Momodou Sabally on 14/08/2013.
Access	011010008036[17]	USD	- Momodou Badjie MD, - Ebrima Camara PS, - Fafa Sanyang Commissioner of Petroleum, - Madun Sanyang.
Skye	1021770031538[18]	Dalasi	- Teneng Mba Jaiteh, - Momodou O.S Badjie, - Fafa Sanyang, - Tsung Wen Shiao, - Alfred Belford, - Baboucarr Njie, - Abdoulie Jarra, - Abdoulie Nyassi, K Ceesay - Cany Jobe Taal
Skye	1022520055538[19]	USD	- Teneng Mba Jaiteh, - Momodou O.S Badjie, - Fafa Sanyang, - Tsung Wen Shiao,

[16] Exhibit BB65
[17] Exhibit BB67A
[18] Exhibit BB48A & BB48B
[19] Exhibit BB49

			- Alfred Belford, - Baboucarr Njie, - Abdoulie Jarra, - Abdoulie Nyassi, - Lamin Manneh, - K Ceesay - and Cany Jobe Taal.
Skye	102252520031538[20]	USD	- Teneng Mba Jaiteh, - Momodou O.S Badjie, - Fafa Sanyang, - Tsung Wen Shiao, - Alfred Belford, - Baboucarr Njie, - Abdoulie Jarra, - Abdoulie Nyassi, - K Ceesay and - Cany Jobe Taal. - Signatories changed to ex-President and Momodou Sabally on 14/08/2013. - Later signatories were Kalidou Bayo, Lamin Nyabally, ismaila Sanyang.
Skye	252003158[21]	GBP	- Teneng Mba Jaiteh, - Momodou O.S Badjie, - Fafa Sanyang, - Tsung Wen Shiao, - Alfred Belford, - Baboucarr Njie,

[20] Exhibits BB50, BB51 & BB52
[21] Exhibit BB50

			- Abdoulie Jarra, - Abdoulie Nyassi, - K Ceesay - Cany Jobe Taal
TBL	110010097601[22]	Dalasi	- Alieu Ngum, - Mambury Njie, - Lamin A.M Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara, - Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Madun Sanyang, - Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra
TBL	11110097604[23]	Dalasi	- Alieu Ngum, - Mambury Njie, - Lamin A.M Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara,

[22] Exhibit BB50
[23] Exhibits BB62A & BB62B

			- Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Madun Sanyang, - Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra
TBL	10710097602[24]	USD	- Alieu Ngum, - Mambury Njie, - Lamin A.M Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara, - Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Madun Sanyang, - Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra

[24] Exhibit BB60

TBL	12010097603[25]	USD	- Alieu Ngum, - Mambury Njie, - Lamin A.M Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara, - Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Medoune Sanyang, - Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra
TBL	12010097604[26]	USD	- Alieu Ngum, - Mambury Njie, - Lamin A. M. Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara, - Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Madun Sanyang,

[25] Exhibit BB60A
[26] Exhibit BB59A

			- Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra
TBL	12010747401	USD[27] –	- Alieu Ngum, - Mambury Njie, - Lamin A.M Njie, - Wu Chung Ding, - Mei Char Lee, - Siaka Camara, - Teneng Mba Jaiteh, - Momodou Badjie, - Ousman Jammeh PS1, OP, - Madun Sanyang, - Tsung Wen Shiao, - Lamin Nyabally, - Isatou Auber, - Alfred Belford, - Baboucarr Njie, - Lamin Manneh, - Abdoulie Jarra

[27]Gambia Petroleum Company Data Account

LOANS GIVEN BY GNPC ON DIRECTIVES OF OFFICE OF THE PRESIDENT

Based on the evidence of Mr. Momodou O.S. Badjie when he took over office, in 2008 he did an appraisal of the company and discovered earlier involvement and interference of the Office of the President (OP) in GNPC's finances. Numerous loans were given under the directives of the Office of the President[28]. The directives also continued in 2010 and 2012[29].

Mrs. Teneng Mba Jaiteh (Witness no. 126) then Permanent Secretary OP explained that, all loans were given under the directive of the President[30]. She further explained that it was very rare for the Ex-President to issue written instructions when it came to financial transactions. As a signatory to the GNPC Accounts she co- signed a number of loans from GNPC to other Institutions. Demand letters for repayment of loans were sent by GNPC's Finance & Admin Director Mr. Madun Sanyang to OP, PEGEP, Ministry of Sports and Ministry of Finance for (the soft loan) but no payment was made.[31]

Mr. Momodou Badjie testified that when he took over in 2008, he recommended to the Board that the loans to PEGEP and OP be written off the books of GNPC.

A summary of the loans disbursed over the years is illustrated below:

Period	Loan Amount Disbursed	GNPC Account	Received by	Purpose	Comments
27/09/2006	USD25,000	TBL	President Empowerment of Girls Education Project (PEGEP)	Not stated	
17/10/2006	USD45,300	TBL	PEGEP	Payment of rent for Cuban and	

[28] Transcript dated 29th August 2017 – pg.4
[29] Exhibits SC2 & SC12
[30] Exhibit SC131 - Witness Statement of Mrs. Teneng Mba Jaiteh dated 22nd January 2018
[31] Exhibit SC2 – Reminder letter dated 8th January 2007 to OP, letter to Department of State for Youth & Sports dated 27th December 2008, letter to MOFEA dated 23rd June 2010

				Nigerian Doctors	
25/10/2006	USD1,000,000	TBL	PEGEP	To carry out their functions and mandate as a social institution	USD1million of this sum was received cash by Protocol Office Omar Dibba from TBL Demand letter written in 2007
25/10/2006	USD75,652.59	TBL	PEGEP	Liquidity Problems	
25/11/2006	USD500,000	TBL	PEGEP	To carry out their functions and mandate as a social institution	
29/6/2006	USD1,280,238.13	TBL	Jammeh Foundation for Peace (JFP)	SG gave instructions to Bank to pay in money to cover Bank Charges for JFP and KFF	
29/6/2006	USD419,761.87[32]	TBL	Kanilai Family Farms (KFF)		See above
13/3/2006	USD2,016,520[33]	TBL	Dabanani Electrical	AU summit electrificati	

[32] Exhibit BB68 & BB69

[33] Exhibits BB68 & BB69

to 8/8/2007			Enterprise	on Project	
12/12/2006	USD20,000	TBL	This request was made by Ministry Youths and Sports to OP and but to be refunded by Ministry according to OP	To pay Foreign Coach for National Football team	
16/6/2006	D21,477,760	TBL	Sheraton Gambia Hotel & Resort	AU Banjul Summit	
17/5/2007	D662,506.10	TBL	OP (Future Travel Agency)	Financing Ticket for Frankie Paul Concert	
15/3/2007	Euros 122,332	TBL	SABADELL ATLANTICO	Aviation charges	
17/05/2010	USD303,000.00	TBL	OP	Soft Loan for payment Hobo Entertainm ent USA	Demand letter written in 2010

11/4/2012	D10 Million[34]	ACCESS	OP	Prisons rehabilitation	According to the evidence of Njogu bah, the D10,000,000 was handed to the Office of the President[35]

INVESTMENTS

(A) AU VILLAS

On the 5th January 2006, Gambia National Petroleum Company (GNPC) and TAF Holding Company Limited entered into a sale agreement[36] for the construction and sale of 52 Villas (AU Villas) to GNPC for a contract sum of USD5.5million. The leasehold land at Brufut Gardens with Serial Registration number K68/2001 is on an area of 47, 250sq meters. The construction was to be completed within 5 months (i. e. June 2006) for the African Union (AU) Summit of Member states to be held in June 2006. The buildings were completed and used for the summit in June 2006.

By letter dated 6th March 2006 ref. GP-001-Oa-100206-01, TAF holding was invited to the Office of the Secretary General Mr. Mambury Njie (through GNPC by its then MD Mr. Siaka Camara now deceased) for a meeting to be held on 7th March 2006.

Nevertheless, by letter dated 14th March 2006 Ref. GP-001-Oa-1430306-01, GNPC wrote to TAF that out of the total agreed sum of USD5.5 Million, USD3,685,703 has been paid to TAF leaving an outstanding balance of USD1,814,297. The letter further highlighted that factoring the cost of lighting and television facilities (USD 2 Million plus was paid by GNPC to Dabani Enterprise[37]&[38]). TAF has received in terms of villas at a unit cost of USD110,000 amounting to 33 and half villas, it was agreed that GNPC would

[34] Exhibit MS60 – Bankers Cheques handed over to Secretary General at OP
[35] Transcript of Mr. Njogou L. Bah dated 10th October 2017 (d)o
[36] Exhibit MS134
[37] Exhibit SC12
[38] Exhibit BB68

pay an additional USD55,000 to make it 34 villas. The rest of the 18 villas remained with TAF, GNPC proposed in the said letter that it intended to retain 10 villas out of the 34. 4 to GNPC and 6 to Government and the 24 were to be put on the market by TAF for sale at a unit price of USD110,000 per villa payments to be made in 4 quarters (i.e. 6 Villas every 4 months). These proceeds were to be paid to Government.

Subsequently by letter dated 11th June 2006, GNPC wrote to TAF and requested that out of the 34 villas, 30 should now be sold on the market for the same USD110,000 per villa and the proceeds paid in to GNPC 's account at Trust Bank Account No: 01-110-100976-02 to offset a loan of GMD29 Million. By letter dated 19th June 2006, TAF accepted the proposal but indicated that they would deduct the above-mentioned USD55,000. Payment was made to GNPC after the said deduction.

By 19th August 2006- GNPC acknowledged receipt of the keys to the 4 Villas bearing house numbers 109, 110, 130.

On 6th December 2007, TAF wrote to GNPC that 10 villas were sold for USD1,100,000 to SSHFC[39] and after deducting the USD55,000 it will leave a balance of USD1,045,000.00. A proposal was made by TAF to make 4 equal installment quarterly payments of USD261,250 or for the amount to be used as an advance payment. GNPC acknowledged receipt of final proceeds from sale of villas on 31st March 2008 via letter ref. GP 303-310308-03. TAF also sold 10 out of its own 18 Villas, to SSHFC.

On 26th March 2008, SSHFC informed TAF that they had sold 17 out of the 20 Villas to Government and instructed TAF to hand over the 17 Villas to PS Finance and prepare the Deeds of Assignment to Government.[40] Mr. Abdoulie Cham, SSHFC Finance Director confirmed SSHFC sold its remaining 3 villas each to Arab Gambia Islamic Bank, Guaranty Trust Bank (Gambia) Limited and Access Bank (Gambia) Limited.

According to Mr. Mustapha Njie, he was not sure if the Office of the President was involved in the purchase of the villas by GNPC, but they were involved in the design and the whole project because it was a government project and apart from the Office of the President, there were other Government offices involved**.** Presently, he confirmed that part of the land where the villas are built is still owned by TAF Holdings Company Limited**.** Deeds of Assignment (Title deeds) have not been transferred to GNPC.[41]

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[39] Exhibit MS138

[40] Transcripts of Mr. Mustapha Njie TAF Constructions dated 18th & 19th December 2017 and Mr. Abdoulie Cham 19th December 2017

[41] Transcript of Mr. Mustapha Njie dated 18th December 2017 pg. 7

On the 24th April 2017, a Task Force was set up by the State Intelligence Service (SIS) based on the request of the Office of the President[42]. The Task Force comprised of members from the SIS, Gambia Police Force (GPF) and the Gambia Drug Enforcement Agency to determine and identify the occupants of the villas and to verify under what terms, conditions of authority that the occupants are residing there. They examined 38 Houses (bungalow) and the summary of findings showed that:

- 11 Villas Occupants (i.e. 102, 109, 110, 114, 116, 119, 123, 124, 129, 135 and 140) were authorized by Mr. Mohamed Bazzi the CEO of the Gam Petroleum Company.
- 5 Villas (i.e. 104, 105, 107, 131 and 133) were allocated by the Chief of Protocol, Mr. Alhagie Ceesay under the directive of ex- President Jammeh
- 6 Villas (117, 122, 126,127, 128 and 134) were allocated by Mr. Sanna Jarju under directive of ex-President.
- 4 Villas108, 112, 120 and 125 were occupied by residents without any approval (according to the Gardener), Villa 103, a Nigerian Judge who left the country during the Political impasse and the Apartment is locked.
- Villa 111, occupant Mr. Razeed who died in a car accident. The Task Force did not know who allocated the apartment to Mr. Razeed.
- Villa 115 was occupied by the First Lady's Zineb Jammeh's brother and villa 113 occupied by a Cuban National Doctor Yurina both are currently locked.
- According to Mr. Bah, the Apartments were under the maintenance of no one, the Gardener did the cleaning but was not paid.[43]

(B) GAM PETROLEUM STORAGE FACILITY

By letter dated 15th February 2008[44] to Gampetroleum, the Secretary General, conveyed directives that 49% of their shares should be opened up to Government and other public enterprises like Social Security and Housing Finance Corporation (SSHFC), Gambia Ports Authority (GPA) and Gambia National Petroleum Corporation (GNPC) to participate in the shareholding structure. The reason was that a bilateral cooperation arrangement had been signed by the Government of the Gambia that had implications governing fuel storage facilities stating that such a strategic investment should not be handled solely by Private Enterprises.

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[42] Exhibit MS164 – Report submitted to the SG at OP on TAF Government Property at Brufut Gardens Estate dated 16th May 2017
[43] Transcript of Mr. Ebrima Bah a Police Officer dated 20th February 2018
[44] Exhibit MS220D – Letter from Office of the President ref. OP151/262/03/Part II/(34)

Following the directive there was a meeting of the Managing Directors of three PE's GNPA ,GPA, and SSHFC with the Minister of Finance Mr. Mousa Balla Gaye in which the PEs agreed on the percentage holding in the Company.

At the time of the said purchase, the Storage Company was valued at Euros 35million according to an unsigned statement of affairs dated 31st May 2008 allegedly prepared by DELOITTE an audit and tax advisory firm and presented to the PE's by the Company[45]. Initially, SSHFC was to take up 20%, GPA 20% and GNPC 9%.

GNPC was not financially strong during that period. Mr. Momodou Badjie requested that the percentage be reduced to 7% but this was not accepted by the ex-President. Mr. Momodou Badjie during the 4th Board Meeting of the Directors of GNPC held on 26th September 2008[46], presented a Management report in which he informed the Board that GNPC approved purchase of shares of 7% (initially 9%, but SSHFC will buy the other 2% of the shares with understanding of future repurchase) the Storage Facility. Euros 1,470,000.00 had already been paid towards the share purchase leaving a balance of Euros 980,000.00. The only comment from the Board on this was for GNPC to enquire whether other PEs met their obligations.

It is noted that a request was made by GNPC to the storage company for the Valuation of the storage facility and audited accounts of the Company but same was not provided.

In 2015, further directives were given that additional shares should be purchased by the PEs. GNPC bought additional 3% shares based on the initial cost of the investment of Euros 35,000,000. GNPC did not start receiving dividends until 2016.

See Volume 6 - Chapter 6 for the entire details on Gam Petroleum Storage Company Limited.

(C) GFFI

In a letter from Office of the President (OP) dated 20th May 2010 to GPA, GNPC and SSHFC, Mr. Ebrima Camara, directed those public entities (PEs) to take shares in a venture with a foreign company, i.e., those public entities should invest in a feed mill factory and rice processing plant.[47]

[45] Exhibit MS112A

[46] Exhibit MS224A

[47] Exhibit MS97 – OP letter dated 20th May 2010 ref. OP 217/45/01/TEMP:E/(20)

According to Mr. Momodou O. S. Badjie, GNPC at a meeting held at the State House in 2010 with Secretary General Dr. Njogu Bah in which also present were representatives of GPA and SSHFC, Mr. N. Bah informed the gathering that Investors, Pearl Investment SAL Offshore (same as CONAPRO) were keen on investing in a Rice and Feed Mill[48]. The investors were to invest 50% in the Rice Mill and 20% in the Feed Mill while the Gambia Government was to invest 50% in the Rice Mill and 80% in the Feed Mill. The feed mill was to produce animal feed while the rice Mill was to process rice in the Gambia to be sold within the Country. A shareholders' agreement was signed on the 29th July 2011.

GNPC subsequently invested 15%, GPA 20%, and SSHFC 65%. 15% GNPC's investment amounted to USD1,063,300. However, according to Mr. Badjie there were no steps taken by the shareholders (PEs) to make sure that the investment had a reasonable return because the investors from Qatar were to do everything; as it was a Turnkey Project, and the Gambia was only asked to pay their share of the investment.

The Company was operated without a Board. A memorandum document was sent by Mr. Muhammed L. Gibba (then MD of GPA) to Inspector Jammeh, Sgt. Drammeh and team, Fraud squad and Police dept dated 8th January 2014 with the subject being 'Person information about/ on GFFI' where he highlighted writing a letter of recommendation to OP advising GOTG to set up a board to steer the affairs of the company

GNPC did not participate in the management of the Company prior to the Board. When the Board was established, it discovered that the investors did not pay up their shares.

See Volume 6 - Chapter 7 for the entire details on GFFI.

OFFICE OF THE PRESIDENT TAKES CONTROL OF GNPC FOREIGN CURRENCY DENOMINATED BANK ACCOUNTS

By letter dated 23rd July 2013, Mr. Momodou Badjie, wrote a letter to the Office of the President requesting that the funds received by GNPC i.e.

[48] Exhibit MS91B – Memorandum and Articles of Association dated 26th July 2010. Paragraph 3a of the said documents states the 'Objects' of the company that is to carry on the business of production of animal, poultry and aquatic feeds for the cattle, poultry and fish industry.

Rentals, Bonus and the Sale of Data, licensee fees from Oil Companies be recognised as grant to save GNPC from paying tax on these amounts.

On 30th July 2013, the Office of the President replied and requested for a comprehensive Statements of Account of all monies collected from 2010 to date, and directed that all funds be transferred from the GNPC Account to Ministry of Petroleum (MOP) Account at Central Bank of the Gambia (CBG)(see the evidence of Momodou Badjie 29/08/2017 (A)J)[49]. A comprehensive report accounting for everything including the construction of 9 Filling Stations and the Petroleum House and all revenues including the data sales totalling USD16,531,002 was submitted on the 31st July 2013 by GNPC to the SG at OP.[50] The report submitted by GNPC highlighted the construction works in progress at an estimated cost of GMD275,768,021 for completion.

The bank transfer to CG did not materialise but by directive dated 6thAugust 2013, the Office of the President requested for USD500,000 (USD250,000.00 and USD243,243.25 Dalasis equivalent). GNPC complied with the directive and withdrew the funds in cash from GNPC's accounts at Skye Bank (Gambia) Limited and Access Bank (Gambia) Limited and same were delivered to the Office of the President by Messrs. Momodou Badjie and Madun Sanyang. Mr. Madun Sanyang confirmed that the cash was handed over to the SG Momodou Sabally in the presence of Mr. Nuha Touray[51]

This was the last transaction from GNPC made from the dollar denominated account by the Company's signatories.

On 13th August 2013, GNPC received another directive to change the signatories of the GNPC Dollar Accounts to Ex- President Yahya Jammeh and Mr. Momodou Sabally. According to Mr. Momodou Badjie, the Board of Directors was not aware of the change of signatories and it was not brought to their attention for any resolution. At the time the signatories were changed, GNPC had a little over USD7,300,000 in all their Dollar Accounts but they continued to pay the 20% Dollar (authorised signed by the Ex-President and Secretary General) component of the certificates for the construction of the petroleum house and GNPC continued to pay the 80% Dalasi Component until completion.

GNPC was left with only the dalasi bank accounts to operate. Subsequently, GNPC took a government guaranteed loan facility from IDB, ITSFC to

[49]The 2 letters were tendered by affidavit evidence through Kebba Drammeh (PR/C697A/VOL.6 (75) admitted as MS2 and MS75J.

[50] Exhibit SC2 – Letter ref. GNPC/101/310713/(119)

[51] Transcript of Mr. Madun Sanyang dated 14th September 2017 – pg. 6 & 7

continue its operations in particular to pay for fuel imported. According to Mr. Momodou Badjie, the Board of Directors was not aware of the change of signatories and it was not brought to their attention for any resolution.

Mr. Momodou Sabally testified that Ex-President Jammeh changed the signatories to the bank accounts because he did not trust Mr. Momodou Badjie the then Managing Director. He even wanted to fire him, but he advised against it, but the Ex-President insisted he did not trust them with the Accounts.[52]

GNPC Dollar accounts subjected to change of signatories from 13th August 2013 are:

Bank	Account Name	Account Number	Date	SIGNATORIES
Guaranty Trust Bank (Gambia) Limited (GTB)	GNPC Dollar Account	201108217210	13th August 2013 7th July 2014 (added on) and deleted on the 3trd September 2014 3rd Sept. 2014 (added on) and deleted 28th July 2016 8th Sept. 2016 (added on) and deleted 19th July 2016	Ex- President and Mr. Momodou Sabally Mr. Abdoulie Sallah Mr. Kalilou Bayo ad 28/07/2016 Mr. Sulayman Samba[53].

[52] Transcript of Mr. Momodou Sabally dated 27th September 2017 – pg. 2

[53] Change of signatures request from MD GNPC to GTB dated 13th August 2013 adding ex - President and Mr. Momodou Sabally as signatories to the GNPC Dollar Account - 201108217210 admitted as Exhibit BB53A.

Skye Bank (Gambia) Limited	GNPC USD	1022520031538	14th August 2013	Ex-President and Mr. Momodou Sabally Signatories also changed to various SG's and Permanent Secretaries[54].
Access Bank (Gambia) Limited	GNPC USD	0011010003101	14th August 2013	Ex- President and Mr. Momodou Sabally. Signatories also changed to various SG's and Perm Secretaries[55].

GUARANTY TRUST BANK (GTB) Gambia Limited

Non- GNPC related transactions paid from GTB US Dollar Account No: 201108217210 from 13th August 2013 to 11 February 2014 during the period Ex-President Jammeh was a signatory to the account.

TRANSACTION DATE	**AMOUNT - USD**	**BENEFICIARY**	**PURPOSE**	**COMMENTS**
5/11/2013	884,000	Transfer to UN Office of Project Services.	Payment for Gambia Flag at the UN	Instructions signed by Ex - President and Mr. Momodou Sabally dated 4/11/2013

[54] Access Bank Statement in respect of US Dollar Account Number 0011010003101 from 1st January 2009 to 31st August 2017 for GNPC and request for change of signatories admitted as Exhibit BB65.
[55] Skye Bank USD account No.1022520031538 change of signatory request letter dated 2nd April 2015 form OP & related docs admitted as Exhibit BB51.

8/04/2014	100,000	Transfer to JFP Bank Account.	No Purpose stated	According to Mr. Momodou Sabally, the Ex- President later explained that a Saudi Princess donated the money to the Foundation and he withdrew the funds and the Princess was supposed to visit the Gambia. He needed to reimburse the money to the Account before the visit. The funds were for the construction of a hospital, but it never happened.[56]
7/07/2014	282,988.24	FX Purchase to MA KHARAFI & SONS GTB Account.	For the construction of Sankanding Karantaba Road	M.A. Kharafi and Sons received USD 565,976.48 dalasis equivalent for the construction of the Sankanding Karantaba Road[57], [58] & [59]. This was part of the 20% contract sum.
7/07/2014	282,988.24	FX Purchase to MA KHARAFI & SONS GTB Account.	For the Construction of Sankanding Karantaba Road.	As above
8/09/2014	129,375	Transfer to TK XPORT Mashreq	In respect of 75 gold coins	Mr. Kalilou Bayo confirmed that the

[56] Transcript of Mr. Momodu Sabally dated 27th September 2017 – pgs. 6 & 7

[57] Contract dated 4th August 2014 between the Ministry of Transport, Works and Infrastructure and M. A Kharafi and Sons ltd for construction of the Sankanding Karantaba road and letter dated 30th June 2014 from Gambia Government to Kharafi requesting Commencement of works admitted tendered by Momodou Lamin Sonko and admitted as Exhibit MS58.

[58] Transcript of Mr. Momodou Lamin Sonko dated 2nd October 2017 – pg.4

[59] Exhibit MS58 Contract signed between GOTG and M. A. Kharafi for the construction of the Sankanding - Karantaba road

	Tarik Musa' statement on the Gold Coin	Bank Mr. Tariq Musa, Managing Director of TKXPORT	at a unit of $1725 ordered by the Ex - President,	gold coins were meant for the 20th Anniversary of the July 22nd Revolution but he did not see Mr. Tariq Musa or the gold coins.[60]
11/02/2015	2,450	Transfer to Mr. Basiru Sarr Bank of America.	Student Stipend	GNPC staff
11/02/2015	2,450.00	Transfer to Mr. Lamin K Sanyang, Bank of America.	Student Stipend	
11/02/2015	6,350.00	Transfer to Mr. Abdoulie Mboob Bank of America.	Student Stipend	
11/02/2015	6,350.00	Transfer to Mr. Matarr Jammeh Bank of America.	Student Stipend	
11/02/2015	7,325.00	Transfer to Mr. Musa Trawally	Student Stipend	
11/02/2015	7,325.00	Transfer to Mr. Yaya Drammeh	Student Stipend	
11/02/2015	11,628.00	Transfer to Mr. Ousman Jobarteh Bank of Nova Scotia.	Student Stipend	
TOTAL	**1,723,229.48**			

[60] Transcript of Mr. Kalilou Bayo dated 8th November 2017 – pg. 3

Access Bank (Gambia) Limited

Non -related GNPC transactions after the change of signatories in the GNPC Access Bank Dollar Account 0011010003101 from 16th December 2014 to 24th June 2015.

Transaction Date	Amount - USD	BENEFICIARY	PURPOSE	TESTIOMONY/COMMENTS
16/12/2014	100,000	Cash WDL to Mr. Sanna Jarju Chief Protocol. Instructions signed by ex-President Jammeh and Mr. Kalilou Bayo to pay Mr. Sanna Jarju the amount.	For President Vacation in Dubai.	Mr. Kalilou Bayo, confirmed monies received by Mr. Sanna Jarju.[61] The funds were meant to fund the President's vacation in Dubai. This was also confirmed by Mr. Sanna Jarju (see the evidence of Sanna Jarjue
2/04/2015	13,890.30	Transfer to Ms. Isha Keita Bank of SEB Kiaroutogata Sweden.	Living Expenses on behalf of student Isha Keita.	
15/05/2015	4,091.48	Transfer to Mr. Amat Bittaye Columbia State Bank in America studying in City University Seattle.	For Stipend	
15/05/2015	4,091.48	Transfer to Ms. Haddijatou Hydara Barclays Bank Huddersfield.	For Stipend	
24/06/2015	125,000.00	Transfer to Gai Enterprise and Marine Civil Engineering Company ECOBANK	For the Construction of building and Bus Park at State	Instruction was given by Ex- President to pay Gai. Payment was made on 24th June 2015 and two cheques (Skye and

[61] Transcript of Mr. Kalilou Bayo dated 7th November 2017 – pgs. 9 & 11

		GAMBIA.	House.	Access) were signed by Mr. Lamin Nyabally the SG each amounting to D5,000, 000.[62] Mr. Hadim Gai the proprietor of Gai Enterprise confirmed receipt payment of D10,000,000 as advance payment for the construction. The whole contract sum was D27,000,000. The balance was paid by the current Government[63]
TOTAL	**USD247,073.26**			

SKYE Bank (Gambia) Limited

It is the testimony of Mr. Momodou Sabally (Witness no. 13) that immediately the Ex -President took over the bank accounts, directives were received from Ex- President Jammeh for the withdrawal of USD2 Million[64]. Initially the bank said they did not have the cash. The Ex- President threatened to close the account and withdraw the cash. However, Mr. Momodou Sabally thought that would have caused a rupture in the entire financial system and convinced the President to continue operating the Account and assured him that the sum of USD2,000,000 which he needed would be provided by the Bank in tranches of USD650,000, USD150,000, USD650,000, USD450,000 and USD100,000.

The Ex-President eventually allowed them 2 working days to bring the cash. The cash was brought to the State House by the Bank tellers and counted in his presence and Messrs. Noah Touray and Momodou Sabally[65]. The account balance before change of signatory was USD2,399,925.

Non -related GNPC Debit Transactions from date of change of signatory 14 August 2013 GNPC Skye Bank Account Number 1022520031538.

[62] Exhibit BB66 and transcript of Mr. Lamin Nyabally dated 4th December 2017
[63] Transcript of Mr. Hadim Gai dated 8th May 2018
[64] Exhibit BB63 – Bank Statement
[65] Transcript of Mr. Momodou Sabally dated 27th September 2017 – pg. 3 & 4

TRANSACTION DATE	AMOUNT - USD	BENEFICIARY	PURPOSE	TESTIMONY
14/08/2013	650,000	Cash Withdrawal by Mr. Momodou Sabally.	No purpose Stated. Handed over to the Ex-President.	Counted in the SG's office in the presence of Mr. Sanna Jarju and handed over to the orderlies. Entered in the President's quire book. The orderly was Yusupha[66]
16/08/2013	150,000	Cash Withdrawal by Mr. Momodou Sabally	No Purpose handed over to ex-President Jammeh	Received by Mr. Momodou Sabally
20/08/2013	650,000	Cash Withdrawal by Mr. Madun Sanyang	No purpose stated. Amount handed over to the Ex-President.	Received by Mr. Noah Touray
27/08/2013	450,000	Cash Withdrawal Mr. Madun Sanyang	No purpose stated. Amount handed over to the Ex-President	Received by Noah Touray
29/08/2013	100,000	Cash Withdrawal by GNPC	No purpose stated. Amount handed over to the Ex - President.	Received by Mr. Noah Touray
23/09/2013	224,900	Transfer to Organisation of Islamic Cooperation	Instructed by the Ex-President and Momodou Sabally on 17/09/2013 to transfer the amount to	

[66] Transcript of Mr. Noah Touray dated 14th September 2017

			OIC Account No. 2520031538.	
8/11/2013	2,034.796.50	Equivalent of 1.5 Euros paid to Michela construction an Italian Firm.	Construction of Slipways for the Aljamdu and Kansala Ferries.	
14/11/2013	585,000	Transfer to David Ford DBF2 Money Market Associates	For the purchase of Dunes Casino and Resort	Owned by the West Africa Resort and Casino, a limited liability company whose shareholders were David Ford 90% shares, Mr. Jim Fielder 5% shares, and Mr. Gene Fielder 5% shares. In 2013 Dunes was bought by the Ex-President in the name of Kanilai Group International by a sale agreement for the sum of USD650,000. Former Minister of Tourism and Culture Mrs. Fatou Mas Jobe, was present in the signing of the Agreement. It was agreed that the sum of USD97,500 being the Capital Gains Tax was to be held by the buyer and be paid on behalf of the seller. The President approved payment for the sum of

				USD585,000[67] &[68]. The title deed was prepared by the former Solicitor General, Ministry of Justice, Justice Basiru Mahoney (gratis). According to Mr. Momodou Sabally until he left as Secretary General there was no refund.
10/09/2014	195,348.84	Withdrawn by GNPC		
………/2014	150,000.00	Office of the President's Account at Access Bank	Bank transfer no purpose	
16/12/2014	200,000.00	Cash withdrawal by Mr. Sanna Jarju.	President's Vacation trip to Dubai	
12/01/2015	77,258.24	Equivalent of 65,403.25 transfer to BPI Tourism Services.	Payment for the Syrian Doctors.	The President did not agree to the payment because the arrangements with the Hotel was not done by the Office of the President. Eventually, payment was made to BPI Tourism[69] &[70]

[67]Supporting documents dated from 31st March 2008 to 15th January 2014 on Dunes Resort and Casino in a bundle admitted was tendered by Fatou Mass Jobe and admitted as Exhibits MS49 and MS42 *'Deed of Assignment with Serial Number 882/2014 Vol.77KD dated 22nd October 2013 between Dunes Resort and Casino and Kanilai Group International (KGI) Limited'*

[68] Transcript of Mrs. Fatou Mas Jobe - Njie dated 18th September 2017 and Mr. Noah Touray dated 12th September 2017

[69]Letter dated 30/10/2014 from BPI Tourism to Kalilou Bayo SG Office of the President. Re: Plead for the settlement of the videos, flights and accommodation for making of the part 1 and 2 of The Gambia Government Video Documentary of ex-President Jammeh and cost of

				Documents shows doctors were brought in by Euro African Group (EAGL) and initial payment to the Hotel made by the group.
10/02/2015	125,715.33	Transfer to GIA		
10/04/2015	22,283.44	Transfer to Ms. Teneng Camara. BPP University UK.	For tuition fee.	
10/04/2015	3,833.16	Transfer to Mr. Amat Bittaye City University Seattle.	For Stipend	
18/05/2015	92,912.00	Transfer to Studio Tech Audio Visual.	Payment for broadcasting material on behalf of GRTS.	
19/06/2015	11,492.00	Transfer to Mr. Sheikh Omar Bittaye.	Stipend	
19/06/2015	11,492.00	Transfer to Seedy Drammeh.	Stipend	
25/06/2015	129,870.13	Transfer to Gai Enterprise.	For construction of building at State House	
26/04/2016	200,000.00	Transfer to Golf International Bank UK.		

Accommodation and lodging of the Syrian Doctors plus minute sheets and bank transfer documents tendered by Kalidou Bayo and admitted as Exhibit MS86.

[70] Transcripts of Mr. Kalilou Bayo dated 7th November 2017 pgs. 14 & 15 and 8th November 2017 – pg. 3

DONATIONS TO THE EX- PRESIDENT'S COMPANIES AND POLITICAL PARTY

Donations were made to the political party 'Alliance for Patriotic Re-Orientation and Construction' (APRC) of Ex-President Jammeh and foundations of the Ex-President and the ex- first lady namely Jammeh Foundation for Peace (JFP) and Operation Save the Children.

(A) TBL Trust Business Plus account with account no. 11110097604:

- 15th February 2016, GMD75,000 paid to APRC Fund Raising Dinner[71];
- 10th November 2016, GMD22,500 was paid to APRC Youth account[72].
- A payment of GMD200,000 was made on the 27th April 2016 to Operation Save the Children.[73]

(B) GTB Current account with account no. 2011082171110[74]:

- 26th August 2011, GMD75,000 paid to JFP;
- 7th February 2014, GMD250,000 paid to APRC Fundraising Committee. Based on the narrative on the bank statement, a time deposit was cancelled to pay for this;
- 16th July 2014, GMD254,200 paid to July 22nd Revolution;
- 30th October 2015, GMD100,000 paid to JFP;
- 18th October 2016, GMD450,000 paid to Operation Save the Children.

(C) Skye Bank account no. 1021770031538

- 21st February 2013, GMD60,000 paid to APRC Fundraising Committee.

[71] Exhibit BB62B – TBL Bank Statement of GNPC – pg.86
[72] Exhibit BB62B(1) – TBL Bank Statement of GNPC – pg.174
[73] Exhibit BB62B(1) – TBL Bank Statement of GNPC – pg.112
[74] Exhibit BB56 – GTB Bank Statement of GNPC

Findings:

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On LOANS

(a) Loans were given to private companies and foundations owned by Ex-President Jammeh namely KFF, JFP and PEGEP. Letters to GNPC were issued using the letterhead of OP. Again this is conflict of interest as GNPC reported directly to OP. The evidence shows that JFP incurred bank charges because the Ex-President fraudulently used JFP accounts to borrow money from TBL. The Commission is of the view that the money was borrowed not for the benefit of JFP but for the Ex-President and that he should be liable for the sum of USD1,280,238.13 paid to JFP on the 29th June 2006 to cover bank charges and to KFF of USD419,761.87 as loan.

(b) Interference from OP was a lot which resulted to loans totalling over USD5,685,473 and payments made without any justification provided. Monies were paid out of GNPC's account and spent on activities that were not in line with GNPC's activities. Examples of such cases are[75]:

- settlement of rent arrears of USD45,300 for Cuban and Nigerian medical team in October 2006;

- cash payment of USD1 Million on the 25th October 2006 to PEGEP to carry out functions and mandate as a social function due to liquidity issues of PEGEP;

- cash payment of USD20,000 to DOYS&C to carry out functions and mandate as a social function due to liquidity issues on the 12th December 2006.

(c) For all the loans disbursed, there were no loan agreements signed between GNPC and the other party.

OP on the 17th May 2010 requested for a soft loan to Government of USD303,000 to be paid to HOBO Entertainment. '*The letter stated that MOFEA is duly notified to reimburse GNPC in the shortest possible time*.' However this process was flawed as MOFEA has the responsibility of securing loans for the Government and agreeing on the terms and conditions. Proper procedures were not followed.

[75] Exhibit SC2

(d) Debts had to be written off the books of GNPC as recovery was assessed to be very low. This is again loss of revenue to GNPC. Funds could have been used for the operations of GNPC particularly in its expansion project.

On UNLAWFUL WITHDRAWAL OF FUNDS FROM GNPC BANK ACCOUNTS

(e) In principle, the Ex-President Jammeh should not have been a signatory to any of GNPC's bank account. The same applied to the SGs. The reasons given by the Ex-President to SG Momodou Sabally, that he was taking over the GNPC accounts because he did not trust Momodou Badjie were false. The real motive was so that he could annex the accounts and use them at will. The Commission finds that there is probable cause for holding that the Ex-President intended to fraudulently convert the funds in the accounts to his own use and did in fact steal the following amounts within the meaning of section 245 of the Criminal Code:

- SKYE Bank (Gambia) Limited

Cash withdrawal of USD500,000 (USD250,000.00 and USD243,243.25 Dalasis equivalent) withdrawn from GNPC's accounts at Skye Bank (Gambia) Limited and Access Bank (Gambia) Limited and same were delivered to the Office of the President by Messrs. Momodou Badjie and Madun Sanyang pursuant to directive dated 6th August 2013 from the Office of the President.

TRANSACTION DATE	AMOUNT - USD	BENEFICIARY	PURPOSE
14/08/2013	650,000.00	Cash Withdrawal by Momodou Sabally.	No purpose Stated. Handed over to the Ex-President.
16/08/2013	150,000.00	Cash Withdrawal by Momodou Sabally	No Purpose handed over to Ex- President Jammeh

20/08/2013	650,000.00	Cash Withdrawal by Madun Sanyang	No purpose stated. Amount handed over to the Ex-President.
27/08/2013	450,000.00	Cash Withdrawal Madun Sanyang	No purpose stated. Amount handed over to the Ex- President
29/08/2013	100,000	Cash Withdrawal by GNPC	No purpose stated. Amount handed over to the Ex - President.
10/09/2014	195,348.84	Withdrawn by GNPC	……………….
16/12/2014	200,000.00	Cash withdrawal by Sanna Jarju.	President's Vacation trip to Dubai
TOTAL	**2,395,348.84**		

Skye Bank

TRANSACTION DATE	AMOUNT – USD	BENEFICIARY	PURPOSE
14/11/2013	585,000.00	Transfer to David Ford DBF2 Money Market Associates	For the purchase of Dunes Casino and Resort which he then proceeded to transfer to KGI.

- Guaranty Trust Bank

Transfer of **USD100,000 made to JFP's account** on the 8th April 2014. According to Mr. Momodou Sabally, the Ex- President later explained that a Saudi Princess donated the money to the Foundation and he withdrew the funds and the Princess was supposed to visit the Gambia. Ex-President Jammeh needed to reimburse the money to the Account before the visit. The funds were for the construction of a hospital, but it never happened.

(f) Evidence shows that public officers aided and abetted Ex-President Jammeh in accessing, diverting and withdrawing large sums of monies that should have been used for GNPC's core business activities.

The following persons aided and abetted the Ex-President to steal the monies specified above and thereby became a party to the offence of theft within the meaning of section 23 of the Criminal Code.

- **Momodou Badjie and Madun Sanyang:** Cash withdrawal of USD500,000 (USD250,000.00 and USD243,243.25 Dalasis equivalent) withdrawn from Skye Bank and Access Bank and handing same over to the Ex-President without the knowledge or approval of GNPC board.

- **Momodou Sabally**: By illegally becoming signatory to the account without the knowledge or approval of the Board of Directors of GNPC and proceeded to withdraw cash which he handed over to the Ex-President in the sums of USD650,000 and USD150,000 from Skye Bank Limited.

- **Madun Sanyang:** Being the finance director of GNPC aided and abetted the Ex-President by illegally withdrawing the sum USD650,000.00, USD450,000.00 and USD100,000.00 from the GNPC Skye Bank Account and handing same over to the Ex-President without the authority of GNPC board of directors.

- **INELIGIBLE EXPENDITURE**

(g) Furthermore, the Commission finds that significant expenditure was undertaken which are deemed to be ineligible.

Skye Bank

TRANSACTION DATE	AMOUNT – USD	BENEFICIARY	PURPOSE
10/09/2014	195,348.84	Withdrawn by GNPC	Not stated
16/12/2014	200,000.00	Cash withdrawal by Sanna Jarju.	President’s Vacation trip to Dubai
12/01/2015	77,258.24	Equivalent of 65,403.25 transfer to BPI Tourism Services.	Payment for the Syrian Doctors.
26/04/2016	200,000.00	Transfer to Golf International Bank UK.	Not stated
Total			

(h) The Commercial Banks implemented the change in signatories to that of Ex-President Jammeh and the then SG Mr. Momodu Sabally based on a GNPC letter signed by the MD (Mr. Momodou Badgie) and Head of Finance (Mr. Madun Sanyang). GNPC was a limited liability company in 2013 and a Board resolution was needed to effect the change in signatories. However, there was no board resolution passed to effect change as Mr. Badjie confirmed that the Board was only notified after the following the implementation of the directive. The Commission is of the view that it would be an unjust enrichment if they are allowed to keep any income realised from the accounts after the signatures were unlawfully changed.

(i) Deeds of Assignment (Title Deeds) are not in the possession of GNPC for the 4 villas purchased.

(j) Donations were also made by GNPC to APRC (a Political Party of Ex-President Jammeh, his foundations such as JFP and the foundation of ex-first lady Jammeh. A particular instance seen was for a donation to be made, GNPC had to cancel a time deposit which would have resulted to loss of revenue.

- 15th February 2016, GMD75,000 paid to APRC Fund Raising Dinner;
- 10th November 2016, GMD22,500 was paid to APRC Youth account;
- 7th February 2014, GMD250,000 paid to APRC Fundraising Committee. Based on the narrative on the bank statement, a time deposit was cancelled to pay for this;
- 16th July 2014, GMD254,200 paid to July 22nd Revolution;
- 30th October 2015, GMD100,000 paid to JFP;
- 18th October 2016, GMD450,000 paid to Operation Save the Children.
- A payment of GMD200,000 was made on the 27th April 2016 to Operation Save the Children.
- 26th August 2011, GMD75,000 paid to JFP;

RECOMMENDATIONS

(a) **USD1,280,238.13 paid to JFP** on the 29th June 2006 to cover bank charges and to **KFF of USD419,761.87** as loan should be recovered from the assets of Ex-President Jammeh.

(b) **The Ex-President should be charged for theft of the following sums:**

- **Cash withdrawal of USD500,000** paid out of the Skye Bank and Access bank accounts based on the directive of 6th August 2013 should be recovered from the assets of Ex-President Jammeh.

- **Cash withdrawals totalling USD2,495,348.84** from the other accounts were deemed to be ineligible and should be recovered from Ex- President Jammeh.

(c) Other payments deemed to be **ineligible totalled USD862,258.24 plus USD303,000 paid to HOBO Entertainment** and should be recovered from the assets Ex- President Jammeh.

Skye Bank

TRANSACTION DATE	AMOUNT – USD	BENEFICIARY	PURPOSE
12/01/2015	77,258.24	Equivalent of 65,403.25 transfer to BPI Tourism Services.	Payment for the Syrian Doctors.
26/04/2016	200,000.00	Transfer to Golf International Bank UK.	……….
Total	**277,258.24**		

(d) The then public officers such as Mr. Momodou Badjie and Director of Finance (Mr. Madun Sanyang) and Momodou Sabally that allowed Ex-President Jammeh and his cohorts to withdraw sums of money particularly from GNPC's foreign currency bank accounts should be held responsible and reprimanded. These officials should not serve in any public office or be appointed as Directors for any State Owned Enterprises (SOEs) for periods specified below:

- Madun Sanyang for 3 years
- Momodou Badjie for 5 years (plus what is decided in Vol. 9)
- Momodou Sabally for 5 years (plus what is decided in Vol. 9)

(e) Other public officers that aided and abetted Ex-President Jammeh in withdrawing so much money to effect ineligible and questionable payments in particular the SGs Messrs. Kalilou Bayo, Sulayman Samba, Lamin Nyabally and Noah Touray should be reprimanded and banned from public office for a minimum of 2 years.

(f) The commercial banks concerned namely GTB, Access Bank and Skye Bank should be fined D1,000,000 each to represent the bank charges and other benefits they derived from these illegal transactions.

(g) Donations made by GNPC to the Ex-President's companies, political party (APRC) should be:

- 15th February 2016, GMD75,000 paid to APRC Fund Raising Dinner;
- 10th November 2016, GMD22,500 was paid to APRC Youth account;
- 7th February 2014, GMD250,000 paid to APRC Fundraising
  16th July 2014, GMD254,200 paid to July 22nd Revolution;
-
- A payment of GMD200,000 was made on the 27th April 2016 to Operation Save the Children.

(h) GNPC should ensure that Deeds of Assignments (Title Deeds) are obtained for the 4 Villas purchased. These documents will show that GNPC are the rightful owners of the villas.

CHAPTER 2 – SOCIAL SECURITY AND HOUSING FINANCE CORPORATION

1. INTRODUCTION

Established by an Act of Parliament in 1981, Social Security and Housing Finance Corporation (SSHFC) is to manage and administer the Social Security and Housing Finance Funds, and connected matters. Its mandate includes the provision of social protection and affordable shelter for all Gambians. Moreover, SSHFC is an active partner of Government and others in national development as has been manifested in its investments in such key sectors of the economy as health, education, agriculture, and tourism.

Section 32 of the SSHFC Act 2015 established the Federated Pension Scheme (FPS) and the National Provident Fund (NPF). The purpose of the National Provident Fund is to provide some measure of protection for members against interruption or loss of earning power as a result of specified contingencies: Old age, premature retirement, and retirement on grounds of marriage (female only), invalidity, death and now redundancy[76]. The contribution rate is 15% of basic salary of the employee: 5% deducted from the wages of the employee and 10% paid by the employer on behalf of the employee. The Federated Pension Scheme was created to provide social protection to workers in the quasi-government organizations.

Preliminary reports received, inter alia, from Social Security and Housing Finance Corporation sources indicated that substantial funds were, either directly or indirectly withdrawn, paid out or expended on instructions or directives received from the Office of the President during the tenure of Ex-President Jammeh, sometimes for unknown purposes.

2. OVERVIEW

This report presents the findings and recommendations of the Commission following a review and analysis of the following:

A. Cash Payments made between July 1994 and January 2017.

B. Loans given to the Gambia Government and Public Enterprises between 1994 and 2017.

[76] See Section 32 of SSHFC Act 2015

C. Investments including Hotels Purchased and Managed (Ocean Bay Hotel & Resort and Sun Beach Hotel).

(A) CASH PAYMENTS

SSHFC made cash payments from its bank accounts in two currencies, namely GMD (Dalasis) and USD (Dollars) held at Trust Bank Gambia Limited A/C No: 11012652601 and 1110765701 details of which are highlighted in Table 1 and 2 below.

Cash Payment to Njogou L. Bah and USD500,000 Banker's Cheque

Evidence shows that there was a request in the sum of USD1 Million from the Office of the President by a letter dated 17th March 2011 signed by Dr. Njogu L. Bah addressed to the Managing Director of SSHFC[77]. The loan was granted by SSHFC on the 17th March 2011 by a letter written to the Managing Director of Trust Bank Gambia Limited signed by Mr. Tumbul K. Danso and Mr. Abdoulie Cham to effect the payment of USD1 Million. The Board also approved the loan through a Board Walkabout Resolution dated 17th March 2011[78].

Mr. Njogou Bah (Witness no. 20), said that the first **USD500,000** in cash was collected from him by Dr. Basirat Niasse who was a negotiator between Ghana and Gambia regarding the issue of the Ghanaians' killed in the Gambia. Mr. Alagie Ousman Ceesay witnessed the handing over of the money to Dr. Niasse[79].

The second transaction set out in table 1 is in respect of the other USD500, 000 which was to be paid to the Tsunami victims in Japan which was subsequently cancelled following a letter dated 6th October 2011 from Office of the President signed by Mr. Abdoulie T.B Jarra addressed to SSHFC to transfer the said amount to a Trust Bank Gambia Limited Account No: 12012099101 in the name of The Gambia Animal Feed and Rice Project[80].

[77] Exhibit SC17 Letter dated 17th March 2011 from O. P to MD SSHFC RE: request for loan facility in sum of USD1 Million Dollars plus approving Board resolution of SSHFC and other related documents.

[78] Exhibit SC50- Walkabout Resolution dated 17th March 2011 – The directors who constituted the board when it was approved were – Mr. Amadou Samba, Mr. Mod Secka, Mr. Tumbul K. Danso, Mr Ebou Ndoy, Mr Oremi Joiner, Mr. Simon Cole, Mr. Tamsir Badji and Mr. Malick Foon.

[79] Exhibit SC29- Acknowledgement of receipt of USD500, 000 dated 1st March 2011 by Dr. Basirat Niasse from Dr. Njogu Bah

[80] Exhibit SC17- Letter dated 6th May 20011 from the Office of the President to the Managing Director SSHFC Re: Trust Bank Dollar Account Opening, Gambia Animal Feed and Rice Project and letter dated 6th October from Office of the President to Managing Director Trust

The said loan of USD1 Million was debited from the National Provident Fund (NPF) account[81].

Transaction Date	Transaction Description	Beneficiary (Supplier)	Amount
17/03/2011	USD500,000 Cash at USD1/GMD29.20 received by Dr Njogou L. Bah - USD420,000 on 17/03/11 & USD80,000 on 18/03/2011 presented by Tumbul K. Danso & Abdoulie Cham respectively.	Gambia Government ---Office of the President	**USD500,000.00**
17/03/2011	USD500,000 Banker's cheque in the name of Govt of Japan was cancelled on letter dated 05/04/2011 signed by Mr. Tumbul k. Danso MD and Abdoulie Cham DOF & Investment to MD Trust Bank. Subsequently, letter dated 06/05/2011 from OP addressed to the MD that this USD500,000 should be paid into the Trust Bank Ltd USD current account no: 2012099101 Signed by Abdoulie T. B. Jarra for Secretary General and copied the MD TRUST Bank Ltd.	Gambia Food & Feed Industries (GFFI)	**USD500,000.00**

The review highlighted the following:

Bank Re: Change of Account names and signatories to Account Number 12012099101 with the name Gambia Animal Feed and Rice Project

[81] Exhibit SC17- Statement of Account from Trust Bank Gambia Limited

a) The directive on the letter dated 17/03/2011 for these payments was on Government letterhead.

b) No evidence submitted to establish that these payments were in line with SSHFC objectives. The USD500,000 paid to Mr. Njogu L Bah was in effect received by Dr. Basirat Niasse for an "onward transmission to the Ghanaian Government" with regards to the Ghanaians who had lost their lives in the country[82]. This payment of USD500,000 was neither in line with SSHFC objectives nor can it be classified as good investment.

FINDING:

The Board ought not to have approved this loan because it was not an investment and was not presented to it as an investment and therefore was not in the best interest of SSHFC. The USD500,000 cannot be regarded as a loan to Government because the Commission found no record where the Government agreed to pay compensation for Ghanaian victims. The Commission concludes that the arrangement was a private one between the Ex-President and the Ghanaians. The Ex-President is liable to repay this sum.

Of the USD1 million requested by Dr. Njogou Bah as a loan to OP, USD500,000 was eventually paid to Trust Bank Gambia Limited Account No: 12012099101 in the name of The Gambia Animal Feed and Rice Project and forms part of SSHFC investment to that company.

The members of the Board of Directors at the time were:

- Mr. Amadou Samba,
- Mr. Mod Secka,
- Mr. Tumbul K. Danso,
- Mr. Ebou Ndoy,
- Mr Oremi Joiner,
- Mr. Simon Cole,
- Mr Tamsir Badji and
- Mr Malick Foon

And they failed in their duty to the Corporation and ought to be reprimanded for giving away SSHF pension funds to the Ex - President.

[82] Transcript of Mr. Njogou L. Bah dated 10th October 2017

Cash Loan to Amadou Samba to buy a Water Tank

Evidence shows that Office of the President wrote a letter dated 3rd August 2011 signed by Mr. Ousman Jammeh addressed to the Managing Director SSHFC for a cash payment of D6.4 Million payable to Mr. Amadou Samba of GACEM[83].

SSHFC effected payment of D6.4 Million by a letter dated 4th August 2011 signed by Mr. Muhammed Lamin Gibba and Mr. Abdoulie Cham addressed to the Managing Director of Trust Bank Gambia Limited to effect payment of the said sum[84]. Mr. Gibba (Witness no. 26) confirmed that he wrote minutes giving approval to pay the money to Mr. Amadou Samba. **Mr. Gibba said that the Chairman of the Board at the time was Mr. Aki Bayo but he did not discuss the loan with the Board because it was extremely urgent and highly confidential and he could not remember taking the matter to the Board subsequently[85].**

The loan was debited from the National Provident Fund.

Transaction Date	Transaction Description	Beneficiary (Supplier)	Amount
03/08/2011	Cash Loan of D6,432,700 paid to Amadou Samba of GACEM	Amadou Samba (through Office of the President)	**D6,432,700.00**

Mr. Amadou Samba (Witness no. 82) testified that he bought the water tank for KFF from Braithwaite in the UK as requested and the water tank was installed at Kanilai. The Commission in a visit to Kanilai did see installed water tanks.

The review highlighted the following:

a) The Instruction/Directive was not on Government letterhead.

[83] Exhibit SC18- Letter dated 3rd August 2011 from Office of the President to Managing Director SSHFC RE: Cash loan in the sum of D6, 432, 700 payable to Mr. Amadou Samba of GACEM plus related documents
[84] Exhibit SC18- Letter dated 4th August 2011 from SSHFC to Managing Director of Trust Bank Gambia Limited
[85] Transcript of Mr. Muhammed Lamin Gibba dated 5th October 2017

b) No substantive evidence submitted to establish that this transaction was eligible and in line with SSHFC'S objectives of investment for reasonable returns.

c) There was no Board approval and thus disbursement was made before Board approval could be obtained.

d) The repayment tenor in the letter signed by Mr. Ousman Jammeh stated that the cash will be repaid in 30 days which means that the liquidation date for the full payment of this facility (no loan contract) was 02/09/2011. However, no evidence was sighted during the review to support that the amount in question has been fully or partially liquidated.

FINDING

The payment of this sum of D6,432,700 to Mr. Amadou Samba for the purchase of a water tank for KFF was unlawful because it was not authorised by the Board and it was not within the power of the Managing Director to make. Mr. Amadou Samba acted as an agent for the Ex-President/KFF in the acquisition of the water tank. Having been the Chairman of the SSHFC Board, he knew that such a transaction was unlawful because SSHFC funds cannot be withdrawn and applied to purchase a water tank for the Ex-President or his company.

In the Commission's view, all the parties involved i.e. Messrs. Ousman Jammeh, Muhammed Lamin Gibba, and Amadou Samba aided and abetted the Ex-President to illegally take SSHFC funds for the benefit of KFF (which is himself) even if they believed that he intended to return it, within the meaning of section 245(2)((e) of the Criminal Code.

Ex – President Jammeh and Mr. Amadou Samba should be liable jointly and severally for any loss arising from the sale of the Tanks plus interest at 10% from 4th March 2011 to 15th January 2019.

The Money can be traced to the water tank at Kanilai. SSHFC has a lien on the water tank.

The Commission notes that the said Cash Payments were Loans SSHFC gave out with no contractual loan agreements and thus there were no collaterals/security over these facilities and interest rates which ought to have applied on the face value of these loans. Even if the loan qualifies as an investment in line with SSHFC's objectives, the realisable benefit/return from such investment for the Corporation was nil and this therefore offset and neutralised any justification. Periodic facility reviews should have been conducted so that retrospective loan contract/agreements would have been prepared and sent to the Office of the President and other Public enterprises for them to commit to an agreement. Vast majority of these Loans have been sticky for several years and have fully exhausted the provisioning cycle as they are past due loans for at least more than a year. Writing off the loans is paramount so that the financial statements can reflect a true and fair view of the Corporation's state of affairs and operations.

(B) LOANS

Social Security and Housing Finance Corporation has provided Direct Facilities in the form of Loans to the Gambia Government and Public Enterprises.

The review of the transcripts of proceedings and documents submitted as exhibits revealed that loans disbursed to the Gambia Government and Public Enterprises by SSHFC were not written off from the Corporation's books.

Furthermore, SSHFC failed to either obtain bank assurance cover or guarantees/cash backed liens against these facilities. Although some attempts have been made by some of SSHFC's former Managing Directors in formulating strategies to recover some of the outstanding loans, it has been observed that continuous loan disbursements were made to the stated stakeholders on top of the existing facilities which were neither fully nor partially liquidated by them.

SSHFC has also given staggering loans (Financial Assets of the Corporation) to the Office of the President, Department Ministries and Public Enterprises without loan agreements, collateral/security, indemnity, etc. for most of the noted disbursements. It was also noted that no principal repayments were effected on these facilities (interest which ought to have been included in a loan agreement were forfeited or lost due to the opportunity cost of the Corporation not preparing an authenticated loan agreement and thus the true capital repayment has been discounted to only the face value of the principal amount of the loan outstanding for the majority of the cases).

Additionally, it was noted that most of these loans were past due (principal/mark up outstanding for more than 90 days) and if they were subject to proper provisioning and annual impairment review, they would have been written off from the Corporation's books as they were sticky and outstanding for at least a year and are deemed to be lost. Recoveries can still be sought after they have been written off.

Gambia Government Loans

Loans disbursed to the Gambia Government predominantly came from an Executive Directive from the Office of the President wholly and exclusively for the OP as the primary beneficiary or via the Office of the President for a Public Enterprise's consummation; other Government Departments; notably; the Ministry of Finance & Economic Affairs and the Ministry of Higher Education benefitted in the same way. These are highlighted below.

LOANS GRANTED TO OFFICE OF THE PRESIDENT

1. Eighty-Eight (88) Million Dalasi Loan

Evidence shows that on the 27th November 2014, OP wrote to the Managing Director of SSHFC to open a Letter of Credit to purchase a tent. On the 4th March 2015, SSHFC received a letter from Trust Bank indicating that the Bill of Lading for the tent had been received therefore a sum of D88 Million had been debited from SSHFC's bank account. Mr. Graham (Witness no. 67) stated that he wrote a letter to OP informing them that the tent had been received and by virtue of the Central Bank of the Gambia guarantee, they should instruct CBG to credit SSHFC's account with the full amount in order to avoid charges. On the 18th March 2015, SSHFC received a response from the Office of the President indicating that they had directed CBG to refund the money for the tent. On the 19th of March 2015, SSHFC Bank Statements revealed that the said amount of D88 Million had been credited to the Account[86].

2. Ten (10) Million Dalasi Loan

Evidence shows that Mr. Muhammed Lamin Gibba, former Managing Director of SSHFC wrote a Memo dated 14th October 2011 addressed to Mr. Abdoulie Cham, Finance Director of SSHFC to facilitate a loan of D10 Million to KGI International to purchase rams[87]. Mr. Muhammed L. Gibba wrote a letter signed by him and Mr. Abdoulie Cham addressed to the Managing Director Trust Bank Gambia Limited to debit the National Provident Fund A/C No: 1110765701 with the sum of D10 Million to KGI International A/C 11011807801[88].

[86] Transcript of Mr. Edward Graham dated 9th October 2017

[87] Exhibit SC19 Internal memo of SSHFC dated 14th October 2011 from the Managing Director to the Director of Finance and Investment RE: Loan of D10, 000, 000 to KGI to purchase Tobaski Rams for the Poor and the needy plus related documents

[88] Exhibit SC19- Letter dated 14th October 2011 signed by Mr. Muhammed L. Gibba and Mr. Abdoulie Cham

Mr. Gibba alleged that Ex-President Jammeh called him through a direct phone call for this loan. However, he could not convince the Ex-President to put it in writing.

A review of the transaction the D10 Million loan dated 14/10/2011 revealed the following:

a) No Loan Agreement was signed for the Purchase of Tobaski Rams for KGI. The 78 days stated in the request letter again was not adhered to as the loan (D10,000,000) was still outstanding past the due date.

b) The Directive for the Loan was ORAL. The review reveals that the directive was minuted in an **In Confidence Memo** by the Managing Director. A further review of the Transcript of proceedings highlighted that the Managing Director, Mr. Momodou Lamin Gibba, stressed that the notes he wrote in a confidential memo was following a conversation he had with the Ex-President to disburse the loan.

c) The Transaction was also not in line with SSHFC objectives.

d) No Board Approval was obtained before approving the loan and yet disbursements have been made to the obligor.

FINDING

The payment of D10 million to KGI as a loan to purchase rams was unlawful because it was not authorised by the Board and it was not within the power of the Managing Director to make. It cannot be regarded as a loan when no returns were agreed for the Corporation and no formalities were put in place for its return.

In the Commission's view, all the parties involved i.e. the Mr. Momodou Lamin Gibba, Mr. Abdoulie Cham aided and abetted the Ex-President to illegally take SSHFC funds for the benefit of KGI (which is himself) even if they believed that he intended to return it, within the meaning of section 245(2)((e) of the Criminal Code.

KGI failed to repay the funds. KGI and the Ex-President are liable to repay the sum of D10 million with interest at the CBG Treasury Bills rate prevailing. If it is found that KGI or the Ex-President do not have sufficient assets to repay this sum, then Mr. Momodou Lamin Gibba and Mr. Abdoulie Cham who authorised TBL to pay the funds without Board approval would be liable each for 5% of the shortfall.

3. Fifteen (15) Million Dalasi Loan

Evidence shows that Office of the President requested for a loan of D15 Million by a letter dated 27th September 2012 signed by Dr. Njogu L. Bah addressed to the Managing Director of SSHFC to purchase rams[89].

SSHFC facilitated payment in the sum of D15 Million in a letter dated 27th September 2012 signed by Mr. Saibatou Faal and Mr. Abdoulie Cham addressed to the Managing Director of Trust Bank Gambia Limited to effect payment D15 Million from the SSHFC **Industrial Injuries Compensation Fund** (IICF) A/C No. 11012652601 to another account bearing the name “”MRI Presidential Project A/C 11280412101’’.

Mr. Edward Graham[90] testified that he had been out of office for two years and only just reinstated as Managing Director so was tryin to get his balance and asked his deputy to continue as usual

A review of the transaction the Fifteen Million Dalasi loan dated 24/09/12 revealed the following:

a) No Loan Agreement for the Purchase of Rams from the Islamic Republic of Mauritania was signed between Social Security and Housing Finance Corporation (SSHFC) and the Office of the President, and there was no evidence of repayments towards the facility. A further review revealed that the tenor given by Mr. Njogu L Bah in the request letter was **90 days** for the facility (D15,000,000) to be fully liquidated. However, it was observed that the facility wasn’t repaid as at the due date of 23/12/2012 (90 days from the loan request date).

b) The Instruction for the loan was on government letterhead.

c) A review of the transcript of proceedings of the witnesses could not directly quote any section of the SSHFC Act that supports that this was in line with SSHFC objectives.

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[89] See Exhibit SC20 Letter dated 27th September from Office of the President to Managing Director SSHFC RE: Loan facility for the purchase of rams for Tobaski 2012 in the sum of D15,000,000 and related document

[90] Transcript of Mr. Edward Graham dated 5th October 2017

d) No Board Approval was obtained and yet payment was effected.

FINDING

The amount D15 Million was indeed paid to the MRI Account at TBL controlled by OP. The payment of this sum to the MRI Account was unlawful because it was not authorised by the Board and it was not within the power of the Managing Director to make. It cannot be regarded as a loan when no returns were agreed for the Corporation and no formalities were put in place for its return.

In the Commission's view, all the parties involved i.e. the Dr. Njogou Bah, Mr. Edward Graham, Mr. Saibatou Faal, and Mr. Abdoulie Cham aided and abetted the Ex-President to illegally take SSHFC funds for to purchase rams, which is not a legitimate function of OP even if they believed that it was a genuine laon, within the meaning of section 245(2)((e) of the Criminal Code.

The Ex-President is liable to repay the sum of D15million at first instance with interest at the CBG Treasury Bills rate prevailing. If it is found that KGI or the Ex-President do not have sufficient assets to repay this loan, then Dr Njogou Bah, Mr Saibatou Faal and Mr. Abdoulie Cham who authorised TBL to pay the funds without Board approval would be liable each for 5% of the shortfall.

The SSHFC Loans were for the purchase of Rams. This happened following an executive directive from the Office of the President dated 14/10/2011 and 24/09/2012

<u>Analysis on Purchase of Rams</u>

Request Date from Office of the President	Transaction Loan Description	Beneficiary(Obligor)	Repayable Tenor*	Amount
24/09/2012	Purchase of Rams from the Islamic Republic of Mauritania	Gambia Government - Office of the President	90 Days	GMD15,000,000.00
14/10/2011	Purchase of Tobaski Rams for KGI	Gambia Government- Office of the President	78 Days	GMD10,000,000.00

Repayable Tenor is the stipulated period the borrower OP promises to settle the loan in the request letter

4. Loan of USD4.5 Million for acquisition of State Aircraft

Evidence shows that OP requested a loan of USD4.5 Million the equivalent of D148.5 Million payable within 12 months by a letter dated 28th August 2012 signed by Dr. Njogu L. Bah addressed to the Managing Director SSHFC for the acquisition of a State Aircraft.

The said payment was debited from the National Provident Fund (NPF) account in Trust Bank Gambia Limited. Moreover, there was a letter **dated 7th November 2012** for the payment of an additional **USD85,704** to ferry the Aircraft to Banjul. An instruction was sent to Trust Bank Gambia Limited to effect payment on the same day **(7th October 2012).** A total sum of **USD4, 585, 704** was paid for the acquisition of the Aircraft.

There was a Loan Agreement dated 31st August 2012 between SSHFC and The Government of the Gambia (Office of the President) signed by Mr. Edward Graham on behalf of SSHFC and Dr. Njogu Bah on behalf of The Government of The Gambia in the presence of Mr. Noah Touray. The said Loan Agreement indicates that the duration of the loan was twelve (12) months[91].

A review of the loan revealed the findings below:

a) There was a Loan Agreement for the Acquisition of Aircraft. The letter on the request date states “Balance of Purchase Price” and it was signed on 31/08/2012. The repayment schedule shows that the repayment started from 31/10/2012 and evenly accrued at the end of the month up to full liquidation. The Total Capital Repayment at the expiry of the facility (30/09/2013) was D152,530,739.34 at an interest rate of 5% per annum as stipulated in the Loan agreement that: “interest payable on the unpaid principal at the rate of 5 percent effective 1st October 2012”.

b) However, no evidence of repayment has been submitted as exhibits to vouch that repayments have been made. The Instruction for the Loan was on Government letterhead and the transaction on its merits can be accepted to be in line with SSHFC objectives.

c) The Loan was granted without Board Approval and yet disbursement was made.

[91] Exhibit SC21- Loan Agreement dated 31st August 2012 between SSHFC and the Government of Gambia (Office of the President) involving a loan of USD4.5 Million US Dollars loan to the Government of the Gambia and payable within twelve (12) plus related documents

The Loan request dated 07/11/2012 for the Acquisition of Aircraft - Purchase of Fuel revealed the findings below:

a) There was neither a signed Loan Agreement nor were any repayments effected towards the facility.

b) The directive for the facility was on government letterhead and again the Transaction can be accepted to be in line with SSHFC objective, again on a standalone merit following a close analysis of the Transcript of Proceedings and evidence submitted by way of Exhibits.

c) The Loan was issued without Board Approval and thus payment was made prior to Board Approval.

FINDING

Even though a loan agreement was signed, the borrowing of money to purchase a plane by the Office of the President and the giving of the loan by the Managing Director of SSHFC Mr Edward Graham was irregular because it was not authorised by the Board and it was not within the power of the Managing Director to make.

However, the Plane was purchased and is the C5-GOG-BOEING B727-100 or Super 27, operational up to December 2016 when it was used by the former First Lady Zineb Jammeh to the United States of America (USA) and back. SSHFC has a lien on the plane and is entitled to sell the plane to recover the sum owed. If the amount recovered is insufficient, then same should be recovered from the assets of the Ex-President.

The Managing Director acted in excess of his powers.

<u>5. Procurement of Fire and Emergency Vehicles</u>

OP requested for a loan for the procurement of 8 Fire and Emergency vehicles by a letter dated 21st September 2012 signed by Dr. Njogu L. Bah addressed to the Managing Director SSHFC to facilitate payment of 15% of USD3, 659, 761.

SSHFC wrote a letter dated 21st September 2012 addressed to the Managing Director of Trust Bank Gambia Limited to effect payment of USD548, 964 from the National Provident Fund. **15% of USD3, 659,761** amounted to

USD548,964.15 equivalent of **D19,159,648.84** was paid to Oshkosh Corporation as advance payment for the said vehicles[92].

Evidence shows that on the 5th of May 2015, a letter emanated from Office the President signed by Mr. Noah Touray which stipulates that **Gambia Civil Aviation Authority (GCAA) should refund 50%** of the **D117 Million**, **Ministry of Finance 35%** and **Office of the President 15%**[93]. On the **9th of January 2014, the Board through a Board Resolution approved the loan** to secure the Fire and Emergency vehicles[94].
The directors who approved the loan were:

- Momodou Sabally,
- Edward Graham ,
- Muhammed Lamin Gibba,
- Oreme Joiner,
- Simon Cole,
- Malick Foon,
- Saibatou Faal,
- Ebrima K.S Dampha

The Loan request dated 21/09/2012 for the Procurement of 8 vehicles from OSHKOSH revealed the findings below:

(a) There was a signed Loan Agreement with GCAA for D60,000,000 (although the loan contract in paragraph 22.2 Notes refers to Banjul International Airport Yundum, West Coast Region of The Republic of The Gambia as the Borrower instead of GCAA). This Loan agreement was entered into following a letter dated 05/05/2015 Ref: PR/C/513/Vol. 14(66-NT) from the Office of the President stating "His Excellency, the President has indicated that the *GCAA should refund 50%, Ministry of Finance 35% and Office of the President 15%.* A payment plan should be agreed with the institutions concerned before 15th May, 2015"; signed by Mr. Noah Touray for Secretary General. A further review revealed that these refunds relate to the aggregate owings of D117, 508,851.74 with regards to the Fire Tenders & Ambulance of which the amount (USD548,964.15 or the D19,159,648.84 equivalent as exhibited in SC25) is a component. No evidence was sighted to vouch for the breakdown of these payments (excluding the audit confirmation of the USD548,964.15 in Table 4)

[92] Exhibit SC25
[93] Exhibit SC25
[94] Exhibit SC27A- SSHFC Walkabout Resolution for Fire and Emergency Vehicles

and no loan agreements were signed between the Ministry of Finance and Office of the President and no repayment plan sighted.[95]

(b) The balance of the Total USD3,110,796.85 (USD3,110,796.85 minus USD548,964.84 equals USD2,561,832.70) was meant to be financed by a Letter of Credit. However, a subsequent request from the Board to effect payment was approved by all the Board members except Mr. Bully Dibba. However, no evidence was sighted to establish that these payments were actually carried out. It couldn't be traced in any exhibited Bank statement.

(c) The instruction for the Procurement of 8 vehicles from OSHKOSH was on Government letterhead and the transaction can be accepted to be in line with SSHFC's objective.

(d) The loan was issued prior to the approval of the Board. Subsequently, through a Board Resolution was obtained for the loan.

Acquisition of Aircraft and Vehicles

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Repayable Tenor*	Amount
27/09/2012	Acquisition of Aircraft - Balance of Purchase Price	Gambia Government-Office of the President	365 Days	USD4,500,000.00
07/11/2012	Acquisition of Aircraft- Purchase of Fuel	Gambia Government-Office of the President	Not Sighted	USD85,704.00
21/09/2012	Procurement of 8 vehicles from OSHKOSH	Gambia Government-Office of the President	Not Sighted	USD548,964.15

The total Loan Facility consummated by the Office of the President directly (not requested for third parties, e.g. Public Enterprises) in GMD and USD respectively based on the review is highlighted below:

The principal amount is past due and outstanding as no evidence of either partial or full liquidation has been submitted as exhibits.

[95] Exhibit SC25

Summary of Total Loans Consummated Wholly by the Office of the President

GMD	**31,432,700.00**
USD	**6,134,668.15**

The Commission notes that there is nothing in our laws that empower the Office of the President or other department of State to borrow money for any purpose. Section 55 of the Constitution provides that "*No loan shall be raised by the Government on behalf of itself or any other person or authority otherwise than by or under the authority of an Act of the National* Assembly*.*"[96] Up to 2004 the only method of Government domestic borrowing was by the Minister of Finance directing the Central Bank to issue Government stock[97]. The September 2004 Government Budget Management and Accountability Act provides that "The Minister of Finance is the only person entitled to borrow from any legal entity or person, or to enter into a guarantee or indemnity with thirds parties"[98]. It was replaced by the Public Finance Act 2014 (effective date 1/1/2015) provides that "the Minister has the sole authority to borrow on behalf of the State, both in The Gambia and abroad." The purposes for which the Minister may borrow are restricted[99].

A. LOAN GRANTED BY SSHFC TO VARIOUS MINISTRIES THROUGH OFFICE OF THE PRESIDENT

1. Office of the President—Ministry of Agriculture - USD2 Million for JOHN DEERE MECHANIZATION PROGRAM

Evidence shows that on the 4th of June 2012, Mrs. Ada Gaye, Permanent Secretary, Ministry of Agriculture wrote a letter to the Secretary General, Office of the President for an Letter of Credit for the second tranche of the John Deere Mechanization Program. Subsequently, Mr. Charles Mustapha Camara, former Secretary General, Office of the President wrote a letter **dated 8th June 2012** addressed to the Managing Director SSHFC to facilitate Letter of Credit in the sum of **USD2** Million for the John Deere mechanization

[96] See section 55(4) of the Constitution also makes it clear that The Constitution also makes it clear Act providing for the raising of loans shall provide that the terms and conditions of the loan shall be approved by the National Assembly and the money received shall be paid into the Consolidated Revenue Fund
[97] See section 5 of the Local Loans Act Cap.75:02
[98] Section 35.
[99] Section 35 & 36.

program. On the 12th of June 2012, Mr. Charles Mustapha Camara Secretary General, the Office of the President wrote another letter addressed to SSHFC to facilitate an Letter of Credit for the same amount and subject matter[100]. The first payment was on the **24th August 2012** which amounted to **USD1.4 Million**. Ministry of Agriculture was the beneficiary of the farming equipment. According to Mr. Cham, when these loans were given to Government and not refunded, SSHFC lodged a complaint to the Ministry of Finance and then discussions were held with the Managing Director and Secretary General regarding the outstanding monies and that was the time when they established a Recovery Committee and the correspondences regarding the actual amounts owed to SSHFC by Government in which a reconciliation exercise was carried out[101]. Mr. Edward Graham stated that the debt portfolio at the time he took over was D1.004 Billion but he continued to grant loans under investments because loans are investments. He added that the government is the ultimate custodian of the funds not the management of SSHFC; their job was only to advise government to repay back these funds. He relied on section 5(1) and (2) of the SSHFC Act as justification[102].

Mr. Njogu Bah said that he had seen between 5 -7 Tractors at the State House but he was not sure how many tractors came in total. Assets were acquired through a special circumstance dictated by the Ex-President and they had to obey[103]. Mr. Katish Sharma, Managing Director of Safari Motor, Safari Equipment Enterprise was responsible for the assembling of these tractors which John Deere had already sold to Government of The Gambia. Five (5) tractors were already in State House, Banjul. Seventy-Eight (78) tractors were brought to Maintenance Service Agency (MSA) in Kotu and, according to Mr. Sharma, their role was to assemble John Deere tractors and then hand them over to Ministry of Agriculture[104]. Mr. Sharma's letter dated 13th November 2017 indicates **83** units of Tractors, 96 cultivators, 38 seed planters, and 18 units of 5 ton tipping trailers, 54 integral harrows, 7 MP, 25 four-row planters and 65 mounted spears. The tractors were handed over to Mr. Ousainou Jobe and Mr. Mustapha Minteh from the Ministry of Agriculture.

There was also a Memorandum of Understanding between Safari Equipment Enterprise and John Deere[105]. According to Mr. Ousainou Jobe (Witness no. 164), former Director of Engineering Service at Ministry of Agriculture, he

[100] Exhibit SC23- Letter dated 12th June 2012 from the Office of the President to the Managing Director SSHFC Re: Request for Letter of Credit (LC) for the second tranche of John Deere mechanization program amounting to USD2,015,082 and related documents
[101] Transcript of Mr. Abdoulie Cham at page 49-50
[102] Transcript of Mr. Edward Graham dated 5th October 2017
[103] Transcript of Mr. Njogu Bah dated 10th October 2017
[104] See Testimony of Mr. Kartish Sharma
[105] Exhibit MS139 – Folder with an assortment of documents including a Bank Statement for Safari Enterprise Savings Account relating to Safari Motors/John Deere Tractors

only signed as witness but the tractors were received by Mr. Sheriffo Bojang, Deputy Permanent Secretary, Ministry of Agriculture. A total number of **65** tractors were distributed to various regions and institutions under the instructions of Major Tamba, General Saul Badjie and the former Minister of Agriculture, Mr. Solomon Owens. Thirteen tractors were left at MSA which were subsequently delivered to other beneficiaries[106]. Mr. Anthony Carvalho testified that he sees the tractors when he goes on trek to the provinces both at the Governor's offices and in Agricultural Mixed Farming Centres. The four tractors they hired from the Ministry of Agriculture are the same tractors they financed as two years ago. They had logistic problems and they are currently being used in their depot in Saro. He stated that they are yet to pay for them because they have not been given an invoice although he has a copy of the correspondence between them, and that last month the controller of the Government vehicles did an inventory of the John Deere tractors and they gave them the Chassis Number and the Location. He provided a statement regarding the four tractors that were financed by Social Security and stated that the statement of account on the 5th December 2013 shows that Social Security was debited D127,9 05, 457.61[107].

[106] See Exhibit MS178- Summary dated 7th March 2018 of John Deere tractors distributed by Department of Agriculture Engineering Service to various beneficiaries plus related correspondences and Delivery Notes for the period 2013 to 2015. (Also See Testimony of Mr. Ousainou Jobe and Mr. Mustapha Minteh)

[107] Transcript of Mr. Anthony Carvalho dated 17th April 2018

<u>Procurement of Agricultural Implements (Farming Equipment) from John Deere Company</u>

<u>LC Facility: USD2,015,082. 00 by SSHFC (LC Banking Facility- A/C No: 11100349907)</u>

Transaction Date	**Description of Transaction**	**Evidence of Payment request by John Deere**	**Amount Paid by SSHFC** USD	GMD	**Comment**
27th June 2012	Commission Charges	YES		645,826.24	Exhibit SC 23 Sheet
24th August 2012	Payment on LC	YES	75, 749.76	2, 916,337. 67	
26th August 2012	Payment on LC	YES	869,032.89	31,395,248. 72	
19th October 2012	Payment on LC	YES	405, 042.16	14,624,305.07	
14th November	Payment on LC	YES	80,388.24	2,846,834.49	

<u>2. Office of the President - Ministry of Finance & Economic Affairs</u>

The Transactions in the table below were traced to a letter dated 24/11/2014 Ref: PR/C/513/Temp A (4-IA) from the OP with regards to SSHFC loans to Public Enterprises and Gambia Government. This letter followed a letter dated 5th November 2014 Ref: SSHFC/G/31/VOL.8/ (61) from SSHFC (without SSHFC letterhead) signed by Mr. Edward Graham, Ex-Managing Director.

<u>Loan to M.A Karafi (2010) and Outstanding AU Villas Balances</u>

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
24/11/2014	Loan to M.A Kharafi (2010)	Gambia Government-Ministry of Finance & Economic Affairs	GMD41,820,000.00

24/11/2014	Outstanding Balance on AU Villas	Gambia Government - Office of the President	GMD7,800,000.00

3. Office of the President - Ministry of Higher Education

As in **2** above, The Transaction in Table below was also traced to a letter dated **24/11/2014 Ref: PR/C/513/Temp A (4-IA)** from the Office of the President with regards to SSHFC loans to Public Enterprises and Gambia Government following a letter dated **5th November 2014 Ref: SSHFC/G/31/VOL.8/ (61)** from SSHFC (without the SSHFC letterhead) signed by Edward Graham, The Managing Director at the time.

Loan Turnkey Housing Estate (Science Academy)

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
24/11/2014	Turnkey Housing Estate (Science Academy)	Gambia Government-Ministry of Higher Education	GMD86,000,000.00

FINDING

The loans to MOA of USD2 Million, MOFEA of D41,820,000 and Ministry of Higher Education of D86 Million should be recovered from the assets of Ex-President Jammeh.

The Managing Director (Mr. Edward Graham) acted in excess of his powers as he did not have the Board's approval to authorise such transactions. There were no loan agreements signed between the parties involved

B. LOANS TO PUBLIC ENTERPRISES

The Public Enterprises which benefited from the loans issued by Social Security and Housing Finance Corporation are highlighted below.

1. NAWEC

Evidence shows that on **2nd June 2011** Ministry of Finance wrote a letter signed by Mr. Mod. A.K. Secka addressed to SSHFC to facilitate a loan of **USD8 Million** on behalf of NAWEC to settle International Islamic Trade Finance Corporation (ITFC). On the 28th of May 2012, Mr. Charles Mustapha

Camara Secretary General, Office of the President wrote a letter addressed to SSHFC to effect payment of **USD4.6 Million** to International ITFC. Another directive from the Office of the President dated **12th May 2012** for the payment of **USD5 Million** on behalf of NAWEC which was signed by Mr. Charles Mustapha Camara in his capacity as Secretary General. On the 14th of May 2012, SSHFC wrote a letter signed by Mr. Muhammed L. Gibba and Mr. Abdoulie Cham addressed to the Managing director of Trust Bank Gambia Limited to debit USD5 Million from the National Provident Fund (A/C NO: 11110765701). This was in addition to the USD4.6 Million transferred to the same institution on behalf of NAWEC[108]. A total amount of **USD23,144, 956** was paid to ITFC for Heavy Fuel Oil.

<u>Payment of Arrears to ITFC: Heavy Fuel Oil (HFO)</u>

Request Date from Office of the President	Transaction Loan Description	Beneficiary(Obligor)	Amount
31/12/2012	Payment of Arrears to ITFC: Heavy Fuel	Public Enterprise-NAWEC	USD5,613,944.88
14/05/2012	Payment of Arrears to ITFC: Heavy Fuel	Public Enterprise-NAWEC	USD5,000,000.00
28/05/2012	Payment of Arrears to ITFC: Heavy Fuel	Public Enterprise-NAWEC	USD4,600,000.00
02/06/2011	Payment of Arrears to ITFC: Heavy Fuel	Public Enterprise-NAWEC	USD7,931,011.12

A. The Loan request date of 31/12/2012 for the payment of USD5,613,944.88 Arrears to International Trade Finance Corporation (ITFC) for HFO on behalf of NAWEC by SSHFC revealed that:

a) No Loan agreement was signed and thus no repayments were effected towards the Loan, even though the request letter promises to liquidate the loan on 28/01/2013 (28 days from the facility date).
b) The Instruction was on Government letterhead and it can be acceptable that it is in line with SSHFC objectives on its own merit.
c) All the Board Members signed the resolution to grant the loan with the exception of Mr. Madi Jatta Ag. (S.G) and payment was made to the Borrower in line with Board Approval date.

[108] Exhibit SC24- Letter dated 27th September 2017 from Managing Director SSHFC to Managing Director NAWEC RE: loan confirmations showing NAWEC's total indebtedness to SSHFC as at 31 December 2015 plus related documents

B. The Loan request date of 14/05/2012 with regards to the Payment of USD5,000,000 revealed that:

a) No loan agreement was signed and thus no repayments were effected towards the loan.
b) The Instruction was on a Government Letterhead and it can be acceptable that it is in line with SSHFC Objectives.
c) The loan was issued without Board approval and yet disbursement was made.

C. The Loan request date of 28/05/2012 with regards to the Payment of USD4,600,000.00 revealed that:

a) No loan agreement was signed and thus no repayments were effected towards the Loan.
b) The Instruction was on a Government letterhead and it can be acceptable that it is in line with SSHFC Objectives.
c) The loan was issued without Board Approval and yet disbursement was made.

D. Furthermore, The Loan request date of 02/06/2011 with regards to the Payment of USD7,931,011.12 was traceable to an initial request of USD8M by Ministry of Finance to SSHFC on June 2 2011. However, there were two payment tranches of USD4,450,686.07 and USD3,480,325.05 respectively which were due to be paid to ITFC on 1st June 2011 and the USD3,480,325.05 equally due on June 20, 2011.

Further review revealed the following:

a) No Loan agreement was signed and thus no repayments were effected towards the Loan.
b) The Instruction was on Government letterhead and it can be acceptable that it is in line with SSHFC objectives.
c) The Loan was issued without Board Approval and yet disbursement was made.

<u>Brikama Power Plant, Corporate Loan: 2007 and Bank Charges</u>

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
24/11/2014	Brikama Power Plant	Public Enterprise-NAWEC	GMD74,517,000.00

24/11/2014	Corporate Loan:2007	Public Enterprise-NAWEC	GMD118,000,000.00
Bank Charges			GMD73,053,661.36
Total (including bank charges)			**GMD265,570,661.36**

Note that there was a Loan Agreement for the Corporate Loan of D118,000,000.00 which was signed on 07/04/2008. And a subsequent Debt Repayment Agreement was sighted between NAWEC and SSHFC for this expired facility dated 14/07/2016.

INSTALLATION, TESTING AND COMMISSIONING OF TWO (2) GENERATORS (EPC AGREEMENT)

The loan of D118 Million was granted to NAWEC by SSHFC on the 1st of October 2007 by virtue of a Board Resolution dated 1st October 2007 to purchase two 6.5 Mega Watts Generators[109]. When the loan was granted and the two Generators purchased, NAWEC could not make use of them due to the lack of certain components. Following a loan request from NAWEC to SSHFC to facilitate an additional loan of EUR1.8 Million to install, test and commission these generators, SSHFC wrote a letter dated 28th October 2010 addressed to the MoFEA seeking approval to grant the said loan. Ministry of Finance endorsed the approval of EUR1.8 Million in a letter dated the same day (28th October 2010)[110]. Mr. Edward Graham said that the D118 Million was meant to purchase the Generators while the supplementary loan was for the installation of the generators. The arrangement was that SSHFC would own all the Generators and then supply NAWEC with the power. SSHFC was to sell the power generated through the Independent Power Plant (IPP) to NAWEC and NAWEC will be paying SSHFC until they recovered both the D118,000,000 (Hundred and Eighteen Million) and the supplementary loan, then SSHFC would hand over the Generators to NAWEC [111].

SSHFC entered into an Engineering Procurement Agreement (EPC Agreement) with Global Trading Group dated 28th October 2010 for the Installation, Testing and Commissioning of the two (2) HFO generators. Mr. Edward Graham in his capacity as Managing Director of SSHFC signed on behalf of the SSHFC and Mr. Manhal Oueidat signed on behalf of Global Trading Group. On the 31st July 2013, SSHFC wrote a letter signed by Mr. Edward Graham and Mr. Abdoulie Cham addressed to the Managing Director of Trust Bank Gambia Limited to effect payment of EUR148,570 an equivalent of D7. 3 Million from the National Provident Fund A/ No: 111-0765701. This NAWEC Loan is part of the D1.7 Billion owed to SSHFC by

[109] Exhibits SC34,SC47, SC49 (C) and SC50
[110] Exhibit SC34
[111] Transcript of Mr. Edward Graham dated 5th July 2018

Office of the President and other Public Enterprises[112]. There is also a Debt Repayment Agreement between SSHFC and NAWEC to repay the loan of D118 Million where NAWEC agrees to authorize the institution to pay their monthly electricity and water bills to SSHFC to offset the current outstanding debt owed to SSHFC[113].

2. Gambia Groundnut Corporation (GGC)

(a) Ministry of Finance instructed SSHFC to guarantee GGC for a D150 Million loan with **Trust Bank Gambia Limited**. GGC defaulted which resulted in TBL compelling SSHFC (Guarantor) to liquidate their long term deposit investment in the sum of D127,905,000. The said loan is still outstanding[114].

(b) SSHFC guaranteed GGC another loan of D150 Million. The said loan is guaranteed under the purview of Groundnut Marketing Season and Crop which GGC had represented to SSHFC. The said loan was awarded by **BSIC** and there was a liquidated term deposit of D41,673,000 which GGC has still not paid to SSHFC[115].

(c) SSHFC guaranteed GGC an additional loan D100 Million with **Ecobank**. There was a liquidated amount of D42 Million. A**ccording to Mr. Abdoulie Cham GGC owed SSHFC a total amount of D222,763,504.** However, according to Mr. Edward Graham's letter dated 5th November, 2014, Gambia Groundnut Corporation owes a SSHFC D186, 005, 224.78[116].

Liquidated Fixed Deposit with BSIC, Trust Bank, and Corporate Loan

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
24/11/2014	Liquidated Fixed Deposit with	Public Enterprise-GGC	GMD39,673,767.17
24/11/2014	Liquidated Fixed Deposit with	Public Enterprise-GGC	GMD119,905,457.61
24/11/2014	Corporate Loan	Public Enterprise-GGC	GMD26,426,000.00

[112] Exhibit SC34- Engineering Procurement Construction that is (EPC Agreement dated 28th October, 2010 between Social Security and Housing Finance Corporation and Global Trading Group, NV Antwerp and related correspondence in a bundle

[113] Exhibit SC26- Debt Repayment Agreement between SSHFC and NAWEC entered into 14th day of July 2016

[114] Transcript of Mr. Abdoulie Cham dated 3rd October 2017 at page 73

[115] See Testimony of Mr. Abdoulie Cham at page 73

[116] See Testimony of Mr. Abdoulie Cham at page 73-74

3. Gambia Radio and Television Services

Evidence shows that on the **16th January 2013**, OP wrote a letter signed by Dr. Njogu Bah addressed to SSHFC conveying Executive Directive to pay a sum of **EUR200,000** to LC2 International for transmission rights for the African Cup of Nations Tournament and other International Tournament slated for **19th January 2013**. The Bank details were attached to the said letter and SSHFC was required to effect payment on the **17th January 2013**[117]**.**

Contract for the Acquisition of CAF & European League

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
16/01/2013	Contract for the Acquisition of	Public Enterprise -	EUR200,000.00/GMD9,151,500.00

A review of the EUR200, 000.00 loan request dated 16/01/2013 for the settlement of the Contract for the Acquisition of CAF & European League Package 2013-2014 from LC2 International revealed that:

a) No Loan agreement was signed and thus no repayments were effected towards the Loan.
b) The Instruction was on Government letterhead and it can be acceptable that it is in line with SSHFC objectives.

The loan was initially issued without Board Approval. However, a Board Resolution was subsequently obtained.

4. Gambia Radio and Television Services (GRTS)

MoFEA instructed SSHFC to guarantee a loan of USD1,845,000 to GRTS. SSHFC facilitated the said amount following a Board Resolution dated 12th May 2009[118]. A cash cover in SSHFC's bank term deposit was also provided for this loan. Mr. Lamin S. Ceesay, Director of Finance said that he was told by the former Director of GRTS, the late Alh. Momodou Sanyang, that Government had given GRTS a satellite project to RS1 Company and it was agreed that Ministry of Finance was going to pay for the project but Trust

[117] Exhibit SC22 Letter dated 16th January 2013 from Office of the President to Managing Director SSHFC RE: Contract for the acquisition of CAF and European League Package 2013-2014 at the cost of €200, 000 plus related documents
[118] See Exhibit SC48B

Bank Gambia Limited will pre-finance it as a loan and SSHFC, was the Guarantor. He only used GRTS Trust Bank Account because GRTS was the beneficiary institution. However, he also advised the Director to open a new account for such a project. He requested to speak to the Permanent Secretary at the Ministry of Finance, Mr. Abdoulie Jallow, who also confirmed that Ministry of Finance will pay everything[119]. SSHFC investment was liquidated in the sum of D37,798,000. SSHFC contracted another loan on behalf of Gambia Radio and Television Service (GRTS) in respect of Satellite link and Construction of Sankulay Kunda Road in which the Satellite link amounted to D37 Million. Mr. Lamin S. Ceesay said that the Director of GRTS, Alh. Momodou Sanyang, told him that the owner of RS 1 Company for the satellite project owns the Acrow Africa Alliance Company and he contracted for the construction of the Sankulay Kunda Bridge and the same arrangement was in place. He contacted PS Jallow at the Ministry of Finance who confirmed in the affirmative. GRTS never paid a butut in respect of these loans. In fact, the said account has a zero balance and it has been left throughout[120]. This is in addition to the EUR200,000 equivalent of D19 Million for the CAF and European League Package. According to Mr. Lamin Ceesay Former Finance Director of GRTS, he claimed that MoFEA was responsible for the loan of Sankulay Kunda Bridge[121].

Contract for the Satellite Link Project Loan Package 2013 - 2014

Request Date from Office of the President	Transaction Loan Description	Beneficiary (Obligor)	Amount
24/11/2014	Satellite Link Project Loan Package 2013-2014	Public Enterprise - GRTS	USD1,845,000.00/GMD23,143,693.38

FINDING

(a) The borrowing of money to purchase generators by the Office of the President and the giving of the loan by the Managing Directors of SSHFC was irregular because it was not authorised by the Board and it was not within the power of the Managing Director to make.

However, the Generators were purchased and is operational and used by NAWEC. SSHFC has a lien on the Generators and is entitled to sell the generators to recover the sum owed. If the amount recovered is

119 Exhibit MS214A- Statement of Mr. Lamin Ceesay
120 Exhibit MS214A- Statement of Mr. Lamin Ceesay
121 Exhibit MS214A- Statement of Mr. Lamin Ceesay

insufficient, then same should be recovered from the assets of the Ex-President.

The Managing Director acted in excess of his powers.

(b) For the loans to GTRS which were based on executive directive, the EUR 200,000 should be recovered from the assets of Ex- President Jammeh.

(c) On the GGC amounts owed to SSHFC of D186,005,224.78, these amounts since issued based on the instruction of MoFEA should be repaid by Government. Fixed deposit investments of SSHC were liquidated by the banks to recover outstanding amounts due.

(d) On Gambia Radio and Television Services (GRTS), MoFEA instructed SSHFC to guarantee a loan of USD1,845,000. SSHFC facilitated the said amount following a Board Resolution dated 12th May 2009. Therefore, the funds should be repaid by Government.

C. EQUITY INVESTMENTS OF SSHFC

Pursuant to section 40 of the SSHFC Act, the Corporation may, with the approval of the Minister invest in a property held by it and forming part of the Social Security Fund or sell such property if it thinks fit; monies forming part of the Social Security fund - in Gambia Government Stock, in shares or debentures of a Statutory Corporation, in a society or company registered in The Gambia or by way of loans at the rate of interest the Board thinks fit[122].

Pursuant to section 62 of the SSHFC Act, the Corporation may from time to time, and with the approval of the Minister, invest in a property held by it and forming part of the Housing Fund or sell such property if it thinks fit; and monies forming part of the Housing Fund in shares, debentures or debenture stock of a Statutory Corporation, Society or Company registered in The Gambia or by way of loans at such interest to such Corporation as the board thinks fit[123].

Moreover, the Corporation may invest a sum not exceeding thirty-five per cent (35%) of its investable funds in a viable venture; and invest moneys

[122] See section 40 of SSHFC Act 2015
[123] See section 62 (1) (a) and (b) of SSHFC Act 2015

forming part of the Housing Fund in Bank Term Deposits, or in Government securities such as Gambia Government Treasury Bills and stock[124].

According to Mr. Abdoulie Cham (Witness no. 66), Finance Director of SSHFC, the Equity Investments of SSHFC made under the Directives of the Office of the President is about D1.8 Billion and D310 Million is classified as Non-Performing Investment in SSHFC's financial statements. GAMCO investment is about D15.6 Million, Gallia investment is D162.1 Million, Qatari investment is D133.6 Million and Gam-Petroleum is D377 Million. These investments are discussed below:

1. Gam-Petroleum

Social Security and Housing Finance Corporation made this investment in 2008. SSHFC purchased 31% of the shares in Gam-Petroleum at a cost of D377 Million. The investment was categorized by SSHFC as a non-performing investment from 2008-2014 this was due to the fact that dividends were not paid. SSHFC received D7,380,000 from 2014-2015 and D8,716,000 from 2015-2016 making a total sum of D16 Million as payment of dividend. According to Mr. Abdoulie Cham there should be a Dividend Policy from Gam-Petroleum regarding the payment of dividend[125].

2. Gallia Holding Limited

Evidence shows that on the 8th of March 2011, Office of the President wrote a letter signed by Mr. Mod A.K Secka addressed to the Managing Director SSHFC to effect payment of 20% which was about EUR350,000 for the acquisition of two (2) Ferries from Gallia Holdings Limited. The agreed price for one of the Ferries now being considered PAPAGEORGIOU IV is EUR1,750,000. Subsequently, a Walkabout Resolution dated 8th March 2011 signed by SSHFC Board members approved then transfer of the said sum to purchase these Ferries from Gallia Holdings Limited[126].

Moreover, on the 30th March 2011, there was a letter from Office of the President signed by Secretary General, Mr. Alieu Ngum, addressed to the Managing Director SSHFC requesting payment of EUR979,375 to the same Gallia Holding Account (GR 08054007700003 460 25012014). The purpose of this EUR979,375 was to design the Banjul and Barra Slipways for the ferries. A Board Resolution dated 1st of April 2011 was signed by SSHFC Board members approving the payment of EUR979,375 to Gallia Holdings

[124] See section 62 (2) (a) and (b) of SSHFC Act 2015
[125] Exhibit SC47 and Testimony of Mr. Abdoulie Cham.
[126] Exhibit SC35- Walkabout Resolution and the Executive Directive from Office of the President to SSHFC to effect Payment.

Limited to design the Slipways for the ferries[127]. A Joint Venture Agreement dated 5th March, 2011 signed between Government of the Gambia and Gallia Holding Limited. The parties to the said agreement were Mr. Hali Abdoulie Gai, who signed on behalf of the Gambia, and witnessed by Mr. Pa Harry Jammeh and Mr. Stavros Galanakis, who signed on behalf of Gallia Holdings Limited[128]. The ferries could not dock at the Port. Arbitration proceedings are now commenced between The Republic of the Gambia and Gallia Holdings Limited to amicably solve this problem.

3. Qatari Investment - GFFI

Evidence shows on the 20th May, 2010 Office of the President wrote a letter addressed to Managing Director, Gambia National Petroleum Company (GNPC 15%), Managing Director Gambia Ports Authoring(GPA 20%) and Managing Director SSHFC to effect payment (65%) of USD7 Million which amounted to USD4.5 million dollars approximately D118 Million for a joint venture with a Qatari Company. Another letter dated 28th May, 2010 signed by Mrs. H. M. Tambadou - Jawara rectifying that the amount should be in US dollars instead of Gambia dalasis. A Board Resolution dated 2nd June 2010 was signed by Board Members at which time Mr. Amadou Samba was the Chairman and Mr. Edward Graham was the Managing Director[129]. The said amount was debited from the National Provident Fund[130]. The site for this venture was Kamalo along Banjul - Serekunda Highway. According to Mr. Abdoulie A. Cham, the Qatari company was to Manufacture Animal Feed. The Qatari Company was later renamed to Gambia Food and Feed Industries (GFFI). He added that after the Company ceased operation there was a Board which involved Social Security, Gambia Ports Authority (GPA) and Gambia National Petroleum (GNPC) and Mr. Mustapha Colley, Deputy Managing Director of Gambia Groundnut Corporation (GGC) was the Chairman of the Board in September[131]. Exhibit SC31 which was a letter from the Office of the President dated 6th October, 2011 informing SSHFC and other institution that the Account at Trust Bank for the Gambia Food and Feed Industries (GFFI) was to be changed to Gambia Animal Feed and Rice Project and USD500,000 had been paid by the Office of the President. However, according to Mr. Abdoulie Cham, this USD500,000 is part of the

[127] Exhibit SC35- Joint Venture Agreement between The Republic of The Gambia and Gallia Holdings Limited dated 5th March, 2011 on the Acquisition of the Ferries: Aljamdu and Kansala plus related documents.

[128] Exhibit SC35- Joint Venture Agreement between The Republic of the Gambia and Gallia Holding Limited.

[129] See Exhibit SC 49 B and SC 36- Letter dated 20th May, 2010 from Office of the President to the Managing Director SSHFC, the Managing Director Gambia Ports Authority (GPA) and the Managing Director Gambia National Petroleum (GNPC): RE on the matter of the proposed Joint Venture with ***"The Qatari Company"*** and related documents.

[130] Exhibit SC36

[131] See Testimony of Mr. Abdoulie Cham.

USD1 Million loan granted to Office of the President discussed above but Gambia Government is claiming ownership of this USD500,000[132]. Mr. Ousman Jammeh, former Secretary General said that the project was a result when the Ex-President made an official visit to the Emirate of Qatar that he met with a group who had a proposal to implement a Rice Mill in The Gambia and add value to the rice production in The Gambia. In light of this, the Ex-President pushed the project himself. However, it was inappropriate for the Office of the President to transfer a sum of USD500,000 to a private account with private people but the justification the group gave was that monies were coming and they wanted to be part of The Gambia and be working with certain Gambia entities[133].

[132] See Testimony of Mr. Abdoulie Cham
[133] See Testimony of Mr. Ousman Jammeh

4. Hotels (Ocean Bay Hotel and Sun Beach Hotel)

a. OCEAN BAY HOTEL

In August 2001, the Department of State for Tourism embarked on a Tourism Revitalisation programme to help increase growth and investment in the Tourism Sector in the Gambia. In this regard, the Secretary of State at the time invited the International Bank for Commerce (IBC) to consider purchasing Mariatou Beach Hotel (now known as Ocean Bay Hotel and Resort Ltd). IBC expressed an interest to invest in Mariatou Beach Hotel but wanted a reputable Gambian partner with sufficient technical expertise and financial resources to partner with in purchasing the said hotel.

It was as a result of this that Social Security and Housing Finance Corporation (hereinafter referred to as SSHFC) were invited by the Department of State for Tourism and Culture to participate in this acquisition venture with IBC. SSHFC thereby confirmed their willingness to explore the possibilities of partnering with IBC in the purchase of the Mariatou Beach Hotel.

However, IBC later intimated that it was no longer interested in the purchase of Mariatou Beach Hotel and the Department of State thereafter advised SSHFC to purchase the said Hotel. SSHFC agreed to the acquisition of the hotel and sought Government's approval to proceed with the purchase of Mariatou Beach Hotel. SSHFC at the time did not have a Board of Directors and the Department of State for Finance and Economic Affairs was overseeing its activities. Mariatou Beach Hotel was then owned by the Government of the Gambia, by transfer from Mr. Babanding Foutanka Sissoho, the previous owner. SSHFC not only wanted to buy the hotel but had intentions to refurbish and upgrade it to 4-Star standard. SSHFC's appraisal of the purchase price, refurbishment and upgrade of the said hotel was in the region of **D104, 000,000**. The Department of State for Finance and Economic Affairs conveyed its approval for SSHFC to purchase and refurbish Mariatou Beach Hotel via a letter dated the 18th June 2002[134].

SSHFC negotiated with the Department of State for Tourism which was charged with selling the Hotel on behalf of the Gambia Government and agreed on the sum of **D44, 820, 824.00.** The Hotel was purchased in June of 2002 for the aforesaid sum and a sum of **D59, 200, 000.00** was earmarked for the refurbishment and upgrade of the hotel to 4-Star standard bringing the

[134] Exhibit MS281

total proposed investment SSHFC sought approval for to the sum **D104, 000, 000 .00**.

The Management of the SSHFC with the approval of its Board of Directors and the Department of State for Finance and Economic Affairs invited eight contractors and companies in July 2002 to submit tenders for the refurbishment and rehabilitation of the former Mariatou Beach Hotel. Out of the eight contractors invited to submit tenders, only two returned completed bids by the submission deadline. It is worth noting that by this time *Emporium Construction and Furnishing Ltd* was not amongst the companies that was invited by SSHFC to tender for the refurbishment and rehabilitation of the hotel. SSHFC, in anticipation of the planned refurbishment of the hotel, engaged the services of a consultant by the name of Mr. Robert Aschwanden, then the Managing Director of the Kairaba Hotel, to appraise/evaluate all the bids submitted and to also supervise refurbishment works. The scope of his consultancy was clearly expressed in the **Exhibit MS282B.**

The two companies that submitted their bids by the tender deadline were GETRA and BAO. The aforesaid Consultant advised that GETRA was not in a position to perform the refurbishment works to the expected standard as they were not a reputable and reliable company. SSHFC was therefore left with only BAO to deal with after its management ruled out GETRA based on the advice of the Consultant. It was at this point that Emporium entered the scene when it was invited to submit a bid for refurbishment works of the hotel and its subsequent submission of a bid was accepted by SSHFC management as the only challenging bidder to that of BAO. As to how Emporium came in to the picture, remains a mystery as it was suspiciously accepted as the second challenging bidder. The minutes of the emergency meeting of the SSHFC Board held on the 18th January 2003 indicated that Managing Director of SSHFC at the time, **Mr. Andrew Sylva, stating that Emporium was proposed to his Corporation** and was accepted as the second bidder to challenge the bid submitted by BAO[135]. Mr Sylva did not; however, state the person that proposed Emporium to SSHFC but the only assumption that can be drawn from this statement is that it could only have been Ex-President Jammeh through Mr. Amadou Samba, the Chairman of SSHFC Board at the time. They were the only two people who had the power, clout and/or the audacity to make such a proposal knowing that it would definitely be accepted.

Moreover, the other suspicious aspect of this saga is the fact that the Managing Director of Emporium, Ms. Ferlaly Diab, had a meeting with the Consultant and Mr. Amadou Samba, the Chairman of the SSHFC Board at

[135] Exhibit MS283

the time, at Mr. Samba's Gamwater office on the 25th January 2003[136]. On the 10th January 2003 Ms. Diab said she received verbal approval from Mr. Amadou Samba to execute the works under the terms and conditions as laid down by the Consultant. This meeting came a week after the SSHFC Board had met and voted by a majority to award the contract to Emporium. The question is what the purpose of the meeting at Gamwater was since the contract had already been awarded by the Board. The Board Chairman was not the one who awarded the contract so why would they meet at his company office. The only reasonable conclusion that can be drawn from this is that he may well have influenced Emporium being invited to submit a bid and subsequently being accepted by SSHFC as the second challenging bidder to the bid of BAO. It is worthy of note that when Ms. Diab was asked about her relationship with Mr. Amadou Samba said he was like family to her and was her father's childhood friend. Something about that meeting at the Gamwater office just does not add up.

Emporium did submit a bid for the refurbishment and upgrade of the hotel sometime in December of 2002. The relevant correspondences were tendered in a bundle[137]. The bids submitted by BAO and Emporium were then appraised by the said Consultant who subsequently prepared a report advising SSHFC to award the contract for the refurbishment and upgrade of the hotel to BAO which had submitted a more convincing project proposal than that of Emporium and, what is more convincing is that, BAO had the experience as they had executed similar projects within and outside the Gambia. As can be gleaned from Board minutes, the Management of SSHFC had recommended that Emporium be awarded the contract but not all the Board members were in agreement with management's recommendations which resulted in the matter being put to a vote. The SSHFC Board by a majority decision of 5 against 2 resolved to award the contract to Emporium. The contract price was in the sum of **USD6, 500, 000[138].**

After the award of the contract to Emporium at the aforementioned contract price, SSHFC sought Government's approval for the said expenditure via a letter dated the 5th February 2003[139]. The Department of State for Finance and Economic Affairs expressed concerns with regard to the contract sum in addition to the purchase price of the hotel as being on the high side but SSHFC tried to justify these expenditures which approval was later granted.

[136] Exhibit MS304
[137] Exhibit MS 304
[138] Exhibit MS 283
[139] Exhibit MS 284

Furthermore, a contract for the refurbishment and upgrade of Ocean Bay Hotel was executed between SSHFC and Emporium dated the 12th March 2003 in the sum of **USD6, 500, 000[140].** According to Mr. Tumbul Danso (Witness no. 68) and Ms. Laly Diab (Witness no. 104), Emporium completed the refurbishment works and handed over the hotel to SSHFC who were satisfied with the project and thereby certified same. There were variations to the original works requested by SSHFC and a contract signed to that effect in the sum of **USD1,053,837**. The hotel could not however be handed over to SSHFC within the 8 months stipulated in the contract which led to several extensions being granted to Emporium. There were delays in the works being carried out by Emporium but it is evident that Emporium for reasons best known to SSHFC's management were not asked to pay liquidated damages of **USD3, 000** per day agreed upon in the said contract.

Leasing of the hotel to BP Investment Group FZE (BPI)

It is in evidence that after the handing over of the hotel, SSHFC operated the hotel on their own for about 10 years and were making losses which resulted in the constant injection of cash by SSHFC which did not yield any dividends on their investment.

The overall amount invested by SSHFC in Ocean Bay Hotel including its purchase, the refurbishments and operating the hotel came to a staggering **D500,000, 000**. Evidence adduced by Mr. Edward Graham suggest that since their investment was not yielding any returns, the Management of SSHFC, after being tasked to review the investments made, decided to lease out the hotel and the Board gave their blessing to this.

It is a fact that the hotel was thereafter leased to **BP Investment Group FZE (BPI)** led by Mr. Nicolae **Buzaianu** Ambassador at Large on the instructions of Ex-President Jammeh conveyed in an Executive Directive dated the 19th August 2013[141]. The SSHFC Board approved the leasing of the hotel to BPI by an amended Board Resolution dated the 2nd September 2013 after the said Executive Directive was given[142]. A lease agreement was executed between SSHFC and BPI on the 30th October 2013 for an initial period of 10 years with an option to renew for a further 5 years after the expiry of the initial term[143].

The evidence adduced especially by Mr. Tamsir Badgie (Witness no. 219) shows that a task force comprising SSHFC management was set up and required to negotiate with representatives of BPI on the Leasing of the hotel.

140 Exhibit MS132
141 Exhibit MS 249
142 Exhibit MS 262
143 Exhibit MS 181

Negotiations were held but it is evident that the task force members were aware of the Executive Directive and were therefore only able to negotiate on terms favourable to BPI. In other words they could not negotiate the best possible deal as they felt that their hands were tied because of the Executive Directive[144].

It is also a fact that SSHFC did not invite interested or potential investors to make offers to Lease the hotel nor did they advise Office of the President that there is a possibility of obtaining a better deal than that of BPI's should they be permitted to open the leasing of the hotel to the prospective investors.

It goes without saying that before the Executive Directive ever came, there was an offer to Lease the hotel from Cordial Canarias Hotels & Resorts represented by Ms. Ida D. Drameh & Associates, communicated in a letter dated the 1st August 2013[145]. This offer was rejected flat out by SSHFC via a letter dated the 13th August 2013[146]. There was also another offer to lease the hotel from Eco Hotel Limited which too was rejected by SSHFC Management.

Moreover, after the lease agreement was signed, BPI made some renovations and started operating the hotel but were deducting the sum of **EUR6,000 per month** from the rental amount for works carried out without justifying these expenditures by way of providing bill of quantities, receipts or invoices pertaining to the works they claimed to be carrying out. It was a term of the agreement that BPI would first notify SSHFC anytime they intended to carry out improvements on the hotel but failed, refused and/or neglected to adhere to this. Mr. Muhammadou Manjang stopped BPI from deducting **EUR6,000** per month from the rental when he was appointed Managing Director of SSHFC as he claimed they were not in compliance with the agreed terms and conditions. BPI was also supposed to be paying the monthly rent stipulated in the agreement on a quarterly basis but at times defaulted[147]. This resulted in SSHFC writing to them on many occasions as can be seen on the letters written to BPI by SSHFC[148]**.**

b. SUN BEACH HOTEL

Sun Beach Hotel was purchased by SSHFC as a direct result of an Executive Directive from Ex-President Jammeh. This assertion is confirmed by Edward Graham in his testimony. The said hotel was purchased in

[144] Exhibit MS 249
[145] Exhibit MS 251
[146] Exhibit MS 252
[147] Exhibit MS181 A
[148] Exhibit SC118

October 2012 from three people who shared ownership of same namely **Mr. Mory G. Cisse who owned 50%, Mr. Tarek Musa 20 % and Mr. Moulay Abass 30%.** SSHFC paid a total purchase price of **USD5, 900, 000**. Mr. Mory G. Cisse sold his shares for USD1,500,000.00; Mr. Tarek Musa sold his for USD775,000 and Moulay Abass sold his for USD3,650,000. There was Transfer of Shares Certificates from the sellers aforementioned persons[149]. SSHFC had to seek the approval from the Office of the President to pay the purchase price which said office granted approval in the letter to SSHFC[150].

Sun Beach Hotel, just like Ocean Bay Hotel, was leased to BP Investment Group in line with the express instructions of Ex-President Jammeh contained in the Executive Directive dated the 19th August 2013[151]. The Office of the President in a letter dated the 5th May 2016**,** granted SSHFC executive approval to lease the hotel to BP Investment Group after they had written to OP seeking approval[152]. This happened after the SSHFC Board had earlier given approval for the leasing of the hotel to BPI. A Lease agreement dated 9th August 2016 was executed between SSHFC and BPI for an initial period of 15 years with an option to renew for a further term[153].

Moreover, as it was in the case of Ocean Bay Hotel, there was an offer by a potential investor by the name of Mr. Rob Bearing who made an offer through his Solicitor **(Name)** to lease the hotel via a letter dated the 20th April 2016[154]. However, according to Mr. Edward Graham, this offer was never considered by SSHFC for one reason or another. BPI communicated their proposals to lease Sun Beach from SSHFC through a series of letters[155].

The testimony of Mr. Tamsir Badgie shows that another task force comprising SSHFC management was set up and requested to negotiate with representatives of BPI on the leasing of the Sun Beach Hotel. Negotiations were held but what is made abundantly clear is the fact that the task force members were aware of the Executive Directive and were therefore only able to negotiate on terms favourable to BPI. In other words, they could not negotiate the best possible deal as they felt that their hands were tied because of the Executive Directive[156].

The fact of the matter is that SSHFC neither invited potential investors to make offers to Lease the hotel nor advised Office of the President that there

149 Exhibits MS268A and MS268B
150 Exhibits MS266 and MS267
151 Exhibit MS249
152 Exhibit MS271
153 Exhibit MS181B
154 Exhibit MS271
155 Exhibits SC116A, SC116B and MS269
156 Exhibit MS249

is a possibility of obtaining a better deal to that of BPI's should they be permitted to open the leasing of the hotel to the prospective investors.

BPI was also supposed to be paying the monthly rent stipulated in the agreement on a quarterly basis but had defaulted on several occasions. This resulted in SSHFC writing to them on many occasions as can be seen in the letters written to BPI by SSHFC[157].

A review of the transactions in respect of Ocean Bay Hotel and Sun Beach Hotel above revealed the following:

(1) There was an interest (Letter of Intent) from Cordial Group from Canary Islands Spain in Ocean Bay Hotel. The initial offer was facilitated by IDA D. DRAMEH & ASSOCIATES; LEGAL PRACTITIONERS in a letter addressed to The Managing Director of SSHFC dated 28TH May, 2013[158].

There was a second letter of intent from the same legal practitioners also addressed to The Managing Director of SSHFC dated 1st August, 2013 on behalf of their Client in the same subject of Leasing the Hotel[159]. See Table 13 below.

(2) An interest in Sun Beach Hotel was only stated in a paragraph of the letter addressed to The Managing Director of SSHFC dated 28TH May, 2013 by IDA D. DRAMEH & ASSOCIATES. No offer for the hotel was stated in the letter[160].

Details are highlighted in Table 13 below:

(3) There was no evidence submitted to establish at minimum the following:

a) Letter of reply to the practitioner from SSHFC with regards to the offers to establish if the offer by the practitioner was acceptable or rejected or if it was acceptable with further amendments to the practitioners' offer on behalf of Cordial Group by SSHFC

b) Board approval was obtained and lease agreement finalised following an extensive due diligence on the part of SSHFC.

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[157] Exhibit SC118
[158] Exhibit MS250
[159] Exhibit MS251
[160] Exhibit MS250

Ocean Bay Hotel

Offer Dates	Practitioner	Offer made by	Description	Offer
28/05/2013	IDA D. Drameh & Associates	Cordial Group	Leasing Agreement	EUR200,000 --- EUR250,000
01/08/2013	IDA D. Drameh & Associates	Cordial Group	Leasing Agreement	EUR450,000

Further details on the acquisition, renovations, refurbishment and leasing of Ocean Bay Hotel and Sun Beach Hotel are discussed above.

The leasing of Ocean Bay Hotel and Sun Beach Hotel in October 2013 and August 2016 respectively to BPI by SSHFC was due to **heavy Executive Influence by Ex-President Jammeh**. This influence is evidenced in the letter from the Office of the President addressed to the Managing Director of SSHFC dated the 19th August 2013[161].
The said letter dated 19th August 2013 sought to convey Executive Directive for the SSHFC to in effect lease the two hotels aforementioned to BPI. There is ample evidence by way of testimonies from Ms. Isatou Auber and Mr. Momodou Sabally, the then Secretary General at the Office of The President, and documentary evidence to prove that the instruction being conveyed in Exhibit MS 249 came directly from Ex-President Jammeh. Mr. Momodou Sabally confirmed this fact in his testimony. He also agrees that the leasing of the two hotels to BP Investment was influenced by the Ex-President. The said letter directed SSHFC to engage Mr. Nicolae Buzaianu, Ambassador at Large, and investors accompanying him on the leasing of the said hotels. There is no doubt that the investors accompanying Mr. Nicolae Buzaianu were BP Investment Group who ended up being leased the two hotels as a direct result of Exhibit MS 249. Mr. Nicolae Buzaianu had a close relationship with the Ex-President as stated by Mr. Momodou Sabally and they had discussed the leasing of the hotels in his presence to which the Ex-President gave his blessing. This Honourable Commission also declared Mr. Nicolae Buzaianu as being a close associate of Ex-President Jammeh. There is then no surprise that instruction in the form of Exhibit MS249 was given to SSHFC to lease the hotels to BPI. It goes without saying that Executive Directives were the order of the day in the governance climate under Ex-President Jammeh.

Although Ms. Isatou Auber authored Exhibit MS249 and signed same, the evidence adduced before this Honourable Commission clearly shows that she was conveying directives that came from the Ex-President through Mr.

[161] Exhibit MS249

Momodou Sabally. The OP file numbered **268/313/01 Minute Sheets Folio 21, 22, 23, 24, 37 and 38** pertaining to the leasing of Ocean Bay Hotel and Sun Beach Hotel which by order of this Commission was included in **Exhibit MS249** also makes it abundantly clear that the instructions of the Executive Directive to lease the two hotels came from Ex-President Jammeh. His signature as confirmed by Ms. Isatou Auber is seen on the OP minutes sheets aforesaid pertaining to the instructions that were given for the leasing of the hotels to BPI.

Moreover, even after the SSHFC Board approved the leasing of Ocean Bay Hotel as can be seen in the Amended Board Walkabout Resolution[162]**,** the SSHFC management still had to seek approval from OP to implement the agreement for the leasing of Ocean Bay Hotel via a letter dated 4th November 2013[163]. The response from OP dated the 21st November 2013 and the testimonies of both Ms. Isatou Auber and Mr. Momodou Sabally confirmed that Ex- President Jammeh gave the instructions conveying the Executive Approval for SSHFC to proceed to implement the agreement for the leasing of Ocean Bay Hotel[164].

In the case of Sun Beach Hotel, the OP in a letter dated the 5th May 2016 granted SSHFC approval to lease the hotel to BP Investment Group after they had written to OP seeking approval[165]. This happened after the SSHFC Board had earlier given approval for the leasing of the hotel to BPI.

The evidence of Mr. Tamsir Badgie and Mr. Edward Graham also suggests that the leasing of the two hotels to BPI was influenced by Ex-President Jammeh as it was in line with the Executive Directive[166].

The Executive Directive dated the 19th November 2013 was the primary reason the two hotels were leased to BPI and due process could not be followed because of it and the negligence of the SSHFC Board and Management who did nothing to find a way out or even get the Ex-President to understand that leasing the two hotels on the terms stipulated in Exhibits MS181(A) and MS181(B) were not in the very best interest of the Corporation. The management and Board of SSHFC owed a duty of care to the Pensioners and would be pensioners to ensure that they got the best possible deal even if MS 249 was to be followed to the letter. The Board and Management failed the pensioners considering that their funds were used in the purchase and renovation of the hotels.

[162] Exhibit MS262
[163] Exhibit MS259
[164] Exhibit MS259 and Testimony of Isatou Auber and Momodou Sabally
[165] Exhibit MS271
[166] Exhibit MS249

The SSHFC Management and Board neglected and failed to question the Executive Directive contained in Exhibit MS249 nor did they find a way out of it. They did not seek legal advice on how to get around Exhibit MS249 and equally failed to advise the Ex-President to consider the possibility of allowing them to invite proposals and offers from the public at large as prospective investors to lease the two hotels. Had this been done, SSHFC could have had a much better deal than the one they ended up with BP Investment Group for both Hotels.

The SSHFC management tasked with negotiating with representatives of BPI for the leasing of the two hotels were very much aware of the Executive Directive MS249 and were somewhat restricted and could therefore not negotiate the best possible deal on behalf of SSHFC. As can be seen from the evidence of Mr. Tamsir Badgie and his witness Statement dated the 23rd July 2018, they were only able to negotiate and agree on terms acceptable to BPI[167]. He said that they agreed on the amounts acceptable to BPI. The negotiations were a mere formality and/or an exercise in futility as SSHFC knew that the end result would be that hotels would be leased to BPI especially when the Executive Directive to do so was hanging over their heads. In other words, they were just going through the motion knowing too well the outcome would be the leasing of the two hotels to BPI. Both Mr. Tamsir Badgie and Mr. Edward Graham agreed with these opinions.

The terms of the lease agreements were not and could not have been competitive based on the circumstances which led to the leasing of the two hotels to BPI and also considering the returns on the total investments made by SSHFC on the hotels.

As a matter of fact, the management and Board of SSHFC felt that they were compelled by Exhibit MS249 to lease the two hotels to BPI. Mr. Tamsir Badgie, Mr. Edward Graham, Ms. Isatou Auber and Mr. Momodou Sabally all confirmed and agreed that Ex-President influenced the leasing of the two hotels to BPI.

Although BPI made a formal offer to lease in the form of a letter of intent for Ocean Bay Hotel and Lease Proposal letters for Sun Beach Hotel[168], but as Mr. Tamsir Badgie put it, management could only agree on terms and amounts acceptable to BPI. As can be seen from the letter of intent to lease Ocean Bay Hotel from BPI and the proposed rental amounts contained therein, and the rental amounts subsequently agreed upon in the lease agreement for Ocean Bay[169], one can see that SSHFC were only able to negotiate a mere **EUR1,000** increment on what was proposed by BPI in

[167] Exhibit SC114 and Witness Statement of Mr. Tamsir Badjie
[168] Exhibits SC115 and SC116A and SC116B
[169] Exhibits SC115 and MS 181 A

Exhibit SC115 as monthly rentals for the initial 10 years period and not a single Euro on top the **EUR15,000** offered for the last five years should BPI decide to exercise the option to renew for a further 5 years.

The negotiations with BPI for the leasing of Sun Beach Hotel was even worse as the SSHFC management tasked with negotiating agreed on the amounts acceptable to BPI and could not even negotiate a single Euro on top of what was proposed by BPI in the proposal letters from BPI dated the **14th March 2016 and 11th April 2016** respectively[170]. The lease agreement for Sun Beach Hotel marked contains the same amounts as rentals for the 15 years period as those contained in the proposal letters[171].

It is not in dispute that there were two other offers to lease Ocean Bay Hotel from SSHFC by Eco Hotels Limited and Cordial Canarias Hotels & Resorts represented by Lawyer Ida D. Drameh communicated in a letter dated the 1st August 2013[172]**.** Both offers were rejected by SSHFC and the letter rejecting the offer from Cordial is dated the 13th August 2013[173]. Mr. Edward Graham, who does not want to be seen as the one to be blamed desperately tried in vain to defend the rejection of the offer from Cordial stating that the offer from BPI was better. However, the offer from Cordial was in many respects better than that of BPI. Apart from the rentals, Cordial was committing to invest at least **EUR100, 000** over the years from its yearly turnover in the refurbishment of Ocean Bay Hotel. This was going to be done free of charge and would not have been deducted from the rentals. Although the sum of **EUR450, 000** proposed by Cordial for the repair of the roof and refurbishment of the hotel was to be deducted from the rentals, BPI was also deducting the amount of **EUR6, 000** per month from the rentals as expenses incurred in the improvement of Ocean Bay Hotel and was not even able to justify such expenses claimed.

The Commission finds that the terms of the two Leases for the hotels were not competitive and same cannot be considered to have brought good returns on SSHFC's investments.

[170] Exhibits SC116A and 116B
[171] Exhibit MS181 B
[172] Exhibit MS251
[173] Exhibit MS252

FINDINGS

1. **Acquisition and Refurbishment of Ocean Bay Hotel**

The award of the contract for refurbishment and upgrade of Ocean Bay Hotel by SSHFC to Emporium Construction and Furnishing Ltd is **highly suspicious**. The way and manner Emporium came onto the scene when they were not even one of the companies initially invited by SSHFC to submit bids for the renovations of Ocean Bay Hotel remains a mystery but there is evidence which suggests that fair competitive practices may not have followed in the award of the contract to them.

Firstly, Ms. Laly Diab, the Managing Director of Emporium, when asked whether Emporium carried out any major renovations or refurbishment projects before the SSHFC contract replied in the negative and stated that it was the biggest contract Emporium has had. These together with her admission that Emporium Construction and Furnishing Ltd was incorporated the same year that it was awarded the contract for the refurbishment and upgrading of Ocean Bay raised strong suspicions as to the probity of the contract.

The contract awarded to Emporium by SSHFC was a massive sum of **USD6,500,000,** and for the variations requested, Emporium was paid a further **USD1, 053, 837.** It is clear that Emporium was **a relatively new company** without any experience in executing projects of that magnitude.

Emporium submitted a bid for the refurbishment and upgrade of the Hotel sometime in December of 2002. The relevant correspondences of which were tendered in a bundle[174]. The bids submitted by BAO and Emporium were then appraised by the said Consultant who subsequently prepared a report advising SSHFC to award the contract for the refurbishment and upgrade of the Hotel to BAO who had submitted a more convincing project proposal than that of Emporium. The Consultant also held the opinion that BAO had the requisite experience as they had executed similar projects within and outside the Gambia. As can be gleaned from Board Minutes in **Exhibit MS283**, the Management of SSHFC ignored the Consultant's professional advice and recommended that Emporium, a local company, be awarded the contract on the basis of strengthening local capacity in line with government policies. Moreover, not all the Board members were in agreement with management's recommendations to award the contract to Emporium. Mr. Darboe raised concerns pertaining to the deficiencies of the submissions made by Emporium and another Board member Mr. Mendy was concerned about the **Emporium's lack of track record with regards to the structural works**. Since all the Board members could not find common

[174] Exhibit MS304

ground on this, the matter was put to a vote where a majority decision of 5 against 2 resolved to award the contract to Emporium.

This Commission finds that due process was not followed as the way and manner Emporium was awarded the contract for the refurbishment and upgrade of Ocean Bay Hotel is suspicious at the very least.

2. <u>The leasing of Ocean Bay Hotel and Sun Beach Hotel to BP Investment Group</u>

There are five key findings:

1) The leasing of Ocean Bay Hotel and Sun Beach Hotel to BP Investment Group by SSHFC was heavily influenced by Ex-President Jammeh.

2) Due process was not followed in the leasing of Ocean Bay Hotel and Sun Beach Hotel to BP Investment Group.

3) The terms of the lease agreements executed between BP Investment Group and SSHFC for the leasing of Ocean Bay Hotel and Sun Beach Hotel were not competitive.

4) The rentals paid and renovations made by BPI to Ocean Bay Hotel and Sun Beach Hotel are not a good return on SSHFC's investment on the two hotels.

5) Fair and competitive bidding process was not followed in the award of the contract for refurbishment and upgrade of Ocean Bay Hotel by SSHFC to Emporium Construction and Furnishing Ltd.

RECOMMENDATIONS

General *Comments*

1. SSHFC Pension fund should be regulated by the CBG, the reason being that they (SSHFC) collect monies from the public and make investments. This regulation will ensure that funds are safe, protected and used for their intended purpose.

   It is important that the pension scheme delivers good outcomes for members' retirement savings.

2. The role of Finance Director and Investment Manager should be split. The Investment Manager's role is to ensure that maximum returns are received but that funds are held in safe investments. The Manager is to help with investment decisions, monitor the portfolio and be able to clearly explain, the investment options available to schemes.

3. The entire SSHFC investment portfolio should be reviewed and an assessment carried out. This review is to check the viability of the investments recorded in SSHFC's books.

   Specific recommendations

4. Ex-President Jammeh should refund the **USD500,000** loan used as compensation for Ghanaian victims.

5. The water tank was brand new and it has never been used. NAWEC is clearly in need of anything that could contribute to the solution of the current water problem of the nation. The Commission recommends that this tank be confiscated as the proceeds of an illegal appropriation of SSHFC funds and transferred by Government and its value be reckoned as part liquidation of Government's debt to NAWEC, if any.

   In addition, Ex-President Jammeh and Mr. Amadou Samba to refund the **D6,432,700** loan used to purchase a water tank for KFF from Braithwaite in the UK with interest at the usual SSHFC lending rate…

6. The D15,000,000 and GMD10,000,000 loan amounts for the respective Tobaski periods, the other parties who authorized transactions should also be liable each for 5% of the shortfall. Therefore, Mr. Momodou L. Gibba and Mr. Abdoulie Cham Ex-

Managing Director and Finance Director of SSHFC on the D10 million approved will be **liable each for D500,000** whilst Messrs. Edward Graham, Saibatu Faal and Abdoulie Cham of SSHFC on the D15 Million, **liable each for D750,000**. Mr. Graham did not sign authority but as MD took responsibility for the payment.

The difference of **D9,000,000 and D12,750,000** should be recovered from the assets of KGI and Ex-President Jammeh.

7. The plane purchased referenced C5-GOG-BOEING B727-100 or Super 27 should be sold as SSHFC NPF funds of USD4.5 Million was utilized plus USD85,704 for purchase of fuel for the aircraft. SSHFC has a lien on the plane and from the proceeds of the sale, they should be refunded. In the event that the proceeds realized is inadequate to cover amount, the remaining balance should be recovered from the assets of Ex- President Jammeh.

8. **USD548,964.15** used to purchase 8 vehicles from OSHKOSH should also be recovered from Ex- President Jammeh.

9. SSHFC has a lien on the 2 NAWEC generators. The Commission notes that there is debt repayment agreement agreed between SSHFC and NAWEC for SSHFC's electricity and water bills to be offset against NAWEC's debts to SSHFC, and encourages that agreement to be respected.

10. The **EUR200,000** paid for transmission rights for the African Nations tournament based on request from OP should be recovered from Ex – President Jammeh.

11. On the GGC amounts owed to SSHFC of D186,005,224.78, these amounts since issued based on the instruction of MoFEA should be repaid by Government. Fixed deposit investments of SSHC were liquidated by the banks to recover outstanding amounts due.

12. On Gambia Radio and Television Services (GRTS), MoFEA instructed SSHFC to guarantee a loan of USD1,845,000. SSHFC facilitated the said amount following a Board Resolution dated 12th May 2009. Therefore, the funds should be repaid by Government.

13. The Commission has recommended the liquidation of GFFI to avoid further deterioration of the assets. The proceeds realized from the sale should be apportioned to the three PEs (SSHFC included as having

contributed USD4.5 Million) that contributed towards the capital of GFFI.

14. **USD2 Million** for the John Deere Mechanisation Program should be recovered from Ex- President Jammeh.

15. The Managing Directors of SSHFC namely Mr. Edward Graham, Mr. Mohamadou L. Gibba and Mr. Tumbul Danso should be held responsible for their actions. There is evidence of Mr. Graham approving payments of numerous substantial amounts as loans to OP without Board approval. He also attempted to justify his actions that loans were also investments despite his knowledge of the status of the loans granted by SSHFC as recoverability was usually assessed as slim.

    Furthermore, Mr. Graham attempted to explain that the sub lease agreements signed with BPI were the best offer that SSHFC could have without pursuing the other companies that had expressed interest in leasing the hotels. He merely acted on the executive directive issued.

    Messrs. Graham, Gibba and Danso should not be allowed to serve on Boards of PEs at least 10 years or also as MD/ CEO for the same number of years.

16. SSHFC Director of Finance and Investment, Mr. Abdoulie Cham, has not demonstrated vigilance and rigor in protecting pensioners' funds considering that he was responsible for SSHFC's investment portfolio. Although the MDs changed at various periods, Mr. Cham however remained in his role over the period and had to exercise a duty of care when performing his job. As a result of all the anomalies detected, the Commission recommends that his services at SSHFC be terminated.

17. Ex-President Jammeh and Mr. Amadou Samba must be held accountable for favoring Emporium Company Ltd over BAO Ltd which had a solid track record in construction works.

18. Emporium should pay penalties for delays at the rate of **USD3,000 per day** for as many days as agreed in the signed contract **MS132** where it is referred to as liquidated damages.

19. Corporate Governance standards must be strengthened at SSHFC to ensure competitive bidding at all times with a view to avoiding corrupt practices.

20. The SSHFC and BPI must follow through the arbitration as ordered by the High Court to determine the future of the existing sub lease agreements of Ocean Bay Hotel and Resort and Sun Beach Hotel which the Commission has ruled it has neither the mandate nor the jurisdiction to handle.

21. All State Corporations must have a functioning Independent Board and management team free from any **Executive Influence** but not oversight to avoid misuse of public/pension funds.

CHAPTER 3 - GAMBIA PORTS AUTHORITY[175]

1. INTRODUCTION

Gambia Ports Authority (GPA) was established in 1971 as a corporation for the purpose of transferring to it "certain of the port and harbor undertakings of the Government". The Authority is responsible for providing, operating, and controlling any and all facilities best calculated to serve the public interest and any such other services as the Minister may require.[176]

The line Ministry for the Gambia Ports Authority is, traditionally, the Ministry responsible for Transportation. The role of the line Minister is to give the Authority directions as to the discharge of their functions in relation to policy matters that affect the public interest.

GPA is mandated to provide the Minister of Information with respect to the property and functions of the Authority, and should provide him/her with returns, accounts and other information with respect thereto and afford to him or her facilities for the verification of information supplied as he/she may require.[177]

The role of the President on Ports operations is to appoint the Managing Director, the Chairperson, and the five nominated members of the Authority after consultation with the Authority and the Public Service Commission.[178]

2. ACTIVITIES OF EX-PRESIDENT IN RELATION TO THE PORTS

The management of GPA submitted to The Commission specific claims of monies, assets, and other resources, which they allege the Ex-President had either appropriated, or that GPA had applied or lost as a result of directives given by him or through his adverse interference in their operations. The Commission also investigated other matters brought to their attention in relation to the GPA.

The matters investigated by the Commission are the following:

A. Gambia Milling Corporation Land at the Sea Port
B. Barajally Ferries
C. Outstanding CFA Francs Owed by the Ex-President

[175] See long title of Ports Act (Cap.68:01) Section 4 & 5
[176] See Ports Act (Cap. 68:01) Section 7
[177] See Ports Act (Cap. 68:01) Section 12
[178] See Ports Act (Cap. 68:01) Section 6

D. Kanilai Family Farms liabilities
E. Kanilai Cultural Centre
F. Kanilai Family Farms Ferry crossing unpaid fees
G. Youth Development Enterprises liabilities
H. Appropriation of GPA Sheds
I. Michela Costruzioni project
J. Financial support to Dobong Properties
K. Loan to Ex-President in Exchange for Sugar
L. Payments for the Black USA Beauty Pageant
M. Regional Maritime Academy
N. Scheepbouw Affair.

3. OVERVIEW

A. GAMBIA MILLING CORPORATION LAND

On 26th January 2011, the Office of the President wrote to GPA conveying an urgent executive directive that **"GPA accedes to the land extension of about 1500 sq. meters for the silos, in support of the Flour Mill Project. It is our understanding that the Proprietor of the said Project (International Milling Corporation) is offering compensation that both sides should discuss independent of this directive for the extension.[179]"**

Prior to this letter, Mr. Mohamed Bazzi had written letters on behalf of the International Milling Corporation (IMC) to the Ex-President for the allocation of land at the Ports as the most suitable for a Flour Mill Project. The land identified was **"the current site of the Naval Yard, engulfing <u>a peripheral part of the Port</u> and relocate the Naval Yard to the old NAWEC site.[180]"** He also offered to rehabilitate the existing building in the old NAWEC site and build a fence around it for the Navy. The letter requested for the Ex-President's blessed directives. The Ex-President approved the request on the condition that the Company bore some of the cost of relocating the Naval Yard.[181]

GPA did not support the idea and requested that an environmental impact study be conducted which was endorsed by the Office of the President in June 2010. NEA initiated a study in November 2010, but a few days later another **"extremely urgent" letter was received from the Office of the President conveying a directive that the Old Navy Site is [sic] handed over to International Milling Corporation "as a matter of urgency."** A

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[179] See Urgent Directive Letter, Exhibit SC10
[180] See Bazzi letter dated 5th February 2010, Exhibit SC10.
[181] See Bazzi letter dated 5th February 2010.

follow up letter from the Ministry of Defense stated that the Environment Impact Assessment was to be disregarded. IMC then requested a further extension of land from GPA.[182]

Following discussions between GPA and IMC, Mr. Bazzi wrote to Managing Director GPA again a letter dated 14-12-2010 which is instructive:

> "RE: PORT SECTION TO BE USED FOR FLOUR MILL PROJECT
>
> *Following the meeting between International Milling Corporation (IMC) and the Banjul Ports Authority (GPA) on the 10th December regarding the acquisition of the section of 1,643m^2 of land that is adjacent to the naval site, the IMC will commission the flour mill on, we would like to offer the following proposal.*
>
> *Due to the small size of the naval premises acquired, there is a need for more space in order to accommodate the flour mill and its 4 silos, the extra space of 1,643m^2 that the ports side is vital for the project. We are well aware of the space constraints that the ports are facing at the moment with the increasing amount of containers coming and the limited space they have to store these containers.*
>
> *Consequently, IMC would like to propose compensation to GPA for the land section of 1643m^2 by concreting a section of 2000m^2 in the new ports expansion area at its own expense. This arrangement should hopefully satisfy both parties and pave the way forward to a great partnership between International Milling Corporation and the Gambia Ports Authority in which both work hand in hand towards a prosperous future for all.*
>
> *We* are *commissioning a concrete batch plant with an output capacity of 45m^2/hour, which should ensure a speedy and very cost-effective completion to the civil works and concreting of the proposed expansion section. Consequently, we would be in a position to make you a very attractive offer for the execution of all civil works or concreting projects that you might have in the future."*

Mr. Gibba responded in a 3-page letter, also copied to Secretary General and his Board, in which he explained why it was not feasible to give IMC this land. He said it would have "serious implications on future sustainable development and expansion of the port of Banjul and its competitiveness." He listed 7 points including the fact that GPA had recently spent D90 Million to acquire residential compounds in the vicinity to create container storage space''. He suggested that IMC scales down its land needs and partially

[182] See letter signed by Mohamed Bazzi addressed to M.L. Gibba, Managing Director of GPA, dated 6th December 2010, Exhibit SC10

relocates elsewhere given the pressure and shortage of space.[183] It was in response to this letter that the directive of 26th January mentioned above was given by the Ex-President to the effect that the request of IMC must be acceded to and compensation be discussed.

GPA acted on the directive and provided IMC with land measuring 1500m^2 and requested for a meeting to discuss compensation. A meeting was held, attended by Mr. Bilal Bazzi on behalf of IMC, after which GPA submitted to the Managing Director of IMC a compensation report[184] for the land which was valued at D18,464,850, including the 1500m^2 of land, pavement, water pipeline installations, and new fencing. The land was handed over on 7th March 2011[185] pending compensation. IMC did not react to the issue of compensation, but took possession of the land and started construction of the project.

On the 3rd April 2012, GPA wrote to the Secretary General requesting that the land be returned because construction had stopped and that GPA was not compensated. On the 30th April 2012 the Office of the President wrote to GPA issuing executive approval for the demand of compensation for D18,464,850, but disapproving the request to re-possess the land. Mr. Abdoulie Tambedou was the Managing Director at this time. GPA demanded payment from IMC again[186].

On the 2nd April 2013, Gambia Milling Corporation Limited (GMC) informed GPA that it was **"in process to issue the title documents for the Navy Land and <u>the adjacent land</u>. In order to have the documents in place and the lands office, we have been requested to provide a letter from the Gambia Ports Authority stating that the above-mentioned land is allocated to Gambia Milling Corporation."** The memos exchanged between the MD and DMD show that GPA had no objection to this request subject to compensation and on the 11th April 2013 a letter issued addressed to the MD of IMC confirming that this **"Authority accedes to the land measuring <u>1500m^2 property of GPA</u> to your institution for the development of the flour mill project. By the same token, you are still reminded that the GPA <u>is yet to receive compensation</u> for the said prime land as claimed for in our letter referenced GPA…"**

It is this letter that GMC submitted to the Ministry of Regional Administration and Lands to obtain a lease dated 30th April 2013[187] for land measuring

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[183] See M.L. Gibba letter of 20th December 2010, GPA letter of 10th February 2010, Exhibit SC 10
[184] See Compensation Report Exhibit SC10
[185] See Bilal Bazzi letter of 17/2/2011, GPA letter of 17/2/2011, and minutes signed by Bilal Bazzi in respect of the compensation for land meeting, and letter of 7/3/2011, Exhibit SC10.
[186] See Exhibit SC10
[187] See Exhibit MS52

4,919.55 square meters. According to Exhibit SC10, up to 24th May 2013, GPA was reminding IMC that it had not yet received compensation for the land.

Mr. Christopher Brady (Witness no. 58), the Managing Director of GMC and Vice President of Seaboard in West Africa has indicated that he was unaware of the issue of compensation. The Memorandum and Articles of GMC show that it was incorporated with the following shareholders: 50% Seaboard Corporation, a US Fortune 500 Company, and 50% Premier Investment Group, a Lebanese company whose shareholders are Messrs. Mohamed Bazzi and Fadi Mazegi. The Directors of GMC are Mr. Mohamed Bazzi, Mr. Fadi Mazegi and Mr. David Dannov.

Mr. Brady said the land which is called the Navy Yard belongs to GMC. They had a lease for it - K154/2013 (Exhibit MS52). He said the land was given to them after they met the Finance and Trade Ministers to ask for incentives, with a 5 years tax holiday. He said IMC was created by Mr. Mohamed Bazzi and he was not aware of the documents written to GPA. He said they had retained Ms. Ida D. Drameh, a lawyer, who carried out a due diligence before the lease was signed. He has searched their files but found nothing on IMC or claims for compensation from GPA.

Mr. Mohamed Bazzi (Witness no. 63) has denied that they ever agreed to pay compensation of D18,464,850. He has submitted a letter that is unsigned by which he was offering D2 Million compensation for the GPA land[188]. There is no record that such a letter was ever delivered to GPA. He also said that after the previous MD left (who we presume is Mr. Gibba) they had a memorandum of understanding with GPA and they **"erected the walls for them and removed the water pump and all the things they asked us to do."** There is no evidence supporting the existence of such Memorandum of Understanding.

Section **11** of the Ports Act provides that: **"There shall be vested in the Authority such assets as may be transferred to the Authority by the Minister by executive instrument and such other assets as may be transferred to it by other persons."**

GPA has produced Exhibit SC38 which is a deed bearing Serial Registration No 2/75 Vol 10 KD **dated** 31st December 1974 **between the Government of The Gambia by its Minister of Works and Communication Sir Alieu Sulayman Jack and Gambia Ports Authority acting by its Director Baboucar Maleh Sallah** which recites Section 11 of the Act and transfers to GPA "**all the messages [sic], lands, tenements, and other assets."** Mr.

[188] Letter dated 28th March 2011, Exhibit MS65

Ousman Jobarteh (Witness no. 22) identified the land in issue on the plan attached to Deed as part of the land transferred to GPA[189].

Mr. Mohamed Bazzi called Commodore Madani Senghore of the Gambia Navy as his witness. His evidence shows that IMC/GMC did work on Navy Land. However, this is immaterial as the GPA land said to have been "acceded" to IMC is entirely different from the Navy Land as clearly shown in the letter of 22nd December, 2010.

The sum of **D18,464,850** is still showing as a debt owing by GMC in GPA books. GMC is still liable for the said sum.

Finding

The Commission concludes that GPA allowed IMC/GMC to occupy and build on the land in consideration of the payment of compensation. Compensation was assessed at D18,464,850 to the knowledge of Mr. Mohamed Bazzi, since Mr. Bilal Bazzi attended the meeting. GMC never responded that they would not pay. Instead they occupied the land. They are liable to pay the compensation. They are also liable to pay rent for the land to GPA for all the period they occupied the land, to be negotiated between them, until compensation is paid.

B. BARAJALLY FERRY

Barajally was a ferry owned by GPA. It was a ferry stationed at the Farafenni Trans-Gambia Ferry Crossing point which shuttled from Bamba Tenda to Yelli Tenda.[190] It last operated at the Farafenni Crossing around 2006. It was a twin of the James Island Ferry.[191] Barajally had been in use from 1989 until 2006. In 2006, it was sent to Banjul Ports for maintenance of its two engines after its twin, James Island returned from maintenance in Banjul. The Barajally was never returned to Farafenni. According to GPA, the ferry was seaworthy when it left Farafenni, but due to the engine not working it was tacked by another ferry from Farafenni to Banjul.[192] A picture of the Ferry before it was lent out was admitted in Exhibit SC32.

[189] See Testimony of Ousman Jobarteh
[190] Exhibit SC32
[191] Exhibit SC32 and See Sadibou Barrow 9th October 2017 Transcript.
[192] Transcript of Mr. Sadibou Barrow dated 9th October 2017

Apparently, it was lent out to Mr. Mohamed Bazzi for use by GAM Petroleum Storage Company Limited (GAM Petroleum). Mr. Mohamed Bazzi of GAM Petroleum had requested to borrow the Barajally during construction works at Mandinary[193]. Exhibit SC16 dated 11/4/2007 is a letter written by Mohamed Bazzi to borrow the Barajally. The letter indicated that **"GAM Petroleum Storage Facility Co. Ltd. is responsible for the overall maintenance of the above-mentioned Ferry to return back to Ports Authority in better conditions."** GPA was not agreeable to this and declined to release the Ferry. A directive came from the Ex-President to give them the ferry boat. Mr. Abdoulie Tambedou (Witness no. 56) told the Commission that they could not find the letter.

According to GPA, GAM Petroleum converted the ferry into a workboat. It was dismembered and modified into a pontoon. A letter was written to the Secretary General querying the conversion of the ferry to a workboat and another by GPA asking for compensation of D16,001,450.64 for the value of the Ferry. The request was ignored by GAM Petroleum[194].

Mr. Mohamed Bazzi admitted that they needed the ferry for the construction of the sub-marine pipeline under construction at Mandinary for a period of 3 months. The Managing Director of GPA, Mr. Gibba, refused to lend it to them. The Ex-President intervened and they were given the ferry which Mr. Bazzi told the Commission, at first, was returned. He accused Mr. Gibba of being a troublemaker who was against their investments. He said he had never seen letters with regard to the state of the ferries or seeking compensation. He contested the value put on the ferry and said it was mere scrap—an incomplete ferry without an engine, which could not even float. Steel pipes were used to bring it to a floating position, then they hired a tugboat to move it. It had nothing except the platform. He later said the Ferry was at Denton Bridge with Capital Gas. He also tendered pictures of what he said was the ferry.[195] It was a flat surface and certainly looked like a wreck.

Exhibit SC14 contains letters of 8th January 2008 and 9th March 2009 to Mr. Mohamed Bazzi and team and Managing Director of GAM Petroleum, respectively, complaining about the Ferry and demanding compensation.

The ferry was not returned. Mr. Antonio Pedro Daniel (Witness no. 209)of Capital Gas Ltd.[196] has told this Commission that the ferry was converted to a barge and after the construction works were completed it was given to Capital Gas as payment of services rendered to GAM Petroleum.[197] He

[193] Transcript of Mr. Mohamed Bazzi dated 2nd October 2017
[194] Transcript of Mr. Abdoulie Tambedou dated 25th September 2017
[195] Exhibit MS64
[196] Testimony of the 11th July 2018
[197] Exhibit MS290

tendered Exhibit MS290 which shows that for the total of USD84,700 he was owed, he was partly compensated with the barge/ferry.

The valuation of the ferry is based on its replacement value as at the time it was taken based on straight line depreciation from the original cost of D17,207,776.75[198]. This original cost was not challenged by Mr. Mohamed Bazzi. Certainly, there is no letter from GAM Petroleum on this matter.

The last letter from GPA for the demand of the ferry was 9th March 2009.

At the time the Ferry was taken in 2007, GPA had not acquired shares in GAM Petroleum. The list of assets in the Statement of Affairs (Exhibit SC113) which formed the basis for the sale of 48% shares to the public enterprises, GPA, SSHFC and GNPC does not include the Ferry.

FINDINGS

Mr. Mohamed Bazzi used his relationship with the Ex-President to compel the Managing Director to hand over an asset belonging to GPA without proper authority. The Managing Director had no such authority. The President had no such authority.

The basis on which he borrowed the ferry for use by GAM Petroleum was: “GAM Petroleum Storage Facility Co. Ltd. is responsible for the overall maintenance of the above-mentioned Ferry to return back to Ports Authority in better conditions.” The ferry never returned. The failure to return the ferry was a conversion and GPA is entitled to damages.

There is no reason why the Commission ought not to accept the sum of D16,001,450.64 demanded by The GPA and the method used to arrive at the sum claimed.

The ferry was not one of the assets that constituted part of the Statement of Affairs and therefore did not form part of the sale of Shares between the original shareholders to the Public Enterprises as is clear from Exhibit SC113.The Original shareholders, Messrs. Mohamed Bazzi and Amadou Samba, by excluding it, remained answerable for it. GPA is entitled to interest on the of D16,001,450.64. The interest element should be paid by Mr. Mohamed Bazzi as there is no evidence that the other director was aware of the agreement to return the ferry and its conversion.

[198] Exhibit SC14 showing replacement value at D16,500,000

C. OUTSTANDING CFA FRANCS OWED BY THE PRESIDENT

The Ferry Services Department (the Ferries) is a subsidiary of GPA and GPA provides management and financial support to them.[199] A bilateral agreement between Senegal and Gambia allows Senegalese businessmen and their vehicles to pay in foreign currency at the two ferry crossings. As a result, GPA collected CFA cash, which it sold to foreign exchange bureaus through a tender process.

From 2013 to 2014, during the period Mr. M. L. Gibba was Managing Director, GPA claimed to have sold to the Ex-President on credit CFA Francs obtained from its ferry service operations. A balance of D6.9 Million was outstanding and unpaid. Transactions were for the total of CFA322million Francs. A balance of CFA83,855,422 francs still remains unpaid.

The process of sale was by phone call from the Managing Director to the Finance Director of the Ferries informing him that the Office of the President needed CFA Francs. The Director of Finance for the Ferry Services was requested to make the amount available. Either General Badjie or Major Yusupha Sanneh[200] collected the CFA Francs on credit. A receipt was drawn when the dalasis were paid. The rate charged was the prevailing rate on date of exchange. Receipts were not issued for the CFA Francs. The Ferries sent reminders for payment to the Managing Director. No written demands were sent to the Ex-President by the Managing Director.

Mr. Ismaila Wadda (Witness no. 25), the Finance Director for the Ferries, confirmed that the directives received from the MD were verbal. The largest request was CFA 80 million francs. Sometimes, the cash had to be raised from the market. The accounting was cash based accounting and the revenue was not recognized until the money was received. It is treated as an off balance sheet item.[201]

Mr. M.L. Gibba confirmed that the practice started in 2013. The Ex-President came to know about the sale of CFA francs to foreign exchange bureaus, enquired from Mr. Gibba and thereafter requested CFA from time to time and if the sum requested was not available they would collect it from Trans-Gambia Ferry Crossing. The requests were verbal, made by phone to the MD, who treated it as confidential. He and the deputy would request the funds through the Director of Finance at the Ferries, Mr. Ismaila Wadda. A paper would be prepared showing the amount sold. The Deputy Managing Director, Mr. Ousman Jobarteh would sign these. According to Gibba, he authorized Mr. Jobarteh to carry the money to State House. The money and

[199] Transcript of Mr. Ousman Jobarteh dated 30th August 2017
[200] Transcript of Mr. Ousman Jobarteh and M.L. Gibba respectively dated on the…….
[201] Transcript of Mr. Ismaila Wadda dated 30th August 2017

documents were then submitted to the President's intermediary, either Major Sanneh or General Badjie.[202] Repayment took some days. ML Gibba confirmed that the amount of D6.9 million[203] was the outstanding balance, which was not paid by the Ex-President because he had difficulties following up payments with him at some point.[204]

FINDING

The Managing Director GPA Mr. Momodou Lamin Gibba was reckless to have sanctioned an arrangement to sell CFA francs belonging to his institution on credit instead of for cash without proper accounting documents. The Commission believes the evidence of all 3 GPA/GFS officers, Messrs. Momodou Lamin Gibba, Ousman Jobarteh, and Ismaila Wadda. However, there is no evidence that Messrs. Momodou Lamin Gibba or Ousman Jobarteh even tried to obtain a receipt from the army officers to whom the money was delivered. That failure to do so is reprehensible. They deserve to be reprimanded.

The Commission finds that the Ex-President and Mr. Momodou Lamin Gibba are jointly and severally liable to GPA for the sum of D6.9 Million being the unpaid balance of the CFA sold to him with interest to be recovered from the Ex- President's assets and refunded to GPA.

D. KANILAI FAMILY FARMS CLAIMS (KFF CLAIMS)

(a) Port Charges

GPA claims that Kanilai Family Farms (KFF) was importing commodities through the ports but failed to pay port charges of **D11,480,194.28**. Services were rendered on the instructions of the Managing Director and invoices raised and sent to KFF Management, but payments were not made despite a series of follow up letters to KFF. The consignee on some of the Bills of Lading was "to the order of Kanilai Family Farms, care of H.E the President, State House, **Banjul**, The Gambia." In some cases, the Shipping Agents wrote to GPA and instructed that the charges were for the account of Kanilai

[202] Exhibit SC8 bundle showing notes on Sale of CFA kept ML Gibba
[203] Exhibit SC4C
[204] Transcript of Mr. Momodou Lamin Gibba dated 30th August 2017

Family Farms. The invoices spanned from March 2009 – July 2013 and tendered with supporting documents as Exhibit SC6.[205]

The Managing Director Mr. M.L. Gibba admitted that the sum was owed by KFF and that he had asked the Finance Department to continue to bill KFF. Letters were written but KFF did not respond. He brought it to the attention of the Ex-President from time to time when he called him but he said the Ex - President merely laughed and KFF never paid.[206]

The amount remains due and owing. KFF is 99% percent owned by the Ex-President.

Subsequently, Mr. M.L. Gibba stated that the Ex-President was of the view that he deserved a "big waiver for all the goods/commodities he brings to the country through the Port of Banjul because he would be selling them to the poor and needy at affordable prices." He also stated that while GPA management had given substantial waivers occasionally during his term in office, he created a mechanism, which was very transparent as regards port charges, including waiver applications. It was only in relation to KFF being owned by Ex - President Jammeh that he gave waivers "out of fear or pressure" from the President, otherwise he had never taken any major waiver application to the Board of Directors.[207]

This seems to suggest that Mr. M.L. Gibba gave the waivers knowing that the President had no intention of paying. Additional claims include D1,523,589.82 being balance outstanding after 50% of port charges for shipment of 10,401 metric tons of cement- waiver of port dues by Mr. M.L. Gibba without Board approval.

D5,296,454.64 - These were stevedore and port charges for 2 cargo vessels MV Star 1 & MV Falake granted by GPA management. Board approval was not sought. Position of management now is that these are due and liable to be paid. There is no written policy about waiver. There is a tariff and management does not have authority to grant waivers.

These amounts remain due and owing by Kanilai Family Farms.

[205] See Sales Statement, Exhibit SC6
[206] Transcript of Mr. Modou Lamin Gibba dated 30th August 2017
[207] Exhibit MS206A statement of M.L. Gibba.

(b) Ferry Crossing Charges

GPA also claims that the Ex-President failed to pay Ferry crossing charges for live animals crossing the river from 2014 to 2016. The total sum accumulated in this regard was **D383,365.00 and CFA Francs618,400**.[208] The Ferries Officer responsible, Mr. Landing Jarju, brought the non-payment to the attention of Colonel Tamba of the State Guard Battalion in 2014 and 2016, but received no response.[209]

Mr. Landing Jarju deserves commendation for keeping a record when he could have so easily overlooked the services to the Ex -President and pursuing payment.

The **amount** remains owing[210].

FINDINGS

Mr. Momodou Lamin Gibba as MD authorised the rendering of services to Kanilai Family Farms, knowing that the Ex-President from his attitude had no intention of paying in the total sums of **D11,480,194.28, D1,523,589.82, D5,296,454.64.** He acted on his own and did not seek Board Approval for this. A record was however kept and bills sent to KFF for payment. The Commission accepts that he could not have forced the Ex-President to pay if he did not want to.

KFF and the Ex- President remain liable to GPA for the sums of **D11,480,194.28, D1,523,589.82, D5,296,454.64, D383,365.00 and CFA Francs 618,400,** with interest.

E. KANILAI CULTURAL CENTRE (KCC)

GPA also alleged that the total sum of **D7,043,669.86** was spent to build and maintain the grounds of a cultural arena at Kanilai Village at the request of the Ex-President. These sums were never refunded.

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[208] The list of vehicles and articulated trucks from the Office of the President for the period were tended as Exhibit 15B.

[209] Exhibit 15A letters dated 24/6/2014 & 14/6/2016

[210] Exhibit SC5**-** Letter dated 17/8/2017 from MD GPA to lead counsel Commission showing spreadsheet of payment made for Ex-President related to Kanilai Cultural Centre from 2009-2015 &SC6- KFF ports charges from 27/3/2009-11/7/213 and related documents in a bundle

A Summary of Expenditures by the Gambia Ports Authority at Kanilai Cultural Arena (KCA) for the period 2009-2016, plus requisition books in a series, and supporting documents in 4 boxes were produced to the Commission.[211]

Mr. Foday Jatta (Witness no. 24), the Deputy Director of Procurement stated that requests were received from the Estate Department for the purchase of materials for KCA. Departmental requisition was received, signed, and acted on by the Finance Department. The arena was built and refurbished during this period 2009-2016.[212]

GPA apparently became responsible for rebuilding and maintaining KCA. A contracting company, Bathurst Builders, carried out the initial works in 2007, and subsequent refurbishments in 2009.[213] Thereafter, works were done internally through their Estate Department and the procurement of materials through GPA's Procurement Department.

Mr. M.L. Gibba confirmed that he was a member of the Kanilai International Cultural Festival organizing committee and the Ex-President had directed him personally and verbally to rebuild the Centre. He had never sought the approval of the GPA Board of Directors because the Ex-President was **"brutal and intimidating and had a way of finding out whether confidential directives had been divulged…to third parties".[214]** The Ex-President never indicated that the money spent would be refunded.[215] So the money was never demanded, but remains in GPA books.

FINDING

Mr. Momodou Lamin Gibba did not have the authority of the Board of GPA to finance the Kanilia Cultural Centre. He did so because the Ex-President directed him to do so. He said that he was a member of the Kanilai International Cultural Festival. He put himself in a position of conflict when he acceded to the request of the Ex-President without Board clearance. He had no authority to donate **D7,043,669.86. Mr. Momodou Lamin Gibba and the Ex-President ought to be jointly and severally liable for the said sum.**

[211] Exhibit SC 7A-D
[212] Testimony of 30th August 2017
[213] Exhibit SC 5A
[214] Exhibit MS 206A written statement of M.L. Gibba.
[215] Transcript of Mr. Foday Jatta dated 30th August 2017

G. YOUTH DEVELOPMENT ENTERPRISES LIMITED

Youth Development Enterprises (YDE) was a company linked to Mr. Baba Jobe, a Senior Assistant Secretary at the Office of the President that traded in commodities—rice, sugar, bulls, cement. It stopped operating sometime in 2007. GPA claims that as of 2007 YDE owed them **D16,001,450.64**. Mr. Abdoulie Tambedou informed the Commission that GPA used to have vessels coming with goods in the name of YDE as consignees, headed by Mr. Baba Jobe, and GPA was invoicing them until one day the company ceased operations due to legal action between them and The Gambia Government. GPA wrote two letters and invoices to the High Court[216] after the dissolution of YDE, in which it claimed the debt owed to them.[217]

The connection between the YDE and the Ex-President was that the letters used to come, called Free-out Letters from the shipping agencies, confirming who the consignees of each of the vessels were, before they were allowed to berth. Those letters would normally mention; Youth Development Enterprises, c/o Baba Jobe, President Yahya Jammeh's Office, State House, Banjul, The Gambia.

The Gambia Government, under the Ex-President, pressed criminal charges against YDE and Mr. Baba Jobe, and GPA was a witness in that trial.

FINDING

The Commission is of the view that it was not a coincidence that Mr. Baba Jobe's address was ℅ President Yahya Jammeh's Office, State House, Banjul, The Gambia. It was because he was working at OP, but not in the Government, because YDE was not a government enterprise. He was allowed to operate YDE from OP because he was an agent of the Ex-President. YDE was just a vehicle used for the Ex-President's business operations. After Mr. Baba Jobe, YDE was subsequently replaced by KFF and KGI. The Ex-President ought to be liable for the sum of D16,001,450.64 owed by YDE and not paid as principal of Mr. Baba Jobe.

H. APPROPRIATION OF GPA SHEDS

GPA also alleged that directives were received from the former President in which GPA sheds were asked to be handed over to three institutions without payment of rent over the years and rent for one of the sheds is owing until

[216] Exhibit SC13
[217] Transcript of Mr. Abdoulie Tambedou dated 25th September 2017

now. The Companies are GAMVEG, Shyben A. Madi and Sons, and Euro African Group.[218]

(a) Gam Veg Oil Limited

GAMVEG is a private Company with the same shareholders as Euro African Group Limited (EAGL) – Messrs. Amadou Samba and Mohamed Bazzi.[219]. Executive directives were received to give them the petroleum tank farms owned by GPA in 2005. GAMVEG took possession of the place from 2005 until now and have not returned it to GPA. A few years earlier, they abandoned the tanks and refused to pay rent, ignoring all of GPA's letters. Gam Veg's negotiation with GPA was led by Mr. Amadou Samba who signed the initial lease agreement. It is to be noted that the directive from the OP used Gam Veg and Euro African Group interchangeably as if they were one and the same.[220]

Mr. Abdoulie Tambedou testified and read a letter from the Office of the President addressed to the Managing Director of GPA dated 18th November 2005, which stated that the President granted approval of the request to lease the GPA bonded warehouse previously held in **reserve** for Government to Seaboard Overseas Group.[221] Gam Veg was refining groundnut oil, processing crude oil into groundnut oil and using GPA tank farms as export. It was operational until around early 2010-2011 and since then the tanks have not been used. The rent was agreed upon; USD10 per square metre of space per annum as seen in the GPA and Gam Veg Lease Agreement. GPA wrote to the Solicitor General about June 2017 after receiving no response from Gam Veg because the directive had come from OP.[222]

FINDING

Even though GPA was compelled to lease the tank farms to GAMVEG, it was still a commercial transaction and they ought, ordinarily, to have taken action to recover their rent from GAMVEG. The Commission notes that being a directive from the Ex-President, GPA management might have felt understandably reluctant to take such action. However there is no record that they brought the matter to the attention of the Ex-President. GAMVEG

[218] See Abdoulie Tambedou 25th September 2017 Transcript. See also Exhibit SC10.
[219] See Exhibit…memorandum and articles of association of Gamveg Oil Ltd.
[220] See Abdoulie Tambedou 25th September 2017 Transcript.
[221] Exhibit SC10
[222] Transcript of Mr. Abdoulie Tambedou dated 25th September 2017

remained liable for the rent. Same should be computed and recovered from GAMVEG assets.

(b) Shyben Madi & Sons Limited

In 2012, a letter was written to GPA from the Ministry of Lands directing them to give one of their properties to Shyben A. Madi on a 4-year rent-free period because the government took over Shyben Madi's own sheds.[223] GPA was asked to compensate them with sheds rent free from 2012 to 2016, and then on 22nd March 2016 GPA received another letter extending the directives to another 3 years. The government used the Shyben Madi sheds for the storage of imported sugar. Kanilai Family Farms imported the sugar and used the sheds in the name of the Ex-President. GPA made it clear that the claim for the rent-free sheds is against Kanilai Family Group. The rent owed amounted to D2.7 million for the 4 years from April 2012 to March 2016. The one for the period 2016 to 2018 has not yet been computed. Shyben A. Madi is still using the sheds and from informal discussions with them, the position is that they have not yet built their new sheds, which is why the Office of the President extended the rent-free period into 2018.[224]

FINDING

The compulsory acquisition of Shyben Madi sheds by government for use by Kanilai Family Farms should have had nothing to do with GPA. GPA are entitled to the release of their sheds by Shyben Madi. Kanilia Family Farms and the Ex-President are liable for the rent that has accrued on the sheds to be computed by GPA from April 2012. Shyben Madi should help itself as regards its sheds.

(c) Euro African Group Limited

The GPA was also directed by the President to hand over one of their sheds to EAGL called Bonded Warehouse 2. The Office of the President had reserved the warehouse for Kanilai Family Farms for their sugar importation and storage.[225] EAGL had approached GPA to use a shed and GPA informed EAGL that they had no sheds left to rent out. Thereafter, GPA received the executive directive that the shed reserved for OP should be given to EAGL. Initially, it was to be a short-term arrangement, but then GPA was asked to create a lease agreement from 11th August 2008 to 25th January 2017 the terms of which were never honored. Military officers guarded the site even while it was in the

[223] Exhibit SC10
[224] Transcript of Mr. Abdoulie Tambedou dated 25th September 2017
[225] Exhibit SC10

possession of EAGL and until after the political impasse when they were withdrawn from the site. GPA has re-possessed the shed now and are claiming D10,420,103.28 against EAGL for the rent owed from August 2008 to December 2016.
GPA sent many claims before EAGL's departure. See Exhibit SC 126.

FINDING

It was EAGL that requested to rent the Shed and merely used Ex-President Jammeh to compel **GPA** to give them the Shed which they occupied and moreover signed a lease agreement, GPA should have taken the steps to recover the rent from EAGL. EAGL is liable for the rent of **D10,420,103.28** which should be recovered from the Company.

I. MICHELA COSTRUZIONI

(a) Why The Company Was Recruited

Michela Costruzioni is an Italian construction company which did some construction works at the ports and had received about USD2,034,000 for this work from the GNPC account. It was a company the Office of the President wrote to in January 2014 to grant them access to resume work that had commenced at the Banjul Ferry Terminal.[226] According to Mr. Ousman Jobarteh, MD of GPA, GPA was already aware of Michela's presence before it was engaged officially (before GPA received a copy of OP's letter asking them to allow Michela to resume work). They had been working on an extension for platforms constructed by GPA for use as landing sites by the two ferries, Al Jamdu and Kansala. When the ferries were delivered to Banjul in 2012 they were too deep so they could not use the existing landing bridge that the other ferries were using. The ferries were single door, meaning vehicles would head in and back out or back in and head out, rather than being able to move in both directions to enter and exit. Additionally, the shoreline was too shallow. For these reasons, the ports needed to build a separate landing facility, thus warranting concrete platforms, which GPA had constructed[227]. However, after building the concrete platforms, GPA

[226] See letters relating to Michela Construction projects, Exhibit SC33
[227] See Vol. Vol 6 Chapter 8 on GALIA

discovered the ferries still could not land properly, so Michela stepped in to build an extension to the platforms. Once GPA installed slave meters[228] for electricity and water because OP requested GPA to provide Michela with such amenities.[229]

Mr. Jobarteh testified that he was not at any time involved in the transaction that occurred in relation to the building of the platforms. According to the letter GPA received from the Ministry of Transport in September 2015, that Ministry had the supervising role over Michela and its construction project. However, Mr. Jobarteh said that to his knowledge no one was on the ground supervising or monitoring anything because there was a perimeter fence[230] dividing the existing ferry terminal that GPA was using and the site where Michela was doing construction works. GPA's construction costs of the platforms in Banjul and Barra were in the region of D80,000,000. Two other platforms were built in Trans Gambia between Bamba Tenda and Yelli Tenda, which were also in the range of D70,000,000 for construction.[231]

In total D150,000,000 was spent on the platforms for the ferries. However, this does not include the USD2,034,000 that Michela received.

(b) Advising On Procedure Following Discontinued Construction

Later in 2014 Michela stopped working, the site was left untouched, and equipment was left behind. GPA received a letter in 2016 from a Mr. Jabbie, claiming that personnel of Michela had given him power of attorney and GPA should not allow anyone to remove any items or materials from the site without its prior knowledge. Some materials had been removed, but Mr. Jobarteh could not testify as to what. As far as Michela was concerned, GPA played no part in managing its projects. The site was completely controlled by Michela; it had its own security and gate access, so GPA staff gaining access to the site was difficult. Michela had full custody of the site which was part of the ferry terminal[232.]

[228] An extension to a meter reading so that whatever water/electricity is consumed, it can be read off the meter for billing. See Ousman Jobarteh Transcript 17th October 2017
[229] Transcript of Mr. Ousman Jobarteh dated 17th October 2017
[230] This perimeter fence was built during the previous construction works GPA was conducting with their company "Syncrosba"
[231] Transcript of Mr. Ousman Jobarteh dated 17th October 2017
[232] Transcript of Mr. Ousman Jobarteh dated 17th October 2017

There was a series of correspondence between OP in which GPA was asked to give an opinion as to the progress of Michela's work, what it achieved, and the materials that were on site.[233] GPA did an assessment with a view to helping OP verify the claim submitted by Michela for advance payment. Mr. Jobarteh testified that to GPA's knowledge OP did not pay the invoice for an advance payment.

Around June 2016, OP wrote to GPA once more, requesting it to seek the Solicitor General's advice on whether to terminate or continue with the project. GPA responded saying it was not involved in the design, it did not know the scope of works, and it did not have any Bill of Quantities. Therefore, it would be difficult to give an assessment as to whether to continue or terminate. It had done an independent survey based on experience; it had carried out similar works and given its opinion as to the progress of works achieved by then and materials on site. GPA's advice was to engage Michela prior to any determination of how to proceed. The letter it sent to OP was acknowledged and honored, and so GPA wrote to Michela at its known addresses in Italy, Gambia, and Senegal, but the letters were never answered. The National Roads Authority[234] (NRA) wrote in response as well, because they were copied the letter, requesting a progress update on Michela's construction. NRA responded to the Secretary General and copied GPA. NRA made mention of the contract from September 2013 (though it was not attached to its report) with a Bill of Quantities, a progress of works, and showed that the contract was for EUR27,000,000 excluding the supply of two ferries valued at EUR8.8 million. NRA's letter included two invoices for payment from Michela for EUR1.5 million[235].[236]

Office of the President had requested legal opinion as to termination or continuation from the Attorney General's Office as well. A meeting was requested with the OP, GPA, the Ministry of Transport, and the Ministry of Justice to discuss how to move forward with Michela's project. No conclusion could be reached, so the meeting was scheduled for a later date, and, in the interim, ended up being overtaken by developments. GPA only attended this one meeting, none others were facilitated, and since then no action has been taken. Mr. Jobarteh testified that as of late there was a letter from OP discussing an entity that would be created to resume works again. GPA advised once again to engage Michela to know the true scope of works, Bill of Quantities, and the project's objectives, to be able to give a solid opinion. Once again GPA's attempts to contact Michela failed, as they received no response[237.]

[233] See correspondences between OP and GPA, Exhibit SC33
[234] Sector underneath the Ministry of Transport Works and Infrastructure
[235] See Exhibit BB52. Also See "Request for Transfer of Funds," Exhibit BB63
[236] Transcript of Mr. Ousman Jobarteh dated 17th October 2017
[237] Transcript of Mr. Ousman Jobarteh dated 17th October 2017

FINDING

OP under the directive of the Ex-President spent USD2,034,000 from GNPC account for a project that was unsupervised and shrouded in mystery that did not seem to benefit anyone. This sum has been dealt with in the GNPC Chapter. Further investigation is required to understand what really happened and to ensure that any loose ends in relation to this company are properly tied off. However, it would appear that completion of the landing platforms would be useful only if new ferries are constructed that fit the design of the platforms. No more money is to be wasted on the building of platforms unless a serious study justifies it in light of the fact that the Aljamdu and Kansala are useless in The Gambia and should be sold.

J. DOBONG PROPERTY

(a) Allocation of the Dobong property

Mr. Momodou Lamin Gibba, the former Managing Director of GPA, testified that his father, Mr. Alhaji Baba Gibba who was the President' Guardian Alkalo at the time, and the elders of Dobong Village allocated the Dobong property[238] to the Ex-President. Mr. Gibba's family are the Alkalos of Dobong village and they are related to the Ex-President by marriage.[239] There was a personal connection because Mr. Gibba's father spent most of his time at the Ex-President's compound in Kanilai. As a young man, Mr. Gibba's father spent a lot of time with his aunt at Kanilai after she married into the Ex-President's family.[240]

(b) GPA Involvement In Dobong Farms

GPA records show that money was being spent on certain farms in Dobong. Mr. Gibba testified that during his time at GPA their corporate social responsibility included an endeavor to play some role in the agricultural sector. In this light, GPA played a keen role in helping the Ex-President's farm at Dobong, but more so to produce groundnut for onward delivery to the agricultural sector to help farmers, who could not afford it, or had a poor harvest, with seeds for the following crop season[241.]

The nuts harvested were bagged and sent to the Office of the President to be sent to the Ministry of Agriculture. Mr. Gibba said that the Permanent

[238] Located in the Foni District of the West Coast Region
[239] Mr. Gibba's grandfather's younger sister married into the Ex-President's family, and his father's aunt also married into the Ex-President's family
[240] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[241] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018

Secretary and Minister of Agriculture were always copied on all correspondence sent to OP regarding GPA's agricultural projects at Dobong. GPA was operating the farms and paying the workers on the farm, not necessarily a monthly salary, but instead a quarterly allowance to make for the time away from their businesses to attend the farms throughout the year[242.]

The program started around 2009-2010. No compensation was paid to the villagers but GPA provided food and other necessities to people who came to help out, or for labour on the farm. Mr. Gibba said that Dobong was the only farm supported by GPA. He did not allow his staff to go to Kanilai to farm. Mr. Gibba testified that Dobong had no permanent employees or salaried workers. The farm manager, one Mr. Biram Camara, whom Mr. Gibba hired himself, was not employed by GPA. The Ex-President had asked GPA to pay him but Mr. Gibba had replied that GPA could not because he was not a bona fide employee of GPA. However, when Mr. Camara left, GPA compensated him D45,000[243.]

(c) Dobong Residence

Mr. Amadou Samba said he built a residence for the Ex-President at Dobong[244], but Mr. Gibba testified that he had no direct involvement with that residence because at the time it was built (around 1997 or 1998) he was a civil servant at the PMO. Mr. Gibba said that in 2009/2010 when they were working on the farm the residence was "desolate and there was no habitation." The Ex-President had directed Mr. Gibba to demolish the building, which GPA did. The GPA Dock Workers Union and laborers were already within the area because they were part of the team helping on the Ex-President's farm. They carried out the demolition with the assistance of the people of Dobong. [245]

Mr. Gibba agreed with Lead Counsel that there was a conflict of interest with respect to the Dobong farm having regard to his relationship with the Ex-President and connection to Dobong. Mr. Gibba stated that they had to utilize the Ex-President's farms in Dobong because it was difficult for GPA to have farms elsewhere to help the agricultural sector and moreover the farms were underutilized. GPA is not in the business of farming, but Mr. Gibba claimed they got involved with this project because agriculture is one of three sectors that act as the backbone of the Gambian economy.[246] Mr. Gibba claimed he came across groundnuts being distributed to Gambian Farmers in Foni and

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[242] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[243] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[244] See pictures of house, Exhibit MS206B
[245] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[246] The other sectors were Education and Health

elsewhere and was under the impression the groundnut grown by GPA was being distributed. However, the Ex-President never specifically said he was distributing them according to Mr. Gibba he does not remember supporting any agriculture projects in Dobong when he was Managing Director of Social Security and Housing Finance Corporation and while he was at Assets Management Recovery Corporation (AMRC).[247]

FINDING

The Commission did not have proof of the amount spent on Dobong. The Commission finds that Mr. Gibba acted in abuse of his office when he undertook projects outside the mandate of GPA and on farms which belonged to the Ex-President. In the Commission's view the farming activities seemed to benefit only one small part of the country, the area where he came from. The Commission does not believe that the Dobong farm project was motivated by corporate social responsibility. Mr. Momodou Lamin Dibba ought to be held liable for all monies spent by GPA on the Dobong Farms. These should be computed from GPA financial records.

K. LOAN IN EXCHANGE OF 10,000 BAGS OF SUGAR

Mr. Momodou Lamin Gibba tendered a written statement wherein he mentioned a loan of D11,000,000[248] that was given to the OP. In return the Ex-President paid it off with 10,000 bags of sugar[249.] The Commission investigated this loan and found that Mr. Gibba received verbal directives from the Office of the President to furnish him with a loan of D11,000,000 from GPA. Mr. Gibba did not take the request to the board for approval. He said he did not do so because it was "highly confidential". Mr. Gibba said he pursued the Ex-President for the money. The Ex-President had trouble paying the money back, so he paid with the 10,000 bags of sugar. GPA sold the sugar to its employees and the public through a committee established for the purpose and realised twelve million dalasis, which meant nearly one million dalasis profit[250] if interest is waived.

In an impassioned pleas to the Commission, Mr Gibba stated that he did his best to advise the Ex-President to respect due process and refrain from things Mr. Gibba thought were **wrong**. However, Mr. Gibba stated that because he was "in the minority" it was very difficult to do what was right, but he made a great effort, especially with the loan because it was not a personal loan but public funds.

[247] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[248] Exhibit MS207
[249] See Momodou Lamin Gibba Written Statement, Exhibit MS206A
[250] See Memorandum charting sugar sales from Director of Finance, Tamsir Sallah, Exhibit SC81D

Mr. Gibba also testified that from his experience and personal knowledge of the Ex-President, Mr. Gibba did not think he was able to distinguish between the State and himself. Essentially, he did not really understand the difference between a Head of State and the State, even though Mr. Gibba said tried to make him understand.[251]

L. MISS BLACK USA PAGEANT

On 8th May 2007, GPA was directed by the Ex-President to pay USD305,280 for air tickets for the Miss Black USA Pageant contestants and officials from the US to The Gambia on 23rd May 2007. It was a total of 162 people at USD1,884.45 per person. The then SG Njogou L. Bah, sent a letter to GPA on 8th May 2007 listing these details and stated that the travel agency working with them had said that the funds were needed by the next day or else prices would “skyrocket.” He also stated that the Ex-President would refund GPA when he returned to the country. GPA transferred the money to the Intraworld Exchange Corporation’s bank account with Citibank, N.A. in Washington D.C. the next day, 9th May 2007 and informed OP[252.]

Mr. Ousman Jobarteh testified that the amount paid for the pageant was not recovered and it is still showing in GPA’s books and has not been written off. This payment was also released without notice to the board.

FINDING

The Ex-President is liable for the sum of USD305,280 taken as an illegal loan requested by Dr Njogou Bah from GPA on his behalf for a Miss Black Africa Pageant. An event which had no connection to GPA or the Government. The President acted in abuse of his powers as President.

M. REGIONAL MARITIME UNIVERSITY

(a) University’s Background

Regional Maritime University[253] was a school hosted in Ghana that was the result of a collective effort from Gambia, Sierra Leone, Cameroon and Liberia, and these West African English speaking countries made up a Board of Governors and also make annual contributions to finance the university.

[251] Transcript of Mr. Momodou Lamin Gibba dated 8th May 2018
[252] See letter and corresponding documents, Exhibit SC9
[253] Was once called Regional Maritime Academy before being converted into a university

GPA would annually send students to RMU to pursue different programs. It paid full fees for the students including tuition and accommodation. Managing Director of GPA at this time, Mr. Modou Lamin Gibba, does not remember if the agreement to pay all fees was discussed with the Board. Before he left GPA, Mr. Gibba remembered Nigeria, Angola and a few other countries had expressed interest in joining the membership behind RMU.[254]

Construction of Student Hostel

In 2008, the **Board** of Governors from RMU came to The Gambia. [255] While visiting the Ex-President they told him of the acute shortage of accommodation for the students studying at the university at the time. They thereafter visited GPA and mentioned that the Ex-President promised either him or the Gambia Government would pay for the construction of a new hostel for the students coming from Gambia, Liberia, Sierra Leone, Cameroon, and the host country, Ghana[256.] The cost of construction was put at USD750,000[257.]

The Ex-President called Mr. Gibba to inform him that the Gambian Government would fund the construction of the hostel. GPA subsequently received the directive from OP to provide funding for the construction of the hostel and that the cost would be borne with Ministry of Finance 50% each[258.] GPA contributed a total of USD378,837.68[259] to the hostel constructing but the Ministry of Finance could not pay their portion[260.]

The Director of Finance for GPA sent an internal memorandum to the Managing Director of GPA, dated 16th December 2008 seeking approval for the settlement of USD200,000 to be refunded to GPA from the Government in 2009[261.] This was approved and carried out through Standard Chartered Bank. RMU sent a progress report from April 2011 giving information about the contracts signed with the contractor undertaking the works for the construction of the hostel, the Bill of Quantities for the project and also some photos showing the physical progress[262.]

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[254] Transcript of Mr. Momodou Lamin Gibba dated 17th April 2018
[255] See Ousman Jobarteh and Abdoulie Tambedou Transcript 23rd April 2018
[256] See Modou Lamin Gibba Transcript 17th April 2018
[257] See RMU Report, Exhibit SC80. See also Messrs. Ousman Jobarteh and Abdoulie Tambedou Transcript 23rd April 2018
[258] See Modou Lamin Gibba Transcript 17th April 2018. Confirmed by Mr. Ousman Jobarteh, see also Ousman Jobarteh and Abdoulie Tambedou Transcript 23rd April 2018
[259] See Exhibit SC80, supporting documents showing payments made
[260] See Ousman Jobarteh and Abdoulie Tambedou Transcript 23rd April 2018
[261] See Memorandum, Exhibit SC80
[262] See progress report, Exhibit SC80

FINDING

The Ex-President could not legally direct GPA to fund construction works whether within or outside The Gambia. The expenditure cannot be said to be unlawful. However, GPA is entitled to recover the money from Government.

N. SCHEEPBOUW NOORD NEDERLAND BV (Scheebouw)

(a) Taiwan Grant

Social Security and Housing Finance Corporation (SSHFC) gave a loan of almost D30,000,000 to GPA and the ferries for them to procure good engines to replenish three old ones. Mr. Modou Lamin Gibba testified that the Ex-President called him and said that the Taiwanese were willing to provide funds to rehabilitate the ferries. He believed it was due to a trip the Taiwanese Ambassador made to The Gambia during which he personally experienced the poor service with the ferries[263.] The Ambassador of Taiwan made paid a total of USD1.47 million in two payments to GPA:

- USD747,692.40 by way of Mega International Commercial Bank in New York, a check dated 19th December 2012[264] out to the Secretary General of the Office of the President, and then remitted to GPA.
- USD728,153.92 made by way of funds transfer by a letter from OP authorizing funds to be transferred from the Central Bank Youth's Development Fund Account to GPA's Abbey Account in the UK.

The Total cost of rehabilitation for all three ferries at the time was D164,130,830[265.]

(b) Scheepbouw Contract

Before Taiwan's intervention, Mr. Gibba had made D30,000,000 available to GPA through SSHFC financing. This money was meant to help the ferries in Basse.[266] Mr. Jobarteh testified that Scheepbouw came into the picture at the time of procuring a new engine for the ferries. Mr. Gibba testified that they met Scheepbouw through the Gambia Groundnut Corporation (GGC) Chairman because at the time Scheepbouw was building some tugboats for

[263] See Modou Lamin Gibba Transcript 17th April 2018
[264] See check, Exhibit SC81
[265] Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018
[266] Transcript of Mr. Modou Lamin Gibba dated 17th April 2018

them. GPA learnt that Scheepbouw was the sole agent for MAN engines in Germany[267.] Mr. Jobarteh also confirmed that Scheepbouw had done work for GPA before in 2009 for the rehabilitation of the then Barajally Ferry. GPA launched a request for quotations from known suppliers of marine engines.[268] Scheepbouw happened to be the most responsive and cheapest company for the supply of eight MAN engines needed for the ferries. GPA entered into a contract with Scheepbouw for the supply of four new engines for the Kanilai Ferry, two for the Soma Ferry, and two for the Farafenni Ferry for a contract value of EUR680,076[269.] GPA paid a first installment of 50% of the contract price, which was an advance of EUR377,537. After some time, Scheepbouw failed to deliver and the recovery efforts proved difficult because the letters sent to them at their known address were returned undelivered [270.]

(c) GPA's Transaction With Scheepbouw

Mr. Jobarteh testified that the only reason GPA contracted with Scheepbouw was because GPA wanted MAN engines for the ferries, but Man Company insisted GPA work with them through Scheepbouw[271.] Scheepbouw was represented by an agent and would only conduct business with GPA through this agent. The advance was paid to the agent but Scheepbouw claimed to have never received the money GPA sent as advance payment[272.] Mr Gibba testified that the agent was also representing the Tanzanian Government for the building of some vessels. At the time that GPA gave money to the agent, he came to learn that the agent was being sued by the Tanzanian Government[273] for failing to deliver on a ferries project in excess of EUR2 million[274.] Mr. Gibba suspected that the agent used that money towards the legal suit against him. GPA sent several letters requesting a refund, but never received a response. GPA wrote to The Gambia Ambassador to Belgium and asked him to intervene on GPA's behalf to see if Scheepbouw could be traced. The Ambassador wrote back to say he could not trace the company, but advised they contact the Gambia Consul General in Holland to see whether he would be in position to be able to trace the company. GPA wrote to him and he was able to trace the company after some time but message came back saying it was out of business and in liquidation. GPA asked the Ambassador if he could go to Scheepbouw on its behalf as

[267] Transcript of Mr. Modou Lamin Gibba dated 17th April 2018
268 Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018
269 See purchase order, quotation invoice, and contract, Exhibit SC81.
[270] Transcript of Mr. Modou Lamin Gibba dated 17th April 2018
[271] See Ousman Jobarteh and Abdoulie Tambedou Transcript 23rd April 2018.
[272] See Modou Lamin Gibba Transcript 17th April 2018
[273] See Modou Lamin Gibba Transcript 17th April 2018
[274] Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018

representative, but the Ambassador did not respond even though GPA contacted him several times regarding this request.[275]

GPA involved OP and AG's Chambers, Mayer Brown and Company, who were already engaged in arbitration cases by government, including the Gallia Holdings arbitration, were approached[276]. Solicitor General sent GPA a letter advising that they should consult with AG Chambers first before agreeing to accept the legal representation. Within the letter SG states, "the cost of initiating arbitration proceedings is very expensive and so in this regard we advise that the first issue to ascertain before considering anything else is the status of Scheepbouw on whether or not it is a legitimate company and whether it has been listed as bankrupt or undergoing bankruptcy proceedings. The reason why this must be ascertained is that given the expensive nature of arbitration proceedings we must be certain that we are dealing with a legitimate company or a company that is not declared bankrupt to provide us with a realistic chance of recovering the funds owed to GPA.[277]"

A fee was quoted to GPA, but no payment was made for the matter to be pursued further[278.] Mr. Jobarteh testified that Brown sent a letter indicating that this was not a very complex matter to pursue and their fees normally should not exceed USD40,000. At the time they were requesting a USD10,000 down payment to move forward. Mr. Abdoulie Tambedou testified that when he returned to GPA he reengaged the issue and wrote to the Gambian Embassy in Belgium to pursue further matters. They asked for the purchase order and evidence of the advance payment, which GPA sent to them, and that was the last correspondence on the matter. This was in 2016.[279]

(d) Breach of Procedure

The procurement contract signed between GPA and Scheepbouw had a clause that payment should have been secured by an advance payment guarantee. Furthermore, it stated that for the first tranche of 50% the supplier must submit to the procuring organization invoices and an advance payment guarantee securing the payment of the full amount of the payment installment[280.] Nonetheless, no invoices were sent, the guarantee was not issued, and none of this was normal according to Port Authority Procurement

275 Transcript of Mr. Modou Lamin Gibba dated 17th April 2018
276 Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018
277 Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018, Page 18-19 Line 441-448.
278 Transcript of Mr. Modou Lamin Gibba dated 17th April 2018
279 Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018
280 See Procurement Contract, Exhibit SC81C.

Rules. Mr. Jobarteh testified that the only explanation GPA had was that this was an oversight even though there was a Procurement Committee and this transaction should have gone to GPPA like all transactions of this nature. Jobarteh also testified that it did not go to GPPA because GPA management was under the impression that procuring the engines was urgent as they were told that the Taiwanese Ambassador meant business, thus justifying the urgency for the funds to be released. They also did not receive a waiver from GPPA. [281]

Mr. Jobarteh testified that he did not know who drafted the agreement with Scheepbouw. GPA does not have in-house counsel and they did not take the agreement to external counsel before signing. Mr. Jobarteh stated that a normal procurement contract would have been modeled according to GPPA guidelines with all the guarantees to secure payments and investment, as standard GPPA contracts do. Also GPA has in-house guidelines to refer to when having urgent matters that bypass normal procedures, but in this case those guidelines were ignored[282.] The Commission drew attention to the fact that from the series of matters before the Commission, it appeared that good governance was not a serious consideration. Management was not taking matters to Board and was not creating resolutions to ratify things done without Board consent.

(e) <u>Finances and Audit Report</u>

Mr. Jobarteh testified that the money that was paid to Scheepbouw was GPA funds and not the money that was received from Taiwan. Taiwan had donated after GPA had already begun the process to fix the engines and contracted with Scheepbouw. The money that came from Taiwan was used by GPA to procure engines from another company.

Mr. Tambedou testified that GPA has external auditors, but the National Audit Office was auditing for the ferries. Ferries itself is a department within GPA and their external auditors were in backlog. The auditors at the time were KPMG who had a three-year contract, which was about to phase out and then new auditors were supposed to come in but they could not come whilst a backlog existed. Therefore there was the issue of trying to address the non-performance of an external audit for the years that were in arrears. In the interim, the Government sanctioned the National Audit Office to do an audit of the Ferries because the 2011/2012 external audit had not been conducted; only an internal one was done. The law governing GPA requires a yearly audit for all subsidiaries; Ferries being a limited liability company is included as a subsidiary. Furthermore, even the Companies Act requires an audit with no exception, and yet Mr. Jobarteh testified that Ferries was

[281] Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018
[282] Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018

transitioning auditors and the new auditors did not want to come in and work with an already existing backlog. The Board of GPA gave directives informing them that the audits must be completed without exception. However, audit reports were not sent to the Board[283.] The OP was put in the know on the money lost to Scheepbouw. The audit report was submitted to the Office of the President, but there was no reaction from them.

FINDING

There is no evidence that the Ex-President was involved in the Scheepbouw affair. However, the Commission has the mandate to investigate any matters related to its terms of reference. EUR377,537 is a large sum of money for GPA to lose. From the evidence, this sum was lost due to the failure to follow GPPA procedure in this matter. There appears to have been gross negligence on the part of management. The Commission investigations were not sufficiently in depth to make any definitive finding of negligence on the part of anyone. GPA Board should cause a more extensive investigation of this matter to be carried out and apply appropriate sanctions, were necessary.

SUMMARY OF FINDINGS

a) There was too much executive interference in the running of GPA by Ex-President Jammeh who succeeded in bringing GPA under his close grip.

b) The GPA Board did not exert its authority on matters emanating from the Office of the President.

c) Former GPA Managing Director, Mr. M.L. Gibba, was a facilitator as he aided in executing all of the Ex-President's directives and turned GPA into a cash cow for the Ex-President. He was also involved in the allocation of the Dobong Property to Ex-President Jammeh while providing financial support as well.

d) Gambia Milling Corporation still owes GPA D18 million for the land occupied by the flour mill

[283] Transcript of Messrs. Ousman Jobarteh and Abdoulie Tambedou dated 23rd April 2018

e) GPA request for compensation of the ferry/workboat from Gam Petroleum Storage Facility Company of D16 million is still outstanding.

f) KFF owes port charges of over D11 million to GPA plus an additional D1.5 million for port charges for shipment of cement.

g) KFF owes GPA ferry crossing charges valued a D383,365 and 618,400 CFA francs.

h) GPA is yet to be refunded D7 million used for the Kanilai Cultural Centre.

i) Youth Development Enterprises owes GPA claims in the sum of D16 million

j) GPA has claims of D2.7 Million against KFF for the rental of sheds for the storage of imported sugar for the 4 years from April 2002 to April 2016.

k) GPA has a claim of D10.42 Million against EAGL for the rent owed from August 2008 to December 2016.

l) D150 Million was spent for the construction of unusable platforms at the Banjul/Barra and the Bamba Tenda/Yelli Tenda crossings; these costs do not include the D2.034 million Michela Costruzioni was paid.

m) Mr. M. L. Gibba gave a personal loan of D11,000,000 (Eleven million dalasis) in cash to Ex-President from GPA funds, a total violation of corporate governance standards. This loan was repaid in kind with 10,000 bags of sugar! The sale of the sugar yielded almost twelve million dalasis; a million dalasis profit for GPA.

n) GPA was directed by Ex-President Jammeh to pay USD305,281 for air tickets for the Miss Black USA Pageant contestants.

o) GPA contributed a total of USD378,838 to the construction of the Student Hostel at the Regional Maritime University in Ghana after a phone call from the Ex-President to Mr. M.L. Gibba.

p) Taiwan paid a total of USD1.47 million as the total cost of rehabilitation of the old ferries and yet the ferries have not been operational.

q) GPA paid an advance of EUR377,537 to Scheepbouw for the supply of MAN engines for the old ferries but there has been neither delivery nor recovery of the said sum because the contract had no performance guarantee or security.

RECOMMENDATIONS

a) Mr. M.L. Gibba should be held liable for all financial losses emanating from his enabling of the Ex-President take money away from GPA. He should also not be allowed to serve on Boards of PEs for at least 10 years or also as MD/ CEO for the same number of years.

b) GMC must pay GPA **D18 Million** plus penalty interest or return the land occupied by the flour mill **plus rent** over the period of occupation.

c) Ex-President Jammeh must refund the cost of the Miss Black USA Pageant of **USD305,281.**

d) Gam Petroleum Storage must repay GPA for the use of the ferry/workboat.

e) GPA must be paid port charges of **D11 Million**, ferry crossing charges **of D383,365 and 618,400 CFA francs** and the cost of **D7 Million** for constructing the Kanilai Cultural Centre. The money should be recovered from the assets of Ex-President Jammeh.

f) **EAGL's debt to GPA of D10.42 Million** for the rental of sheds must be repaid.

g) The **D16 Million** owed by Youth Development Enterprises should be recovered from the estate of the late Mr. Baba Jobe and the balance remaining recovered from the assets of Ex- President Jammeh.

h) The **D2.7 Million owed by KFF** for the rental of sheds for the storage of imported sugar for the 4 years from April 2002 to April 2016 should be recovered from the liquidated assets of KFF and Ex-President Jammeh.

CHAPTER 4 - GAMTEL AND GAMCEL

1. INTRODUCTION

Gambia Telecommunications Company Limited (GAMTEL) was established in 1984 as a Limited Liability Company. Prior to the establishment of GAMTEL, Post and Telecommunications (P&T) was responsible for the national telecommunications services. Cables and Wireless Limited were responsible for international telecommunications services and telecoms and therefore the international telecommunication Gateway[284]. The Telecoms Department of Posts and Telecommunications was separated from the Postal Services and Cable and Wireless nationalized and amalgamated with the Telecommunications Department to form the Limited Liability Company now known as GAMTEL[285]. GAMTEL was established to function as a public telecommunications carrier for the Gambia i.e. GAMTEL is a fixed network operator that deals with fixed lines and related services. GAMTEL also offers internet service to customers[286].

The Certificate of Incorporation issued at the time of incorporation was not produced as the copies could neither be found at GAMTEL nor at the Company Registry[287]. The Registrar's stamp on the earliest Memorandum and Articles of Association tendered indicates that it was filed on the 1st of December 1987. The shareholders at the time were Ministry of Finance and Trade, Social Security and Housing Finance Corporation, and Gambia National Insurance Corporation (no signatures)[288] each holding one share[289]. Mr. Sarjo Ceesay (Witness no. 129), the Company Secretary of GAMTEL has told this Commission that the shareholding structure was later changed and Government of the Gambia through MOFEA became 99% owner whilst Gambia National Insurance Corporation (GNIC) held 1%[290].

GAMTEL in 2001 established Gambia Telecommunications Cellular Company Limited (GAMCEL) as a wholly owned subsidiary of GAMTEL. GAMCEL is a Mobile Operator that offers GSM services. The Certificate of Incorporation could not be found. The Registrar's stamp on the Memorandum and Articles of Association of GAMCEL[291] is dated 16th November 2000. The shares are held by, Managing Director GAMTEL (99%) and General Manager GAMCEL (1%).

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[284] Transcript of Mr. Abdoulie Kebbeh dated 1st February 2018
[285] Transcript of Mr. Sulayman Susso dated 15th January 2018 – pg. 5
[286] Transcript of Mr. Sulayman Susso dated 15th January 2018
[287] Transcript of Mr. Sarjo Ceesay dated 24th January 2018 – pg.6
[288] Transcript of Mr. Sarjo Ceesay dated 24th January 2018
[289] Exhibit SC63A
[290] Transcript of Mr. Sarjo Ceesay dated 24th January 2018
[291] Exhibit SC65A

The statutory documents were amended in 2008 after Government sold 50% shares in GAMTEL and GAMCEL to Spectrum International Investment Holding Sal in 2007. The shareholders then were Ministry of Finance and Economic Affairs (50%) and Spectrum International Investment Holding Sal (50%)[292]

The shares were repurchased by the Government from Spectrum in 2009. The Office of the President (OP) wrote to the Attorney General's Chambers requesting that the statutory documents of GAMTEL and GAMCEL be regularized. This resulted in the amendment of the Memorandum and Articles of GAMTEL on the 30th of July 2014, to reflect Ministry of Finance and Economic Affairs (99%) and Gambia Ports Authority (GPA) - (1%)[293].

GAMTEL up to 2000 also operated an analog mobile communication services when that technology became available. When the GSM Technology was invented, GAMTEL decided to establish a subsidiary GAMCEL to operate the mobile communication business.[294].

In 2016, the Memorandum and Articles of GAMCEL were amended again on the 14th March 2016 and the shareholding reversed to the original arrangement[295] with GAMTEL holding 99% and General Manager GAMCEL holding 1%.

(A) OVERVIEW

THE INTERNATIONAL GATEWAY

The International Gateway is a point where all international voice telephone calls, data and voice traffic coming into and out of the country passes through. Mr. Sulayman Susso (Witness no. 117) testified that there are two types of Gateways - the Voice Gateway and the Data[296] Gateway. The Data Gateway was liberalized during the implementation of the Africa Coast to Europe (ACE) Submarine Cable in December 2012 but the Voice Gateway was not liberalized[297]. GAMTEL managed the international Gateway for both

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[292] Transcript of Mr. Sarjo Ceesay dated 24th January 2018 and Exhibit SC63B
[293] Exhibit SC63C
[294] Transcript of Mr. Sulayman Susso dated 15th January 2018
[295] Transcript of Mr. Sarjo Ceesay dated 24th January 2018
[296] Data Gateway relates to Internet – see pg.4 , transcript of Mr. Sulayman Susso dated 15th January 2018
[297] Transcript of Mr. Sulayman Susso dated 15th January 2018 – pgs. 3 & 4

National and international calls in and out of the country from 1984 up to 2006[298].

Internet started in the Gambia in 1998. In the same year, GAMTEL started experiencing a lot of issues regarding its traffic. Suspicious connections that could not be explained were found in GAMTEL switches that were carrying traffic. It could not be ascertained whether the traffic was *voice over IP or traditional traffic*. These were illegal call terminations into the GAMTEL system, but GAMTEL did not have the right technology to quantify the loss of revenue from illegal call terminations[299].

Mr. Omar P. Ndow (Witness no. 118) former Executive Chairman of GAMTEL's Board, testified that there was a lot of fraud perpetrated on the Gateway including the illegal termination of Traffic. He further mentioned that there were new entrants in the market ISPs, Mobile Operators as well as State House. GAMTEL realized that 4E1s were connected directly to their switches from State House and they had no agreement with State House to that effect. GAMTEL did participate in the installation of the equipment i.e. 4E1 which is a total of 120 Channels at the State House in 2001. They had noticed a satellite dish at the State House backyard and GAMTEL officials believed that that was the medium of communication used to dump traffic into GAMTEL's switches. All calls were coming through the satellite and dumped into the GAMTEL switch and were not accounted for. The call terminations at State House jeopardized GAMTEL's bilateral agreements with their carriers as GAMTEL was selling at an agreed rate of 12 cents whilst others sold at a cheaper rate of 4 cents[300]. Mr. Ndow testified that GAMTEL never communicated to OP on this issue.

GAMTEL could not aggregate the revenue generated by State House through the illegal call termination because the billing system they had at the time (designed by SOFROCOM) only did an aggregate billing i.e. local and international traffic. The State House system also did not have a caller ID. Mr. Omar P. Ndow further mentioned that GAMTEL cannot therefore ascertain the revenue loss attributable to State House[301].

Due to the widespread fraud on GAMTEL's network GAMTEL and the adverse impact on its growth, management took the decision to find a solution as the issue was critical to the operation of GAMTEL. GAMTEL is the custodian of the Gateway and there is only one gateway at Abuko and the other part of the Gateway is the link between Gambia and Senegal. They wrote to British Telecoms, France Telecoms, AT&T, MCI, US Print and other carriers but GAMTEL did not receive positive feedback. In 2006, GAMTEL

[298] Transcript of Mr. Sulayman Susso dated 15th January 2018 – pg. 8
[299] Transcript of Mr. Sulayman Susso dated 15th January 2018 – pg. 9
[300] Transcript dated Mr. Omar Ndow dated 16th January 2018 – pgs. 10 & 11
[301] Transcript dated Mr. Omar Ndow dated 16th January 218 – pgs. 7 & 8

moved over to Voice over IP and they were able to find operators such as Global Voice Group. GAMTEL eventually entered into a Memorandum of Understanding (MOU) with Global Voice Group (GVG) for the management of the international Gateway[302].

(B) INTERNATIONAL GATEWAY MANAGERS

(i) Global Voice Group S.A. (GVG)

GVG had the technology that GAMTEL did not have, that is the ability to detect and prevent fraud on the Gateway, international billing and provide quality assurance. A Memorandum of Understanding (MOU) was concluded between GAMTEL and GVG signed by Mr. Omar P. Ndow (Managing Director) on behalf of GAMTEL and Mr. Laurent Lamothe (President/COO) on behalf of GVG. Same is not dated but the services were to commence no later than 31st October 2006. The purpose of the MOU was to:[303]

1. To obtain an initial prepayment of USD2 Million;
2. To ensure a monthly revenue assurance;
3. To increase the monthly collection by 60% fromUSD650,000 to USD1 Million;
4. To acquire state of the art technology and billing system;
5. To increase the international rates up to the Federal Communication Commission (FCC) benchmark of 21 cents per minute within a period of one year; and
6. To train GAMTEL staff technically and commercially.

The responsibilities of GVG under the MOU included installation and operation of a new Soft Switch for international traffic; and to provide training for existing and new international switch operators[304].

When GVG took over the management of the international Gateway, the revenue realized from the international Gateway increased dramatically. Prior to GVG's involvement, GAMTEL collected an average of USD380,000 per month. Mr. Omar P. Ndow testified that when GVG took over, monthly revenue generated went up to about USD1.5 million[305]. There was a provision in the contract that even if traffic drops; GVG still had to pay GAMTEL a minimum of USD1 Million. The new billing system provided real

[302] Exhibit SC56 - MOU between GVG and GAMTEL
[303] Exhibit SC56 MOU between GAMTEL and GVG
[304] See SC56 MOU between GAMTEL and GVG signed on the 7th November 2007
[305] Transcript of Mr. Omar P. Ndow dated 16th January 2018 - pg. 9 lines 192-196

time information which enabled GAMTEL to sum up the total number of traffic and its dollar equivalent[306]. During GVG's tenure, the call termination tariff was increased USD 0.20 to USD0.21 and finally USD0.23 and this resulted in increased traffic volumes[307].

When GVG started managing the Gateway, they detected the fraud and isolated all the irregular connections[308]. GVG provided financial assistance to GAMTEL of USD3 Million to improve their Network and carry out other projects[309]. Mr. Omar Ndow testified that GAMTEL had the option to work with GVG to build capacity instead of making them Gateway Managers. However, GAMTEL chose to make GVG Gateway Managers rather than acquire the technology because they regarded that as a better arrangement[310]. GVG were key players in the industry and they were assisting GAMTEL collect traffic in areas that they previously had difficulty collecting traffic from.

In 2007, Government sold 50% of its shares in GAMTEL and GAMCEL to Spectrum and gave Spectrum authority to take full control of the Management. A second MOU was entered into between GAMTEL (under the Management of Spectrum) and GVG 'to *terminate the current management of the international Gateway being carried out by GVG and to entrust the said management directly to GAMTEL'*[311]*.* It was agreed that termination of the previous MOU would take place on the 31st December 2007 without any penalty. The MOU was signed by Mr. Michael Tenn (Managing Director) GAMTEL and Mr. Laurent Lamothe on behalf of GVG[312].

During the period that GVG managed the Gateway on behalf of GAMTEL, a total of **USD19,926,664.33** was received as GAMTEL's share of the revenue generated.[313]

(ii) ORATUS Incorporated

Contrary to the reasons given for the termination of GVG's contract, GAMTEL under the management of Spectrum entered into another Gateway Management Agreement with a Company registered in the British Virgin Islands known as 'ORATUS' on the 7th of December 2007[314]. The services

[306] Transcript of Mr. Omar P. Ndow- 16th January 2018 dated 16th January 2018 – pg. 12
[307] ICT Taskforce report page 77
[308] Transcript of Mr. Omar P. Ndow dated 16th January 2018
[309] Transcript of Mr. Omar P. Ndow dated 16th January 2018 – pg. 20 lines 472-474
[310] Transcript of Mr. Omar P. Ndow dated 16th January 2018 – pg. 19 GVG were Traffic Terminators
[311] Exhibit SC56 - MOU entered into on the 7th November 2007 between GVG and GAMTEL
[312] Exhibit SC56 - MOU entered into on the 7th November 2007 between GVG and GAMTEL
[313] Exhibit SC59 - Summary provided by Mr. Banding Sillah
[314] Exhibit SC56 - Management Agreement Between Oratus and GAMTEL

were activated on the 1st January 2008. Mr. Micheal Tenn signed the agreement on behalf of GAMTEL in his capacity as Managing Director. Clauses 6 & 9 of the said agreement state that ORATUS is the sole and exclusive international gateway manager for the Gambia for a period of 5 years. Clause 5.1 of the agreement provided that ORATUS shall pay GAMTEL a fixed Term Service Charge of USD1 Million) payable monthly regardless of the amount collected or billed to other carriers.[315]

The responsibilities of ORATUS under the agreement included:

1. Making payments to GAMTEL as per contract
2. Monitoring and maintaining international network
3. Negotiating all aspects of international traffic with existing and new carriers
4. Provide hardware and software support for the existing soft switches and upgrade the hardware in the future;
5. Provide full engineering and technical support as well as full international management of the Gateway[316].

Although Mr. Susso testified that GAMTEL did not have record of how much ORATUS paid because the management of GAMTEL was being handled by Detacon – a consultancy firm[317], Mr. Banding Sillah (Witness no. 124) testified that during the period commencing February 2008 to October 2008, a total of **USD7,875,358** was paid to GAMTEL by ORATUS[318]. The total revenue for the Gateway was **USD17,522,242**.[319]

(iii) SYSTEM ONE WORLD COMMUNICATION (SOWC)

On the 17th December 2008, GAMTEL entered into another Gateway management agreement with a company having its registered offices in Panama known as 'System One World Communication' represented by Mr. Manuel Cuadrado Rodriguez. GAMTEL was represented by Mr. Phoday

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[315] See page 9 of Agreement – Exhibit SC56 GAMTEL and Oratus Management Agreement. Full payment terms were set forth in Annex A which constituted an integral part of this Agreement and provided for GAMTEL to receive a payment of USD1 Million on the 15th of every month and 50% of all revenues above USD3 Million as of March 2008

[316] Exhibit SC56 - See page 12 of the GAMTEL and Oratus Management Agreement
[317] Transcript of Mr. Sulayman Susso dated 15th January 2018 – pgs. 28 & 29
[318] Exhibit SC59 – Document showing Analysis of Revenue from the International Gateway Managers
[319] Exhibit SC66 - Page 80 of ICT Taskforce Final report

Sisay, the Managing Director at the time[320]. GAMTEL granted exclusive management of the International Gateway to SOWC.[321] The premise of the Gateway management contract with SOWC was for SOWC to train GAMTEL engineers and other staff so that they'll be equipped to take over the Gateway management after a year.

Contrary to what was stated in the agreement, SOWC continued managing the Gateway up to 2011 when TELL Incorporated took over. Bank transfers into Mr. Amadou Samba's (Witness no. 82) Mega Bank account indicate that SOWC was making payments to Mr. Amadou Samba through his company AMASA Investment Co. Limited[322]. Mr. Samba has deposed to an Affidavit and exhibited a letter from SOWC which simply stated that AMASA carried out some work for SOWC and those transfers of (USD1,999,950 & GBP1,407,756.74) in 2010 and 2011 were payments for the work carried out.[323]

SOWC's agreement was terminated on the 15th April 2011 and the manager of the gateway awarded to TELL Inc. Following the termination, SOWC entered into a 'Handover and Settlement agreement' with GAMTEL on the 27th April 2011[324]. GAMTEL undertook to make the following payments under the agreement[325]:

1. To reimburse SOWC USD333,333.33, being a loan that was granted to GAMTEL in March 2011.
2. Pay SOWC USD2 Million; and USD150,000 as compensation for the following listed equipment:
    1. Cisco Card (8E1s or G2) in a 7200 in Banjul (quantity:1)
    2. RAD OP-108 (Quantity 2)
    3. Cantata Spare Cards (SS7 or IPN) (Quantity 4)
    4. Modems Comtech CDM-625 (Quantity 4)

which became the property of GAMTEL.

[320] Exhibit SC56 - Management agreement between GAMTEL and SOWC entered into on the 17th December 2008
[321] Exhibit SC56 - See Clause 4 of the GAMTEL and SOWC Management Agreement
[322] Exhibit MS337 – Memorandum & Articles of Association dated 30th November 2004 – Amadou Samba owns 99% shares and Fanny Griffiths 1%

[323] Exhibit MS331
[324] Exhibit SC56
[325] Exhibit SC56 – Clause 3 of the Handover and Settlement Agreement between GAMTEL and SOWC

SOWC undertook to pay GAMTEL[326]:

1. USD809,561.54 being payment due to GAMTEL in consideration of services rendered during March 2011;
2. USD500,000 being payment due to GAMTEL in consideration of services rendered during the period 1st to 15th April 2011.

It was also stated that all international carriers were expected to make the payment to SOWC for the period 1st to 15th April 2011. GAMTEL agreed to compensate SOWC in the same amount should international carriers fail to make payments to SOWC. The remaining balance due to SOWC of USD1.173 Million was not to be paid in cash but through call terminations. SOWC transferred ownership of all equipment to GAMTEL including the soft switch.[327]

During the period January 2009 to March 2011, SOWC paid a total of USD24.6million to GAMTEL as proceeds from the Gateway.[328] The total revenue from the gateway from 2009 to end of 2010 was over **USD100 Million**.

(iv) TELL INC

Government terminated the Spectrum management contract of GAMTEL & GAMCEL and took the decision to reverse the sale.[329] On or about two years after the Government entered into the agreement with Spectrum to repurchase the shares of GAMTEL/ GAMCEL, Mr. Ali Youssef Sharara succeeded in securing a contract to manage the gateway through another company called TELL Incorporated. Mr. Mohammed Bazzi testified that TELL came back to The Gambia in order to recover the money that Spectrum lost when they re-sold their shares in GAMTEL & GAMCEL to the Gambia Government. The Gateway Management agreement with TELL was signed on the 8th of April 2011 by the Secretary General – Mr. Ebrima O. Camara. There was no witness on the part of the Gambia Government. Mr. Francesco Russo signed on behalf of TELL in his capacity as Vice President. The effective date was the 8th of April 2011.[330]

[326] Exhibit SC56 – Clauses 4 & 5 of the Handover and Settlement Agreement between GAMTEL and SOWC
[327] Exhibit SC56 – Annex I & II of the Handover and Settlement Agreement between GAMTEL and SOWC
[328] Exhibit SC59 - Document showing Analysis of Revenue from the International Gateway Managers
[329] Exhibit MS149
[330] Exhibit SC56 – Management Agreement between GAMTEL and TELL Incorporated

The Ministry of Communication was under the Office of the President from Mr. Njogu L. Bah (Witness no. 20), gave evidence in relation to the Management Agreement signed between the Government of the Gambia and TELL. He testified that he signed an agreement with TELL but that was different from the version tendered signed by Ebrima O. Camara. He was asked to sign the agreement after Mr. Ali Sharara and his group had a meeting at the Office of the President with ex-President Jammeh.

Mr. Njogou Bah informed the Commission that Mr. Ali Sharara gave Ex-President a Range Rover vehicle during TELL's management of the Gateway and this was an incentive to keep the Gateway contract[331]. The Commission has already accepted Mr. Mohammed Bazzi (Witness no. 63) evidence that GMD240,280,000 (USD7,514,000) paid into ex-President Jammeh's salary account no. 11002037701 at Trust Bank from June 2011 to January 2013 was given to him by Mr. Ali Sharara. He claims the money was demanded by the Ex-President as a precondition for TELL retaining the gateway management contract. Mr. Bazzi said he served as intermediary between Ex-President Jammeh and Mr. Ali Sharara[332]. Having regard to the evidence of Mr. Mohamed Bazzi of this blatant case of bribery of the Ex-President, the Commission believes Mr. Njogou Bah that Mr. Ali Sharara gave the Ex-President a Range Rover vehicle as an incentive. The Commission finds that TELL obtained and maintained the international gateway contract by providing the Ex-President with illegal incentives.

Mr. Bazzi said that he was neither involved in the contract negotiation for TELL's management of the gateway nor was he a shareholder and he did not act as a Broker.[333]

On the 8th May 2011, about a month after the TELL gateway management contract was signed, OP wrote to GAMTEL instructing them to transfer the International Gateway to the Office of the President. The Solicitor General and Legal Secretary was also asked to setup a team that would review the proposed management contract between GAMTEL and TELL and advise the Office of the President accordingly.[334] The Contract was already in effect at the time. We have no evidence that the Solicitor General responded.

GAMTEL's Management was not in support of TELL's management of the Gateway and then Managing Director (Mr. Baboucarr Sanyang) took steps to have the contract terminated[335]. In August 2013, the MD of GAMTEL, Mr. Baboucarr Sanyang (Witness no. 140) wrote to the Secretary General, OP to

[331] Transcript of Mr. Njogu Bah dated 29th January 2018
[332] Vol.7 Chapter 1.
[333] Transcript of Mr. Mohamed Bazzi dated 18th January 2018
[334] Exhibit SC72A- OP letter dated 10th May 2011 ref.OP/268/375/01 PART:VIII (115)
[335] Transcript of Mr. Lamin Camara dated 5th April 2018

provide an update on the Gateway management Contract with TELL. The letter pointed out that TELL's contract with government had expired since April 2013 and there had been no discussion on renewal of the contract. Mr. Sanyang also prepared a report that contained management's concerns over TELL's management of the Gateway[336]. The Report highlighted the following:

- Tell imposed a charge on GAMTEL for the cost of existing SOWC equipment, ownership of which had passed to GAMTEL after SOWC deducted the cost from the monthly revenue.
- TELL also allowed SOWC to terminate traffic worth USD2 Million as penalty for government's termination of the contract.
- GAMTEL was excluded from Contract negotiations and were compelled to renew contracts that were not favorable for the institution.
- TELL carried out major activities without informing GAMTEL; they introduced new carriers without informing GAMTEL.
- They were solely responsible for routing calls unlike previous Gateway managers.
- TELL did not conduct training for GAMTEL staff and there was no knowledge transfer because GAMTEL staff are not really involved in the day-to-day operation and management of the Gateway.
- The revenue collected from the Gateway decreases by the month and TELL has not been able to explain the reason for the fall in revenue.[337]
- TELL deducted USD2 Million from the proceeds of the gateway on a monthly basis throughout their tenure as Gateway managers[338].

OP responded on the 26th of August 2013 and requested that TELL should be summoned to hand over to GAMTEL since the contract had expired, the handing over process was to be supervised by the Secretary General. The letter added that the switch board equipment is the property of GAMTEL. The Managing Director was asked to handle negotiations with carriers[339].

Upon receipt of the letter, the Managing Director of GAMTEL wrote to TATA Communications in Canada on the 8th of September 2013, informing them that the agreement between TELL Inc. and GAMTEL had been terminated by the Government of the Gambia with effect from 26th August 2013. TATA Communication was instructed to re-route all voice traffic from the existing route to the Gambia through MGI in Switzerland with immediate effect. MGI

[336] Exhibit SC72B
[337] Exhibit SC72B - Report annexed to MD of GAMTEL's letter dated 14th August 2013
[338] Transcript of Mr. Lamin Camara dated 5th April 2018 and page 81 of Task force Report-Exhibit SC66 and Transcript of Mr. Baboucarr Sanyang dated 7th February 2018
[339] Exhibit SC72C – OP letter dated 26th August 2013 ref. PR/C/676/TEMP A/(4)

was asked to work with TATA Communication for the smooth implementation of this agreement[340].

The following day 9th September 2013, the GAMTEL MD wrote a generic letter and the addressee was "Valuable partner" in which he informed the "valuable partners" that the earlier decision to terminate the agreement with TELL has been reversed, TELL remained the Gateway manager for the Gambia and that all voice traffic coming to Gambia should be routed through TELL and not MGI[341]. Mr. Baboucarr Sanyang was asked whether he had authority to reroute the calls and he said a letter was sent from the Office of the President authorizing him to do so. He was unable to produce the letter[342].

The Managing Director, Mr. Baboucarr Sanyang was removed and arrested shortly thereafter. Mr. Sulayman Susso testified that two National Intelligence Agency officers came to GAMTEL and instructed Mr. Baboucarr Sanyang to handover to him. Shortly after Mr. Susso took over from Mr. Baboucarr Sanyang, as acting MD, executive instructions were issued to TELL from the Office of the President to pay all proceeds due to the Gambia Government from the Gateway into the 'International Gateway account'[343] at the Central Bank with Account number 110 300 1840, swift code CBG AGM GM. The Managing Director of GAMTEL was copied[344]. The account was thereafter managed from the OP with Secretary Generals serving as Signatories to the account. The monies deposited into this account were spent at the discretion of ex-President Jammeh. A **total sum of USD5,026,805** was deposited into this account.

In response to the executive instructions, Mr. Susso wrote to the SG at OP in order to seek a reversal of the decision. He pointed out that:

1. GAMTEL was seriously cash strapped and debt ridden due to capital intensive project commitments that were geared towards the improvement of service delivery;
2. GAMTEL was currently implementing projects that required massive funding;
3. Revenue streams of GAMTEL had been dwindling due to the global liberalization of the telecommunications industry and the subsequent introduction of GSM service by private operators;
4. There was a need for massive capital injection that would allow GAMTEL to implement new and existing projects;

[340] Exhibit SC57 – GAMTEL letter dated 8th September 2013
[341] Exhibit SC57- GAMTEL letter dated 9th September 2013
[342] Transcript of Mr. Baboucarr Sanyang dated 8th February 2018
[343] Exhibits CB16, CB17 & CB18
[344] Exhibits SC57 & MS145B – OP letter dated 25th September 2013 ref. PR/C/676/Vol.16/(50)

5. The cash requirement to meet current supplier and service provider obligations stood at USD2.8 Million for local payments and USD1.7 Million for overseas payments.
6. Revenue from the Gateway is nearly 50% of GAMTEL's total revenue.

A list of all major commitments was exhibited to the letter and an appeal made for the government to grant GAMTEL tax exemption for a year;

The Ex-President was not receptive to this plea. He made handwritten notes on the Minute forwarding the letter that GAMTEL cannot use the diversion of funds from the Gateway as an excuse for their current situation. He also stated that an audit firm should be engaged to audit GAMTEL and GAMCEL from 2010 to 2013.[345]

Mr. Susso testified that he did not receive a response to his letter; so, he followed up by calling the Secretary General. A meeting was setup to discuss the possibility of reversing the decision taken on gateway funds. The Secretary General at the time, Mr. Noah Touray, asked him to send a shorter letter as the previous letter was deemed to be too long. A follow up letter was subsequently sent on the 31st December 2013 to renew the acting MD's plea on behalf of GAMTEL for the institution to be given access to the proceeds from the Gateway[346]. No response was received.[347]

(v) <u>MGI TELECOM AG</u>

In early 2013, Mr. Baboucarr Sanyang approached Mr. Njogu Bah then SG at a retreat in Kanilai and asked Mr. Njogu Bah to introduce the MGI team to ex-President Jammeh. Mr. Njogou Bah testified that he told Mr. Baboucarr Sanynag to inform MGI that they should send a proposal to the President. A proposal was sent and discussions were held with ex-President Jammeh but at first it seemed like the offer made by MGI was not favorable to ex-President Jammeh so he decided to maintain the contract with TELL. Mr. Bah testified that Mr. Baboucarr Sanyang informed him that MGI was willing to offer something in order to be awarded the contract. The ex-President requested for USD10 Million but MGI was only willing to offer USD2 Million. Both Messrs. Baboucarr Sanyang and Bala Jassey claim that they have no knowledge of the ex-President's request for USD10 Million from MGI.[348]

[345] Exhibit MS145B
[346] Exhibit SC57 – GAMTEL letter dated 31t December 2013 ref. GTC/C/7/3/Vol.1/ (050)
[347] Transcript of Mr. Sulayman Susso dated 15th January 2018
[348] Transcript of Mr. Njogu L. Bah dated 29th January 2018

Mr. Bah further testified that there were allegations of bribery involved in securing the contract, that the contract was not signed in the Country and that the Managing Director traveled to Switzerland to sign the contract[349]. Mr. Baboucarr Sanyang, General Sulayman Badjie and Mr. Bala Jassey were facilitating the process.

On the 14th May 2014, the Secretary General wrote a Minute to ex-President Jammeh informing him that the Managing Director of GAMTEL had written to inform the OP that MGI engineers were in the country and a bypass had been created. Traffic coming to the Gambia was now coming through the Bypass. TELL noticed the bypass and tried to stop it but MGI found a way around it. All carriers were informed that TELL was no longer the Gateway manager and TELL was equally informed. They were however unresponsive[350].

Ex-President Jammeh directed that a letter should be sent to Mr. Muhammed Bazzi regarding the handing over, as per the instructions, TELL was supposed to totally handover by the 22nd May 2014. A letter was sent to Mr. Bazzi to that effect and he was asked to contact the MD of GAMTEL to that effect.[351]

The MGI contract was negotiated in Kanilai. Ex-President Jammeh, General Sulayman Badjie, Messrs. Baboucarr Sanyang, Bala Jassey, Momodou Sabally and one of the MGI Partners were present[352]. Mr. Momodou Sabally was the Secretary General at the time the MGI contract was successfully negotiated. Mr. Sabally testified that he found the gentlemen with ex-President Jammeh and he joined the meeting. An agreement was reached to terminate the contract with TELL and engage MGI. Mr. Sabally said that he signed an agreement on behalf of the Government with MGI. A copy of that agreement was not found and Mr. Sabally did not keep a copy. The version of the agreement tendered was signed by Mr. Baboucarr Sanyang then MD of GAMTEL. Mr. Sabally could not confirm whether the Ex-President received an incentive or not but he stated that the circumstances surrounding the switch from Tell to MGI were murky.

Mr. Bala Jassey testified that he visited Kanilai with Messrs. Baboucarr Sanyang, Lamin Saidy and Ilija Reymond, one of the MGI partners. He said he never met Mr. Njogu Bah regarding the issue of the international Gateway[353]. He accepted that he met with Mr. Momodou Sabally regarding the Gateway. He received a call from Mr. Momodou Sabally and Sabally told him that a meeting was scheduled in Kanilai with the MGI Partners. On the

349 Transcript of Mr. Njogu Bah dated 29th January 2018
350 Exhibit MS 145A - Minute Sheet dated 14th May 2014
351 Exhibit MS145A – OP letter dated 15th May 2014 ref. PR/C/676/Temp.A(4-NT) to Mr. Bazzi
352 Transcript of Mr. Momodou Sabally dated 6th March 2018
353 Transcript of Mr. Bala Jassey dated 7th February 2018

1st of May 2014, the meeting was held in Kanilai and the meeting started around 11pm. Mr. Jassey recounted what was discussed at the meeting. He explained that MGI had previously submitted a letter of intent to the Office of the President and they were granted permission to manage the Gateway but it was short-lived. The meeting was concluded by ex-President Jammeh instructing Mr. Momodou Sabally to terminate the contract with TELL and engage MGI with immediate effect. Mr. Sabally was supposed to work with MGI and sign the agreement. It was suggested by Messrs. Baboucarr Sanyang and Martin Keller that TELL should be formally informed. Mr. Baboucarr Sanyang testified that they needed time to figure a way out. The Managing Director of GAMTEL was communicating with the Office of the President on the developments concerning MGI's takeover. Mr. Bala Jassey testified that he was not involved in that regard. Mr. Jassey further testified that he was present at the Serrekunda exchange in order to identify the type of switch TELL was using. They managed to create a bypass.[354]

The Gateway Management Agreement between MGI Telecom and the Government of The Gambia is dated 1st of June 2014, a date that fell on a Sunday. The agreement was signed by Mr. Baboucarr Sanyang (then MD of GAMTEL) on behalf of the Gambia Government whilst Messrs. Ilija Reymond and Martin Keller signed on behalf of MGI.[355] Mr. Sanyang said he signed the contract because it was a directive from ex-President Jammeh.[356]

MGI is a company based in Switzerland. Mr. Baboucarr Sanyang said he came to know about MGI in 2011 when they came to the Gambia to apply for a Mobile Virtual Network Operator license. They were represented by Messrs. Hameed and Balla Jassey.[357] It is worth highlighting that an application had been made by Mobicell Blue Ocean Wireless UK on the 15th July 2011 to the Public Utilities Regulatory Authority (PURA) to operate a Mobile Virtual Network with GAMCEL. Prior to the submission of the application, GAMTEL wrote to PURA on the 12th May 2011 supporting the application. The application was refused by Ministry of Information & Communication Infrastructure (MOICI) based on the recommendation of PURA. GAMTEL MD (Mr. Baboucarr Sanyang) then wrote to PURA on the 15th May 2012 ref. GTC/C/2/VOL.4/(14) making a "special appeal" for PURA's special consideration.[358] This is a clear indication that Messrs Baboucarr Sanyang and Balla Jasseh had a relationship prior.

MGI managed the Gateway from 2014 to July 2017 when their contract was terminated by the current administration.

[354] Transcript of Mr. Bala Jassey dated 20th March 2018
[355] Exhibit SC56
[356] Transcript of Mr. Baboucarr Sanyang dated 8th February 2018
[357] Transcript of Mr. Baboucarr Sanyang dated 7th February 2018

[358] Exhibit MS285

Mr. Banding Sillah, testified that based on the financial records, there is no investment made in GAMTEL by MGI.[359]

The Gateway management contract was deemed to be above the purview of GAMTEL Board or the Ministry of Communication because it was dealt with at the level of OP.[360] No one monitored the implementation of the Contract. Mr. Sanyang stated that the financial aspect of the contract was strictly the concern of OP. However, the persons that served as Secretary General during the material time i.e. Messrs. Momodou Sabally and Sulayman Samba did not share the same understanding. Mr. Sabally said he took steps to monitor the contract but did not get the feedback he anticipated. He stated that when he realized that MGI had not deposited funds into the designated account after the first month, he alerted GAMTEL but the response he got from Mr. Baboucarr Sanyang was "very unpleasant". Mr. Sabally said when he informed ex-President Jammeh about it, he, the Ex-President downplayed it and told him that it would be sorted out. He was fired shortly thereafter.[361]

Mr. Samba said that he was not privy to the Special Fund Account (and he did not monitor the performance of the contract as it was not his responsibility to work with MGI on the revenue sharing formula under the Contract. He also stated that MGI did not submit monthly statements to OP during his time as Secretary General[362].

MGI entered into a contract with local companies called Mobicell Blue Ocean Wireless[363] and Multimedia Gateway Incorporation[364] (MGI Limited.) Although, Mr. Bala Jassey downplayed his company's involvement to that of a technical assistant, the evidence shows that MGI Ltd. was responsible for the operations and maintenance of the Gateway locally. Multimedia was responsible for collecting all the statistics of daily operations. They were also responsible for solving issues on the system. They had total control. However, there was no transparency in their operations.[365]

A report submitted by MGI Telecoms[366]showed that the total Gateway revenue from 31st May 2014 to 31st March 2017 was USD122,578,919. Out of this they deposited only USD43,123,245 into the Special Projects account (Vision 2016) account at CBG. The MGI report also showed USD52,837,514

[359] Transcript of Mr. Banding Sillah dated 17th January 2018
[360] Transcript of Mr. Lamin Camara dated 5th April 2018
[361] Transcript of Mr. Momodou Sabally dated 6th March 2018
[362]Transcript of Mr. Sulayman Samba dated 22nd March 2018
[363] Exhibit MS167A – Amended Memorandum and Articles of Association. The Shareholders of Mobicell Blue and Multimedia Gateway Incorporation are Mr. Bala Jassey and his wife. Bala Jassey owns 95% of the shares and his wife owns 5%.
[364] Exhibit MS167B – Memorandum and Articles of Association
[365] Transcript of Mr. Abdoulie Kebbeh dated 10th July 2018
[366] Exhibit SC67

stated as expenses incurred and USD69,741,405 as profit. **There is a difference of USD26,618,160 between the amount reported in MGI's report as profit and amount deposited in CBG which has not been accounted for.**

MGI signed another contract with GAMTEL 'Master Services Agreement' on the 16th May 2015.[367] Mr. Baboucarr Sanyang testified that ex-President Jammeh gave MGI directives to support GAMTEL and GAMCEL. GAMTEL and GAMCEL were supposed to identify areas in which they needed support. Mr. Sanyang claims that "*the commitment in financial terms was an arrangement between MGI and Ex-President Jammeh, GAMTEL and GAMCEL were not involved in the process.*[368]

Another account called the Special Project Fund (Vision 2016) with account number 1103002074 was opened and ex-President Jammeh was the sole signatory to the account[369]. The total amount deposited into the account was USD43,123,245. Ex-President Jammeh spent the funds at his discretion. Although General Sulayman Badjie was not a signatory to this account, he also was permitted to authorize payments from the account approved by Amadou Colley, the then Governor of Central Bank.

(vi) MGI PROJECTS

After the change of Government, in April 2017 a Task Force was setup to look into the ICT Sector and MGI's management of the international Gateway. The taskforce submitted a report to the President that resulted in MGI's contract termination. Mr. Abdoulie Kebbeh, the deputy Chairperson of the task force appeared before the Commission and produced the Task force's report. MGI also submitted a report[370] referred to above to the taskforce.

Mr. Kebbeh confirmed that GAMTEL did not have any financial information on MGI. The Taskforce had to rely on the deposits made by MGI at the Central Bank. As stated, during the period May 2014 to December 2016 MGI reported a profit of USD67,340,347 and MGI was not paying taxes. The total revenue realized form the Gateway from May 2014 to December 2016 is USD114 Million[371].

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[367] Exhibit SC75A
[368] Transcript of Mr. Baboucarr Sanyang dated 8th February 2018
[369] Exhibits CB19A, CB19C & CB20
[370] Exhibit SC67
[371] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018

MGI claimed that USD26.8 Million which formed part of its expenses was spent on 8 projects carried out in The Gambia. Four out of the 8 projects were executed by Mobicell Blue Ocean Wireless. The other 4 were executed by contractors engaged by MGI AG.

Mr. Sanyang stated that the Service Contracts came about after ex-President Jammeh instructed MGI to assist GAMTEL. Mr. Sanyang, indicated that out of the 8 projects, he could only confirm the existence of 7. He had no relationship with the E-government project. He did confirm that the second phase of OP's project was funded by MGI but he was not involved in the payment or funding arrangement. Mr. Sillah, the Finance Director of GAMTEL said that from the financial records, there is no investment in GAMTEL made by MGI[372].

The first project was the Gateway soft switches. The soft switches were claimed to have been purchased for USD3.6 Million. The Chairman of MGI, Mr. Ilija Reymond informed the taskforce that the switches had been paid off and they now belong to GAMTEL. MGI said they had to purchase switches because when they took over from TELL they did not have access to TELL's switches[373]. GAMTEL has no documentation on the purchase of the soft switches. GAMTEL staffs were not allowed access to the switches.[374]

The second project is GAMCEL's Billing System; GAMCEL's previous billing system was not adequate. MGI procured the GAMCEL Billing system for USD11.7 Million. The most responsive bidder for the GAMCEL Billing System was Amdoc who quoted USD8.2 Million but MGI awarded the contract to Redknee for a quotation of USD10.9 Million. The GAMCEL General Manager, Mrs. Elizabeth Mendy Johnson (Witness no. 163) testified that GAMCEL preferred AMDOCS's system. In a Report on the Billing System submitted to the ICT Taskforce and admitted as part of SC67, the General Manager of GAMCEL in her Statement Report stated "…we conclude that Amdocs is a solution that is better suited for Gamcel's situation. As we have always maintained, time to market is very important given our market dynamics, Amdocs is the only one that displays a capability that is seen to have such provision. However, like other offers, cost has not been mentioned. It would be interesting to have the cost of each for comparison not just for more informed decision but would also give some leverage in the negotiation[375]."

The Report also indicated that:

[372] Transcript of Mr. Banding Sillah dated 17th January 2018
[373] Transcript of Mr. Baboucarr Sanyang dated 8th February 2018
[374] Transcript of Mr. Abdoulie kebbeh dated 29th January 2018
[375] Exhibit SC67- Annex A

"In general and overall the MD of GAMTEL, the GM of GAMCEL, The Technical Director of GAMCEL and MGI were unanimous in their reaction and decision to put Amdocs on no.1 position with regards to the functionality of the proposed solution. Amdocs enables GAMCEL to have full control over the system, to decrease the current revenue leakage and supports them to initiate new business that brings value added to GAMCEL. An added plus is that Amdocs' platform can integrate the 'fix-line' (of GAMTEL) as well, which means that GAMCEL can offer triple/quad-play services in Gambia, which takes them ahead of the competition![376]"

AMDOCs was rated number 1, as they ticked all the boxes. They also offered a flexible payment plan. The billing system was eventually purchased for USD11.7 Million[377] from another supplier. Mr. Sanyang testified that MGI made the final decision as to who the contract should be awarded to. The GM of GAMCEL said that she was informed by MGI that REDKNEE was going to provide the Billing System. MGI did not provide reasons as to why REDKNEE was termed the most responsive bidder[378].

GAMCEL did not sign any agreement with REDKNEE, all negotiations were handled by MGI[379]. GAMCEL signed a project implementation contract with MGI for the implementation of the Billing System. According to Mrs. Elizabeth Johnson, MGI was managing the project and they were providing the system[380]. She believed that the GAMCEL Billing System was a grant from MGI[381]. The Contract[382] stated that MGI would provide GAMCEL with the following services:

- ON-SITE OPERATIONAL SUPPORT
- ON-SITE BUSINESS CONSULTANCY
- EXTRA TRAINING AND CERTIFICATION

MGI charged USD1.78 Million for the services provided and the sum was to be deducted from the revenue due to the Government of The Gambia[383]

When MGI's contract was terminated, they shut down the Billing system. Elizabeth Johnson informed the Commission that two days after MGI's contract was terminated, GAMCEL could not have access to the portal. When she contacted REDKNEE, REDKNEE asked her to contact MGI because MGI owned the Billing platform. MGI was engaged and they

[376] Exhibit SC67
[377] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[378] Transcript of Mrs. Elizabeth Johnson- dated 6th March 2018
[379] Transcript of Mrs. Elizabeth Johnson dated 6th March 2018
[380] Transcript of Mrs. Elizabeth Johnson dated 6th March 2018
[381] Transcript of Mrs. Elizabeth Johnson dated 6th March 2018
[382] Exhibit SC75B
[383] Exhibit SC75B - SEE Clause 4 of the Agreement

indicated that since the Gambia government terminated the Gateway Management Contract, they would require GAMCEL to pay the outstanding cost on the project implementation in order for GAMCEL to be given the license. The cost was USD1.7 Million according to MGI.[384]

On the 10th of August 2017, MGI's Counsel, Mr. Phillip Schaller wrote to GAMCEL demanding payment of USD473,997 under the Service Contract dated 11th December 2016 by 8p.m. on that day otherwise MGI would suspend any and all services under the Master Service Agreement and the respective Service Contracts and Project Management Agreements[385]. The letter also stated that "under the Project Management Agreement dated 16th April 2015, MGI procured from Redknee the Redknee Unified Charging Solution and the license to use it (together the platform) for use by GAMCEL and GAMCEL agreed to pay monthly service fees to MGI. Until the end of April 2017, the monthly service fees were deducted from the revenue generated by the international gateway. Since then, GAMCEL is obliged to pay the monthly service fees directly to MGI and has up to now failed to remit the fees for the period May to July 2017 which were invoiced to GAMCEL dated 15 July 2017 and payable until 31 July 2017 (see also Article 8.2 of the Project Management Agreement)"[386]

A copy of the Project Management Agreement was not submitted and we do not have a copy of the invoice but Mrs. Elizabeth Johnson has indicated that it costs USD1.7million.

The third project was the <u>E-government project</u> which appears to have been partially executed. MGI calls it Unified Communications Solutions and it cost USD915,000. This project was carried out by Mobicell Blue Ocean Wireless. No tender was done for this project, it was simply awarded to Mobicell by the Managing Director of GAMTEL Mr. Baboucarr Sanyang[387]. Mobicell Blue Ocean Wireless provided an invoice submitted to MGI for USD950,180 for the E-government phase 2 project. Mr. Bala Jassey claims that he was paid on the 13th and 19th of May 2014[388] via telex transfers, however no telex was provided. Credit Advices were submitted instead and only one of them indicated that payment was from MGI Telecom Ag, this was prior to the execution of the Master Share Purchase Agreement.

<u>The fourth project- the Deep Pocket Inspection (DPI) project</u> was for the purchase of an equipment that could interrupt data calls such as Viber and Whatsapp and maintain the revenue generated through international calls.

[384] Transcript of Mrs. Elizabeth Johnson dated 6th March 2018
[385] Exhibit SC75D
[386] Exhibit SC75D - Letter dated 10th August 2018
[387] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[388] Exhibit MS182

Mr. Kebbeh told the Commission that the Ex-President gave MGI approval to carry out the project. This project is claimed to have cost USD3.7 Million[389]. Mr. Bala Jassey submitted an invoice of USD622,687,59 but the telex transfers for the payments (or other proof of payment) were not provided. Mr. Bala Jassey further testified that the DPI project was initially contracted to two companies based in Switzerland and USA but they failed to implement it successfully so the DPI was installed by MGI, Multimedia Gateway and two GAMTEL staff. It was not installed by Affirmed as claimed by Mr. Bala Jassey[390] The DPI is intended to affect the data speed in the country, the gateway Management Contract provided for the installation of a DPI. Annex B of the Agreement makes it a joint responsibility of Gambia Government and MGI to take every appropriate technical measure to block, distort or limit Voip traffic (whatsapp, viber etc.) [391] private mobile operators were losing revenue due to the DPI.[392]

The fifth project was the fraud protection project. It involved purchase of a fraud protection equipment that was interconnected with the Gateway switch to prevent sim boxing. This project is claimed to have cost USD956,000[393].

The sixth project was the Intelligent Network Management Center, the task force could not ascertain what this project was about. MGI claimed that USD2.2 Million was spent on the project.[394] The project was executed by Mobicell and MGI Ltd.

The 7th was the ICT Gambia project which also could not be explained. MGI Swiss claimed to have spent USD1.6 Million on the project.

The eighth and final project was the roaming service project and MGI claimed to have spent over USD1 Million on this project.[395] The General Manager of GAMCEL testified that GAMCEL had problems with roaming service. MGI sent in a Coordinator and a Roaming Expert traveled to The Gambia twice to assist GAMCEL's Roaming Team to enhance their skills. The Roaming expert assisted in the negotiation with bilateral partners. No hardware was installed in relation to the Roaming project.

The Task force report regarding the DPI, Fraud Prevention and Detection, Intelligence Network Management System, ICT Gambia and Roaming stated that "based on consultation, product and system experience, we observed

[389] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[390] Transcripts of Messrs. Ezel Mendy, Momodou Nying dated12th September 2018
[391] Exhibit SC56 - See Annex B
[392] Transcript of Mr. Sulayman Samba dated 22nd March 2018
[393] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[394] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[395] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018

that these costs might be grossly inflated. The details of each of the projects need to be provided to the Government".[396]

Mobicell and MGI Limited had a Management Service Agreement[397] which provided that Mobicell would send a service offer to MGI for the execution of any project. Mr. Jassey testified that a service offer was never presented to MGI. He claims to have executed four projects for MGI Telecoms AG.

Mr. Jassey, Mobicell and MGI Limited have not provided the proposals submitted for each of the four projects which they admit they were involved in. No evidence was given as to manner for awarding these contracts to Mobicell and Multimedia. They were certainly not tendered. No contracts were signed for these projects. It would appear that MGI Limited awarded these contracts at their absolute discretion. The amounts on the Invoices submitted by the Mr. Bala Jassey are not consistent with the amount MGI Swiss claim they spent on the respective projects. The rest of the invoices are not specific to any project

We cannot ascertain the criteria used to award the contracts to Mobicell and MGI Ltd. The table below shows the difference in the amount deducted from the proceeds of the gateway for the four projects i.e. USD7.9million and the amount Mr. Bala Jassey claims he was paid.

No.	Project	MGI AMOUNT	MOBICELL & MGI LTD AMOUNT
(1)	E-GOVERNMENT	USD950,000	USD950,180
(2)	DEEP POCKET INSPECTION	USD3.7 million	USD622,687,59
(3)	FRAUD DETECTION AND PREVENTION	USD956,000	Not specified
(4)	INTELLIGENT NETWORK MANAGEMENT AND CENTER	USD2.2 Million	Not specified

396 See page 96 of the SC66- Taskforce report
397 Exhibit SC68B

The figures presented by Mobicell as payments received did not tally with the amounts claimed to have been spent by MGI on these projects[398]. MGI paid Mobicell based on the invoices raised.[399]

The Commission finds that a total of USD7.9 Million remains unaccounted for by MGI AG or Mr. Balla Jassey.

(vii) MGI'S MANAGEMENT OF THE GATEWAY

Mr. Bala Jassy has denied that his companies, MGI Limited and Mobicell managed the international Gateway, the evidence however shows the contrary. MGI Limited was incorporated in June 2014, the same year and month that MGI Telecoms AG was granted the Gateway Management Contract. Mr. Bala Jassey stated that this seemingly convenient arrangement is only a coincidence.

MGI Telecoms AG had no engineers stationed in the Gambia. Mobicell and MGI Limited were responsible for all the local work and the day to day operations of the gateway in the Gambia unlike previous gateway managers who worked with GAMTEL engineers. The Agreement signed between Mobicell and MGI Ltd and MGI AG was for the "subcontracting of technical and logistic support for the implementation of an international gateway assistance program project." Mr. Bala Jassey, tried to minimize the effect of this agreement by saying that only the technical aspect of the gateway was outsourced to him. When asked whether there was any other management apart from the technical management, his response was "I wouldn't know.[400]"

Mr. Sulayman Susso testified that GAMTEL did not have access to the switches. Although Mr. Adama Jammeh, the GAMTEL staff who testified on behalf of Mr. Bala Jassey claimed otherwise, the engineers that work in his department refuted this claim.

GAMTEL staff working under the Department of International operations Messrs. Momodou Nying and Ezel Mendy also testified that the GAMTEL staff were not given access to the Gateway soft switches during MGI's management of the Gateway.[401] MGI Swiss AG was not based in the country and there was a team that worked for Mr. Bala Jassey that referred to itself as MGI. They were stationed at the ACE building at GAMTEL and they monitored and managed the Gateway partially, as they were responsible for

[398] Transcript of Mr. Bala Jassey dated 20th March 2018
[399] Transcript of Mr. Bala Jassey dated 20th March 2018
[400] Transcript of Mr. Bala Jassey dated 22nd February 2018 lines 819 to 820
[401] Transcript of Mr. Momodou Nying dated 11 September 2018

the daily operations which included extraction of CDR and maintaining the switches. The logbook shows that MGI employees were permanently stationed at Ace Building. Both MGI's also used the same logo and the manager signed as "Country Director".

GAMTEL had nothing to do with the local MGI team. GAMTEL staff were not allowed to take part in the activities conducted by the local MGI team. GAMTEL staff were not privy to the call statistics, the SDRs and traffic flow, they had no access to that information.

The office occupied by the local MGI was supposed to be a shared office space for use to monitor the Gateway. After the soft switches were installed, GAMTEL staff had restricted access as they were not allowed to enter the office with their mobile phones or with laptops, external Hard Drives or flash drives. GAMTEL staff were not doing any work in relation to the Gateway during MGI's tenure as compared to previous Gateway keepers.[402] MGI did not transfer any capacity to GAMTEL as they did not train the GAMTEL staff working at the Department of International Operations. GAMTEL staff were trained by previous Gateway managers on how to use the various systems in place. That was not the case with MGI. With previous Gateway Managers, GAMTEL engineers did 90% of the work when it came to monitoring the Gateway, they partook in the installation of switches etc.[403]

MGI Swiss AG was summoned to appear before the Commission but they have failed to cooperate. They have full notice of this Inquiry.

C) THE NATIONAL ASSEMBLY CONTRACT

Whilst the National Assembly Building was under construction, a multi sectoral meeting was convened to discuss the ICT telecommunication infrastructure needs of the National Assembly and whether the Project had catered for those needs. The meeting was held on the 28th August 2013 and GAMTEL was represented by Mr. Sulayman Susso. The National Assembly wanted to understand the ICT component of the Project. The only issue apparently agreed on was the fact that the provision made by the contractor for the ICT component was not sufficient and a system was needed. There was no mention of Mobicell Blue or Mr. Bala Jassey. No specific supplier was mentioned[404].

A follow up meeting was held on the 2nd September 2013, and suggestions of different technologies were made. CISCO and Huawei systems were

402 Modou Nying-11th September 2018
403 Ezel Mendy- 11th September 2018
404 Transcript of Mr. Sulayman Susso dated 11th September 2018 – pgs. 3 & 4

considered and some of the Engineers present were tasked to get specifications which would be reviewed to see which system would be more suitable[405]. GAMTEL generated internal minutes for the GAMTEL team but they were never adopted.[406]

What transpired at these meetings regarding the CISCO system was contentious before the Commission. Mr. Omar Nyassi (Witness no. 211) called by Mr. Balla Jassey stated that a CISCO system was agreed upon during the first meeting, although he could not remember who made the recommendation. Mr. Nyassi testified that the meeting was chaired by the Deputy Managing Director Sulayman Susso, a claim that Sulayman Susso denies. He added that fiber optic cables were the preferred link. It is important to note that the fiber cables had already been laid at this time.[407].

Mr. Yaya Colley (Witness no. 210) testified that the system proposed by the contractor was an analog system, it was brought to the attention of the meeting that GAMTEL had already laid fiber optic cables up to the National Assembly therefore a digital system would be more ideal.[408] The consultant that carried out the building project mentioned that the digital system was not within their scope of work therefore the National Assembly had to get special/ additional funding for it. Mr. Colley was tasked to provide specifications for an IP-PBX system.[409]

The National Assembly Authority scouted for funds through the GLF and secured a grant of D28 Million to fund the design, purchase and installation of the IP-PBX System. A technical package was subsequently designed and the National Assembly decided to single source the contract to GAMTEL because they felt it would be more reliable[410].

On the 26th of February 2014, the Clerk of the National Assembly, Mr. Dodou C. M. Kebbeh testified that he extended an invitation to GAMTEL to attend a multi-sectoral stakeholder's fact finding visit to the new National Assembly complex. The Managing Director of GAMTEL was tasked to come up with concrete solutions to issues that were raised earlier with his office[411].

Mr. Baboucarr Sanyang (Witness no. 140), former Managing Director of GAMTEL testified that the National Assembly approached GAMTEL and informed them that they would require a PBX System. The Managing

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[405] Transcript of Mr. Sulayman Susso dated 11th September 2018 – pgs. 4 & 5
[406] Transcript of Mr. Sulayman Susso dated 11th September 2018 – pg.5
[407] Transcript of Mr. Omar Nyassi dated 12th July 2018 – pgs. 5, 6
[408] Transcript of Mr. Yaya S.B. Colley dated 11th July 2018
[409] Transcript of Mr. Omar Nyassi dated 12th July 2018
[410] Transcript of Mr. Dodou Kebbeh dated 5th February 2018 – pg. 9
[411] Exhibit SC67A - Letter dated 26th February 2014 ref. MA 1/54/02/Part I/(III)

Director setup a project team that was solely responsible for addressing the needs of the National Assembly project. At the initial stage, the National Assembly wanted to deploy a Panasonic analog system but this system would not have been suitable. Prior GAMTEL had laid a fiber cable from GAMTEL house up to the National Assembly premises, before National Assembly engaged GAMTEL. The fiber cable was designed to handle both data and voice. During the meetings, the National Assembly was informed about a Cisco unified communication system installed at the State House by Mobicell and that platform would be able to provide all the services needed by the National Assembly. The National Assembly expressed interest in the platform but GAMTEL did not have the manpower in house.

Documentary evidence shows that on the 11th of August 2014, the National Assembly wrote to GAMTEL asking GAMTEL to provide the *National Assembly with a Switch Board system equipped with direct lines and extension facilities*. *The National Assembly indicated in the letter that they recently found out that the PABX System recommended by the contractor was analog and obsolete and will not be compatible with the digital cables provided by GAMTEL. GAMTEL was asked to supply, install and provide staff training for a state of the earth digital switch board and submit an invoice to the office of the Clerk of the National Assembly for settlement*[412].

The Managing Director of GAMTEL, Mr. Baboucarr Sanyang wrote to the National Assembly on the 4th of September 2014. Mr. Sanyang indicated that a comprehensive communications solution had been identified but the manufacturing of the hardware and software solution would take at least six months. He also indicated that all procurements will have to be done through the public procurement rules and regulations. Selection of an appropriate vendor would take nothing less than six months. The GAMTEL engineers had already started scouting for vendors/suppliers. The National Assembly was required to provide a timeline for the project[413].

The National Assembly responded to GAMTEL on the 9th of September 2014 and asked that Financial and Technical quotations be submitted.[414]

GAMTEL sent another letter to the National Assembly and recommended a Cisco Call Manager Business Edition 6000 and that it was a state of the art IP Base system. Installation and configuration could be done within 21 days. GAMTEL also recommended that the National Assembly works on facilitating

[412] Exhibit SC67A – National Assemble letter dated 11th August 2014 ref. MA 1/54/02/01/(183)
[413] Exhibit SC67A – GAMTEL letter dated 4th September 2014 ref. GTC/C/MDO/013/VOL.2/(009)
[414] Exhibit SC67A - Letter dated 9th September 2014 ref. ME01/54/02/ (201)

a single sourcing arrangement in order to avoid delay in the procurement process[415].

On the 24th December 2014, another meeting was held at the National Assembly chaired by the Speaker. Messrs. Baboucarr Sanyang and Sarjo Khan attended the meeting on behalf of GAMTEL. The meeting discussed the National Assembly project and the different contract lots. Lot 11 was for the **Supply, installation and commissioning of IP-PBX and Data Convergent, with telephone handsets and accessories**.[416]

At the meeting, the Clerk pleaded with the GPPA representative to permit the National Assembly to single source the contract to GAMTEL due to the exigency of the need for the **facilities** to be installed. As at that time, GAMTEL had already submitted a proposal of USD644,389.16 equivalent to D28million for the contract including a year's warranty.[417] Approval was subsequently given by Gambia Public Procurement Authority (GPPA) for the contract to be single sourced.[418]

Mr. Baboucarr Sanyang informed the meeting that GAMTEL had the expertise and capability to handle the project as expected. He added that the system designed by GAMTEL is technologically proven and suitable for the new National Assembly building. The system would provide room for expansion with the Office of the President which already had a similar system in place and for any other department. Mr. Balla Jassey was present at that meeting; his designation as captured in the minutes is "telecoms expert". No mention was made of a sub-contract arrangement[419].

By letter dated 5th January 2015, the Managing Director of GAMTEL was informed by the National Assembly that GAMTEL had been awarded a contract for the supply, installation and commissioning IPBX and Data Convergent with Telephone handset and accessories for USD644,389.16 equivalent to GMD28 Million[420].

The contract entered into between the National Assembly and GAMTEL made provisions for a year's warranty. As per the contract, GAMTEL was supposed to carry out the works. It was agreed by parties that the National Assembly would pay an annual maintenance fee of GMD400, 000, the terms and conditions for that contract were to be negotiated separately.

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[415] Exhibit SC67A – GAMTEL letter dated 10th November 2014
[416] Exhibit SC67A - Minutes enclosed with letter dated 5th January 2015 awarding the contract GAMTEL
[417] Minutes of meeting held 29th December 2014
[418] Exhibit SC67A – GPPA letter dated 7th January 2015 ref. GPPA/NAT ASM/TR 1/15
[419] SC67A - Minutes of meeting held 29th December 2014
[420] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018

The contract also indicated that GAMTEL had spent GMD707, 031.34 on the installation of the fiber cable. This was considered pro bono.

Ten days later, the MD of GAMTEL wrote to the Managing Director of Mobicell Blue Ocean Wireless and subcontracted the contract to Mobicell. The letter stated that **"GAMTEL management is hereby awarding the said contract with all the associated terms and conditions to Mobicell Blue Ocean as a subcontractor for a total cost of USD585,808.17.[421]"**

GAMTEL did not sign a contract with Mobicell[422]. The GAMTEL MD did not have **any** approval from GAMTEL board or GPPA. His said his sole motivation was that he was going to earn money for GAMTEL. Mr. Sanyang said that the GAMTEL Finance dept. was involved and this contract was discussed at GAMTEL and particularly at management level but this was denied by Mr. Banding Sillah. Mr. Sanyang however conceded that he did not have authority to sub-contract a contract worth GMD28million without approval from the Board or GPPA[423].

The Clerk of the National Assembly, Dodou Kebbeh told the Commission that the National Assembly applied for a single sourcing because they thought that GAMTEL had all the competence and expertise and experience to be able to roll out the project, and GAMTEL was going to host the platform on their platform since telephone networks were involved[424]. The National Assembly management did not want the contract to be handled by private companies or individuals[425].

Mr. Baboucarr Sanyang claims that Mobicell was introduced to the National Assembly and that the National Assembly approached Mobicell because they wanted a system similar to the one installed at State House.[426] He testified that the National Assembly was aware of the subcontract and they gave GAMTEL the green light[427]. This fact is denied by the Clerk of the National Assembly – Mr. Dodou Kebbeh.

The Clerk of the National Assembly indicated that he only got to know about Mobicell when he received a contract and a covering letter from their solicitor, Mr. Malick M'bai in 2017. The contract was not signed by the National Assembly. The Clerk indicated that no one from Mobicell approached the National Assembly to negotiate the contract; they merely

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[421] Exhibit SC67A – GAMTEL letter dated 15th January 2015 ref. GTC/C/MBOW/1/VOL.1/(002) to Mobicell Blue Ocean Wireless
[422] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018
[423] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018
[424] Transcript of Mr. Dodou C. M Kebbeh dated 5th February 2018
[425] Transcript of Mr. Dodou Kebbeh dated 5th February 2018
[426] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018
[427] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018

sent a letter and attached the contract[428]. The pre-contractual discussion between the National Assembly and GAMTEL was handled by Mr. Sarjo Khan. The National Assembly never dealt with Mr. Bala Jassey. GAMTEL did not inform the National Assembly that they were going to subcontract the contract to Mobicell[429].

Mr. Bala Jassey (Witness no. 150) testified that Mobicell and GAMTEL had a verbal agreement. The contract was awarded to him by GAMTEL and the negotiations were with Sarjo Khan, not the National Assembly. Mr. Jassey said that the system is a CISCO Unified Call Manager platform, it is not an IP Base platform.

Mr. Baboucarr Sanyang stated that his intention was that they would maintain the project with the National Assembly and get an offer from Mobicell so that they would add a markup and submit that figure to the National Assembly and subcontract the project to Mobicell. He however did not provide the offer sent by Mobicell.[430]

Mr. Abodulie Kebbeh, a member of the ICT taskforce indicated that GAMTEL did not earn anything from the National Assembly contract, all the funds paid by the National Assembly were transferred to Mobicell.[431]

The Head of Customer Service, Mr. Sarjo Khan testified that his understanding was that GAMTEL subcontracted the contract to Mobicell because Mobicell had successfully implemented a similar project at the State House. The time needed to deploy the system was very short and that could be one of the reasons why the contract was subcontracted. He confirmed that GAMTEL had the capacity to install PABX and IP-PABX but successful deployment depends on the time and the resources needed to implement the project.[432]

During cross-examination, Mr. Sarjo Khan said that he did not know whether GAMTEL had ever deployed a unified system communication similar to the one deployed at the National Assembly. He also said that the National Assembly knew that GAMTEL was working with Mobicell. Some meetings were attended at the National Assembly and mobicell and GAMTEL staff were present. He said that the system works but he could not confirm whether there was a site survey or not.

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[428] Transcript of Mr. Dodou Kebbeh dated 5th February 2018
[429] Transcript of Mr. Dodou Kebbeh dated 5th February 2018
[430] Transcript of Mr. Baboucarr Sanyang dated 5th February 2018

[431] Transcript of Mr. Abdoulie Kebbeh dated 29th January 2018
[432] Transcript of Mr. Sarjo Khan dated 7th March 2018

Mr. Sarjo Khan confirmed that the National Assembly had no relationship with Mobicell; they only had a relationship with GAMTEL.[433]

Mr. Banding Sillah said the finance department was not provided with the pricing for the sub-contract. GAMTEL did not earn anything from the arrangement. There is no record of a board resolution giving management the approval to subcontract the project of the National Assembly.[434]

Mr. Banding Sillah, said that he got to know about the National Assembly contract in January 2015 and this was through an email from the Director of Customer Service, Sarjo Khan. He responded to the email and suggested that certain measures should be put in place. He said since that email, he was cut off from the chain of communication and he was not aware of what was happening, until he received a payment request from the Director of Customer Service addressed to the Managing Director that came through his office. It was a part payment of about GMD14 Million that was coming from the National Assembly to GAMTEL and GAMTEL was going to pay the exact amount to Mobicell. When he made enquiries from the Director of Customer Service, he was informed that GAMTEL subcontracted the contract to Mobicell as a result of Mobicell’s successful implementation of a similar project at the State House. He tried to find out what GAMTEL was going to gain from the contract because it appeared to him that GAMTEL was being used as a transit account. The Director of Customer Service stated that GAMTEL will benefit from the after-sale services; GAMTEL was going to sign another contract with the National Assembly to look after the operation and maintenance of the system.[435]

He said he made similar enquiries at the time and got a similar response. The Managing Director added that the National Assembly project is an extension of the State House project.

On the 10th of August 2015, GAMTEL wrote to the National Assembly acknowledging receipt of the GMD9.2million paid in early July 2015. The National Assembly promised to settle the balance by end of July. In August GAMTEL wrote to remind the National Assembly of the balance. GAMTEL indicated that they had incurred a penalty charge of USD35,000 due to the late payment.[436]

GAMTEL wrote to the National Assembly on the November 2015 acknowledging receipt of the D5.4million paid by the National Assembly in August 2015. GAMTEL went on to explain how the exchange fluctuations had affected the balance due. They were paying the subcontractor and Cisco

[433] Transcript of Mr. Sarjo khan dated 10th and 11th July 2018
[434] Transcript of Mr. Banding Sillah dated 5th February 2018
[435] Transcript of Mr. Banding Sillah- 5th February 2018
[436] See SC71C

in dollars. A balance of USD35,687.16 was outstanding due to volatility of the exchange rate.[437] The delay in payments also attracted penalty charges of USD70,000 dollars.[438]

"in addition to this there has been a lot of delay in payment that has resulted in Gamcel as the facilitator and owner of the project to face two penalty charges from Cisco through the system integrator Mobicell Blue Ocean Wireless. This has happened in two occasions due to default in payment. In each of the default a penalty of USD35,000 is charged to re-activate the platform license. Having paid the initial penalty which is to be reimbursed and still not yet refunded the system integrator is unable to settle for the second penalty due to the second default or late payment. The first penalty was paid for from the provision made or the training."[439]

By letter dated 9th December 2015, the National Assembly wrote to GAMTEL stating that:

1. The National Assembly has no contract with CISCO or Mobicell
2. They have no obligation towards CISCO or Mobicell
3. The agreement is to pay according to the official exchange rate and not the market rate
4. The National Assembly asked GAMTEL to send an invoice of the balance on the principal sum
5. They also asked for a shutdown on the platform; and
6. Delivery of the outstanding accessories and components.[440]

I) COMPETENCE OF GAMTEL STAFF TO DEPLOY THE UNIFIED COMMUNICATION SYSTEM

It was alleged by Mr. Balla Jassy that GAMTEL did not have the capacity to deploy the CISCO system for the National Assembly. Mr. Baboucarr Sanyang testifed that CISCO only sells equipment to CISCO certified engineers. He said that Mobicell deployed the CISCO platform at GAMCEL. GAMTEL could not have deployed the National Assembly contract on its own.

The Finance Director of GAMTEL, Mr. Banding Sillah testified that GAMTEL had carried out similar services for other agencies. GAMTEL has a unit that is responsible for the installation and provision of such services. Mr. Sillah

[437] See SC71C- letter dated 2nd November 2018
[438] See SC71C
[439] Letter dated 2nd November 2018- SC 71C
[440] Exhibit SC71C and Transcript of Mr. Dodou Kebbeh
- Letter dated 9th December 2015

does not believe that there was a need for the contract to be subcontracted. Mr. Sillah pointed out that he did not come across any document that showed that the National Assembly said they wanted a system similar to the one at the State House.[441]

The GAMTEL staff are divided on the issue of the competence the GAMTEL staff had to have deployed the CISCO system. GAMTEL Engineers came to testify voluntarily that GAMTEL engineers had the competence to deploy the system.

Messrs. Omar Nyassi and Yaya Colley gave the impression that GAMTEL did not have the capacity to deploy the CISCO unified communication system installed at the National Assembly Building because no Engineer at GAMTEL had the required certification at the time. Their staff did not have the training to carry out voice configurations. The most qualified engineers at the time had the CCNA certificate which was not sufficient to deploy a CISCO unified communication system. Mr. Nyassi also said that GAMTEL could not even configure the voice component of the platform deployed at the Civil Aviation without the help of Mobicell engineers.[442]

Mr. Colley said that when he was asked to get specifications for the IP-PBX System he scouted around for suppliers and contacted Mr. Conateh, a Senegalese supplier but was not successful. He said that Mr. Sarjo Khan suggested Mr. Bala Jassey to him and informed him that Bala Jassey had installed a similar system at State House. He conducted a tour of the National Assembly building with Bala Jassey. Mr. Colley admitted that GAMTEL already had an Engineer on site. Mr. Colley said he had no formal training on advanced digital systems such as the one being considered.[443] He said his unit is responsible for such systems and they have never deployed one before. He was not involved in the Gambia Civil Aviation Authority (GCAA) project. He said that the Cisco system at GAMCEL was installed by Mr. Bala Jassey.[444]

Contrary to what Mr. Colley and Mr. Nyassi claim, Mr. Seedy Jadama, Mr. Modou Nying, Mr. Omar Ceesay, and Mr. Ezel Mendy all Engineers at GAMTEL as well as the Current Managing Director of GAMTEL stated that GAMTEL had the competence. In fact around 2010, when the Cisco unified communications solutions or the voice over IP Technology was developed by CISCO, GAMTEL wanted to acquire the system and use it within GAMTEL for some time and then sell them to customers upon demand. By 2011, GAMTEL developed a negotiation plan for the project. GAMTEL Engineers upgraded the network infrastructure for GAMTEL House and GAMCEL in

[441] Transcript of Mr. Banding Sillah dated 5th February 2018
[442] Transcript of Mr. Omar Nyassi dated 12th July 2018
[443] Transcript of Mr. Yaya Colley dated 11th July 2018
[444] Transcript of Mr. Yaya Colley dated 11th July 2018

2010. A Cisco unified communication system was then deployed with the support of a system vendor from Senegal. The vendor support is a requirement, anytime an institution wants to deploy a CISCO specialized device they have to have a vendor support from Cisco. By 2011, GAMTEL with the help of SESAM, a vendor support, deployed a Cisco unified communication solution without a third party or a local company in the Gambia[445].

Mr. Sulayman Susso testified that CISCO is a system and equipment vendor just like Alcatel, Ericson and the rest. GAMTEL has a lot of engineers that have done Cisco system, CCNA, CCNP and so on. Every project has a training component, there is also a human capacity development aspect of a project. A set of engineers are trained before implementation and some are trained after the project. The training is conducted by the system vendor. When GAMTEL deployed the IPMSL System, there was a training component and it was implemented by the sub vendor. The Gambia does not have a Cisco sub-vendor.[446]

CISCO is a proprietary technology. Anytime they sell a specialized device, the purchasing company is not allowed to develop on it. It is a compliance policy to from a proprietary company to have a sub-vendor-support. The Gambia does not have a Cisco sub vendor.[447]

In response to the claims by Mr. Baboucarr Sanyang that Mobicell was involved in the deployment of the system at GAMTEL/GAMCEL House. Mr. Seedy Jadama testified that at the time the GAMTEL engineers were doing the installation, he doubts whether Mobicell had the human resource to even deploy a single Cisco router. Mr. Bala Jassey supplied materials such as switches and IP phones. GAMTEL could not buy directly from shops, they had to buy from a supplier because of the procurement rules. Tenders have to be opened for a supplier[448].

GAMTEL already had the infrastructure for a Cisco unified communication system, they would have simply contacted their traditional partner for a cisco license to send in a Cisco engineer with the required number of phones for the duration of the license. The subcontracting was handled by Mr. Baboucarr Sanyang and there is no reason why a third party had to be involved.[449]

GAMTEL deployed a Cisco unified communication system at the GAMCEL/GAMTEL in 2016 without the involvement of a third party. It was

[445] Transcript of Mr. Seedy Jadama dated 11th September 2018
[446] Transcript of Mr. Sulayman Susso dated 11th September 2018
[447] Transcript of Mr. Seedy Jadama dated 11th September 2018
[448] Transcript of Mr. Seedy Jadama dated 11th September 2018
[449] Transcript of Mr. Seedy Jadama dated 11th September 2018

exclusively between Manobi a system vendor and GAMTEL. GAMTEL has the capacity to deploy a Cisco unified communication system[450].

(i) DEPLOYMENT OF THE SYSTEM

GAMTEL invested in the National Assembly project by connecting a fiber optic cable from GAMTEL house to the National Assembly building. GAMTEL stationed an IT Engineer on the ground to be working with the contractor.[451]

After the system was deployed by Mobicell, they had some hitches on the switching component. This could not be fixed so they had to call the GAMTEL switching team[452].

The training component of the arrangement never took place. There was no knowledge transfer. From a technical point of view, GAMTEL did not gain anything from the project. There was a time that the system at the National Assembly was not operational.[453]

Mobicell did not deliver the IP Cameras and the training component as indicated in the bill of quantities was not provided. The system was on trial license and needed to be renewed and penalty charges were provided for if not renewed[454]. A penalty charge of USD50,000 was to be paid and Mobicell claimed to have settled USD15,000[455] leaving a balance of USD35,000.

When asked about the penalty, Mr. Baboucarr Sanyang said that the USD35,000 penalty was transferred to the National Assembly, Mobicell did not pay the penalty. However, there exists a Memo from Mr. Sarjo Khan to Mr. Baboucarr Sanyang soliciting approval to pay the USD35,000 to Mobicell Blue Ocean Wireless in order for them to pay the late penalty to Cisco and have the license reactivated.[456] A letter was subsequently sent addressed to the Clerk of the National Assembly that penalty of USD35,000 should be paid.[457]

Mr. Jassey testified that the National Assembly engaged Mobicell to provide maintenance services, a letter was sent to that effect signed on behalf of the Clerk. The Clerk of the National Assembly said that he received the Draft

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[450] Transcript of Mr. Seedy Jadama
[451] Transcript of Mr. Seedy Jadama
[452] Transcript of Mr. Yaya Colley dated 11th July 2018
[453] Transcript of Mr. Yaya Colley dated 12th July 2018
[454] Transcript of Mr. Sarjo Khan dated 10th and 11th July 2018
[455] Exhibit SC67A – Mobicell Blue Ocean Wireless letter dated 21st October 2015 ref. WR/OPPH2/054
[456] Exhibit SC67A -
[457] Exhibit SC67A - GAMTEL letter dated 14th December 2015

Contract from Mr. Malick M'bai Mobicell's lawyer but he did not sign it. It is important to note that the contract between GAMTEL and the National Assembly had a maintenance clause. The evidence however shows that it was Mobicell that sent a contract to the National Assembly but the Clerk refused to sign the contract because he maintained that he did not have a relationship with Mobicell.

(ii) PAYMENTS to MOBICELL

Mr. Baboucarr Sanyang's explanation for passing the contract to Mobicell was because he wanted to create a profit margin for GAMTEL.

The evidence shows that no such margin was created. A total of D29,033.000.47 was paid being the dollar equivalent of USD644,389.16 at the exchange rate of GMD45.62 as follows:

GAMTEL then made the following payments to Mobicell[458]

1. GMD14, 698,516.73 GAMTEL transferred the entire sum to Mobicelll on the 11th of February 2015.
2. GMD9,272,113 - on the 15th of July, the director of customer services forwarded a memo to the managing director requesting for approval to transfer the GMD9.2million paid by the National Assembly to Mobicell. Approval was granted and GAMTEL wrote to TBL the following day authorizing a transfer of the entire sum from GT Bank account to Mobicell.[459]
3. GMD5,426.388 on the 15th of October 2015 another memo was sent by…….requesting for approval to transfer GMD5.4 Million to Mobicell. According to the Memo, that was the final payment received from the National Assembly;[460]
4. On the 14th December 2015 another memo was sent requesting for approval to settle the USD35,000 penalty charged. This sum was approved for payment on the 14th of January 2016 by GAMTEL from their own funds.
5. USD35,000 was paid to reactivate the call manager license. There is no invoice for the USD35,000, they got a clearance from cisco via email correspondence. The witness admitted that it was not a penalty but it was for the license. He attended meetings at the National

[458] Exhibit SC67B
[459] Exhibit SC67A - Mobicell letter dated 21st July 2015 ref. WR/OPPH2/051 – Acknowledgement of payment
[460]

Assembly but Mobicell had no formal communication with the National Assembly, everything was through GAMTEL.

(xii). PROCUREMENT POLICY

GAMTEL being a PE has to apply GPPA rules in all procurement.

With regards to the National Assembly, Mr. Sillah reaffirmed the fact that he was not involved in the process. He however saw from the records found at the former managing director's office showing that there was GPPA approval for the contract to be awarded to GAMTEL. The approval is dated 7th January 2015[461]. That apparently was the only record.

(xiii) BRIBERY

Money given to ex-President Jammeh paid from a GTB account of Mobicell Blue.

On the 25th June 2015, USD3,642,000 was transferred from Mobicell Blue's bank account no. 901100150025033 at GTB[462] to TK Xport in Dubai for the purchasing of agricultural materials. Details on GTB's Foreign funds transfer request form stated 'Purchase of Vision 2016 Farm Equipment'.

Mr. Bala Jassey testified that the funds transferred of USD3,642,000 was a loan given to the Gambia Government.[463] However, there was no documentary evidence to show that amount is treated as a loan. He explained that ex-President Jammeh's orderly contacted him via telephone and asked for the money but he could not recall the name of the orderly that contacted him. He further testified that he was contacted by the Chief of Protocol 'Mr. Sana Jarju' on this matter and subsequently met him at GTB to effect the transfer and sign the instruction at the GTB MDs office 'Mr. Bolagi Ayodele'.

As at 22nd June 2015, there was USD1.2 Million in Mobicell's account, subsequent inflows of USD1.214 Million and USD1.2 Million were received from MGI Swiss on the 24th and 26th June 2015 making a total of USD3.6 Million. Then coincidentally payment was made to TK Xports on the 26th June. Mr. Jassey when probed testified that inflows were for services carried out in Benin for MGI Swiss but paid in the Gambia. Mr. Jassey was asked if he was acting as an intermediary between MGI Swiss and ex-President Jammeh, he replied in the negative.

[461] Transcript of Mr. Banding Sillah dated 5th February 2018
[462] Exhibit BB128A
[463] Transcript of Mr. Bala Jassey dated 10th September 2018

(xiv). TAXATION

Mr. Essa Jallow – Deputy Commissioner General & Head of Domestic Taxes[464] (Witness no. 168) testified that none of the Gateway Managers (Global Voice Group, SPECTRUM through ORATUS, System One World Communications, TELL Inc. and MGI) paid any tax to Gambia Revenue Authority (GRA). He further testified that the Gateway Managers were not registered as a tax payer with GRA. Mr. Jallow further testified that GRA is not aware of any Bill being passed by the National Assembly giving tax exemptions to Gateway Managers.

Office of the President – STATE HOUSE CONTRACT ON THE TELECOMMUNICATIONS FACILITIES

In 2013, a CISCO Unified Communication Solution and installation of CCTV Cameras contract for OP was awarded to Mobicell Blue Ocean Wireless. Mr. Momodou Sabally (Witness 13) testified that GAMTEL contracted Mobicell for this project.[465] Mr. Baboucarr Sanyang testified that he recommended Mobicell for works at State House.[466] GAMTEL pre-financed payments to Mobicell which was evident in a letter dated 13th August 2013 from OP to the MD of GAMTEL[467] that a directive had been issued for GAMTEL to make payment for reimbursement afterwards.

In another letter dated 8th July 2013 from Mobicell Blue Ocean Wireless to Secretary General at OP confirming that GAMTEL had made a payment of USD316,469.36 to them. In another letter from GAMTEL to Mobicell dated 22nd October 2013, the GAMTEL MD confirmed that payments for this project were made from direct inflows.[468] Mr. Baboucarr Sanyang said that the payments made by GAMTEL were in fulfillment of a Corporate Social Responsibility. He confirmed writing letters dated 25th April and 6th April 2013 to the Secretary General titled "Replace and Upgrade the Internal Telecommunication Infrastructure Within The **Office of the President"** claiming wrote this "Under the pretext of a fulfillment of part of our corporate social responsibility, you are hereby informed of GAMTEL/GAMCEL Management's approval of the needed support with regards to the replacement and upgrading of the International Telecommunication

[464] Transcript of Mr. Essa Jallow dated 20th March 2018
[465] Transcript of Mr. Momodu Sabally dated 6th March 2018
[466] Transcript of Mr. Baboucarr Sanyang dated 7th February 2018
[467] Exhibit SC69 – Letter ref. PR/C/102/Vol. 4 (120-1A)
[468] Exhibit SC69 – GAMTEL letter ref. GTC/C/MBOW/1/VOL.1/(002)

Infrastructure within the complex of the Office of the President. We are in cognition of the degraded nature of the telecommunication facilities within the premises and therefore attach a lot of urgency in addressing. In the light off the above, management is offering to take up the responsibility of paying the needed **50%** which is USD316,469.36 advance payment towards the total invoice for the Project''.

SALE OF GAMTEL/GAMCEL SHARES TO SPECTRUM INTERNATIONAL INVESTMENT HOLDING

I) INTRODUCTION

In 2007, ex-President Jammeh conceived the idea of divesting 50% of the shares in GAMTEL and GAMCEL. PKF Consulting Limited (Kenya) was instructed to value the two companies as at 31st December 2006 for the purpose of determining the value of up to 49% of the shares which could then be divested through privatization to a strategic partner.[469]

The Final Business Valuation Report indicates that a Discussion Draft of the Report was issued to the Secretary of State for Finance and Economic Affairs (SOS MOFEA) and the Gambia Divestiture Committee on the 21st of May 2007. Mr. Mousa Bala Gaye was the SOS MOFEA during this period[470]. MOFEA had no comments on the Discussion Draft and requested for finalization of report on 27th September 2007.[471] A copy of the Discussion Draft was not provided; the Commission assumes that it is the same as the Final Report. The recommended combined value of GAMTEL and GAMCEL was stated to be at least USD147.02 Million and at most USD161.23 Million and a midpoint of USD153.87 Million based on the equity cost of capital of 19.0% to 20.2% with a mid-point of 19.6%.[472] The Discounted Cash Flow (DCF) Valuation approach was used.

II) OVERVIEW

A. Sale of 50% GAMTEL & GAMCEL SHARES

During the interval between the submission of the Discussion Draft and the sending of approval for finalization of the Report from MOFEA, a group of investors representing Spectrum International Investment Holding SAL (Spectrum) came to The Gambia to invest in the Telecommunications sector. The group was introduced to ex-President Jammeh by Mr. Mohamed Bazzi (Witness no. 63).[473] The ex-President took the decision to sell 50% of GAMTEL & GAMCEL to them. The Commission has been told that the reason why ex-President Jammeh decided to partner with Spectrum was because he wanted to revive GAMCEL and make it the best in the country again.

[469] Exhibit SC78 - See Pg. 4 of Final Business Valuation Report for GAMTEL
[470] Transcript of Mr. Mousa Bala Gaye dated 22nd January 2018
[471] Exhibit SC78 - See Document History page
[472] Exhibit SC78 - See page 6 and 7 of Final Report
[473] Transcript of Mr. Muhammed Bazzi dated 18th January 2018 – pg. 3 & 4

By this it is understood that he wanted to restore GAMTEL to its former glory. Spectrum had made a representation to ex-President Jammeh that they had the expertise to revive GAMTEL and GAMCEL and bring more revenue for Government[474].

Contrary to the facts stated in the Business Valuation Report, Mr. Mousa Bala Gaye (Witness no. 128), testified that Government never discussed the sale of GAMTEL. He was not aware of any valuation of the shares of GAMTEL and he was not presented with a valuation report. Mr. Gaye however stated that he was informed by ex-President Jammeh verbally that GAMTEL and GAMCEL were valued at USD70 Million.[475] Mr. Gaye also stated that the Gambia Divestiture Agency (GDA) was not involved in the process.

Mr. Lamin Camara (Witness no. 178), the former Permanent Secretary of the Ministry of Communication testified that the Ministry of Communication was provided with a copy of the report although he is not certain whether the Ministry was involved in the valuation process. He said that he came across the report in 2014 when he became the Permanent Secretary[476]. On the other hand the Secretary of State for Communication at the time Mrs. Neneh Macdouall Gaye (Witness no. 119) testified that her Ministry which was the line ministry of GAMTEL/ GAMCEL was not given notice of the arrangement to divest the shares of GAMTEL and GAMCEL. She also said she was not aware of nor presented with the Business Valuation Report.

Mr. Mohamed Bazzi testified that a valuation had been carried out and that both companies were valued at USD70 Million and that was how the price of USD35 Million was determined for 50% of the shares.[477]

On the 27th of July 2007, the Secretaries of State for Communication and MOFEA and the Secretary General, Mr. Ousman Jammeh were directed by ex-President Jammeh to negotiate and sign a contract for the sale of GAMTEL and GAMCEL shares with Spectrum. They were instructed to negotiate and sign the contract on the same day. The Ministry of Communication was not consulted prior to the date slated for execution of the MSPA[478]. A draft of the contract was not sent to the Attorney-General and Minister of Justice for review[479]. Ex-President Jammeh constituted the negotiation team, the procedure set out in the Divestiture Act were ignored. Ex-president Jammeh made the unilateral decision to sell the shares.[480]

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474 Transcript of Mr. Ousman Jammeh dated 24th January 2018
475 Transcript of Mr. Mousa Bala Gaye dated 22nd January 2018
476 Transcript of Mr. Lamin Camara dated 5th April 2018
477 Transcript of Mr. Muhammed Bazzi's dated 18th January 2018 – pg. 5 – line 84
478 supra
479 See testimony of Bala Gaye , Ousman Jammeh and Neneh Macdouall
480 supra

The Master Share Purchase Agreement (MSPA) for the sale of 50% shares of GAMTEL and GAMCEL for USD35 Million was signed on the 27th July 2007 at MOFEA. Mrs. Neneh Macdouall Gaye signed on behalf of the Government of The Gambia and Mr. Ali Youssef Sharara signed on behalf of Spectrum.[481]

Mrs. Neneh Macdouall Gaye testified that she did not know much about Spectrum or their representatives. Mr. Bazzi had accompanied the Spectrum group to a meeting held at MOFEA[482].

The Secretary General Mr. Ousman Jammeh (Witness no 69) said he was present at the time Spectrum made their first presentation at the Office of the President. He noticed that the representations made during the presentation regarding the financial commitments were not reflected in the written Agreement. The discrepancy was brought to the attention of Spectrum but they casually dismissed it. They informed him that he should not worry about it, as Mr. Bazzi had sorted that out with the President. Mr. Jammeh insisted that the contract should not be signed until he verifies with ex-president Jammeh. He went to the State House and informed the ex-President, the President told him that all the terms shown in the presentation must be reflected in the contract. However, when he went back to the meeting at MOFEA he found the parties signing the contract[483]. He believes that the ex-President had given them the go ahead to sign after he left his Office.

The Government representatives told the Commission that they were not given the opportunity to properly review the contract. The Spectrum team indicated that they had a flight to catch and that the agreement needed to be signed on that day.[484]

The Recitals to the MSPA did not indicate the respective capitals of GAMTEL and GAMCEL or the number of shares. The MSPA was to be governed by the laws prevailing in England except for matters that are mandatorily subject to the laws of The Gambia. All disputes were to be resolved by arbitration and the place of arbitration was stated to be London, England.[485]

The MSPA gave Spectrum the power to take over the management of GAMTEL and GAMCEL either directly or through a consultant or a management company[486]. Spectrum also had the power to terminate employees of GAMTEL/GAMCEL that it did not wish to retain. All liabilities

[481] Exhibit MS147A and transcript of Mrs. Neneh Macdouall Gaye dated 16th January 2018
[482] Transcript of Mrs. Neneh Macdouall Gaye dated 16th January 2018 – pg. 4
[483] Transcript of Mr. Ousman Jammeh dated 24th January 2018
[484] Testimony of Mrs. Neneh Macdouall Gaye
[485] Exhibit MS147A – pg. 16 of the Master Share Purchase Agreement
[486] See clause 3.2.1 of the Master Share Purchase Agreement MS147A

arising from the employee terminations were to be borne by GAMTEL/GAMCEL.[487]

After the MSPA was signed, the Ministry of Communication wrote to the Managing Director of GAMTEL to inform him that Government had entered into a strategic partnership with Spectrum. GAMTEL Management was also informed that management of GAMTEL and GAMCEL had been assigned to a management Consultant, Detecon International GmbH.[488] Spectrum, through the Management Consultant took over the management of GAMTEL and GAMCEL.[489]

Subsequent agreements were also signed to perfect the sale:

- Share Holders Agreement;
- Completion of Sale Agreement; and
- Disclosure Letter.

These agreements were sent to the offices of the Ministry of Communication and they had the opportunity to send the drafts to the Attorney-General's Chambers for review[490] before signing. In the course of the contract reviews, the Minister of Communication was summoned to the Office of the President and given an ultimatum to finalize all the agreements by the end of that week. The Shareholders Agreements was signed at the Office of the President in the Cabinet Room in the presence of Cabinet Ministers, officials of GAMTEL and Spectrum.[491]

The Shareholders Agreement was signed on the 27th September 2007 by Mrs. Neneh Macdouall Gaye as representative of Gambia Government and Mr. Ali Sharara as representative of Spectrum.[492] On this same day, a request was sent to PKF Consulting Limited for finalization of the Valuation Report.

The Shareholders' Agreement provided that their provision supersedes the Memorandum and Articles of the company in matters concerning the parties.[493] The governing law of the Shareholders Agreement was the laws of England.

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[487] See clause 3.2.3 of MS147A
[488] Exhibit SC57 - Letter dated 6th August 2007
[489] See Memo dated 17th August 2007 and Memo from Secretary of State for Communication
[490] Transcript of Mrs. Neneh Gaye and Mr. Lamin Camara dated 5th April 2018
[491] Transcript of Mrs. Neneh Macdouall Gaye
[492] Exhibit MS147B
[493] See article 2 of Exhibit MS147B – pg. 2

Mrs. Gaye was redeployed to the Foreign Mission before the Completion of Sale Agreement was signed. The copy tendered in evidence is signed by Mr. Michael Tenn.[494] Mrs. Gaye's successor, Ms. Fatim Badjie (Witness no. 128) denied signing the Completion Agreement. The Agreement on its face bore her name and what purported to be her signature. In the face of her denial that the document was not signed by her, the document was not admitted in evidence.[495]

On the day that the Shareholders Agreement was signed, Mr. Ali Youssef Sharara, wrote to SOS Mousa Bala Gaye, requesting for a waiver of all existing and current liabilities of GAMTEL and GAMCEL to Government of The Gambia. The liabilities amounted to GMD550,011,383 equivalent to USD25,000,517.[496] The Minister of Finance (Mr. Mousa Bala Gaye) wrote back to Spectrum on the 9th October 2007 informing them that ex-President Jammeh agreed to waive the USD25 Million liability provided GAMTEL waived D215,292,990.70 owed by government; and GAMCEL D13,449,655.50 owed to GAMCEL497.

The rationale for granting waiver according to Mr. Gaye was that Spectrum was going to make huge investments in GAMTEL and the waiver would increase profits for the company.498 Three days after the waiver was granted, the Ministry of Finance received the Final Business Valuation Report from PKF Consulting. The Final Business Valuation Report which as stated valued GAMTEL including GAMCEL for between USD147.02 Million to USD161.23 Million with a midpoint of USD153.87 Million as at end of December 2006.499

Thus on its face the shares were sold at a gross undervalue. The least that government should have sold the 50% shares for was USD73.5 Million. The Government lost USD38.5 Million.

B. Payment of the purchase price by Spectrum

After the MSPA was signed, instructions were sent to the Central Bank of the Gambia for a special account to be opened and named the Second Divestiture Account. The account was formally opened by CBG on the 28th August 2007 and given account number 03201200386. The monies paid for the sale of the shares were deposited into the Second Divestiture Account by

[494] Exhibit MS147C
[495] Transcript of Ms. Fatim Badjie dated 23rd January 2018
[496] Exhibit MS150 – Letter from Spectrum dated 27th September 2007
[497] Exhibit MS150 – Letter ref. MF/C/278A/(4) from Department of State for Finance & Economic Affairs
[498] Witness Statement of Mr. Mousa Bala Gaye dated 22nd January 2018
[499] See page 7 of Exhibit SC78

Spectrum. From reviewing the bank statement, only USD28.5 Million was actually deposited into the account by Spectrum. The balance of USD6.5 Million remains unpaid.[500]

The funds were spent at the discretion of ex-President Jammeh on expenditures such as vehicle purchase, air craft insurances, contributions to Bissau's legislative elections, tuition fees for African American students (mostly contestants of the Miss Black USA Beauty Pageant) etc. Out of the USD28.5 Million deposited, only USD19.383 Million was deposited into the Consolidated Revenue Fund[501]. The USD9.1 Million was squandered by ex-President Jammeh.

C. SPECTRUM was responsible for the Management of GAMTEL

Management of GAMTEL/GAMCEL was fully surrendered to Spectrum before the Shareholders' Agreement was signed[502].

Spectrum's Management of GAMTEL did not meet the expectation of the Government stakeholders. Mr. Camara (PS MOICI at the time) represented MOICI on the GAMTEL Board. A situational report on GAMTEL was prepared by Mr. Lamin Camara of MOICI at the time and submitted to MOICI, Ms. Fatim Badjie – Secretary of State DOSCIIT. The report exposed corporate malpractices alleged to have been carried out by Spectrum. The situational report[503] highlighted the following issues:

1. The management structure was complicated and ill-defined and that affected day-to-day activities of the company;

2. Decisions were being taken by the Chairman instead of the Management Consultant;

3. Continuous disregard of Board Meetings; major decisions were taken without Board approval;

4. A monthly payment of GMD4.4 Million equivalent of Euros 138,000 was being paid to Detecon Management Consultants;

5. GMD1million was paid to Detecon for developing GAMTEL's Business Plan;

[500] Exhibits CB33, CB34 and SC62
[501] Transcript of Mr. Mousa Bala Gaye dated 23rd January 2018 and Exhibit CB34 - letter dated 5th May 2008
[502] See SC57 a document signed by Mrs. Neneh Macdouall Gaye
[503] See SC79A

6. Senior staff were sacked without recourse to service rules and board approval;

7. A gateway management contract was signed with another company (ORATUS) without the Board's approval or knowledge;

8. There was no transparency on gateway revenue collection;

9. Tariff issues

10. Quality of calls had deteriorated.

D. TERMINATION

Following submission of the Situational Report on GAMTEL, an investigation team was setup to look into the matter; the team comprised of GAMTEL management and the Attorney General's Chambers to identify aspects of the agreements that were breached. Spectrum was not being transparent in the management of the companies and the finances derived from management of the gateway. Spectrum was not submitting monthly reports to MOICI as expected and no investments were made in the companies[504]. MOICI decided to bring the situation to the attention of the President. Further investigations were directed involving the National Intelligence Agency, PURA, the Secretary General, Attorney-General and the SOS MOICI[505].

The MOICI reached out to Spectrum to discuss the issues but Spectrum was not responsive. An extraordinary Cabinet meeting was called and it was decided that Spectrum was not acting in the best interest of GAMTEL and GAMCEL and that the partnership with Spectrum was not in the interest of The Gambia. The letter of termination was drafted at the Cabinet meeting.[506]

Mr. Mohamed Bazzi on the other hand told the Commission that Spectrum was not given an opportunity to carry out their management plan. He said that Spectrum had a plan that would have taken 12 to 18 months to revamp the company but the agreement was terminated after five months[507]. Mr. Bazzi testified that Spectrum tried to look for cheaper financing by sourcing funding locally from commercial banks but they did not succeed.[508]

[504] Transcript of Ms. Fatim Badjie dated 23rd January 2018- Banding Sillah reiterates it in his testimony of 17th January 2018
[505] Transcript of Ms. Fatim Badjie dated 23rd January 2018 – pg.5
[506] Transcript of Ms. Fatim Badjie dated 23rd January 2018 – pg. 6
[507] See page 6 of Muhammed Bazzi's transcript
[508] Transcript of Mr. Mohammed Bazzi – pg. 9

The waiver granted to GAMTEL and GAMCEL on their outstanding liabilities was rescinded by Government shortly before the termination of the Agreement with Spectrum. GAMTEL and GAMCEL were expected to pay all outstanding liabilities[509].

On the 5th of November 2008, SOS MOICI Fatim Badjie wrote to Mr. Ali Youssef Sharara of Spectrum terminating the Management Agreement.[510] The reasons given for the termination were fundamental breaches of the provisions of the agreement and fraudulent acts committed by Spectrum and its representative in violation of the laws of the Gambia.[511]

Shortly after Spectrum's Agreement was terminated; Ex-president went on an Investor scouting spree in a quest to divest 30% of Government's interest in GAMCEL. Mr. Mohammed Bazzi, was *authorized* and *mandated* to *negotiate* on behalf of Gambia Government[512].

An interim Management company was put in place by the Ministry of Communication to manage the affairs of GAMTEL. The interim management committee prepared a report that underscored the need for major investments to be made to resuscitate GAMTEL's dilapidated network infrastructure. The report was submitted to MOICI and in that context, a letter was written to the SOS MOFEA dated 26th November 2008 requesting for his intervention to revive GAMTEL. The SOS MOICI pleaded on behalf of GAMTEL and GAMCEL for the earlier waiver (of liabilities owed to Government) to be restored and for GAMTEL to be exempted from the GPPA Act. Issues such as GAMTEL's lack of adequate infrastructure and financial constraints were highlighted in the letter[513]. The Minister of Finance wrote back on the 1st December 2008[514] indicating that certain liabilities are recommended for waiver; the Secretary General was copied. The final decision[515] had to be made by the President.

E. Negotiation to Repurchase the divested Shares

After the Agreement was terminated, Government entered into negotiations with Spectrum to repurchase the 50% shares from Spectrum. The Minister of

[509] Exhibit MS150 - Letter dated 29th October 2008 ref. MF/C/278A/(6)
[510] The witness from TELL, Mohammed Matarr mentioned that he signed a Management Agreement
[511] Exhibit MS149 - Letter ref. DOSCIT/CON/031/(20) signed by Ms. Fatim Badjie then SOS
[512] Exhibit MS151A – Letter signed by SOS for Finance & Economic Affiars dated November 14th 2008 ref. MF/C/278A(8)
[513] Exhibit MS151B - Letter dated 26th November 2018 ref. DOSCIT/CON/012/(48) from the Minister of Communication
[514] Exhibit MS151B – Letter dated 1st December 2008 ref. MF/C/278A/(9)
[515] Transcript of Mr. Mousa Bala Gaye dated 23rd January 2018

Finance was directed to write to spectrum to commence the negotiation process. The terms proposed by government where:

1. Waive the right of first refusal under the MSPA and the Shareholders Agreement for Spectrum to sell its 50% shares in GAMTEL and GAMCEL;

2. Spectrum will transfer its 50% shareholding to Government of The Gambia an appropriate price;

3. The management contracts for GAMTEL/GAMCEL and the international gateway management contracts have been terminated;

4. Both parties accept the above terms as a fair and amicable settlement of the current issues[516].

5. The proposed negotiation terms were only signed by MOFEA, Mr. Ali Sharara did not sign on behalf of Spectrum.[517]

Mr. Gaye was replaced before the negotiations were concluded. The negotiations continued in 2009. The documents reviewed indicate that the negotiation was subsequently being handled at the level of the Office of the President and Mr. Bazzi was involved in the negotiations at some point.

The initial offer from government to Spectrum was USD35 Million to repurchase the 50% shares in both companies;[518] this was later reduced to USD25 Million and subsequently reversed back to USD35 Million after the intervention of Mr. Bazzi[519]. A draft Agreement[520] was sent to Spectrum on the 17th April 2009 signed by the PS MOFEA – Mr. Mod Secka and witnessed by Mr. Ebrima Camara – PS OP. Spectrum wrote back on 29th April 2009 proposing that certain amendments be made. The changes they proposed were in relation to abdication of rights by the respective parties[521].

A letter dated 7th May 2009 was written to Spectrum conveying acceptance of proposal to amend Clause 4 of draft agreement[522]. The final repurchase agreement was signed on the 27th May 2009 by the Permanent Secretary II, MOFEA – Mr. Serign Cham as representative of Gambia Government and Mr. Mohammad Farid Matarr as representative of Spectrum. The Agreement

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[516] Exhibit MS151A – Letter dated 14th November 2008 ref. MF/C/278A/(7)
[517] supra
[518] Exhibit SC61 – OP letter dated 12th March 2009 ref. PR/C/676/Vol 13/(7)
[519] Exhibit SC61 – OP letters dated 16th March 2009 ref. PR/C/676/Vol 13/(8) and 23rd March 2009 ref.PR/C/676/Vol 13/(PS2)
[520] Exhibit SC61
[521] Exhibit SC61B – Spectrum letter dated 29th April 2009
[522] Exhibit SC61B – OP letter dated 7th May 2009 ref. PR/C/676/Vol 13/(43)

indicated that the purchase price i.e. USS35 Million was to be fully paid within 120 days from the date of signing the agreement. 50% was to be paid within 45 days of signing.[523]

F. Steps taken to Finance the Repurchase of GAMTEL/ GAMCEL shares

The Government could not raise the funds required to settle 50% within the agreed 45 days window. By then the money paid by Spectrum into the Second Divestiture account had been spent by the Ex-President. Government had no option but to source for funds elsewhere. A meeting was held at the Office of the President and it was agreed that the MOFEA was going to acquire a loan on behalf of government from the Commercial banks. The loan was to be guaranteed by SHHFC[524].

The Permanent Secretary II of MOFEA – Mr. Serign Cham wrote to Trust Bank Limited (TBL) requesting for a loan of USD5 Million to be guaranteed by SSHFC[525]. TBL expressed their willingness to offer the loan but there were certain conditions that needed to be followed such as obtaining a waiver from CBG and the Bank also needed to know who the corporate borrower was because they could not lend money to Central Government directly.[526] It was agreed that GAMTEL would serve as "Surrogate on Government's behalf" for a USD5 Million loan from TBL.[527] A directive was issued to GAMTEL to that effect.[528]

GAMTEL subsequently wrote to TBL to formalize the transaction attaching a copy of a Board Resolution, a letter from the MOFEA and a guarantee from SSHFC[529] & [530]. Trust Bank transferred the USD5 Million to Spectrum in August 2009.

Spectrum wrote several letters following up on the balance[531]. On the 26th of October 2009, Mr. Mohammad Matarr (foreign Solicitor of Spectrum) wrote a letter addressed to Mr. Sering Cham the Permanent Secretary of MOFEA at

[523] Exhibit SC61B – Agreement (terms of payment are at page 4)
[524] Exhibit SC61B - letter dated 10th July 2009 (68)
[525] Exhibit SC61B - Letter dated 10th July 2009
[526] Exhibit SC61B – TBL letter dated 13th July 2009 ref. TB/56/1074 to MOFEA
[527] Exhibit SC61B - OP letter dated 14th July 2009 ref.PR/C/676/Vol 13/(72). Terms of the TBL loan was 20% interest and payment of one off arrangement fee of 0.5%
[528] Exhibit SC61A – MOFEA letter dated 17th July 2009 ref. MF/C/278A/(17) from PS 1 MOFEA to MD GAMTEL
[529] Exhibit SC61A - Directives were given to SSHFC to provide the Guarantee for the USD5 Million loan – MOFEA letter dated 17th July 2009 ref. MF/C/278A/(18)
[530] See SC58- letter from GAMTEL to Trust Bank.
[531] Exhibit SC61A – Reminder letters from Spectrum to MOFEA dated 28th August 2009 and 26th October 2009

the time requesting payment of the outstanding balance. They acknowledged receipt of the USD5 Million and highlighted the fact that they had complied with their part of the contract.

GAMTEL experienced difficulty in servicing debt repayments which led to SSHFC writing to MOFEA as TBL planned to call on the guarantee[532]. Partial payment of the TBL loan of USD 5 Million was eventually repaid by the MOFEA using funds from account number 012-012-00426 (Construction of New Government Offices) lodged at the CBG. The sum of GMD97 Million was deducted from this account[533]. The final payment of GMDD45 Million was made from the Special Project Dalasi Account No: 01201600001 (Sale of Land). This amount was paid by the Accountant General[534].

Government only paid USD5 Million for the repurchase of the GAMTEL and GAMCEL shares from Spectrum.[535] This was the major reason why Mr. Ali Sharara was allowed to return to The Gambia to manage the International Gateway through TELL International Inc. The agreed intention was for him to recoup his lost "investment"[536].

As stated, the total revenue generated by TELL from the Gateway was over USD100 Million.[537]

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[532] Exhibit SC61A – SSHFC letter to MOFEA dated 12th November 2008 ref. SSHFC/G/31/Vol.6/(112)

[533] Exhibit SC61A – MOFEA letter dated 16th November 2009 ref. MF/C/33/(16)

[534] See SC61A

[535] Transcript of Mr. Lamin Camara 5th April 2018 and testimony of Mr. Farid Matarr of 18th January 2018

[536]

[537] Exhibit SC66 – See pg. 80 of the ICT Task Force final report

FINDINGS

International Gateway

(a) State House (OP) was involved in illegally terminating calls between the periods 2001 to 2006. This resulted in significant loss of revenue for GAMTEL and contributed to loss of control by GAMTEL and consequent resort to international gateway managers who had the technology to detect and prevent fraud.. The loss in revenue was never quantified by GAMTEL.

(b) Ex-President Jammeh was solely responsible for selection and awarding the contracts to the various Gateway Managers (SPECTRUM through ORATUS, System One, TELL Inc., & MGI Telecoms AG) all within a short timeframe. Reasons for the change were not provided. GAMTEL's line ministry (Ministry of Communication) was unaware of how contracts were awarded.

Evidence that due diligence was carried out on any of these companies was not provided. The international call tariffs as per signed MOU rates increased with each of the gateway managers.[538]

The Ex-President after having taken it upon himself to control the revenue from the international gateway did not bother to make sure that OP put in place a system for monitoring the revenue from the gateway. It seems it was entirely up to the gateway managers (at least during the MGI contract) to determine what to pay to government and what to debit as expenses. Accounts were not submitted and neither OP nor GAMTEL requested for accounts. In fact only the Ex-President and Mr. Baboucarr Sanyang seemed to know exactly what was going on with the MGI contract.

(c) The contract with MGI was signed by Mr. Baboucarr Sanyang then GAMTEL MD on behalf of Government which is deemed to be improper as he did not have the legal mandate to do so. Mr. Sanyang was at that time not a Government employee (i.e. a civil servant) and could not represent Government in such transactions. Instead of the line Ministry, it seemed General Sulayman Badjie was the one guiding the process.

(d) Mr. Baboucarr Sanyang also signed a Master Service Agreement without seeking Board approval and entered into various Service

[538] Exhibit SC67 – Summary of Taskforce Report to the Janneh Commission of Inquiry– pg. 9

Contracts which enabled MGI to deduct funds from the revenue payable to Government at source.

MGI or Mobicell Blue Ocean Wireless and Multi Media Gateway have not accounted for the funds of USD26.8 Million alleged to have been committed to these projects. MGI Swiss is liable to account for these funds. The Commission assumes that the sum forms part of USD52,837,514 stated as expenses incurred by MGI Telecoms from the total Gateway revenue of USD122,578,919. Neither GAMTEL nor government has records of these expenses.

(e) The receipts from the International Gateway based on an Executive directive issued in September 2013 were paid into an account opened at CBG called 'International Gateway account bearing account no. 1103001840 and Special Projects Fund (Vision 2016) account bearing account no. 1103002074. Revenue should rather have been used by GAMTEL in its operations and to settle its obligations.

(f) The Gambia had one of the highest international termination rates in Africa and out of the total revenue collected of USD443,891,688, only 18% went to GAMTEL, the remaining 82% of the total revenue went to the foreign Gateway Managers.[539] This is a clear indication that outsourcing the gateway management was not in the interest of GAMTEL or the country as a whole due to the significant loss of revenue.

(g) Taxes were not paid to Government by any of the Gateway Managers (Global Voice Group, SPECTRUM through ORATUS, Systems One, TELL Inc., MGI Telecoms Ag.) during the periods they managed the Gateway.

(h) Having regard to the evidence of Mr. Mohamed Bazzi that the sum of over GMD240,280,000 paid into Ex-President Jammeh's salary account no. 11002037701 at Trust Bank from June 2011 to January 2013 was given to him by Mr. Ali Sharara, and the payment of USD7,514,000 by Ali Sharara/TELL International into Euro African Group Ltd. Lebanese bank account, the Commission believes Mr. Njogou Bah that Mr. Ali Sharara gave the Ex-President A Range Rover vehicle as an incentive. The Commission finds that Mr. Ali Sharara and his company TELL International were through Mr. Mohamed Bazzi and EAGL involved in paying illegal incentives to the Ex-President in order to maintain the International gateway management contract and otherwise maintain the Ex-President's favour.

[539] Exhibit SC66 – See pg. 16 of the ICT Task Force final report

(i) Bribery is both a criminal and civil wrong and both the person bribed and the person giving the bribe is liable for the amount of the bribe. The Commission finds that the sum of USD7,514,000 paid into EAGL's Lebanese Bank which Mr. Mohamed Bazzi said is what he gave the Ex-President is recoverable from Mr. Ali Sharara, TELL International, Mr. Mohamed Bazzi, and Euro African Group.

(j) There was no Board approval for GAMTEL payments of USD316,469.36 towards the ICT works at OP.

(k) Based on the evidence, one can infer that the USD3,642,000 paid from Mobicell Blue's account to TK Xport for Vision 2016 farming equipment based on requests from ex-President Jammeh's orderly and Chief of Protocol was a bribe to Ex-President Jammeh. Individuals do not give loans to governments, so for Mr. Jassey to testify that the money was a loan to Gambia Government is absurd. Based on the evidence we find that this payment constituted bribery for the gateway manager contract granted to MGI.

From the timing of the payments into the account from MGI Swiss - USD1.214 Million and USD1.2 Million from MGI Swiss on the 24th and 26th June 2015 to make up a total of the USD3.6 Million requested by the Ex-President- it is most probable that MGI Swiss through its directors/partners, Martin Keller and Ilija Reymond, paid the said bribe jointly and severally with Mobicell Blue through Mr. Bala Jasseh.

Bribery is both a criminal and civil wrong and both the person bribed and the person giving the bribe are liable for the amount of the bribe. The Commission finds that the sum of USD3.6 Million given to Ex-President Jammeh is recoverable from MGI Swiss, Messrs. Martin Keller, Ilija Reymond, Balla Jassey and the Ex-President jointly and severally.

The Commission does not find any justification for MGI Telecom licensing the billing software paid for from Gateway proceeds in its name. The Billing software belonged to GAMCEL and should have been licensed in GAMCEL's name. In any event, having regard to the amount deducted as expenses from the Gateway revenue, the license should have been fully paid and handed over to GAMCEL. The action of MGI in shutting down the billing system was mala fides. They ought to be liable for the damages caused to GAMCEL as a result. The matter ought to be pursued by GAMCEL for redress.

Mr. Baboucarr Sanyang acted in contravention of the GPPA Act in his relationship with MGI Telecom AG and Mr. Bala Jassey's companies. He never sought Board approval or complied with procurement rules. The sub-contracting of the National Assembly Contract to Mobicel Blue Ocean was unlawful. He should be liable for all losses suffered by GAMTEL as a result including the penalty of **USD35,000** paid by GAMTEL to Mobicell Blue to reactivate the call license.

There is probable cause for holding that he has committed an offence under section 69 of the GPPA Act, 2014.

<u>Sale of GAMTEL/ GAMCEL SHARES</u>

(l) Ex- President Jammeh gave the directive that GAMTEL/ GAMCEL shares should be divested.

(m) The sale price of USD35 Million i.e. 50% of GAMTEL/ GAMCEL offered to Spectrum was grossly understated. The companies were valued at a mid-point of USD153.87 Million so 50% should have resulted to payments of USD76.94 Million being made by Spectrum.

(n) National Assembly contract awarded to GAMTEL was subcontracted to Mobicell Blue Ocean Wireless by the then MD Mr. Baboucarr Sanyang without Board approval.

RECOMMENDATIONS

(a) The administration of the proceeds from the international gateway should be transferred back to the control of GAMTEL and not left with Government. GAMTEL'S financial situation is in a dire state as the debt burden ratio is high. If GAMTEL controls the proceeds, the moneys gained are likely to facilitate core developments at GAMTEL to enhance technology and make the SOE more competitive.

All bank accounts opened at CBG where proceeds from the Gateway are paid into should be closed immediately.

(b) Call termination at State House should also be immediately discontinued as this has a negative impact on revenue generated.

(c) Government of the Gambia should consider giving back GAMTEL autonomy in order for them to become competitive. GAMTEL should look into the options of buying state of the art equipment to manage the Gateway locally rather than outsourcing that function to foreign companies. Revenue generation will be high and monitoring of the Gateway can be properly controlled and managed to deter fraud.

(d) GAMTEL should be transferred back to its line ministry i.e. Ministry of Information & Communication Infrastructure and yearly targets set for the PE to perform. Monitoring of the PE should also be regularly carried out, be it quarterly or half yearly. An assessment will have to be carried out after yearend to check if targets were met.

(e) Efforts should be made by **Gambia Revenue Authority (GRA) to recover all outstanding taxes owed to Gambia Government by previous Gateway Managers (Global Voice Group, ORATUS, Systems One World Communication, TELL Inc. & MGI Telecoms AG).**

(f) Charge for crimes on bribery should be leveled against Mr. Ali Sharara, TELL International, Mr. Mohamed Bazzi and Euro African Group Limited jointly and severally.

(g) The **difference of USD26,618,160** highlighted above between MGI'S and the amounted credited into the Special Projects Fund (Vision 2016) account domiciled at CBG should be investigated.

(h) MGI Telecoms should be required to account for the sum of USD52,837,514 stated as expenses incurred by MGI Telecoms and deducted by them from Revenue. Should they fail to do so, legal action should be instituted against them for the recovery of the sum less reasonable expenses.

(i) The relationship between Messrs. Baboucarr Sanyang and Bala Jassey needs to be further investigated. There is evidence to show these individuals have a close relationship as Mr. Sanyang wrote a letter to PURA appealing on behalf of Mr. Jassey that his application be reconsidered.

(j) The penalty of **USD35,000** paid by GAMTEL to Mobicell Blue to reactivate the call license should also be recovered from Mr. Baboucarr Sanyang who authorized the payment..

(k) The then public officers such as Mr. Baboucarr Sanyang (former MD) should not serve in any public office again or be appointed as Directors for any State Owned Enterprises (SOEs) for at least ten years.

(l) Charge for crimes on bribery should be levied on Messrs. Balla Jassey Martin Keller and Ilija Reymond and their companies. Mr. Balla Jassey should also be barred from holding any directorship positions in any business i.e. companies, enterprises, partnerships or sole proprietorships related to telecoms or multimedia operations.

(m)Further investigations should be done to quantify the loss suffered by GAMCEL due to the shutdown of the Billing system by MGI. Legal action should be taken against MGI in Switzerland to recover the loss.

(n) Messrs. Baboucarr Sanyang and Bala Jassey should be charged under the provisions of section 69(1) & (2) (b) of the Public Procurement Act, 2014 for contravening the Procurement Act in connection with the contracts awarded to Mobicel Blue.

(o) The **difference of USD9.1 Million** not transferred to the CRF following the sale of 50% GAMTEL/ GAMCEL shares to SPECTRUM should be recovered from ex-President Jammeh. Funds were spent on *ineligible items such as Tuition fees for African American students (Miss Black USA Pageant), contributions to Bissau's legislative elections and so on.*

(p) Both GAMTEL and GAMCEL should secure copies of their Certificate of Incorporation from the Registrar of Companies. One never knows when lack of this vital document can be an impediment to negotiations, agreements etc.

CHAPTER 5 – NATIONAL WATER AND ELECTRICITY COMPANY LIMITED

I. INTRODUCTION

National Water and Electricity Company Limited (NAWEC) is a limited liability company established by Government on the 22nd May 1995 with a share capital of 100 million Dalasis divided into 10,000,000 shares of D10 each. Its objects are the generation, transmission, supply and distribution of electricity; the provision, distribution and conservation of water; and the provision, operation and maintenance of sewage facilities. The other shareholders are SSHFC, GPA, and GAMTEL, each subscribing for 1% of the capital[540].

2. STATUS OF NAWEC AS AT 2017

The audited financial statements of NAWEC for the years ended 31st December 2011 to 2015[541] show that the company was in a dire financial situation. The current assets were unable to cover the current liabilities of the company. As a result of this, a qualified audit opinion was issued on the 2015 audited financial statements.

As at June 2017, NAWEC had total liability of D9.335 Billion. The total liability of NAWEC includes D816.7 million owed to SSHFC of which D235.216 Million is money paid to ITFC to settle GTG's liability for HFO supplied to NAWEC, and D1.686 Billion in respect of NAWEC bonds issued to commercial banks to set off liabilities owed by GTG (and sister companies) to the banks against NAWEC liabilities to GTG.

The breakdown of the total NAWEC debt of D9,335,429,170 made up of debts and loans amount is shown below:

[540] See Exhibit MS296 - NAWEC Memorandum and Articles of Association.
[541] Exhibit SC102

Annex 2

Summary of NAWEC's Loans

	Facility	Lender	Original Currency	Tenor	Maturity	Outstanding (GMD) 06/2017	Comment
1	Kotu Power Generation Expansio	OFID/OPEC	USD	20 years	2032	369.149.737	
2	Upgrade & Expansion of LV Netw	BANDES (Ven.)	USD	20 years	2029	814.724.712	
3	Banks	IsDB	ID	9 years	2020	294.513.228	
4	Brikama Power Station	IsDB	USD	25 years	2031	199.907.636	
5	Kotu Power Generation Expansio	BADEA	USD	30 years	2042	165.541.415	Electricity Loans that remain in NAWEC's books GMD 2,091,614,966
6	Brikama 2 Gen Sets	SSHFC	GMD	Open	Open	139.343.750	
7	Elect. Expansion Project GBA LO	India Exim Bank	USD		2040	1.887.742	
8	Overdraft	BSIC	Eur		2017	45.247.521	
9	Overdraft	Eco Bank	GMD	12 mos	2017	30.000.000	
10	Overdraft	GT Bank	GMD	12 mos	2017	20.000.000	
11	Refi of ITFC for HFO	Mega Bank	GMD	18 mos	2017	11.298.425	
12	ITFC Repayment	**SSHFC**	GMD	Open	Open	235.216.524	SSHFC Loans to be repaid by MoFEA
13	EFGA Payment	**SSHFC**	GMD	Open	Open	581.489.543	
14	Bond	Commercial Banks	GMD	7 years	2024	1.686.444.749	Bond to be realocated to MoFEA
15	~~ING Loan Repayment~~	~~Government~~	~~GMD~~	~~Open~~	~~Open~~	~~46.900.179~~	
16	Government Loan	Government	GMD	Open	Open	804.746.603	Government Loans to be capitalized GMD 2,645,890,311
17	Loans Generators	Government	GMD	Open	Open	794.121.551	
18	BANDES Loan Repayment	Government	GMD	Open	Open	8.003.332	
19	ITFC GM/0302 Loan Repayment	Government	GMD	Open	Open	81.621.857	
20	~~TOTSA Loan Repayment~~	~~Government~~	~~GMD~~	~~Open~~	~~Open~~	~~910.496.790~~	
21	Energy Dev.& Access Expansion	OFID/OPEC	USD	20 years	2031	235.523.260	Rural Electrification Loans to be realocated to MoFEA GMD 1,205,940,874
22	Rural Electrification Project	ECOWAS	USD	25 years	2033	652.566.708	
23	Second Phase Rural Elect.	ECOWAS	USD	22 years	2033	317.850.906	
24	Kotu Ring Water Supply System	IsDB	ID	25 years	2028	429.780.846	Water & Sewearage Loans to be realocated to MoFEA GMD 888,833,002
25	Gunjur Water Supply	IsDB	USD	30 years	2038	188.609.848	
26	GBA Water Supply Project	ING Bank	Euro	5 years	2019	257.788.833	
27	Gunjur Rural Water Supply	IDB	ID		2026	1.490.825	
28	Replacement of Asbestos Water	India Exim Bank	USD		2036	11.162.651	
					TOTAL	9.335.429.170	

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In order to keep NAWEC afloat, on the 9th of March 2018, MOFEA signed a memorandum of understanding with NAWEC for the restructuring of the NAWEC debt with the stated objective to:

(i) create a mechanism that will assist in turning NAWEC into a financially viable company and to set it in the path of long term sustainability i.e. clean up its books; and

(ii) serve as a catalyst to build a comprehensive financial recovery strategy including a debt restructuring program[542]. By this MOU, Government passed onto the tax payer about 75% of the total liability of NAWEC amounting to D7,243,814,204

[542] See Exhibit SC110 - Memorandum of Understanding between Ministry of Finance and Economic Affairs and NAWEC

Witnesses appearing before the Commission have blamed the current situation of NAWEC on the excessive interference by the Ex-President in NAWEC's operations, particularly in matters of procurement.

The Commission in accordance with its mandate investigated the Ex-President's alleged interference in NAWEC including, in particular, on matters relating to the application of NAWEC resources; procurement of generators and HFO for its operations; and its management.

3. OVERVIEW OF PERIOD PRIOR TO 2001

By 22nd July 1994, when the Ex-President came to power, the Jawara Government had transformed the Gambia Utilities Corporation[543] (GUC) into the Utilities Holding Corporation (UHC) which proceeded to privatize its operations by signing a ten-year management lease contract with SOGEA S.A., (a French company). SOGEA set up a local subsidiary, the Management Services Gambia Limited. (MSG), to manage the operations. The previous Government was intent on renegotiating some aspects of the management contract which were found to be unsatisfactory[544]. On the 23rd February 1995, the AFPRC peremptorily, terminated the SOGEA/MSG management lease with immediate effect and froze all SOGEA group accounts. SOGEA immediately thereafter commenced arbitration proceedings against the Government.

In March 1995, UHC signed a management contract with ESBI/Biwater) a consortium of Biwater International Limited and ESB International Limited for the operation and maintenance of the water, electricity and sewage services of the Gambia for a period of 1 year with a view to a long term agreement if successful. In May 1995, NAWEC was incorporated.

NAWEC was compelled to negotiate a settlement of the arbitration proceedings with SOGEA. On the 13th October 1995, a Global Settlement Agreement was signed between UHC and SOGEA and their assets unfrozen on the 26th February 1996. The UHC Act was revoked and UHC assets transferred to NAWEC in June 1996 to make way for NAWEC to commence operations[545]. NAWEC and SOGEA entered into a joint venture, Gampower Limited, over a re-commissioned 11 MW generator installed at Kotu Power

[543] Responsible for electricity and water supply
[544] Transcript of Mr. Batchi Henri Baldeh dated 26th July, 2018
[545] Exhibit SC111 – Undated Memorandum and Articles of Association of Gampower Limited - 1996; Power Sales Agreement dated 29th October 1996 between Gampower and NAWEC; Agreement relating to the management of Gampower dated 29th October 1996; and Agreement to sequester the cash deposit between UHC and Sogea Group

Station, with NAWEC holding 54% and SOGEA 46%. Gampower was the first IPP to sell electricity to NAWEC. The agreement was for 10 years at a fixed fee of D0.64 (sixty four bututs) per KWH for 6 years and a tenancy over the site allocated by NAWEC for the IPP.[546] The arrangement seems to have come to an end in 2002 by mutual agreement. Mr. Samuel Sarr acted at some point as the representative of SOGEA[547]. NAWEC operations appeared to have somewhat stabilized by 1999 and was able to acquire its own new **3.4 megawatt generating set** from **Mirrlees Black Stone** from its own cash flow.

On the 21st January 1999, the services of NAWEC's first MD, Mr. Henry Batchi Baldeh, were abruptly terminated on the directives of OP. No reasons were indicated. He was replaced by Mr. Serign Jobe. In February1999, Biwater offered a joint venture to Government wherein it would provide a new 6 megawatt Mirrlees generator set at Kotu to replace G1 and G2 and also within 18-24 months provide an 18 megawatt power station at Kotu. On the 25th November 1999 (after **10 months)** Mr. Serign Jobe was summarily dismissed by letter from OP signed by Mrs. Julia Joiner. Mr. Alhagie Conteh the then Transmission and Distribution Manager was appointed MD. On the 1st February 2000, Mr. Momodou Jallow Commercial Director was appointed MD and Mr. Alhaji Conteh reverted back to his original position[548]. Direct interference in NAWEC's operations had commenced.

On 12th February 2000, NAWEC board of directors held an emergency meeting to discuss proposals for increasing the companies generating capacity. Two proposals were under consideration: –

(1) a proposal from Biwater to supply and install a new (unused) 6 MW Mirrlees heavy fuel generator at the Kotu power plant for the sum of D79.9 million;

(2) the sale of SOGEA shares to IPG/Afrinvest (a Swiss company owned by Dax Holding Group and Omni Finance Investment)[549] and the addition of a 12 MW power plant including the supply of a 6MW generator as capital to GAMPOWER and the lease of another 6MW generating set from WARSILA Power Finance for a period of 5 years. The proposal also included the installation of a 10 MW Power Plant as a fast track solution to the capacity shortage.

546 Exhibit SC111 - See clause 5 & 6 of the Power Sales Agreement.
547 Transcript of Mr. Mustapha Corr dated 28th May 2018
548 Exhibit MS275E - Letter of Julia Joiner
549 Mr. Samuel Sarr has told this Commission that Omni Finance Investment is his company.

The Board approved proposal (1) and gave an in-principle approval to proposal (2) subject to certain precautionary actions that management was required to carry out.[550]

On 26th February 2000, Mr. Momodou Jallow signed an agreement with Biwater. NAWEC was unable to fulfill the conditions of the contract with Biwater due to the issue of the foreign exchange risk and the inability of NAWEC to provide the GBP32 Million bond agreed with Biwater; so, the agreement could not be performed.

By August 2000, NAWEC was transferred to OP as the oversight Ministry. No reasons were advanced. NAWEC remained under OP until 2008 when a substantive Minister of Energy was appointed. The direct interference in NAWEC's affairs however continued.

NAWEC then was facing serious financial challenges and wrote through DOSF&EA to OP in December on the financial predicament of NAWEC due to arrears owed by local authorities and Central Government. The MD Mr. Alhaji Conteh wrote and requested an offsetting arrangement against current and future tax liabilities with respect to fuel requirement which would allow NAWEC to maintain a reasonable level of stock of necessary spares to reduce lead-time spent on maintenance and forced outage.

In October 2000, NAWEC commenced discussions with Taiwan for the financing of a MAN B&W Mirrlees Blackstone Diesel set. According to Mr. Alhaji Conteh, the Taiwan Technical team had visited NAWEC which informed them that an amount of USD35 million was needed to help increase generation capacity and rehabilitate the Transmission and Distribution infrastructure. It was agreed that Taiwan would advance a loan for the acquisition of the generating set[551]. This generated a lot of interest from proposed investors. The Ex-President approved the acquisition of the Mirrlees generating set[552]. MD Conteh signed a contract with Mirrlees Blackstone for a 6 Megawatts generator which contract was already negotiated by his predecessor Mr. Serign Jobe. A Loan agreement[553] for USD5 Million, dated the 20th November 2000 from Taiwan for the purchase of 6MW Mirrlees generators was signed with Government. By letter of 3rd January 2001,[554] NAWEC requested the Taiwanese Ambassador to issue a payment guarantee for 90% of the contract sum to the contractor's bank for

[550] Exhibit MS275F (PR/C/674 Vol.11) Office of the President.
[551] Exhibit MS 275G PR/C/674 Vol.14
[552] Exhibit MS239 – File no: PR/C/674/Vol. 15 'Approval of Ex-President Jammeh seen on Minute Sheet'
[553] Exhibit MS160 – Loan Agreement between EXIM Bank of the Republic of China and GOTG dated 20th November 2000 with loan no. 6020483002
[554] Exhibit MS275G – NAWEC letter ref. NAWEC/ALSTOM/6MW/G4/(32)

the effectiveness of the EPC contract for the supply of the generators because of IMF restrictions.

The Commission has been informed that NAWEC preferred the Mirrlees generators because they had proven reliable. Generator 6 a Mirrlees Blackstone generator was a grant from Danish Government from 1990 and apparently still performing in 2017.

4. TAIWAN FINANCED GENERATORS

GTG Involvement

On the 18th January 2001, Mr. Alhaji Conteh was dismissed from office on directives of the Ex-President. He was replaced by Mr. Henry Batchi Baldeh the same day[555]. Mr. Alhaji Conteh[556] (Witness no. 189) testified that his dismissal was in connection to the Taiwan financed generators and his refusal to cooperate with Messrs. Baba Jobe, Mohamed Bazzi and Amadou Samba to sign a contract with GTG, for the supply of the generators.

Mr. Alhagie E. F. Conteh alleges that a few days before he was dismissed, he was approached by Messrs. Baba Jobe, Mohamed Bazzi, and Amadou Samba in his office and informed that the Ex-President had instructed that he sign two agreements, one for the purchase of 3 generators which he was told were ready for shipment[557], and the second for the construction of a transmission and distribution infrastructure which was needed to offload the additional power to be generated[558]. He said he refused to sign and told Mr. Mohamed Bazzi that the instructions should be in writing; he also needed a quality assurance certificate from the Manufacturers that the generators were new. He claims that the trio did not take it well. He also alleges that Mr. Mohamed Bazzi offered him D1.5 million[559] as a bribe if he would sign the agreements. This allegation remained unproven.

A few days after, he was invited to the Office of the President and publicly[560] accused of soliciting a bribe in writing from Mirrlees Blackstone on the pretext

[555] Witness No.189
[556] Transcript of Mr. Alhagie E.F. Conteh dated 30th April 2018
[557] Transcript of Mr. Alhaji Conteh dated 30th April 2018 page 13
[558] The transmission lines were for the coastal areas going up to Gunjur and then Brikama.
[559] Ibid - Mr. Alhaji Conteh page 14
[560] In the presence of the Secretary General, NAWEC Board Chairman, Mr. Amigo Jeng, Director General NIA Mr. Kebba Ceesay, Mr. Abdoulie Kujabi etc.

that he was going to share it with the President. The President claimed he had investigated and received a letter to that effect but refused to show him the alleged letter. Mrs. Julia Dolly Joiner, Secretary General, at the time confirms this event.[561] Mr. Conteh stated that he informed those present at the meeting that the generators Mr. Bazzi was trying to bring into the country were second hand and he was charging USD15.8 million for them which was the price of new generating sets. He said he showed them an email written by one of his professors in Germany in which it was explained that the DUETZ generators were second hand and that they were refurbished in Germany; however, the President said that was 'nonsense'[562].

The Mirrlees Blackstone generators were never bought. Instead GTG was selected to supply and install three DEUTZ generating sets.

The Negotiations for the Generators

The evidence shows that on the 19th January, 2001[563] a day after he was re-instated, Messrs. Batchi Baldeh together with Mustapha Corr[564] attended a meeting held at MoFEA presided over by the PS OP, Mr. S. M. Mboge[565], also attended by Mr. Baba Jobe, PS MOFEA, Mr. Mohamed Bazzi and Mr. Amadou Samba[566] and the latter two's lawyer, Mr. Sheriff Tambadou. Mr. Bazzi presented GTG, as a Belgian company. It was mentioned at the meeting that GTG had presented a draft agreement to the OP for the supply of 3 generating sets and the purpose of the meeting was to discuss the agreement with a view to reaching "its logical conclusion". GTG offered to provide 3x18 megawatt Deutz generating sets, the first in 6 months and the other two in about 20 months for USD15,686,000. NAWEC raised concerns about its ability to pay for these generators. **The meeting was informed that the first generating set would be financed from a loan from Taiwan and Government would provide the funds for the other two**. NAWEC raised the need for network rehabilitation for efficient utilization of electricity

[561] Witness Statement of Mrs. Julia Dolly Joiner

[562] Exhibit 82A - Agreement for the sale and supply of heavy fuel oil between GTG and NAWEC dated 24th July 2002; Extension of Exhibit SC82A on the 26th July 2007; Exhibit SC82B; Build own operate and transfer agreement dated 7th March 2003; and Memorandum of Understanding dated 15th July 2012.

[563] Exhibit MS239 - Minutes of the meeting on the Agreement for the Supply of Generator Sets by GTG and NAWEC dated Friday 19th January 2001

[564] Mr. Mustapha Corr took over from Mr. Batchi Baldeh as Managing Director from 16th of March 2001 to the 16th of September 2004. From August 1998 to March 2001 he was the Power Supply Director, the position that supervises the Transaction and Distribution and the Generation of Electricity and he also served as the Generation Manager from May 1995 to August 1998.

[565] Transcript of Mr. Batchi Baldeh dated 26th July 2018 at Lines 192- 198

[566] Exhibit MS239 - Messrs. Mohamed Bazzi and Amadou Samba were reflected in the minutes as representing GTG

generated. Mr. Baba Jobe responded that network rehabilitation was part of the package on offer. This was confirmed by Mr. Bazzi in the afternoon session.

The Agreement was signed by Mr. Henry Batchi Baldeh on behalf of NAWEC and Mr. Mohammed Bazzi on behalf of GTG and witnessed by Mr. Amadou Samba[567]. The minutes showed that Mr. H. B. Baldeh had agreed to sign on condition that it would only be binding if, inter alia, a written confirmation of the verbal directives from the OP[568] was received, the funds were provided by Taiwan, and a FIDIC/EPC contract was negotiated[569]. Subsequent to the meeting NAWEC wrote to OP to confirm the verbal directive to sign the 18 MW contract with GTG as negotiated and endorsed by Government and also for Government to confirm that it would shoulder the full responsibility of providing NAWEC with all the requisite project funds of USD15.686 Million as well as informing NAWEC of the modalities of receiving and disbursing project funds[570]. This request was approved by the Ex-President[571]. On the 7th February the written directive was received from OP.

Under cross examination Mr. Baldeh confirmed that when he returned in January 2001, there was a generation issue because capacity had not increased, but "it was not because of financial issues that Investors did not come, that is just one aspect of it. The environment must be conducive and the partners coming must have the financial and technical capacity to deliver what they are saying they are going to deliver".

As per minutes of the meeting, it was agreed that the three generator sets were to be delivered and commissioned as follows:

Generator Set	Delivery Date as per Minutes	Commissioning as per minute
1st set	On or before 31st May 2001	not later than 20th July 2001
2nd set	On or before 31st July 2001	not later than 30th Sept. 2001
3rd Set	on or before 31st august 2001	not later than 30th October 2001

[567] Exhibit SC87
[568] In his testimony Mr. Henry Batchi Baldeh "during the meeting we were told certain things that the President said this or that so in front of everybody and I had said that he should write to me to confirm that that is what was said"
[569] Exhibit MS239 -PR/C/674 Vol15.
[570] Exhibit MS239 - NAWEC letter ref: NAWEC/GTG/DEUTZ/(01) dated 25th January 2001
[571] Exhibit MS239 - As per minute file ref: PR/C/674/Vol.15.- Minute 6

However, none of the said delivery and commissioning timelines were met. From the evidence, the engine numbers 4, 7 and 8 and all three generators were located at the Kotu Power Station.

On the 1st February 2001, Mr. Baldeh wrote to OP about the serious financial situation of NAWEC with a negative liquidity position of -D9.233 Million[572] and requested for an urgent meeting.

<u>What was GTG Contribution?</u>

Mr. Henry Batchi Baldeh testified that he had initially refused to sign the agreements[573]. He said NAWEC preferred a Mirrlees generator and they would not have gone with GTG but for the directives from the Office of the President. The Commission is concerned that the Ex-President imposed DEUTZ generators on NAWEC whose performance was assessed to have contributed to NAWEC's capacity challenges.

Mr. Alhagie Conteh (Witness no. 189) testified that the 3 generators subjected NAWEC to considerable amount of increased operating costs both in terms of spares and fuel consumption. All the three generators supplied by GTG had undergone major component changes compared to generators that were in existence prior to them. The witness's rundown of the state of the current affairs of the generators is provided in the table below[574].

Current state of the generators

No	Details of the Generator	Current Conditions	Location
1	Generator No. 4	Alternator replaced	Kotu
2	Generator No. 7	Engine Block replaced	Kotu
3	Generator No. 8	Engine Block replaced	Kotu

Why were the generators single sourced when financing was available? Mr. Fadi Mazegi[575] claims that GTG pre-financed the purchase of these sets and not the CBG[576]. He said there was no guarantee or **LC** in place. They were

[572] Exhibit MS239 – NAWEC letter ref. NAWEC/O/O/F/(119)
[573] Transcript of Mr. Henry Batchi Baldeh dated 26th July 2018 – Lines 230-248
[574] Transcript of 2nd May 2018
[575] A shareholder and director of GTG
[576] Transcript of Mr. Fadi Mazegi dated 11th June 2018

therefore exposed and it was the **Taiwanese** Ambassador at the time who gave them some comfort. GTG did not produce any documents to support this claim or to explain how the financing was arranged. Mr. Fadi Mazegi (Witness no. 19) testified that they no longer have any documents. He further mentioned that GTG no longer had bank records on the financing because they did not keep records beyond 6-7 years.

The loan agreement for the first generator with the Export-Import Bank of Republic of China (Taiwan) (EXIM Bank) had been signed on the 10th January 2001 by Mr. Famara Jatta, Minister of Finance for USD5million. It was amended to replace the Mirrlees generating set mentioned therein to a Deutz set to be provided by GTG. This sum was made available to GTG through the Central Bank. A letter from Beirut Riyad Bank dated 27th January 2001 showed that USD5 Million was paid to GTG[577]. The whole USD5 Million was paid as lump sum before the generators were supplied.[578]

A second NAWEC related Loan Agreement with the EXIM Bank of Taiwan- LOAN NUMBER: 6020483003[579] dated January 4th 2002 was signed for a total loan of USD25,542,000 to finance:

(i) indebtedness incurred toward Global Trading N.V. or its lawful assigns and successors for the procurement of 3 six megawatt generator sets to be installed at the power plant presently situated at Kotu;

(ii) the entire cost of an electrical power project more particularly known as the Rehabilitation, Enhancement, Expansion and Refurbishment of the Transmission and Distribution Network in the Greater Banjul Area and Environs.

GTG has not submitted any evidence that the USD10,686,000 paid to them out of the initial advance was to be used to reduce NAWEC's existing indebtedness to GTG or its assigns for an amount they were supposed to have advanced for the procurement of the generators. GTG has submitted no such evidence. Procurement was defined by the loan agreement as the three 6 Megawatt generator sets to be installed at Kotu power plant.[580]

It is clear that GTG did not pre-finance anything. There is no evidence of any funds brought in by GTG. Instead, it was the Government of the Gambia that pre-financed the purchase of these generators. The Commission's view of

[577] Exhibit MS114G
[578] Exhibit MS239 - Letter dated 16th January 2001 requesting the amendment signed by Minister Famara Jatta
[579] Exhibit MS160
[580] Exhibit MS160 - Article 1.o1 and 2.01(c) Exhibit MS160

this evidence is corroborated by the reconciliation sought by OP from the CBG in 2006.

A letter dated 5th October, 2006 from Mr. Momodou Bamba Saho, First Deputy Governor of CBG[581] to the Secretary General, Office of the President states:

"With request Loan No. 6020483002 between the Export-Import Bank of the Republic of China and Republic of the Gambia dated 4th January, 2002

Pursuant to our (Njie/Saho) telephone discussion of 28th September 2006, I attach details of amounts spent by the Government of The Republic of The Gambia for the procurement of three (3) six megawatt generating sets for installation at the Kotu Power plant in 2001.

Yours sincerely,
Momodou Bamba Saho
Deputy Governor

Attachment:

DATE	***NARRATIVE***	***AMOUNT USD***
12-Feb-01	*Payment of USD5.0m to MM Global Trading Group NV Ref. Instructions dated 09 February, 2001*	
19-Jun-01	*Payment of USD3,937,200 to MM Global Trading Group NV b/o NAWEC*	
3-Sep-01	*Payment of USD4,321,500 to MM Global Trading Group NV b/o NAWEC*	
		4,321,500.00

[581] Exhibit MS248(2) – CBG letter ref. GM368

7-Dec-01 Payment to Global Trading Group NV

2,700.000.00

11-Feb-02 Payment of USD0.70m to Global Trading Group NV

Ref: ADM214/259/01(dbj) dated 11-Feb-02 700,000.00

TOTAL 16,658,700.00

Notes:

These amounts were partially covered from the proceeds of Loan No. 6020483003 between the Export-Import Bank of the Republic of China and the Republic of The Gambia dated 4th January 2002. Payments were for purchase of three (3) six megawatt generating sets made by Deutz with auxiliaries.

The total sum provided by EXIM Bank was USD30,541,294. USD14,855,294582 for the Transmission & Distribution lines and USD15,686.000[583] for the generator sets.

A reconciliation of the loan amount, the contract sums and the money advanced from CBG shows that GTG received USD16,658,700 in 2001 instead of the agreed USD15, 686,000. USD972,700 more than the price agreed for the generators. What happened to this sum?

As regards Mr. Baba Jobe's involvement, Mr. Fadi Mazegi said he knew of him and had seen him but that was all. Mr. Baba Jobe had no interest in GTG and he did not know why he was accompanying Mr. Mohamad Bazzi. He said that Mr. Amadou Samba also had no interest in GTG whether as shareholder or director. Mr. Tareq Musa he said was a friend he met in Lebanon. He introduced Mr. Bazzi to Gambia. Mr. Samba said he accompanied Mr. Mohamed Bazzi to the meeting at DOSF&EA *"because he was a stranger in the Country and he (Bazzi) asked him to accompany him because he I was a prominent business man in the country but the moment he saw his way, I never saw him as Mr. Bazzi was dealing on his own with his business"*[584]. This statement is of course untrue as Messrs. Mohamed Bazzi and Amadou Samba became, and remained, partners in several companies until 2017.

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582 Exhibit SC88A –Clause 2a

583 Exhibit SC87 – Agreement signed between GTG and NAWEC for the supply of Generating Sets dated 19th January 2001 – Clause 3a 'Purchase Price'

584 Transcript of Mr. Amadou Samba at page 8 lines 161 -170

4.1 Condition of Generators, if New or not?

Mr. Alhagie E.F. Conteh has leveled the allegation that the generators were second hand not brand new as stated in the Agreement. He stressed that the engine block of Generators 7 and 8 had been replaced and the alternator of Generator 4 had been replaced. According to the witness, the engine blocks of Generators 1 and 2 in Kotu have been in good working condition since the days of President Jawara. He said there was no assessment of the ages of the GTG generators when they were supplied. Mr. Fadi Mazegi refutes the allegation that the generators were not new as utterly false. He said they were brand new as he visited the factory in Manheim and saw them.[585]

On the 25th January 2001, Mr. Bazzi [586]wrote to say that he had instructed Deutz to commence work on the first engine which would be ready by end March. Mr. Baldeh replied to say that they had received no specifications so the basis on which work could be commenced "is incomprehensible". Mr. Bazzi replied to say that the specification would be brought by the Deutz engineers on February 3rd. On February 5th Mr. Baldeh wrote to OP complaining that it had received neither specifications etc. nor engineers. By 12th February Mr. Baldeh was still asking for the detailed specs. Mr. Baldeh resigned in March 2001 and was replaced by Mr. Mustapha Corr.

A bundle of documents relating to the 3 generators including the FIDIC conditions of contract[587] which incorporated the Agreement of 19th January 2001[588] that new sets shall be provided,[589]and various technical documents including factory test reports of generator number 4, number 7 and 8 which showed that Messrs. Abdoulie Ndure, Tijan Bahoum and Baba Fatajo were present during the tests. A report from an Independent Consultant hired by NAWEC, LAHMEYER INTERNATIONAL to lead the team of Engineers from NAWEC in the witnessing of those tests was submitted. The test document was signed by Mr. M. Holweck, Project Manager dated 6th June 2001 who was Lahmeyer International's representative and the 3 generators were supplied and accepted as new.

Nothing in these documents suggests that these generators were not new. The witnesses, Messrs. Fadi Mazegi, Baba Fatajo, and Alhaji Conteh informed the Commission that the age of the generator could be verified. The Commission found that this could only be done for a significant cost and did not proceed with the verification.

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[585] Transcript of Mr. Fadi Mazegi dated 11th June 2018
[586] Exhibit MS239
[587] Exhibit SC87
[588] For the purchase of the 3 Generators
[589] See Clause 8.5 Part II Special Conditions

5. REHABILITATION OF TRANSMISSION AND DISTRIBUTION NETWORK FOR GREATER BANJUL

As stated, the Second Loan Agreement signed on the 4th January 2002 between the EXIM Bank of Taiwan and the Government was for the supply of additional two 6 megawatt generating sets plus the upgrading and the rehabilitation of the transmission and the distribution for **USD25,540,333 Dollars**.[590]

An agreement was signed between GTG and NAWEC on the 1st August 2001 by Mr. Muhamed Bazzi and also witnessed by Mr. Amadou Samba on behalf of GTG and Mr. Mustapha Corr with the PS, OP Mr. Mambury Njie on behalf of NAWEC for the sum of **USD14,855,294.63**[591]**.** The transmission infrastructure was for the coastal areas from Kotu to Gunjur then Brikama.

Again Mr. Alhagie Conteh testified that he refused to sign this agreement because going by international rates the proposed sum of USD12 Million charged by GTG was excessive. By his own assessment of the works, the price should not have exceeded USD8 Million.

It would appear that Mr. Mohamed Bazzi had given the impression that he would pre-finance this project because the scope of the Project was initially reduced to fit GTG's budget[592].

Mr. Mustapha Corr (Witness no. 195) testified that he had sent a brief to OP in May 2001 which among other things had outlined the fact that adding generation capacity alone at Kotu was not going to help if the network was not improved. NAWEC wanted **Government** to approach the **Agence Francaise De Development (AFD)** because they had already carried out a feasibility study and developed the Master Plan for the GBA Transmission and Distribution Network as a grant and were expected to return to appraise the Project, but did not. So, NAWEC wished for Government to continue the dialogue with **AFD** to help finance with a mixed loan and grant. Mr. Mustapha Corr said they were informed in **July** of **2001** that **Mr. Bazzi** of **GTG** was going to finance the improvement of the Network in the **Greater Banjul** for up to USD**12,000,000.** The proposal was thereafter received from Mr. Bazzi for the USD12million project.[593]

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[590] Exhibit MS160
[591] Transcript of Mr. Mustpha Corr dated 28th May 2018
[592] See minutes of the negotiation meetings..
[593] Transcript of 28th May 2018

However, the minutes of the meeting of 19th January 2001[594] (on the 3 generators) show that Mr. Baba Jobe had told the meeting that the Network was part of the package. So, the Commission finds it most probable that the decision was taken at that time to award GTG the contract for the Network to be financed by the EXIM Bank of Taiwan.

Mr. Mustapha Corr stated that the NAWEC technical team negotiated the scope and terms of the contract with GTG. They did not negotiate any specific price except with respect to the items added to the scope, and since the contract was single sourced to GTG, there were no estimates from their engineers to measure it by, or a comparative tender to determine whether the price was high or low[595]. He said it was GTG who gave them a price buildup of the total amount. He explained that the scope of work was scaled down to meet the contractors budget but thereafter increased to supply electricity to villages along the way and that is what is reflected in the final contract sum.

Minutes of the meeting between International Montage Maintenance (IMM) and NAWEC dated 25th July, 2001[596] to finalize and adopt technical proposals from IMM to NAWEC in question do indicate that the cost breakdown of the technical proposal was USD14,847,534.23, and that GTG had said "that the absolute budget ceiling for the intervention on the T&D network was USD12 million indicating a shortfall of USD2,847,534.23. It was agreed therefore to re-examine and re-prioritise the scope of supply in order to match the indicated budget." The scope was then reduced by USD1,529,085.4. Then it appears an additional 10 MV/Kiosk Type distribution stations was added[597]. An Agreement[598] was signed on the 1st August 2001 between GTG and NAWEC and states in the recital that: "T*he contractor represents that it has the capacity to provide the means to rehabilitate the existing transmission and distribution facilities of the client and to expand the same as required by the client*". Clause 1.vi provides that "*the Project shall be sold, supplied and commissioned under an engineering procurement contract governed by Federation International Des Ingenieurs-Conseils (FIDIC) to be signed by International Montage Maintenance (IMM) and RMT (Industric – Und Elektrotecchik GMBH)*.

[594] Exhibit SC88C - Minutes of meeting between IMM and NAWEC on the technical proposal from IMM for the rehabilitation and expansion of the Greater Banjul Area Transmission and Distribution system dated 25th July 2001.
[595] See……..
[596] Exhibit SC88C – Minutes of meeting between IMM and NAWEC
[597] See document attached to the minutes titled 'Network Refurbishment of existing 11 KV OH LINE.
[598] Exhibit SC88A – Signed Agreement for the Rehabilitation, Enhancement, Expansion and Refurbishment of the Transmission and Distribution Network of NAWEC in the Greater Banjul Area

Evidence shows that on the 9th August 2001, Mr. Mustapha Corr wrote to the 'Ambassador, Republic of China' stating:

''At a request of the Secretary of State for Finance and Economic Planning who currently is on a mission in Taiwan, we herewith submit signed originals of the 18MW capacity addition and the transmission and Distribution Rehabilitation Projects with GTG."[599]

A FIDIC based contract dated 12th October 2001[600] was signed between GTG, International Montage Maintenance (IMM), and NAWEC for the Rehabilitation, Enhancement, Expansion and Refurbishment of the Transmission and Distribution Network for the Greater Banjul Area and Environs. The Contract was executed by IMM and fully paid by the EXIM Bank of Taiwan.

The Commission concludes that GTG did not, and was not required to provide the means or expertise to deliver the project. The former was a loan provided by the Exim Bank of Taiwan, and the latter was provided by IMM. GTG's role as contracting party appeared to be that of facilitator only.

The Commission cannot find any justification for single sourcing the contract to GTG. The contract price was pre-determined and imposed on NAWEC. The Commission believes that it is more probable than not that the price was inflated as alleged by Mr. Alhaji Conteh. However, in the absence of satisfactory evidence of a standard industry benchmark the Commission cannot make any conclusive determination on the extent to which the GTG price was inflated. That notwithstanding, it is the Commission's firm view that this project including the generators supplied by GTG was an arrangement for the benefit of GTG, the Ex-President and those involved i.e. Messrs. Baba Jobe, Mohamed Bazzi, and Amadou Samba, and not in the best interest of NAWEC.

[599] Exhibit SC88A – NAWEC letter ref. NAWEC/GTG/T&D/(06)
[600] Exhibit SC88B – FIDIC Based Contract

6. HFO CONTRACTS

6.1. Background

Heavy Fuel Oil (HFO) constitutes 70% of NAWEC costs. Between March 2001 to June 2002, NAWEC had a tender process in place for the supply of HFO needed to fuel its generators. It appears that the main supplier was Shell because it had the advantage of a depot in Banjul. NAWEC was usually required to open Letters of Credit (LC) and provide guarantees to the supplier. In terms of pricing, PLATTS[601]which is an international reference for the supply of fuel, was used as a bench mark given that it cannot be subjected to individual manipulation[602]. The supplier's premium and other costs were then added which were subject to negotiations.

The evidence shows that the tendering process in place was suspended in 2002 and was not reinstated until 2014. Between the period July 2002 to May 2013, GTG was awarded the exclusive rights to supply HFO to NAWEC[603] by the following contracts:

- Agreement dated 24th July 2002
- Agreement dated 26th July, 2007
- Memorandum of Understanding dated 15th July, 2012
- Agreement dated 7th May, 2013

6.2. 2002-2007 Fuel Supply Contract with GTG

According to Mr. Mustapha Corr, the OP had sent GTG to sign a Contract with **NAWEC** for the supply of HFO. He believed it may have been in reaction to a recommendation he made in a written brief in May 2001 for Government to find a Strategic Partner to supply HFO to NAWEC because of difficulties with providing guarantees to open LCs demanded by potential suppliers. NAWEC also needed to cut costs by building a **HFO Storage Tank Facility** in **Banjul.**

[601] The definition of ''**PLATTS''** is a provider of energy and metals information and a source of benchmark price assessments in the physical energy markets. **Platts** provides "reliable market-based price information" on the oil industry

[602] Transcript of Mr. Mustapha Corr dated 28th May 2018

[603] Exhibit SC82A-D - Bundle of Agreements and an MOU between GTG and NAWEC for the sale and supply of Heavy Fuel Oil to NAWEC spanning this period.

As stated, in 2002 GTG was already working with NAWEC to install the EXIM Bank of Taiwan financed generators and the Transmission and Distribution Network. They had also participated in HFO tenders in March and June 2002 in which GTG were the winners[604].

On the 24th July 2002, NAWEC entered into the first contract with GTG. It provided for GTG to "**..supply exclusively all NAWEC's requirements and needs for HFO for a term of five years from the date of execution…"[605].** The price was the Average of the PLATTS Quotation for Fuel Oil 1% under the Heading 'Cargoes NWE Basis Ara" plus freight plus 17%. The duration was 5 years renewable. Delivery was deemed to be when the HFO begins to flow into NAWEC'S road tankers at Banjul Port. Ownership of the HFO and all risk, except responsibility for customs and clearance in relation thereto was to pass to NAWEC when the HFO passed into NAWEC road takers. GTG was responsible for offloading the cargo at Banjul Port into NAWEC's road tankers including the provision of necessary hoses.

The Build, Own, Operate and Transfer (BOOT) Agreement incorporated in Clause 1 of the HFO Contract provided that:

GTG shall build, own, operate and transfer a new 10,000 m3 capacity storage facility, connected to a 5,000 m3/24hrs capacity pipe line to the vessel unloading pier at Banjul port and to a truck loading facility (hereinafter referred to as "the new tank farm". It was to be located at the NAWEC Half-Die site to be built and ***pre-financed entirely at GTG's expense and account*** *which is approximately US USD2,000,000.[606] On its completion, GTG was to "own and be responsible for the operation, management and maintenance of the new tank farm up to 25th July 2007 after which it shall assign the same to NAWEC free of charge".*

Mr. Mustapha Corr testified that the construction of a storage tank facility in Banjul was included in the agreement and factored in the pricing. USD271 was the highest PLATTS rate and that was used to estimate, based on the total number of liters of fuel they were to receive under the contract, 3% for the tank and 14% mark-up per MT for the HFO. The 3% estimate was based on the estimated projection that July 2002 to July 2007 would have given (about USD2 Million) to cater for the tank. He said GTG submitted the design drawings for the Half Die Tanks to them and the construction should not have taken more than 18 months. So, the tanks ought to have been ready in 2004/2005. At the time, the Ex-President was the Minister of Energy. Mr.

[604] Transcript of Mr. Mustapha Corr dated 28th May 2018
[605] Exhibit SC82A - See Clause 3 of the Agreement for the Sale and Supply of Heavy Fuel Oil (HFO) to NAWEC
[606] Exhibit SC82B – Build, Own, Operate and Transfer (BOT) Agreement between GTG and NAWEC

Mustapha Corr said when he was transferred from NAWEC in 2004 the tanks were not built.

When Mr. Abdoulie Jobe (Witness no. 198) took over from Mr. Mustapha Corr as MD, he said he was briefed about the HFO contract[607]. He set up an internal committee comprising of the late Mr. Ndure Director of Power Supply, the Finance Director Mr. Baba Jarjusey to review the contract which was coming towards the end to see what was accomplished by GTG. They realized that the tank in Half Die was not constructed. He wrote to GTG demanding an explanation.

GTG wrote back giving explanations and making proposals in anticipation of the expected renewal of HFO contract that:

"The scope of the original Contract stipulated that GTG would build a storage facility for NAWEC to discharge the HFO at Afdai. However, following intensive soil tests which we carried out at Afdai, it was apparent that the soil was of very poor quality that it would not be feasible to build a storage facility due to the astronomical amount of micro piling required.

Consequently, it was decided to offer NAWEC free storage for their HFO deliveries at the newly contracted tank farm of our sister company Gam Petroleum, at Mandinari which is due to be completed by the end of this year.

The scope includes free storage of the HFO for NAWEC at Gam Petroleum Facilities, including all depot management fees, in addition to free delivery of the HFO from Mandinari to Kotu power plant, for a period of five years.

The above-mentioned scope will be an integral part of the renewed contract and will replace the tank construction condition. All other terms and conditions for the renewal of the contract for a further five years remain the same"[608].

NAWEC did not respond to this letter and no agreement was therefore reached on the proposal. Mr. Abdoulie Jobe said their proposal was unclear[609]. He was arrested and removed as MD on the 26th August 2006 at 2:30 AM. This issue had not been resolved.

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[607] Transcript of Mr. Abdoulie Jobe dated 5th June 2018
[608] Exhibit SC89B Letter dated 11th August, 2006 from Mohamed Bazzi, Managing Director, Global Trading Group NV to Abdou Jobe, Managing Director, NAWEC
[609] Exhibit SC104A – Witness Statement of Mr. Abdoulie Jobe

6.3. 2007-2012 Fuel Contract with GTG

Mr. Momodou B. Jallow took over from Mr. Abdoulie Jobe as MD. The 2002 HFO contract ended in July 2007. A new HFO supply contract[610] was signed by Messrs. Momodou Jallow and Mohamed Bazzi for NAWEC and GTG, respectively. Mr. Jallow said he was not aware of the 3% markup in the initial contract signed in 2002. He said at this time GTG's subsidiary GMS had been handed over the management of NAWEC[611]. He said Mr. Mohamed Bazzi brought the Contract to his office and told him that the Ex- President had sent him. He was alone. Mr. Bazzi wanted the Agreement signed because he was flying out that night. Mr. Jallow said he compared the Agreement with the 2002 Agreement which indicated the price of HFO at PLATTS plus 17%. He said he told Mr. Bazzi that he cannot get 17% from the bank so he should reduce it, but Mr. Bazzi told him not to worry, the Ex-President said at the end of the contract NAWEC can bring fuel to the depot - the tank farm in Mandinari - and NAWEC will not pay charges.

Mr. Jallow was insistent that he was not aware that in the previous contract GTG were supposed to build a tank at Half Die[612]. Mr. Mohamed Bazzi failed to appear or offer any evidence on this issue despite being summoned. Mr. Momodou B. Jallow also confirmed that MS89A commenced on the 24th July 2007 and the date indicated by the Witness was a mistake[613].

While the letter of 11th August 2006 offered "free storage of the HFO for NAWEC at Gam Petroleum Facilities, including all depot management fees, in addition to free delivery of the HFO from Mandinari to Kotu power plant, for a period of five years," the agreement did not state that the free storage and transportation was to replace the Half Die Tanks. In fact, the agreement never mentioned anything about the storage Tank. The exclusivity clause was retained. The price of the HFO was to be the Average of the PLATTS Quotation for Fuel Oil 1% under the Heading **"Cargoes NEW Basis Ara"** plus freight of USD52.00 Per Metric Ton plus 17%. The PLATTS Quotation to apply would be the average of 5 consecutive quotations around the Bill of Lading Date (BL-2, BL-1, BL, BL+1, BL+2).

The Commission notes that according to Clause 6 of the Agreement[614] ownership of the **HFO** and all risk except responsibility for customs and

[610] Exhibit SC89A – Agreement for the Sale and Supply of HFO to NAWEC dated 24th July 2002
[611] See post
[612] Transcript of Mr. Momodou B. Jallow dated 30th May 2018.
[613] The execution clause shows that the witness signed and dated the agreement 30th July 2007 and it was endorsed on the cover page 30th July 2007, together with the correspondence from GTG on the 14th August, 2006. Mr. Momodou Jallow said no witness was present and the witness must have signed afterwards.
[614] Exhibit SC89B

clearance ….. thereto "shall pass through **NAWEC**, when the **HFO** passes into **NAWEC's Storage Tanks** at **Kotu**. NAWEC actually took ownership of the product when it was delivered to their **Tanks"** not before. Therefore, the issue of transportation or storage seemed quite irrelevant.

By December 2004, Gampetroleum[615] had received approval for the construction of the Mandinari Depot which they had been pursuing since 2003. The Commission finds it most probable that the building of the Banjul tanks for NAWEC was stalled, while GTG pursued this objective; and when they succeeded in December 2004, it would no longer have made sense for them to build a fuel depot for NAWEC and thereby lose their single biggest customer in NAWEC itself.

6.4. 2012-2015 Fuel Contract

The 2007 contract expired in 2012 when Mr. Ebrima Sanyang was MD. This time the contract was extended from the 24th July 2012 to the 31st July 2013 by a Memorandum of Understanding[616] effective the 15th July 2012 which confirmed that all the terms from the 2007 contract were to apply to the MOU. He said his point of reference was the 2007 contract and applied its terms.

Mr. Sanyang also said he was not aware of the 3% margin for the fuel tanks agreed upon in 2002. By this time OP had told them to work with GNPC and the MOP to get fuel from Mauritania pursuant to a bilateral arrangement. However, Mauritania refineries were down at the time so GNPC could not proceed. So, when the MOU expired he re-engaged the services of GTG for a one-year contract because GNPC had not commenced importing HFO. He then negotiated a much lower supplier's margin from **17% to 10%[617] and freight charges from USD52 to USD49.** The exclusivity clause was removed[618].

In Clause 6 of the Agreement, ownership of the HFO remained the same i.e. ownership of the HFO passed to NAWEC when the HFO passed into NAWEC's fuel storage tanks at the designated power plant. As per clause 9 the price included storage for NAWEC of the HFO at the Mandinari Storage Terminal and transportation of the HFO up to NAWEC's designated power plant.

615 A sister company to GTG

616 Exhibit SC82C – Memorandum of Understanding to the Agreement for the Sale and Supply of Heavy Fuel Oil

617 See Exhibit 105A – Agreement for the Sale and Supply of Heavy Fuel Oil between GTG and NAWEC dated 1st August 2013 ''Clause 9''

618 Transcript of Mr. Ebrima Sanyang dated 11th June 2018

Mr. Sanyang stated that in 2015 the exclusivity agreement was not extended as Government had initiated a collaboration with the World Bank to help the Energy Sector and other reforms like open competition of fuel supply were initiated. Open tender was carried out whereby they received 6 to 7 bids and GNPC was awarded the contract. He explained that it was not an open competitive bidding in 2013 because of the exclusivity which ended in 2014.

Mr. Amat Cham (Witness no. 194) testified that the mark-up i.e. premium on top of PLATTS reduced from USD110 to USD47 after the exclusivity was removed and HFO supplies were open to tender.

The **3%** difference charged by **EAGL** from **October 2002** to **31st July 2013** when the **Fuel Supply Agreements** between **Global Trading Group** and **NAWEC** were in place amounted to **USD3,886,981.53**[619] **according to NAWEC.**

The evidence shows also that while the HFO contract signed was with Global Trading Group, payments were made to EAGL and supporting invoices were also sent by EAGL. Global Trading Group did not have a branch in The Gambia[620].

6.5. GTG's Explanation

Mr. Fadi Mazegi[621] has admitted that in 2006, GTG wrote to NAWEC for the reasons stated in their letter; but for him the offer of free transport and storage at the newly built terminal at Mandinari was to the advantage of NAWEC. The cost of free transportation and free storage to **EAGL** was USD26 (USD20 through-put and USD6 for transportation). This if extrapolated over **7** years he said would have been USD**7.3 Million** compared to the cost of the **10.000m^2** (maximum USD**2 Million)**. He also said that 17% was their premium and that 3% was never mentioned and was a 'self-exercise' on the part of NAWEC bench marked on the Shell (previous supplier) rate of 14.4%. He said GTG charged more than 17% because the risks were high as they were dealing with a company in financial trouble.

He admitted that they did not make a calculation to show the cost of storage and transportation and the tanks would have been redundant once MandinarI became operational.

[619] Exhibit SC108 – Calculations done by NAWEC
[620] Transcripts of Messrs Baba Fatajo and Amat Cham dated 20th June 2018
[621] Testimony of 11th June 2018

However, letters from Mr. Mohamed Bazzi dated 26th September 2002 and 11th August 2006[622] to Mr. Mustapha Corr and Mr. Abdoulie Jobe on - SUPPLY of 5000+10% of HFO in August 2001 stated otherwise:

"/ELF payments as % of CIF 14.40%

*An average of 5,000 MT of HFO is used every 45 days. In one year, i.e. 360 days, an average of 40,000 (360/45*5000). The percentage charged by Global Trading Group (GTG) and Euro financing is 17% on CIF whereas the amount charged by EIF/Shell on their supply agreement was 14.4% leaving a balance of **about 3% financing the tank project at half die**.*

*Total Value of Contract annually = 40,000*USD271 (taking the extreme case of our last order when the Platts was at a very high level,) =USD10,840,000 The financing component of the project is 3%*USD10,840,000 = USD325,000*

*Over a five year period, that will translate into USD325,000*5= USD1,626,000 which is about the cost of the proposed tank at Half Die in 1996 although a 2002 revision of the costing was around USD2,200,000."*

Mr. Fadi Mazegi has confirmed the above fax to Mr. Mustapha Corr attached to both said exhibit (SC89B) and the letters of Mr. Bazzi were GTG documents. He said these were merely an internal analysis and in **2002,** when the first contract was signed GTG was merely trying to show **NAWEC** that by giving them those tanks the premium they were charging was equal or more than what **Shell** had been charging before. Further, that the 2002 signed Agreement, never broke down the premium into **3%** and **14%**. He acknowledged that the 2007 agreement did not mention that free transport and fuel was compensating for tanks either; but he maintained that the value of what was given to NAWEC in terms of free storage and transport outweighed anything that NAWEC lost from the non-building of the farm tanks.

The Commission does not find the GTG position on the 3% mark-up tenable. From the evidence, it is clear to the Commission that the 3% mark up for the fuel tanks to be built at Half Die was a fundamental term of the contract and the failure to build the tanks by 2007 was a breach of that term.

By the time the 2002 Fuel contract ended GMS were the managers of NAWEC and owed a duty to NAWEC to ensure that the issue was tabled and resolved particularly when the MD (Mr. Abdoulie Jobe) with whom they had commenced discussions had been arrested and dismissed. The evidence shows that issue of the 3% was never raised again after Mr. Abdoulie Jobe.

622 Exhibit SC89B

In fact all the managing directors after Mr. Abdoulie Jobe as well as Mr. Amat Cham (Finance Director)[623] have said that they were not aware that the 17% premium as initially agreed included the building of a fuel depot for NAWEC at Half Die.

To make matters worse, the 17% mark-up was applied by GTG not only to the fuel supplied under the HFO contracts but to the energy charge applied under the IPP. The evidence of Mr. Momodou Jallow as to the circumstances of the renewal of the HFO contract was not challenged, the Commission therefore accepts it.

It is the Commission's view that when the contract was up for renewal, GTG ought properly to have refunded NAWEC their USD2 million and negotiated the issue of storage of NAWEC fuel, if it was still relevant. The USD2 Million dollars is public funds, it could not have been so casually subsumed into the second contract signed between the MD Jallow and the Chairman of the Task Force of the company managing NAWEC. Offering storage free is also meaningless because the fuel does not belong to NAWEC until it flowed into their tanks.

The Commission concludes that the extension of the contract at a mark-up of 17% when it was clear that the 3% was for fuel tanks which had not been built and at a time when Messrs. Mohamed Bazzi and Fadi Mazegi (who were the owners and directors of GTG) were also through GMS responsible for the management of NAWEC was not made in good faith but rather was fraudulent. GTG exercised undue advantage when they imposed on NAWEC a mark-up of 17% in 2007-2012 which was then perpetuated. Time does not run here in relation to the Limitation Act and therefore, NAWEC is entitled to a refund of **USD3,886,981.53[624].**

[623] Transcript of Mr. Amat Cham dated 23rd May 2018 - page20

[624] Exhibit SC108 calculated by NAWEC

7. BRIKAMA INDEPENDENT POWER PLANT (IPP)- GLOBAL ELECTRICAL GROUP (GEG)

7.1. The Power Purchase Agreement (PPA) contract with GEG

The Electricity Act 2005 lay the foundation for private sector participation in power generation. The stated objective of the Act is to promote the development of the electricity sub-sector on the basis of the principles of competitive and market oriented economy; to regulate electricity service providers and the activities of persons required to be licensed.[625] Mr. Abdoulie Jobe, MD at the time testified that the overriding objective was to attract private sector funds into the sector through Independent Power Producers (IPP). Brikama was identified as a suitable site and was demarcated between NAWEC and potential IPPs. Guidelines were developed which included a model power purchase agreement (PPA). The first proposal received in 2005 was from Thames Energy, a UK Company, which submitted a proposal through GIPZA to build a 35 MW IPP.

In Mid 2005, OP forwarded a proposal from GTG including a draft PPA and related documents for an IPP. Mr. Abdoulie Jobe said NAWEC wrote back to the Office of the President that the proposal was not compliant with the guidelines developed. Verbal instructions were then received through SG Mr. Mambury Njie that they had 3 days to complete the negotiations with GTG or heads would roll[626]. A NAWEC management Committee was set up which negotiated with Messrs. Mohamed Bazzi, Fadi Mazegi and Terry Jehin and endeavored to reach an agreement within the timeframe of 3 days.[627]

The outcome of this negotiation was a PPA dated the 30th November 2005 between GTG and NAWEC signed by Mr. Mohamed Bazzi for GTG and Mr. Abdoulie Jobe for NAWEC[628]. The terms required the establishment of an operating company within a month[629]. *Global Electrical Group Limited (GEG) was incorporated by GTG as the Operating Company*. The shareholders at incorporation were Mr. Mohamed Bazzi - 99% and Mr. Amadou Samba 1%. The 1% share belonging to Mr. Samba was transferred to Premier Investment Group Sal Offshore on the 30th January 2010[630]. The PPA with GTG provided for the installation of 4 Siemens Single bearing generator sets

[625] See the long title to the Act – No. 8 of 2005
[626] Transcript of Mr. Abdoulie Jobe dated 5th June 2018
[627] Exhibit SC95A - Minutes of negotiation meeting of Friday 25th November 2005
[628] Exhibit SC95A – Power Purchase Agreement between GTG N.V. and NAWEC
[629] Exhibit SC95A - See clause 3.5.6 of the PPA
[630] Exhibit MS122

of 11KV-50Hz with a guaranteed electrical output of 22,000 Kilowatts (KW) – Annex 1.

There are 2 types of payment under any PPA:

(i) A capacity charge to enable the power producer/seller to recoup their investment which then ceases; and
(ii) an energy charge for the actual energy produced and sold to the Buyer, which would include the operation and maintenance of the Power Plant.

The issues which arose in respect of the GTG IPP are that allegation were made by all NAWEC Staff current and past that the IPP was imposed on NAWEC by the Ex-President at an extremely high capacity payment cost. Some of them stated that the energy charge was also too high. The allegation was made that it was the IPP that was the source of all NAWEC's problems. Mr. Baba Fatajo called it a "disaster for NAWEC". Mr. Momodou B. Jallow (Witness no. 196) said it killed NAWEC because NAWEC was not ready for it.

The evidence shows that, ultimately, the accumulated invoices on unpaid capacity charge and energy charges constituted a substantial part of NAWEC liabilities and the USD64 Million NAWEC Bond also discussed below.

7.2. Capacity Charge

The capacity charge under the GTG PPA was USD32.8 per Kilo Watt hour of demonstrated capacity which translated to a flat rate of US720,000 per month when all the 4 generators were commissioned. Both Messrs. Alhaji Conteh and Abdoulie Jobe said the industry benchmark for generator power plants installation is about USD1 Million per megawatt.

Mr. Abdoulie Jobe explained the negotiations which led to the GTG PPA**.** He said the generators were recommissioned generators from China. NAWEC's position was that they should not pay more than USD25 per kilowatt hour using industry standard benchmarks. The value of the generators was not disclosed by GTG. According to the IPP Guidelines a technical, commercial, and draft PPA was expected to be provided by the contractor. GTG submitted the draft PPA together with some technical details in an annex, but did not submit financials. Considering that the best-case scenario for used generators was between USD15-20 per KWH or at worst USD25 per KWH, NAWEC's perspective was that the GTG IPP would be a stop gap measure for **5 years,** pending the anticipated investment from the IDB. Their position during negotiations was based on a bench mark of USD1Million per 1 Megawatt. The proposal from GTG was USD33.8. They were not willing to budge below USD32.8. Mr. Jobe further testified that the issue was regarded as a sticking point, so he referred it to OP.

The letter of 26th November 2005 written to OP did say that the capacity payment was felt to be a bit high[631] but did not communicate any proposed rate for capacity payment or that it should be reduced. Issues were highlighted for instructions. The directive from OP for the approval of the IPP contract with GTG was exactly on the terms advised by NAWEC[632]. In addition, GTG was required to submit a copy of the PPA to PURA and apply for an IPP license.

All NAWEC staff who testified[633] have said that the price of a new 6 MW generator should not exceed USD6 million which meant that by industry standards not more than USD24 million ought to have been paid over 5 years (the period of the IPP) for a new generator. These were used generators whose ages were not known.

Mr. Fadi Mazegi confirmed that the 4 IPP generators were re-commissioned (second hand sets) from China[634]. He said they bought used spares and components from Europe shipped to China and had the generators reconditioned. He testified that he did not remember how old they were and no longer had documentation for them.
He told the Commission that the capacity charge was justified based on the cost of the investment weighted by the very high-risk factors which played a big role in assessing the IPP. He claimed that GTG was the only Company that agreed to sign a **PPA** without a guarantee from the Government. Other companies when they learnt that Government was not in a position to give them a guarantee, proceeded no further. **No evidence of these companies was provided to the Commission.** He said USD32.8 was what was agreed to cover the Cost of their Investment to be recovered over 5 years, after hard negotiations, then capacity payments would cease. He said the cost of their investment in the IPP was over USD40 Million based on Asset Value, the Cost of borrowing from Banks abroad at very high interest rates, and Risk Factors. He said they did not give NAWEC the Cost of their investment because NAWEC did not ask, but NAWEC would have known because this could easily be worked out by multiplying the **Capacity Charge** by the **Duration of the Contract.**

631 Exhibit SC95A - Letter ref. NAWEC/IPP-PROPOSALS/VOL.11.(040)
632 Exhibit SC95A - Letter from SG OP-268/318/01/TEMP:VII(19)
633 Messrs. Abdoulie Jobe, Alhagie Conteh, Baba Fatajo and Momodou B. Jallow.
634 Transcript of Mr. Fadi Mazegi dated 13th June 2018

Capacity charge payments[635] commenced in August 2006 and the rates were:

	USD
- August 2006	108,240.00
- September 2006	276,613.33
- October 2006	360,800.00
- November 2006	360,800.00
- December 2006	453,909.68
- January 2007	541,200.00
- February 2007	541,200.00
- March 2007 to end of contract	
- (721,600*54 months)	38,966,400.00
Total	41,609,163.01

In March, the USD721,600 kicked in and never varied which suggests that the energy supplied never fell below the demonstrated capacity of 85%. This, in fact, was not the case.

7.3. Power Generation Performance

Clause 4.1 of the PPA provided that the Buyer agreed to make payment for "the Delivered Energy produced by the Project or, as minimum, 85% of the Demonstrated Capacity". Clause 4.3.4 provided that the demonstrated Capacity determined by the most recent capacity Test will be used for calculating payments after the date of the capacity test.

Mr. Jobe said the obligation was on **GEG** at any point in time to demonstrate through tests that the Capacity charged was actually being produced by the generators i.e. **Demonstrated capacity** of **22 Mega Watts**. It was an implementation issue.

GTG did not consistently produce the guaranteed capacity of 22 megawatts which subsequently led to the Office of the President (OP) writing to GTG on the 20th June 2012 to increase their capacity to 80%[636]. The letter from OP did not lead to any improvement and for the last years of the contract they were basically running on 2 generators instead of the agreed 4 generators.

[635] Exhibit SC103 – Capacity charge invoices from August 2006 to August 2011
[636] Exhibit SC95B – OP letter ref. OP 268/318/01/PART: XXVI/ (30-CC)

The related capacity charge was not subjected to any reduction to reflect the variation in actual capacity provided under the agreement[637].

Mr. Mazegi admitted that the demonstrated capacity of 85% of 22KWH was not always met because there were breakdowns but this he attributed to NAWEC's failure to comply with the payment terms, which also impacted their ability to perform.

He said by 2010 NAWEC started defaulting heavily on their payments and that was due to the fact that PURA made successive reduction in tariff. At the same time the Fuel Prices went through the roof. The tariff that NAWEC was charging at the time did not cover the cost so they had a huge deficit and that deficit was growing month and month. And all they did was they defaulted on their payments, on the **IPP** (International Power Plant) and on the **HFO (**Heavy Fuel Oil). By the year **2012**, they were in a dire financial situation.

He said GTG closing and stopping was not an option. There were threats also from the Executive.

7.4. Was the Capacity Charge Excessively High?

The Commission has adverted its mind to the IPP license issued to GEG signed by the President and the attached GIPZA Special Investment Certificate (SIC) issued to GEG by The Gambia Investment Promotion and Free Zones Agency (GIPFZA) exempting them from various taxes for the 5-year period (from 25th May 2006 to 25th May 2011) of the IPP which shows that the investment made by GEG was stated to be USD18,103,800[638]. The SIC indicates that each of the generators cost USD576,239.50. 5 generators were included and these plus all installation costs and civil works is approximately USD12 Million.

The total capacity charge paid by NAWEC including the amount incorporated in the NAWEC Bond is USD41,609,163.01[639], more than 100% return on investment.

The Commission finds that the amount paid by NAWEC for an IPP comprised of used generators of indeterminable age which remained the property of the Seller after the investment period extremely high and cannot be justified by any risk factors.

[637] Transcript of Mr. Baba Fatajo dated 29th May 2018 - 186
[638] Exhibit MS122
[639] See SC103- Global Trading Group Capacity Charge Invoices from August 2006 to August 2011.

7.5. Energy Charge

The Energy charge component of the price was based on the specific consumption of the generators i.e. how much fuel they use to produce 1kilo watt Hour of electricity among other related costs. Therefore, the variable costs are fuel and spares which are also drivers of the price. Of these, the major cost driver is fuel. The Energy Charge agreed worked out to be approximately 21 cents per KWH. According to Mr. Conteh the global standard is 13-14 cents per KWH. He produced the current PPA with Karpower International DMCC entered into on the 12th February 2018 with NAWEC[640] does show in clause 8.1 *(Monthly fee*) that the Unit Price is USD cent 14.185 per KWH as of 20th December 2017.

Mr. Fadi Mazegi, disagreed with Mr. Alhaji Conteh that the Energy Charge was too high. He said the energy cost was elastic and depended on the price of fuel. He said the cost of spare parts did not affect the energy cost because the cost of maintenance was for GEG. The spare parts were linked by a formula to the number of kilowatt hours. The consumption of spares did not depend on the performance of the plant.[641] Furthermore, he rebutted Mr. Alhaji Conteh's testimony on an average of 21cents/kilowatt hour as a rule of thumb is not correct. He said there was no such thing as an average because this assumes that the valuable energy cost was fixed which is not the case as it depended on the fuel cost which varied a lot over the period from USD800 MT to USD300 per MT.

Mr. Abdoulie Jobe said the Energy charge for the IPP was not high because the PPA applied a standard indexation formula applicable to all generators whether old or new.

The energy invoice dated 1st February 2012 showed the following components:[642]

- Fixed energy component of USD1,386,805.44
- Variable Spare Parts Component
- Variable Fuel Component per KWH
- Which made up the energy payment for that particular bill for the period of February 2011.

640 Exhibit MS280 – Power Purchase Agreement between NAWEC and KARPOWER International DMCC
641 Transcript of Mr. Fadi Mazegi dated 12th June 2018 from line 940
642 Exhibit SC85B

The HFO supplied to the IPP also maintained the 17% over PLATTS. Mr. Fadi Mazegi testified that this was because EAGL was the importing company and was a separate company from GEG. Even though they are under the same Group, they had a different shareholding structure and were dealing at arms-length. He said GTG signed the contract with NAWEC but EAGL was the executor because it was EAGL that had the contract with TOTAL and the same elements were factored in storage (throughput paid to Gampetroleum) and transportation.

The Commission has already expressed the view that the cost of fuel at PLATTS +17% was based on the 2002 HFO contract which had factored in 3% for the construction of fuel tanks. It appears this was lost sight of when the IPP was negotiated by the NAWEC team. It is not in fact clear whether this was known to the NAWEC team at the time because the period of five years to build the tank had not yet lapsed and it was only in 2006 that MD Mr. Abdoulie Jobe took up the issue of the Fuel Tanks. The Commission concludes that based on the agreed price for fuel under the HFO Supply Contracts, which was 14%, the energy cost charged on the basis of the 17% was too high.

7.6. Incorporation of the Capacity Charge in the NAWEC Bond

NAWEC became heavily indebted which had an impact on other sister institutions, like SSHFC. SSHFC had given out loans to NAWEC as liquidity support.

By 2008, EAGL had begun asking for post-dated cheques because of the substantial arrears that had accumulated on the HFO contract and IPP despite the Islamic Development Bank (IDB) facility of USD15 Million having been given to them.

By 2009, NAWEC was struggling to settle the IPP charges. The Finance Director Mr. Alhagie Jallow prepared a financial situation report tabulation on 31st December 2009 showing that from 2006-2009 the capacity charge invoiced was USD27,177,162.33.[643] By May 21st 2010, [644] Mr. Mohamed Bazzi wrote to the Minister of Energy and stated that the arrears owed was about USD10 Million and requested the approval from MOFEA for the renewal of the IDB facility urgently otherwise there would be no HFO after 31st May 2010 when their stock would run out. On the 21st May, 2010, the Ministry of Energy wrote to NAWEC[645] conveying directives that **"NAWEC**

[643] See Annex 5 GEG Invoiced/Payments from 8/2006 to 12/2009 -Exhibit 104B Financial Situation of NAWEC as at 31st December 2009.
[644] Exhibit SC84
[645] Exhibit SC 92B/SC105B – Letter ref. ALC 87/281/04 (21)

should stop with immediate effect the payment of the Capacity Charge to GTG for the next two years." The letter was copied to SG OP and Managing Director GTG.

However, GEG did not stop invoicing. By the time the IPP ended in 2011, the outstanding capacity invoices was USD10,824,000. This sum became an issue in relation to the NAWEC Bond.[646]

On the 18th November 2014, Mr. Ebrima Sanyang the then MD of NAWEC wrote to GTG to inform that due to the executive directive, payments to GTG should not include the capacity charge and requested MOFEA to exclude it from the Bond arrangements. GTG responded the same day stating that they had offered NAWEC deferral of capacity payments for a period of 2 years to ease the financial burden on NAWEC. They had never agreed to waive it. They suggested that NAWEC seek clarification as to whether the directive was to stop the Capacity Charge payments indefinitely or temporally.[647] Ministry of Energy wrote to the Secretary General OP to seek clarification as to "whether the directives can still be maintained" on the 18th December 2014. There was no response to the letter. On the 16th January 2015, EAGL wrote to NAWEC attaching an earlier letter of 6th March 2013 from the SG Mr. Njogou Bah in which it was stated: "*The Government of the Gambia shall work out a comprehensives payment plan together with GEG towards the capacity charges USD10,824,000". GEG shall be invited to a meeting on this matter*" and urged NAWEC and MoFEA to rely on this letter to include the capacity charges in the Bond.[648]

NAWEC did not write. However, the Capacity Charge was included in the reconciliation that was signed with EAGL and *found* its way into the Bond Agreement.

On the 15th September 2014, 5 months after the Bond was signed, the Ministers of Energy and Finance, Messrs. Abdou Kolley and Edward Saja Sanneh, wrote to the Secretary General seeking executive endorsement for the Capacity Charge payment of USD10,824,000 to be included *because* SCBG had a judgment over EAGL and a first ranking security over the IPP power plant. The letter stated that *" in an attempt to avoid further legal issues with SCBG, who technically now own the GEG Plant, and NAWEC who are currently operating the Plant in which Government of the Gambia have also invested additional generators, the Government stake holders in Energy sector and NAWEC have finally agreed for SCBG and EAGL/GEG to fully and legally hand over the entire plant to NAWEC once government agrees to*

[646] See Post NAWEC Bond
[647] Exhibit SC92B
[648] Exhibit SC92B – OP letter ref. OP 268/318/01 Temp (94-1A)

include the balance of the capacity payments into the five year re-payment Bond".

Executive approval[649] was conveyed on the 30th September, 2015. With this additional sum the total amounts paid by way of capacity charge as stated above was USD41,609,163.01

6.7. Handing over of the IPP

When the PPA expired in 2011, the parties did not formerly extend the contract, nor was the Plant handed over. The IPP continued on the basis of the terms agreed in the PPA. According to Mr. Ebrima Sanyang the idea of NAWEC paying up all the liabilities and taking over the plant became the focus[650]. GEG position was clear that the IPP was not a BOOT so the plant remained theirs until it was purchased. From the evidence, it would appear the idea came from GEG.

On the 29th November 2012, GEG submitted a proposal to Secretary General OP to hand over the IPP facility to NAWEC & SSHFC as being more 'beneficial and cost effective' at zero cost on condition that the deferred Capacity Payments were settled. This it referred to as a gesture of goodwill to ease NAWEC's financial burdens and enable it produce power at cheaper cost. The proposal was that GEG would accept SSHFC shares in Gampetroleum in full settlement of the capacity payments of *USD10,824,000*. They were willing in this regard to take the SSHFC shares at a margin of USD4 Million. With recent increase in electricity Tariff and direct ownership of the electricity, NAWEC should then afford to pay GTG the outstanding energy invoices of USD24 Million spread over 24 months. HFO invoices had to be settled at the earliest. NAWEC would then use the IDB facility of USD25 Million to import HFO which GTG would import at cost price, storage free, and deliver free to Kotu, until all debts were repaid[651]. It was argued that NAWEC was a better investment for SSHFC rather than Gampetrpleum which was not yet paying dividends.

A NAWEC Task Force was constituted which advised the SG as follows[652]:

- Thorough assessment of the Plant since production ranged from 25-50% at the time.

[649] Exhibit SC92B – OP letter ref. OP/268/318/01/PART:XXVII(LM-100)
[650] See Transcript of 11th June, 2018
[651] See Exhibits SC92B & MS227A - GEG letter – Proposal for handing over the IPP Facility to NAWEC & SSHFC- copied to NAWEC and SSHFC.
[652] Exhibit MS227A - Letter from NAWEC to SG dated 21st January 2013

- Support for procurement of fuel from major producers without a margin would reduce cost of electricity and is welcome.
- SSHFC shares in Gampetroleum should not be traded off as the depot has begun to be profitable. Instead SSHFC should pay off the Capacity payment whether one-off or by installments
- The proposal for SSHFC and NAWEC to pay off the IDB loans USD25million be thoroughly discussed to determine sustainability of the re-payments with a possibility of re-scheduling them
- Sustainability of NAWEC payment plan for GEG liabilities was an issue.
- Once SSHFC pays off Capacity charge payments all debts should be consolidated and structured into a long term payment plan between NAWEC and SSHFC.

It was recommended that GEG can formally hand over the IPP plant since it is housed together with the SSHFC generators and this might make operations complex or impossible. A new dispensation was also recommended comprising NAWEC, SSHFC, GNPC and GPA to work together for the sustainability of the electricity sub-sector.

A meeting of the Ministries of Finance and Energy and the 4 PEs mentioned was called by OP on the 25th January 2013.[653] Following the meeting, executive approval was conveyed to the attendees on the 6th February 2013:

- NAWEC and GEG should move quickly to start the handing over process of the GEG plant bearing in mind that the SSHFC generators are being commissioned and there is no mechanism to distinguish the cost of production and the power generated from the two generators.

- The heavy fuel business should be opened up for competition and not monopolized. Additionally, the three PE's GNPC, GPA, and SSHFC should be given the opportunity as a group to import petroleum products in the country.

- The Government of The Gambia to discuss the payment terms for the $10.8 capacity charge with GEG.

SG Mr. Njogou L. Bah wrote to GTG in a letter dated 6th March 2013[654] and responded to the letter of 29th January 2013 accepting the offer to hand over the GEG plant at cost. NAWEC shall work out a sustainable payment plan towards its liabilities with GEG and EAGL on the IPP and HFO supplies:

[653] See OP letter of invitation of 22nd January 2013 signed by Ms. Isatou Auber
[654] See Exhibits MS227A &SC92B – OP letter ref. OP 268/318/01 Temp (94-1A)

> "**The Government of the Gambia shall work out a comprehensive payment plan together with GEG towards the capacity charges (USD10,824,000). GEG shall be invited to a meeting on this matter."**

Details on the utilization of the ITFC facilities were to be worked out by MOFEA with Stakeholders. He also reminded GEG that the completion of works on the SSHFC generators was long overdue.

Mr. Baba Fatajo testified that NAWEC took possession of the IPP a month or so after the technical assessment in May 2013. The staff were transferred to NAWEC's payroll. A letter dated June 20th 2012 from OP[655] addressed to GEG and attachment dated May 2nd 2013 with technical assessment shows that the IPP generators were appraised for handing over. *The report highlighted that G1 and G4 had been down since September 2011 and December 2012 due to mechanical defects.* The SSHFC generators i.e. G5 was still undergoing commissioning test runs and G6[656] was under construction.

Mr. Ebrima Sanyang testified that the financial mechanisms for payment of GEG liabilities had not been put in place when they were invited to State House one morning with Mr. Mohamad Bazzi and were instructed to take over the IPP[657]. Mr. Momodou Sabally was SG. He has confirmed that Mr. Mohamed Bazzi attended the meeting at which the decision was made and was upset because GTG's position was that the Plant could only be taken over when their liabilities were settled but they went in and took over in July 2013. Mr. Fadi Mazegi has also stated that they were forced to hand over the IPP.

Officially, the generators were eventually handed over following the signing of a 'Transfer of Ownership Agreement' dated 5th November 2015 between GEG, EAGL (described as an affiliate), MOFEA and NAWEC as part of the NAWEC Bond settlement. The Plant was transferred subject to the First Mortgage of SCGB of USD8,051,407.01 (D340 Million). The agreement also acknowledged the outstanding sums of USD2,087,731.70 and D24,038,583.48 still owing to EAGL to be settled directly between NAWEC and EAGL.[658]

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[655] Exhibit SC95B – OP letter 268/318/01/PART: XXVI/ (30-CC)
[656] See post
[657] Transcript of Mr. Ebrima Sanyang dated 11th June 2018 from line 340
[658] Exhibits SC95C & Exhibit SC95B - NAWEC Technical Assessment Report 24th April 2013 handing over of Global Electrical Group (GEG) IPP facilities in Brikama plus related correspondence.

Mr. Amat Cham has told the Commission that NAWEC does not have any value for the IPP in their books. It is captured as part of the Bond. There was no handing over with the cost of the plant. He said NAWEC requested for the Book value but it was not given. He said he never saw the contract until he appeared before the Commission.

7.8 Impact of the IPP

When the generators were handed over 2 out of the 4 were not operational despite the amount of money NAWEC paid for them.

Mr. Abdoulie Jobe said he did not know whether the IPP met the expectation of generating 80% of electricity because he was arrested the night the IPP was commissioned.

Mr. Fatajo explained that when the IPP in Brikama was inaugurated, there was a complete black out at night, the MD Mr. Abdoulie Jobe and Power Supply Director Mr. Tijan Bahum were at the station helping out, and they were taken to Mile II the next day. Mr. Bazzi invited the senior management to his Office and that was the first time the witness interacted with Global Trading Group. He was the Generation Manager in charge of the Power Generation Division. At the meeting, they were informed by Mr. Mohamed Bazzi about the black out. Mr. Bazzi said he had no hand in the black out and told the management to be patriotic and there would be no tolerance for anyone found wanting. The management went to Mr. Bazzi because when Mr. Jallow took over after the arrest of the 2 gentlemen, Mr. Bazzi was introduced as the person in charge. They did not have a meeting with Mr. Jallow before meeting Mr. Bazzi. The fuel price worldwide was at first USD300 per metric ton and it went up to USD700 or more. The MD at the time made observations that NAWEC was absorbing all the risks and there was no corresponding intervention from the Government.

Mr. Momodou B. Jallow similarly said the IPP killed NAWEC[659]. They could barely pay the bills. NAWEC became perpetually indebted. There were technical losses due to the poor transmission lines, and commercial losses due to the age of the meters some of which were over 30-40 years old. The specifications of the Plant were not indicated in the IPP. The cost of the set and the level of investment to be made was not specified. He said the PPA was not transparent.

Mr. Baba Fatajo also said that the IPP was a disaster for NAWEC and that is why they were so heavily indebted. The price of fuel escalated from USD300 to USD700 at one point and there was no indexation of the tariff, so NAWEC

[659] Transcript of Mr. Momodou B. Jallow dated 23rd May 2018

could not recover its costs. NAWEC was not allowed to pass on the cost nor getting subsidy from the government. NAWEC became insolvent and sister institutions like SSHFC that lent to NAWEC were also affected. He said it was a very bad experience.[660]

The Commission finds that the GEG IPP was expensive and unaffordable for NAWEC and The Gambia. NAWEC management did not have the freedom to negotiate the contract given the pressure they were put under by OP.

[660] Transcript of Mr. Baba Fatajo dated 29th May 2018

8. GLOBAL MANAGEMENT SYSTEMS (GMS) Management Contract

8.1. Signing of the Management Contract

In September 2006, Global Management Systems GmBH with its registered offices said to be in Germany entered into an Agreement for the Management of NAWEC with the Government of The Gambia[661] to commence on 2nd October 2006. The rationale for contracting this agreement on the part of Government is not clear. The evidence shows that SG Mr. Mambury Njie wrote to Mr. Mohammed Bazzi, MD GTG on 1st December 2005[662] stating "*that the Government of The Gambia intends to improve on the management of the National Water and Electricity Company to enable it better serve its clientele. Directives have thus been given for the Global Trading Group to negotiate a management contract for NAWEC with Lahmeyer International, a German Company. We would appreciate your expeditious action on this*".

There is a series of reports from NAWEC[663] to the Secretary General copied to the DOSFEA and the NAWEC Board outlining the serious nature of the situation at NAWEC 'constraining its ability to deliver services' which situation was deteriorating. The situation was indeed dire and the reasons for it were stated as including the limited generating capacity as the seven functioning generators with an installed capacity of 43.6MW had an available capacity of 30MW and there was no reserve capacity; the impact of the alarming rate of escalation of the price of HFO and the need for proactive action on the part of government; the poor condition of the transmission and distribution lines which meant that all the power generated does not reach the people because of wastage; and the negative impact of increasing fuel cost i.e. from a cost of USD175 per metric tonne in June 2004 the price had risen to USD350 per metric ton recently (May 2006). It was also indicated that NAWEC "was currently engaged with GTG to intervene in the most critical components of the network constraints in parallel with the works on their Power Pant"[664].

Both Messrs. Mambury Njie & Momodou B. Jallow have said that without pre-warning they were invited to a signing ceremony of the GMS contract at

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[661] Exhibit SC90 – The objective of the agreement stated is that GOTG and NAWEC are desirous of obtaining the services of GMS for the purpose of providing certain advisory, consultancy and management services

[662] Exhibit MS248 - OP letter ref. PR/C/674/VOL.19/(42) extracted from Office of the President file No. PR/C/674/VOL.19

[663] Exhibit SC104 – NAWEC letters ON THE State of Affairs at NAWEC dated 18 January 2006 ref. NAWEC/PROV/SERS/E/W/(1), 2nd February 2006 ref. NEWEC/O/P/GEN/(18), 12th April 2006 ref. NAWEC/O/P/GEN/(61) & 17th May 2006

[664] Exhibit SC90 - See page 3 of letter ref. of 12th April 2006

the Cabinet Room of OP presided by ex-President Jammeh with Cabinet Ministers and other dignitaries present. NAWEC had no preview of the document and Mr. Jallow said he did not read it, as there was no point. Mr. Mambury Njie said he was instructed to sign the document to 'kick-start preparations for negotiating a detailed management contract[665]. The signed document was thereafter sent to the Attorney General's Chambers (AGC) and MOFEA for comments/ advice on the 2nd October 2006 after agreement had been signed. The Solicitor General & Legal Secretary responded inter alia that advice ought to have been sought before signature, while the MOFEA drew attention to a Study which was intended to help government develop a master plan for the sector with a clear strategy and road map for private sector participation in NAWEC[666]. None of the comments made by AGC and MOFEA seemed to make any difference.

GMS contract[667] was signed by Mr. Mohammed Bazzi for GMS, Mr. Mambury Njie, for Government and Mr. Momodou B. Jallow for NAWEC to take effect from the 2nd October 2006. The contract was subject to:

(i) payment of a monthly service charge of Euros 50,000 by NAWEC to GMS;
(ii) and an annual charge at the rate of ….% of the profits recovered from improvements and developments made.

The duration was 5 years, from 2nd October 2006 to terminate automatically without notice on the 1st October, 2011.

8.2. NAWEC's Reaction to the Management Contract

The NAWEC managers that have given evidence have vehemently contended before this Commission that the management contract was detrimental to NAWEC:

(1) GMS was in substantial control of NAWEC during this *period in terms of human resources, finances and procurement and took all key decisions*;

(2) that the directors, particularly Mr. Mohamed Bazzi abused their position during the period of the contract to control NAWEC's

[665] MS247(3) - Witness Statement of Mr. Mambury Njie
[666] Exhibit MS248 - DOSFEA letter ref. LDM 451/01/Part9/(8) of 16th October 2016 signed by Mr. Abdou B. Touray and letter from AGC ref. AG 322/425/01/Part 9/(32) dated 31st October 2006 signed by Ms. N. Jallow
[667] Exhibit SC90

procurement for the benefit of GTG and associated companies and to the detriment of NAWEC.

Mr. Mohamed Bazzi through GTG was also the exclusive supplier of HFO, spares and generators and used his authority over the company to inflate his prices[668].

Mr. Baba Fatajo alleged that the management contract weakened the NAWEC management team which was strong at that time in order to have a monopoly. He believed Mr. Bazzi started taking control after the arrest of Messrs. Abdoulie Jobe and Bahoum the night of the blackout when the IPP was commissioned. Mr. Mohamed Bazzi called a management meeting at Standard Chartered House located at Kairaba Avenue before they met with Mr. Momodou B. Jallow the new acting MD. He talked to them about patriotism and that there would be zero tolerance[669].

Mr. Momodou Jallow further testified that he could not see any good that the GMS contract did for NAWEC or the energy sector. He said GMS decapitated NAWEC as when they took over 2 senior Directors and the MD were fired overnight and a few months after the Finance Director was fired making it impossible to know what was agreed upon prior. He stated that Mr. Jobe was not available to explain anything about the fuel contract or spare parts when he took over. He believes that GMS were deceptive and dishonest, they did not negotiate the contracts in a free and fair environment and never gave NAWEC a chance to be on sound footing.

Mr. Fadi Mazegi denied that GMS was in control of NAWEC management. He said the GMS Taskforce provided **Technical** and **Administrative Assistance only.** He said they were never responsible for finance and NAWEC at all times had to take the approval of its **Board** and the **Ministry** for any of its decisions. He said that GMS proposed an elastic tariff, that could have moved in tandem with **HFO** prices, and had this recommendation been adopted, **NAWEC** would not have been in the dire financial situation that it was; and that they were never Management.[670]

Mr. Nani Jawara, **acting Commercial Director,** disagreed with Mr. Mazegi, he said Mr. Momodou B, Jallow was a ceremonial MD as he was not in control at the time and was completely answerable to Mr. Bazzi. Mr. Bazzi used to call management meetings on Fridays afternoons, when he was in town at his offices at Standard Chartered Building, Traffic Light Junction, which Mr. Jawara attended one or two times. A five man Taskforce appointed by GMS was sent to the NAWEC technical, commercial, and finance

[668] Transcript of Mr. Alhagi Conteh 30th April 2018
[669] See Transcript of 29th May 2018.
[670] Transcript of Mr. Fadi Mazegi dated 11th June 2018

departments, and the Taskforce leader, shared the same office with the MD. He testified that Mr. Bazzi had told them that the President had said he should fire them but because they were brothers, he would not do that….. "*but this is how I want things done period".* Mr. Bazzi was in charge and not the MD Mr. Jallow who was shuttling between Standard Chartered House and NAWEC on a daily basis –every 2-3 hours.

8.3. Who was in Charge of NAWEC

The GMS agreement after review leaves no doubts as to who was expected to be in charge of NAWEC. Article 2 - 7 of GMS Agreement states that:

- Article 2 - GMS was to carry out the services detailed in the Schedule.
- Article 3 – the services provided by GMS shall be carried out by a team of independent persons (Task Force) established by GMS.
- Article 4 – the Task Force will act under the sole instructions of GMS and independently without any influence by the Board of Directors of NAWEC or other.
- Article 5 – the Task Force shall have supervisory control over all existing departments, their staff and resources in NAWEC at time of signing this Agreement and in the event of any restructuring of the departments.
- Article 6 – should the Task Force find it necessary to restructure, reorganize, employ and dismiss staff, change the use of all premises owned and/or rented out by NAWEC, the Task Force shall do so without incurring any liability.
- Article 7- GMS shall be in control of and responsible for all financial matters concerning funds, loans and credits with national and international financial institutions.

The Schedule referred specifies that GMS shall provide the following Scope of Services:

Administrational and commercial tasks in detail

- Verify and evaluate human resources
- Establish new structure of organization
- Stabilize a working environment

- Check customer accounts
- Renew billing system
- Controlling of order and purchase
- Improve asset turn
- Check inventory
- Improve logistics

Technical Tasks in detail

- Cleaning and clearing of areas, buildings and Transmission and Distribution
- Secure transmission and distribution networks
- Secure power generation
- Secure water supply"

Mr. Fadi Mazegi testified that Exhibit SC90 schedule was theory only. However, in light of the expressed terms of the agreement and the testimony of the NAWEC managers, the evidence is overwhelming that GMS was in charge of NAWEC in all material respects.

The Commission notes that at this time GTG through EAGL had been granted an exclusive contract to supply all the petroleum needs of Gambia effective at least from 2004. They had been granted through Gampetroleum the right to build a petroleum depot at Mandinari which when ready would be given an exclusive right to store fuel for The Gambia. They also had an exclusive HFO supply contract with NAWEC. Global Power Systems (GPS) a company that worked with GTG were also responsible for the supply of spares. GEG (another sister company) had also just completed and commissioned a 22 Megawatt IPP. The Commission concludes that handing over NAWEC to the GTG group created a strangle hold over NAWEC and a recipe for disaster for the sector.

8.4. <u>Procurement and related/associated GMS Companies</u>

A letter was written to the SG dated 2nd September 2007 which shows that Mr. Mohamad Bazzi as Chairman applied for GPPA exemption 'as per the agreement'[671]. The SG wrote to the Chairman of NAWEC Board conveying

[671] Exhibit MS275

the directive that NAWEC had been exempted from GPPA requirements, but procurement had to be approved by the NAWEC Board and the SOS for Petroleum, Energy and Mineral Resources. Mr. Momodou B. Jallow admitted that there was some value to this exemption– because, for instance, it facilitated access to spares.

A number of contracts awarded during the GMS contract were awarded to companies closely linked/associated with GMS. An allegation was made that the process was manipulated to GTG's advantage. Further to that GTG inflated its prices after the award of the contracts.

8.4.1 Greater Banjul Electrification Project

Project was funded through a loan from the Economic and Social Development Bank of Venezuela (BANDES). The total sum of the loan was USD22,000,000 of which USD17,000,000 related to the supply side. The contract was in 17 lots which were awarded as follows:

a) 10 were awarded to GTG – an associated company for *Cables and Overhead Line, Insulators, Power Transformers, Bolts & Nuts, Steel Straps, Angle Irons, LV and MV Fuses, Sectionaliser and Cut-outs, LV Feeder Pillars, MV Ring Main Unit, MV Switchgear Equipment and Tools.*

b) 3 were awarded to an associated company – Phoenician Commercial Group (PCG). According to the witness testimony the associate relationship between PCG and GTG was established during the evaluation and ensuing follow up discussion. The lots awarded were for *Poles, Cross Arms, OHL Hardware and Lighting Protection Material.*

c) 3 lots awarded to Dabanani Electrical Enterprise for *Stay Material, Cable Terminations, Joints and Accessories and Street Lighting Equipment.*

A summary of the bids analyzed for the materials for the project is exhibited[672]. The bids show that Dabanani Electrical Enterprise was not cheaper than GTG in some lots but were cheaper in others. For example, Dabanani bid USD2,765,031 in lot 1 and GTG bid USD3,180,866 but the lot went to GTG. Lot 2 went to PCG even though Dabanni was at least USD1million cheaper. Lot 3 went to PCG but they were cheaper. Lot 4 went to GTG but Dabanani was cheaper. So, the basis for the award of the contract was not on the lowest bid.

[672] Exhibit SC85D

However, an examination of the contracts signed after the awards show that it was indeed true that Dabanani was awarded the smallest lots. Also, while the contract sum indicated for Dabanani approximate the prices on the bids, that was not the case for GTG and PCG.

Dabanani Electrical Enterprise [673]	**Lot 9**	**Lot 10**	**Lot 13**
	USD	**USD**	**USD**
Bid	12,570	50,941	100,314
Contract sum	12,444.30	50,431.25	99,311.36

Phoenician Commercial Group (PCG)[674]	**Lot 2**	**Lot 3**	**Lot 5**	**Lot 7**
	USD	**USD**	**USD**	**USD**
Bid	3,650,795	284,938	324,342	298,242
Contract sum	5,726,233	595,349	679,903	609,588

GTG [675]	**Lot 1**	**Lot 4**	**Lot 6**	**Lot 8**	**Lot 11**	**Lot 12**	**Lot14**	**Lot15**	**Lot 16**	**Lot 17**
	USD	**USD**	**USD**	**USD**	**USD**	**USD**	**USD**	**USD**	**USD**	**USD**
Bid	3,180,866	550,100	953,935	128,800	64,449	174,660	607,010	344,430	177,204	
Contract	4,980,866	853,800	1,859,557	128,798	300,800	174,660	607,010	344,422	202,404	316,77

673 Exhibit SC96 - Contract dated 3rd December 2009 between BANDES, NAWEC and Dabanani Electrical Enterprise
674 Exhibit SC96 – Contract dated 3rd December 2009 between BANDES, NAWEC and PCG
675 Exhibit SC96 – Contract dated 3rd December 2009 between BANDES, NAWEC and Global Trading Group (GTG)

sum										5

According to Mr. Baba Fatajo the current MD NAWEC, management objected to the variation in price but the OP through a letter to the line Ministry of Energy gave a directive that the price variation should be accepted. He said the letter was read to him he did not see the copy and same was not tendered.

Eventually the balance on the project funds was subsequently used to finance the funding gap (difference between the contract and the bid price) for the Western Region Electrification Project and purchase of generator for Kotu Power Station, all of which were awarded to GTG.

Mr. Fadi Mazegil[676] testified that GTG had no relations with PCG **which is a Lebanese Company.** He explained that the Government wanted to utilize the whole USD**22,000,000** from BANDES Bank. But the total of the bids that were for the initial scope was only USD**17,000,000**. They decided to use the balance of the loan USD**5,000,000** extra for the purchase of the Generator set, and the electrification of the **Western Region**. He admitted that these were not tendered for. He said GTG was selected.

Based on documents submitted, the generator funded is No.9 (6 megawatt). Mr. Baba Fatajo, testified that subsequent to the purchase of the generator, GTG requested NAWEC to provide further funding for auxiliaries and electrical equipment costing around Euros1.2 Million[677].

The Western Region Electrification Project was awarded to GTG during the management service contract. The project was funded by ITFC to the tune of USD5 Million. Similar to the case of Greater Banjul Area Electrification Project, there was a difference between the contract and the bid price which was then financed from the funds remaining on the Venezuelan BANDES Bank project.

Mr. Baba Fatajo's statement that during the period of the GMS management, GTG/GEG participated in the tenders, took part in the evaluations and basically manipulated the outcome, was challenged by Counsel Mrs. Victoria Andrews for Messrs. Mohamed Bazzi and Fadi Mazegi during cross examination. Mr. Baba Fatajo thereafter produced correspondence which

[676] Transcript of 13/6/2018
[677] Transcript of Mr. Baba Fatajo dated 29th May 2018

were admitted by the Commission by Affidavit[678] and served on Counsel Andrews.

The correspondence and documents do show that whilst they were managers of NAWEC, GMS Task Force members participated in the evaluation and tendering processes of all of the projects, and in fact lead the process.

- *Document 'A', in respect of the Venezuela Project, s*hows that the bidding process was managed by the Task Force members *Mr. Walter Klotz, Task Force leader, Messrs. Nikki Daswani (Project Manager) and Nabil Bazzi*. The bid evaluation team was set up by the Task Force comprising an all Gambian team but the Task Force members attended the evaluation meeting as technical advisers.
- *Document 'B' in respect of the Brikama II Power Project is Correspondence between MD NAWEC, Messrs. Nabil Bazzi, and Baba Fatajo on the Brikama II Power Project Tender Process; and* the same applied to the Brikama II Power Project.
- *Document 'C' in respect of the Kotu Ring Project and the Gunjur Water Project is correspondence between Mr. Nabil Bazzi and NAWEC staff on the Kotu Ring Project—Technical Evaluation and Gunjur Water Project Tender Process.*
- *Document 'D' is correspondence from Mr. Nabil Bazzi to NAWEC staff and Task Force members on Western Region Electrification Project—Contract Documents including minutes of bid opening with the attendance list showing that Amine Saad represented GTG/HHI (Hyundai Heavy Industries).*

[678] Exhibit SC123

9. DISCOUNTING OF CHEQUES

9.1. GTG commences the discounting of cheques

Evidence shows that the discounting of cheques initially commenced at the expense of EAGL. By 2008, EAGL had started requesting for post-dated cheques because of the substantial arrears that had accumulated on the HFO contract (EAGL) and IPP (GEG) despite the Islamic Development Bank (IDB) facility of USD15 Million having been given to them. Mr. Amat Cham testified that discounting of cheques was the idea of EAGL.[679]

On May 21st 2010,[680] Mr. Mohamed Bazzi wrote to the Minister of Energy and stated that the arrears owed by NAWEC was about USD10 Million and requested the approval of the renewal of the facility urgently otherwise there would be no HFO after 31st May 2010 when their stock ran out. Another letter dated14th December 2011 ref. NW/ 0111214 in the same bundle shows that the arrears were stated to be USD30 Million and prompt payment of D150 Million was demanded to settle L/C of the Islamic Development Bank and roll over of the facility for the next importation, and the HFO stock would last until the end of the year only and delay would result in total black out.

The letter of 14th December 2011 referred to above states “we will attempt to discount these cheques in order to realise the total amount promptly and settle IDB in the beginning of January. However, we insist that all costs related to discounting the said cheques be fully borne by NAWEC because we cannot bear any more our cumulative loss over D85 Million to date from discounting cheques.”

Mr. Momodou Jallow said that Mr. Bazzi had requested that they be refunded the cost but he had resisted this until he left in September 2011[681].

The letters of 3rd January 2012 signed by Mr. Ebrima Sanyang (then NAWEC MD) responding to Secretary General’s letter of 29th December 2011 conveying executive approval for NAWEC to proceed as planned, post-dated cheques amounting to D150 million were issued to EAGL to be discounted “as discussed and approved by the Executive’. The SG’s further responded on 12th January 2012 conveying prior endorsement as appropriate upon receipt of the associated discounting cost. Letters of 26th November 2012 directed that a formula be worked out to share the cost of discounting charges if that is feasible next time. On the 24th December 2012, Mr. Ebrima

[679] Transcript of Mr. Amat Cham dated 23rd May 2018
[680] Exhibit SC84
[681] Ibid Mr. Amat Cham

Sanyang conveyed to the Secretary General that an agreement had been reached with EAGL to share the cost of discounting cheques 50% each.[682] We have found no response to this letter.

The discounting of cheques spanned the period 2012-2015. The procedure was that NAWEC would issue postdated cheques. GTG would then take the cheques to a Bank[683] for cheques to be discounted. The Bank would write to GTG showing the cost of the Discount. GTG would write to NAWEC attaching the letter from the Bank and claim the **50%** of the Discount which would be paid to GTG/ EAGL[684]. The interest varied from Bank to Bank. NAWEC did not participate in negotiating the cost of the discount[685]. He said borrowing from the banks was worse than paying 50% cost of discounted cheques.

The total cost of discounting cheques according to a spread sheet submitted by NAWEC to this Commission is D25,468,354.44[686] and forms part of the debt owed by NAWEC to the Banks.

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682 Exhibit SC92A – NAWEC letter ref. NAWEC/O/P/GEN.VOL. IV (157)
683 Exhibit SC92A – EAGL had Cheque Discounting facilities of D60 Million with Ecobank (Gambia) Limited and D10 Million with FI Bank Limited
684 Ibid Mr. Amat Cham
685 Transcript of Mr. Ebrima Sanyang dated 11th June 2018
686 See Exhibit SC92A – NAWEC SHARE OF DISCOUNTED CHEQUES BY EURO AFRICAN GROUP –from 9 January 2012-6 March 2015

10. SSHFC FUNDED GENERATORS

10.1. Background

Sometime in October 2007, SSHFC was directed by the Ex-President to fund the supply by GTG of 2 x 6.4 Megawatts (MW) reconditioned generators from China to NAWEC meant for Western Region Electrification Extension Project. SSHFC paid for the generators in 2007 but same were not supplied until 2009, and installation not completed until 2013. By the time it was completed a total of Euros 6,140,600 or D254,517,072.50 had been paid. GMS management contract was in place at this time. The generators eventually became known as Brikama II Project No. G5 & G6.

The allegation has been made that these second hand reconditioned generators were also imposed on NAWEC. SSHFC pensioners funds were used to pay for the generators without any possibility that NAWEC could pay off the debt from its operations.

10.2. Purchase of the Generators

Mr. Momodou B. Jallow (MD at the time) testified that he was called to a meeting at the then Minister of Finance's office, Mr. Mousa G. Bala-Gaye where he was informed by Mr. Mohamed Bazzi that the Ex-President had directed that NAWEC should purchase 2 second hand generators from China for Euros4.3 Million and SSHFC would pay for it. Based on the directive the transaction was to be completed within 2 working days. Mr. Edward Graham (MD SSHFC) confirmed that the purchase of the generators was a directive from OP. SSHFC was required to give a loan of D118 Million which he said went through the normal process. A loan agreement was signed and the money given[687]. The loan agreement[688] was between the Government and SSHFC. A CBG account NAWEC Brikama Power Station Generator Account was opened into which SSHFC transfer Euros 4.3 Million equivalent to GMD118 Million.

[687] Exhibit MS297A – DOSFEA letter ref. LDM 451/01/PART II/(119) dated 3rd October 2007 to MD SSHFC giving clearance for D118 Million loan to NAWEC

[688] Exhibits SC34 & MS297A – Loan agreement with a tenure of 4 years with an interest rate of 17% and collateral of landed properties owned by NAWEC

On October 3rd 2007, Mr. Mousa G. Bala-Gaye[689] wrote to Governor CBG authorising *"the payment of Euros 4.3 Million from the NAWEC-Brikama Power Station* Generator's *Account to the GTG Account No.170782, SWIFT-LECALBBE with the Lebanese-Canadian Bank, Beirut, Lebanon for the purchase of 2 Generators (6.4 Megawatts) from the Global Trading Group. The Generators are required for the electrification of the Western Region*." The letter indicates SSHFC had paid into the said account the sum of D118 Million for the 2 (6.4 megawatt) generators. Attached to the letter was a 3-page signed agreement dated 2nd October 2007 between GTG and NAWEC.

The agreement was for the purchase of 2 generators with DEUTZ engines. The make was *stated* to be SIEMENS for the price of Euros 4.3 Million the whole of which was to be paid in advance.

- Clause 3 provided that: "*The Supplier declares that the Equipment is suitable for further use as it is and a more detailed scope of the Equipment will be provided by the Supplier and annexed hereto at a later date following the signing of this Agreement."*
- Clause 4 stated that: *"Subject to the following clauses of this Agreement the Supplier will deliver the Equipment to a location in Brikama approximately 4 (four) months from the date of signing of this Agreement".*
- Clause 6 stated that: *"The price quoted in clause 2 of this Agreement excludes any auxiliary or additional supplies and installation of the equipment".*

The agreement did not provide for any penalty for late delivery or any form of performance security for SSHFC in the event of a breach by GTG and in fact did not provide any protection for SSHFC. *The price of the generators was also excessively high since they were sold without "auxiliaries, cost of installation and additional supplies"* [690]considering the price at which the IPP generators were purchased in 2006 – approximately USD580,000 each. It was also not a supply and works contract so responsibility for installation was not fixed.

[689] Exhibit SC97 – Department of State for Finance & Economic Affairs letter ref. LDM 451/01/(62)

[690] Exhibit SC97 – Agreement of Sale of Specific Equipment between GTG N.V and NAWEC signed 2nd October 2007 – Clause 6

10.3. Installation of the Generators

Evidence shows that the Generators did not in fact arrive until March 2009 i.e. 15 months after payment, an 11 months delay. GTG did not suffer any consequences for this. The generators were taken to the Brikama IPP Power Station to be installed by GEG. Mr. Momodou B. Jallow testified that NAWEC started paying SSHFC but could not continue and suspended payment. GTG said the sum of Euros1.3 million was needed for the installation of the generators.

Matters came to a head in early 2010 when according to Mr. Abdoulie Jobe, NAWEC had directives to complete the Western Division electrification before July 2010. He said there was a capacity gap and unless the SSHFC generators were up and running it was not going to be possible. The MOP wrote a letter dated 23rd May 2010 to OP indicating that NAWEC could not service the D118 million loan from SSHFC and not even pay the accrued interest. It suggested a Build-Own-Transfer (BOT) arrangement for SSHFC to provide the additional Euros 1.3 Million required to complete the installation of the generators, and the loan converted to a BOT model for 5 - 6 years. Indicated in the proposal was that the BOT Model would enable some margin of profit to SSHFC and give NAWEC financial relief.

OP said the proposal was plausible and directed that SSHFC be engaged to discuss and finalise the arrangement. A meeting was convened on the 22nd March 2010 at which it was agreed that with the BOT SSHFC would own the generators until its cost was fully recovered then hand them over to NAWEC. An Operation and maintenance (O& M) contract was to be entered into with GEG for them to operate and maintain the generators.

OP approved the arrangement[691]to:

a) sign the Engineering Procurement Construction (EPC) Agreement between SSHFC and GTG; and
b) SSHFC to pay the Agreement Price to GTG as per EPC Agreement payment terms

An Engineering Procurement Construction (EPC) Agreement for Installation, Testing and Commissioning of Two (2) existing Heavy Fuel Oil (HFO) Generators at Brikama Power Plant was signed between SSHFC and GTB[692]. A supplementary loan was given by SSHFC for the installation of the generators was given to NAWEC. Apparently GTG subsequently said the

[691] Exhibit SC34 - OP letter ref. OP/268/318/0/AA1V/ (SKG-139) dated 27th October 2010
[692] Exhibit SC 34 - EPC Agreement with Global Trading Group for SSHFC generators in Brikama and related documents

Euros1.3 Million was insufficient and the said sum was increased to Euros1.8 Million.

Details of the payments in connection with the EPC Agreement are provided in Table 3 below.

Table 1: EPC payments for Installation, Testing and Commissioning of 2 HFO-Fired generators

Payment details	**Amount - Euro**	**Rate**	**GMD - Equivalent Paid**	**Description of payment**
Advance Payment	1,300,000.00	42.00	54,600,000.00	D27,000,000 was paid through PHB NPF account, cheque number 00129456 by PV Number 050117 dated 05/11/2010. The difference of D27,600,000 was paid through NPF account at TBL through cheque number 00508978 and PV number 050119 dated 05/11/2010.
2nd Payment	300,000.00	42.00	12,600,000.00	Payment was made through NPF account at PHB through cheque number 00129467(Payment voucher dated 16/11/2011) to GTG NV account at TBL
3rd Payment	148,570.00	49.25	7,317,072.50	Payment instruction ref: SSHFC/G/98A/Vol.5/(178) dated 31/07/2013 was made from NPF account number 111-0765-701 at TBL. Payment Instruction was signed by the Managing Director Mr. Edward Graham and Finance Director Mr. Abdoulie Cham. Payment was made to Global Trading Group NV's bank account

				number 120-102-981-08 at TBL
Final Payment	92,030.00			GMD equivalent payment not part of the Exhibits
	1,840,600.00		**74,517,072.50**	

Source: Exhibit SC34

The Contractor was to achieve commissioning of the Plant by SSHFC within a maximum of 8 months (subject to possible extension under agreed conditions) from the date of effectiveness of the Agreement. Any delay of completion of the contract attributable to the Contractor would attract a penalty of 1% per day of the total amount of the contract. After signing of the contract the Contractor was to provide a performance guarantee from a local bank in the sum of 10% of the agreement sum.

SSHFC was to retain 5% of the contract price as a guarantee to ensure that the Contractor met its obligations during the maintenance period but this was not done. There is no evidence that a performance guarantee was provided. The works should have been completed by August 2011.

The evidence shows that by September 2011, GEG[693] said 80% of the work was done. Meetings were held with GEG on 21st September 2011 and a revised Implementation Schedule requested because a lot remained to be done. SSHFC paid all installments on time.

By 23rd April 2012 work was still not completed Mr. M. L. Gibba MD SSHFC wrote to GEG stating *"I wish to* beseech *you to give us and Government, a situational Report on the progress attained so far in this vital project".*

The Project completion was again extended this time to July 2012. By letter of 21st August 2012 ref. NAWEC/MIN/ENERGY/VOL.X I(28), NAWEC sought the intervention of the Ministry of Energy. The Office of the President wrote to

[693] Global Electrical Group (GEG) is a sister company of GTG N.V.

GTG giving them the deadline of November 2012 for completion. By February 2013, GTG gave an update to NAWEC indicating that while some parts were 100% complete some accessories were still being awaited.

10.4. Cannibalization of SSHFC Generators

On the 6th September 2010, Mr. Baba Fatajo of NAWEC wrote to GEG and requested an explanation for the information they had learnt (with concern) that GEG had removed the AC alternator from one of the SSHFC generators to replace that of GEG generator 4 (an IPP generator). GTG apparently replied seeking permission to remove the alternator[694].

Mr. Fadi Mazegi said IPP generator G2 went down and NAWEC agreed that they could take the alternator from G5. The priority was to have electricity immediately. There was a big delay in sourcing for an alternator and other technical delays. The penalty clause of 1% was not applied because of the arrangement with NAWEC.

The assertion made by Mr. Mazegi could not be verified due to the high turnover of NAWEC MDs from 2006 to 2011. Mr. Ebrima Sanyang[695] said on the 30th October 2011, he was appointed Managing Director and the SSHFC generators were not functional until 2013.

The Report also raised concern that other components might have been removed. It also complained inability to determine the quality of fuel because GTG was not providing Certificates of Quality before shipment and therefore quality was not being verified by independent agency like SGS or VERITAS as in previous agreements. Certificates were being submitted after the consignments arrived that the exclusivity in the arrangement with GTG gave very little room for maneuvering. Further the management contract through their subsidiary gave them sweeping powers over the management of the company. Also that fuel was being received in small quantities because of NAWEC inability to pay. Thus, the fuel did not settle properly resulting in the generators sucking fuel from low level of the tanks and this might be causing recent operational difficulties.

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[694] Exhibit SC97 - See the report submitted by Baba Fatajo as Power generation Manager to the MD and received).

[695] Transcript of Mr. Ebrima Sanyang dated 11th June 2018

11. NAWEC BONDS

11.1 Background

The NAWEC Bond was an arrangement spearheaded by Government to set-off liabilities NAWEC owed to GTG and affiliated companies against liabilities GTG and said companies owed to the Banks. The idea of setting off GTG bills owed by NAWEC against the amounts owed by GTG to the respective banks based on the testimony of Mr. Ebrima Sanyang emanated from Minister Kebba Touray MoFEA.[696] The then Minister of Finance Mr. Kebba Touray coordinated this exercise with assistance from Mr. Amadou Colley, Governor of CBG.

Mr. Amadou Colley testified that in 2014, the financial situation of NAWEC in terms of its inability to meet its obligations particularly to ITFC and ING Bank of Netherland and a restructuring of its debts was discussed at the High Level Economic Committee (HILEC). Statistics from the commercial banks showed that EAGL had accumulated substantial debts with the banks *(SCBG, TBL, GTB, Eco Bank, BSIC and Access Bank)* which they explained was due to NAWEC's failure to meet its obligations to them. Ecobank alone was owed USD12 Million by EAGL and SCBG USD8 Million although the latter had taken legal steps to recover the sum. CBG had to waive the single obligor limits of some banks to accommodate lending to NAWEC. He said CBG came up with the bond idea which was agreed by Mr. Kebba Touray. The idea was to avert a potential financial crisis in the banking system and give Government ''breathing room'' while it discussed a fuel grant between ECOWAS and Gambia Government. A reconciliation was carried out between NAWEC and EAGL.

In defense of the failure of CBG to detect and avert the problem, he said CBG did not supervise the banks on a yearly basis because of capacity issues. In any case, supervision was not required where the banks were lending for "some matter of national interest". As regards Ecobank, he said the debt was so huge that its capital would have been eroded and the CBG would have been compelled to call them to inject additional capital. He admitted that CBG did not carry out a due diligence on EAGL's ability to pay the banks. EAGL had told him that they were using payments from Oil Marketing Companies (OMCs) to import fuel for NAWEC because ITFC had suspended The Gambia and no other credit was available[697].

[696] Transcript of Mr. Ebrima Sanyang dated 10th June 2018
[697] Transcript of Mr. Amadou Colley dated 4th July 2018

Mr. Abdou Kolley (Witness no. 212) took over from Mr. Kebba Touray as Minister of Finance on 16th March 2015 after the bond had already been signed. He was told that SCBG was waiting for approval from their headquarters before they could sign. He admitted that he signed letter[698] together with the Minister of Energy - Mr. Edward Saja Sanneh. He was concerned about the Capacity Charge because when he was the Minister in 2009/2010 he was told that there was a directive to stop the payment of Capacity Charge. He however came to the realization that there was a different interpretation from both NAWEC and EAGL.

There is no evidence that the NAWEC Board was involved. At the time, NAWEC owed the banks D347,532,966.

11.2 Amount owed to Commercial Banks by NAWEC

Mr. Amat Cham testified that,[699] the breakdown of the amounts owed to the respective commercial banks was as follows:

- Eco Bank	D29,314,891
- BSIC	D26,685,307
- GT Bank (Guaranty Trust)	D39, 801,962
- Trust Bank Limited	D251, 730,806
Totaling	**D347, 532,966**

11.3 Bond Agreement

The Bond was in the amount of D1,821,417,747 equivalent to USD64,212,284.89 and comprised of:

[698] Exhibit SC92B – Letter dated 15th September 2015
[699] Transcript of Mr. Amat Cham dated 22nd May 2018

		USD
-	Capacity charges suspended (June 2010 - August 2011)	10,824,000.00[700]
-	GTG HFO arrears	28,909,824.32[701]
-	IPP invoices (Energy Charges)	24,478,460.57
	Total	**64,212,284.89**

The Bond agreement[702] was signed on 12th March 2015 after a series of consultative meeting between NAWEC, MOFEA, CBG and Commercial Banks (the Bondholders but SCBG refused to sign initial bond agreement) as a way of restructuring what NAWEC owed to commercial banks and what EAGL owed to Commercial Banks. In the process, the amount owed by EAGL was transferred to NAWEC. The exchange rate proposed by commercial banks to CBG was USD1/ D55 but the counter proposal made by NAWEC was USD1/D48. Eventually it was finally agreed at USD1/D48.

As part of the arrangement, an Escrow account[703] was opened at the CBG into which NAWEC transferred funds on monthly basis. CBG then made payments to the respective banks based on the agreed upon amount.

The initial bond amount was D1,821,417,747 (inclusive of NAWEC and EAGL debt to commercial bank loans) and was agreed to be repayable over 5 years at an interest rate of 15%. However, in 2017, the bond agreement was revised and a new one signed dated 29th August 2017 (this time all commercial banks involved signed). The maturity of the bond was changed and the new maturity period revised from 1st July 2017 to 30th June 2024 with bond amount at D1,686,444,749. The interest rate was also revised downwards from 15% to 12%. The revised bond amount was agreed to be repayable in 28 equal quarterly installments on September 30, December 31, March 31 and June 30 each year. Arrears up to 31st December 2016 were to be settled by GOTG. Bond agreement was signed on behalf of NAWEC by

[700] Exhibit SC91C – Reconciliation of Statement of account of NAWEC – Capacity Charges as at 27th August 2014
[701] Exhibit MS215(A)
[702] Exhibit SC91A
[703] Escrow account is defined as per bond agreement (Exhibit SC91A) – an account in the name of the Issuer in the account bank, pledged on first priority and blocked in favor of the bondholders and where the bank operating the account has waived any set off rights.

Mr. Nani Juwara and by Mr. Abdoulie Jallow on behalf of the Ministry of Finance and Economic Affairs (for Government of the Gambia)

Mr. Ebrima Sanyang expressed the view that although the Bond was a government initiative, it was beneficial to NAWEC because before the bond all NAWEC resources went to paying debts owed to banks. The interest rate at 15% was much cheaper than the cost of funds of loans from the banks which ranged from 24/25%. NAWEC defaulted on the payments because Government, despite assurances that public institutions would settle their bills on time, failed to do so.

Concurrently, EAGL was reported to be owing commercial banks USD38,000,000 which was factored in the Bond agreement and set-off against the amounts owed to EAGL by NAWEC. Mr. Fadi Mazegi testified that the amount owed was in respect of LCs for both Light Fuel Oil (LFO) and Heavy Fuel Oil (HFO) indicating that all the debts owing to EAGL were not NAWEC's debt. He was asked to provide the breakdown/makeup of the debts but never did[704] & [705]. The analysis below provides the summary of how the USD64 Million owed to the EAGL was off-set.

[704] Transcript of Mr. Fadi Mazegi dated 13th June 2018
[705] Exhibit SC124 – Facility letters of Commercial Banks

Table 1 – Analysis of Euro Africa group Loan off-set

Description	Amount – USD'000
Total reconciled and balance agreed to be owed to Euro Africa Group by NAWEC - USD64,214,287.89	64
EAGL's debt to commercial banks included in the 15% five year Bond - USD37,936,605.14	(38)
Balance = USD26,277,682.75	**26**
Amount settled by Govt. on behalf of NAWEC to Total International in respect of balance owed by EAGL. This includes the USD6 Million discount given to govt. - USD24,189,951.05	(24)
USD2,087,731.70	**2**
Fully paid as at 31st December 2017 = D86,640,865.55/USD2,087,731.70 exchange rate of D41.5 to 1USD	(2)
Balance on account as at 31st December 2017	**0**

The balance of USD2,087,731.70 was repaid using NAWEC postdated cheques to EAGL. This was communicated by the MD NAWEC (Mr. Ebrima Sanyang) to EAGL in a letter dated 4th December 2015. [706]

[706] Exhibit SC91B – NAWEC letter ref. NAWEC/O/O/F/ Bank VOL XI (72)

12. AQUA INC (AQUA GAMBIA LIMITED)

12.1 Background

The Deputy Managing Director of NAWEC Mr. Nani Juwara (Witness no. 197)[707] testified in connection with Aqua INC by stating that the company is a foreign based company but later incorporated a sister company in the Gambia called 'Aqua Gambia Limited'. Aqua INC[708] submitted a proposal to the Office of the President (OP) with regards to taking over the operations and management, upgrading and modernisation and maintenance of the NAWEC owned Kotu Pond. Based on the proposal submitted to OP, Aqua was to introduce a technology called ABIS system, an integrated biological system that will prevent the site from smelling and can even be visited by tourists for bird watching. In addition, it was also proposed that a shareholder agreement will be entered with the Government. This proposal probably was attractive to the Government and thus resulting in NAWEC being invited to a stakeholder meeting at the Office of the President.

This proposal came after NAWEC had invested so much on the upgrading of the site, and if it were not for Executive intervention according to Mr. Juwara, NAWEC would not have given up the site to Aqua INC.

Mr. Juwara further testified that a letter ref. OP 262/291/01/TEMP:XV/(29-NT) dated 26th January 2015 from the Office of the President was sent to NAWEC inviting them to a meeting at the State House on the 30th January 2015 with other stakeholders including Public Private Partnership Directorate (PPP) at Ministry of Finance & Economic Affairs, Ministry of Environment, National Environment Agency (NEA) and Ministry of Energy. The purpose of the meeting was to review the proposal submitted by Aqua INC and to provide feedback to the former President by 3rd February 2015. Given the tight deadline given by the President for feedback to be provided, the team could not have carried out a comprehensive review of all the templates especially those that were considered to be complicated. A thorough due diligence of Aqua could not be carried out because of the tight timeframe involved.

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[707] Transcript of Mr. Nani Juwara dated 30th May 2018

[708] Aqua INC is the Parent company of Aqua Gambia Limited. The registered address of Aqua INK is 1035 Pearl Street, Boulder Co. USA

12.2 Negotiation with Aqua

Based on the feedback, the team was asked by Ex-President Jammeh to negotiate with Aqua INC and that negotiation was coordinated by PPP. Based on the negotiation the key issues agreed upon were:

a) the initial tenure proposed of 30 years was reduced to 21 years;
b) Government was to be a shareholder;
c) NAWEC was supposed to receive 10% of total revenue collected from the site;
d) Aqua was to upgrade, modernize, maintain and operate the facility.

12.3 Concessional Agreement

At the conclusion of the negotiation, NAWEC was requested by the Office of the President to hand over the site and sign a Concessional Agreement with Aqua. The Concessional Agreement including the lease agreement was signed on March 31st 2015[709] by Mr. Ebrima Sanyang (then Managing Director) on behalf of NAWEC and by Ms. Bianca Griffith on behalf of Aqua. Operation started around July 2015.

12.4 Shareholding and related payments

Mr. Juwara further testified that Government was to own 40% shareholding whilst 60% was going to be owned by Aqua. NAWEC received instruction from the Office of the President dated 1st October 2015 for NAWEC to pay D5.8 Million to Aqua on behalf of Government as part of Government's equity contribution[710] and this was confirmed as having been paid by NAWEC in tranches of D4 Million and D1.8 Million.

There was another subsequent directive[711] from OP dated 10th October 2016 for NAWEC to pay an additional D19.5 Million to Aqua as the remaining part of Government's shareholder contribution. However, based on the financial position of NAWEC it was negotiated and a payment plan over one year period with monthly payment of D1.5 Million was agreed. However, the

[709] Exhibit SC100
[710] Exhibit SC100 – Letter ref. OP 268/318/03/(30) signed by Mr. Noah Touray
[711] Exhibit SC100 – Letter ref. OP 268/318/03/TEMP./(63) Signed by Mrs. Adama Ngum - Njie

election came about before the first payment was due and when NAWEC was approached for this payment, NAWEC declined to pay and referred the company to Government on the basis that NAWEC did not have any shareholding agreement with them.

As per the information provided in SC106 (Financial Statements and Revenue Report - Aqua Company Limited), the authorised issued share capital of D58.5 Million divided into shares of D1 each thus government 40% holding would require a share capital payment of D21.6 Million. However, NAWEC was requested to make two separate payments in respect of Government shareholding contribution of as follows:

- D5.8 Million – already paid in tranches of D4 Million and D1 Million;

- D19.5 Million – monthly payment plan of D1.5 Million was agreed but this was not paid as the first installment payment happened after election and NAWEC then declined to pay.

Based on the request from OP and shareholding information provided in the financial statements of Aqua (Gambia) Limited, there was a difference of D1.9 Million between the amount claimed by OP as Equity contribution and the amount that should have been contributed by Government as part of their 40% share obligation as summarised in the Table below:

Table 1 - Analysis of Govt. Share ownership and payment requests from NAWEC

Description		Amount - GMD
Total Authorised and Issued Share Capital of Aqua Gambia Limited		58,500,000.00
40% Government Share Contribution		23,400,000.00
Share Contribution payment requests from Government to NAWEC - Compared to what should have been paid as per share capital and 40:60%		

Share Ownership Structure:		
First Equity payment request – Paid		(5,800,000.00)
Second Equity payment request – agreed to be paid but subsequently declined by NAWEC		(19,500,000.00)
Difference - Payment Requests more than the expected Equity Contribution based on the Share Capital and Share Ownership Structure		**(1,900,000.00)**

12.5 Reporting

Based on the testimony of Mr. Nani Juwara, the Company (Aqua) was supposed to be providing periodic reports to NAWEC as per agreement but this was not duly complied with. However, the witness confirmed during the said sitting that of late the Company has started submitting periodic reports to NAWEC.

12.6 Payment of 10% of Total Revenue collected

Mr. Nani Juwara also testified that Aqua Gambia Limited was supposed to be paying 10% of all revenue collected from the site in the concession area to NAWEC as provided for in sub-section 2.1 'Rental'[712] of the lease agreement. However, further review of the (Monthly Payment from Aqua)[713] revealed that the company did not fully comply with requirements of the Lease Agreement in consideration of the under-listed. Detailed extract of revenue collection allocated and payments to NAWEC by Aqua Gambia Limited is provided under Appendix 12.3

[712] Exhibit SC100 – pg. 30 of the Lease Agreement
[713] Exhibit SC106(i)

- The Company did only part payments for the months of August and September 2016 with outstanding unpaid amounts of D15,467.33 and D97,966.32 respectively.
- The Company failed to make payments for months August 2015, September 2015, April 2017 and July 2017.

Clause 2.2 of the Lease Agreement indicated that this 10% should be paid to NAWEC on monthly basis and should be considered as late payment if paid 30 days after the related month. Further to this, subsection 2.3 states that payments due to the Landlord hereunder shall be treated as late if sent more than 60 days after the due date. Late payments shall bear a delay penalty at a rate equal to the prevailing treasury bill rate until full payment of any such late sums. Despite the failure of the Company to comply with the requirements of timely payments, NAWEC also failed to apply the conditions outlined under subsection 2.3 of the Lease Agreement.

Comparison of the revenue in the audited financial statements with the extract of NAWEC's 10% share of the total revenue collected on site revealed a difference of D341,454.13 that should have been due to NAWEC.

Table 2 – NAWEC's 10% of Total Revenue – Financial Statements to Aqua Reports

Financial Year		**Total Income as per Audited Financial Statements** [714]	**NAWEC Income Sharing Ratio**	**NAWEC's Expected Share of the Income**	**Income allocated to NAWEC by Aqua Gambia Ltd**	**Difference**
Revenue for year ended 31st December 2017		10,690,640.00	10%	1,069,064.00	805,078.10	263,985.90
Revenue for year ended 31st December 2016		10,654,979.00	10%	1,065,497.90	1,101,450.48	(35,952.58)

[714] Exhibit SC106(ii)

Revenue for year ended 31st December 2015		2,793,337.00	10%	279,333.70	165,912.89	113,420.81
Total		**24,138,956.00**	**10%**	**2,413,895.60**	**2,072,441.47**	**341,454.13**

13. FREE ELECTRICITY CONNECTION[715]

Mr. Nani Juwara further testified[716] that NAWEC's Management had received verbal instructions around August 2014 that all meters in Kanilai, Bujiling, Allah Kunda, Buginga, Mandina and Bulunt Villages with the exception of the commercial meters should be removed. Prior to this executive order, prepaid meters were connected for all the customers that were connected in the aforementioned communities.

As a result of this executive order, NAWEC had to remove the prepaid meters from all non-commercial customers and connected them directly thus the inability to monitor the electricity consumption of such customers. In effect these customers could not have been billed after the direct connection and by extension they were enjoying free electricity and water supply from the time the prepaid meters were removed.

Additionally, a number of electricity and water extension works were undertaken by NAWEC for various projects related to the former President without being paid for. Based on evidence provided[717], an amount of D51,681,164.98 was owed to the company.

13.1 Details of Unpaid Electricity and Water Extension incurred at former President's Projects

No	Activity Description		Amount
			GMD
1	HV LINE EXTENSION FOR KANILAI TECH SCHOOL		1,152,900.00
2	30KV LINE EXTENSION FOR GUNJUR BEACH MOSQUE		2,774,700.00
3	LV LINE EXTENSION AT BARRA FOR KAINILAI FAMILY FARMS		105,980.00
4	NETWORK EXTENSION FOR KGI KANILAI FARM AT KAMPANTI FONI		1,626,306.00
5	IIKV LINE EXTENSION FOR KANILAI VILLAGE		958,200.00

[715] Exhibit SC99B
[716] Transcript of Mr. Nani Juwara dated 30th May 2018
[717] Exhibit SC107

6	30KV LINE EXTENSION FOR PIRANG SHRIMP PROCESSING COMPANY AND COLD STORE AT PIRANG VILLAGE / FORMER SCAN		256,440.00
7	LV LINE EXTENSION AT KANILAI BUNUBOR FARM FOR THE SECOND BOREHOLE C/0 KGI FARM LTD		270,883.65
8	LV LINE EXTENSION TO SUPPLY 3 BOREHOLES AT THE GUNJUR BEACH MOSQUE		617,910.00
9	SERVICE EXTENSIQN FQR THE FQUR BQREHOLES AT KANILAI AIRPORT FARM ALLAH KUNDA C/0 KGI FARM		13,342.62
10	30KV LINE EXTENSION FOR THE TRANSFORMER AT KANILAI		2,234,975.00
11	KANILAI FARMS DENTON BRIDGE		829,192.46
12	LV LINE UPGRADING FOR KANILAI FAMILY FARM AT BANJULINDING		143,280.00
13	LV LINE EXTENSION FOR FARM AT BATOKUNKU		402,870.00
14	LV LINE EXTENSOIN FOR KANILAI FAMILY FARM AT DENTON BRIDGE GARDEN		577,910.00
15	LV LINE RELOCATION AT KANILAI		73,490.00
16	LV LINE EXTENSION FOR ALLAH KUNDA VILLAGE FARM ALLAH KUNDA CHECK POINT KANILAI		1,094,090.00
17	LV LINE EXTENSION FOR KAMBONG VILLAGE FONI KAMPANT TRANSFORMER		1,432,940.00
18	30KV LINE EXTENSION FOR KANILAI FAMILY FARM BOREHOLE KANWALL 2, FONI		1,386,055.00
19	LV NETWORK FOR KAUR FARM AT KANILAI C/0 KANILAI FAMILY FARM		155,960.00
20	30KV LINE EXTENSION FOR KANILAI FAMILY FARM BOREHOLE AT KANWALLY 1		4,888,065.00
21	TRANSFORMER AT KANILAIS VILLAGE AIRPORT FARM FOR BOREHOLES 1,2 & 3		3,396,993.00
22	TRANSFORMER FOR THE KGI FARM AT SIFFOE VILLAGE		1,066,676.00
23	TRANSFORMER AT NYEFEE 1&2 AT KANILAI 3,147,726.00		3,147,726.00
24	TRANSFORMER FOR THE CATTLE FARM AT BONUBURR VILLAGE IN KANILAI		1,256,415.00

25	STREET LIGHTING AT GUNJUR BEACH MOSQUE		8,944,162.50
26	ELECTRICITY NETWORK AT KANILAI AIRPORT FARM FOR BOREHOLE 4 C/0 KGI		555,300.00
27	ELECTRICITY NETWORK AT KANILAI AIRPORT FARM FOR 3 BOREHOLES C/0 KGI		686,830.00
28	MV LINE DIVERSION FROM OHL TO UG AT KANILAI		892,650.00
29	MV LINE DIVERSION AT KANILAI		1,035,700.00
30	MATERIALS FOR KANILAI ROAD SIDE LIGHTENING 648,650		648,650.00
31	CASHEW FARM BOREHOLE AND ALLA KUNDA AT KANILAI VILLAGE		2,990,730.00
32	TRANSFORMER AT KAMPANTI FONI FOR H.E YAYA JAMMEH KANILAI FARM		1,786,900.00
33	ELECTRICITY NETWORK FOR BATOKUNKU BOREHOLE C/0 KGI FARM LTD		81,200.00
34	ELECTRICITY NETWORK FOR THE PRESIDENT'S GARDEN AT DOBONG VILLAGE		105,860.00
35	STREET LIGHTING AT DOBONG VILLAGE		92,500.00
36	GLOBAL HOLM C/0 KANALAI FAMILY FARM AT BIJILO		239,615.37
37	SULAYMAN JUNKUNG JAMMEH HOUSING DEVELOPMENT PROJECT AT KANILAI		1,137,769.60
38	SULAYMAN JUNKUNG JAMMEH HOUSING DEVELOPMENT PROJECT AT KANILAI		967,104.16
39	SARRO / KANILAI FARM AT BANJUL HIGHWAY		1,586,517.41
40	KANILAI FAMILY FARMS LTD AT NUIMI ESSAU		66,376.21
	TOTAL		**51,681,164.98**

14. UNPAID NAWEC BILLS

At the Commission's sitting of 30th May 2018, the Deputy Managing Director of NAWEC, Mr. Nani Juwara testified that there were outstanding bills for electricity and water owed by businesses and institutions/private properties owned and/or connected to Ex-President Jammeh. The total **outstanding unpaid electricity and water bills**[718]as per (Summary of loss of revenue as at July 2017) was **D63,355,201.60**.

14.1 Details of Unpaid Electricity and Water owed by KFF, KGI and other Properties connected to the Former President

No.	Description of the Account Details	Amount Outstanding - GMD - C = A - B	Paid = B	Billed = A
		GMD	GMD	GMD
1	State House Kanilai - A/C No:001-03002-00000-26700-0131	2,859,990.84	17,438,077.80	20,298,068.64
2	Kanilai Family Farm - Fire Service Borehole c/o KFF - A/C No: 001-03002-00000-28000-0108	5,072,006.75	5,208,036.56	10,280,043.31
3	Sindola Hotel - A/C No: - 001-03002-00000-29000-0114	11,952,876.53	1,096,585.36	13,049,461.89
4	Various Properties in the name of Kanilai Family Farm	41,017,372.34		41,017,372.34
5	Various Properties in the name of Kanilai Group International	2,452,955.14		2,452,955.14
	Total Outstanding unpaid bills related to the former president	**63,355,201.60**	**23,742,699.72**	**87,097,901.32**

[718] Exhibit SC99A

15. REQUEST FOR NAWEC FUNDS BY OP

Mr. Mustapha Corr former MD of NAWEC testified that financial assistance of USD1 Million was received in January 2003 from Taiwan to assist NAWEC in its operations[719]. A cheque was issued by the Embassy of ROC on Taiwan. NAWEC upon receipt of cheques opened a dedicated special USD account bearing account no. 1070527501 at TBL where the cheques of USD1 Million was deposited and the account credited on the 20th February 2003.

He further mentioned that between July 2003 to August 2003, OP gave several instructions to NAWEC to pay beneficiaries on its behalf and that consumed more than half of the said USD1 Million. Again this was interference from OP considering that the financial situation of NAWEC has been a cause for concern.

A TBL Bank statement of the USD account as at 17th August 2003[720] was tendered as evidence by Mr. Baba Fatajo. From reviewing the account, there were payments made on behalf of Government details of which are provided below:

Date	**Details**	**Instruction received from**	**Amount**
			USD
18th July 2003	Transfer to Fusion Oil & Gas NL – Australia	¥	525,169.00
30th July 2003	Cash withdrawal	¥	22,000.00
11th August 2003	Transfer to Air Guinea	√ - Yes from OP	22,000.00
29th August 2003	Transfer to be made to Mr. Gregory R. Copley in the USA	√ - Yes from OP	20,000.00
			589,169.00

[719] Exhibit SC94 - Witness Statement of Mr. Mustapha Corr dated 16TH May 2018
[720] Exhibit SC94A

Note:

¥ - Instruction not in evidence

16. USE OF NAWEC PROPERTY AT FAJARA BOOSTER STATION

Mr. Fadi Mazegi testified[721] that GTG were occupying a NAWEC premises at Fajara Booster Station. He further explained that they came to be occupying the premises via a written agreement GTG had with NAWEC that they would rent it or use it for a period of 5 years in exchange for refurbishing all the warehouse and T&D Offices in the adjacent plot of land. A copy of the agreement was not provided. He further explained that there was a draft agreement but he couldn't find the actual Agreement.

He further mentioned that refurbishments were done to the warehouse and T&D Offices and that it was NAWEC's responsibility to ensure that a copy of the signed agreement was in place.

[721] Transcript of Mr. Fadi Mazegi dated 13th June 2018

17. ISLAMIC DEVELOPMENT BANK (IDB) FACILITY

IDB under one of its arm International Islamic Trade Finance Corporation (ITFC) had given the Gambia Government a facility of USD23 Million to be used for the importation of fuel into the county. *The International Islamic Trade Finance Corporation is an autonomous entity within the Islamic Development Bank Group created with the purpose of advancing trade to improve the economic condition and livelihood of people across the Islamic world. ITFC has consolidated all the trade finance businesses that used to be handled by various windows within the IDB Group*.

As a leader in Shari'ah-compliant trade finance, ITFC deploys its expertise and funds to businesses and governments in its member countries. Its primary focus is to encourage intra-trade among OIC member countries.
This facility was handed over to EAGL for use as they had the exclusive rights to import fuel into Gambia from 2002 to 2014.

EAGL based on correspondence had difficulty in servicing loan and ITFC had expressed concerned over the facility's performance. SSHFC at times were issued executive directives to make payments to ITFC to avoid breaches/ default[722]. A payment of USD4,816,000 was made.

A proposal was made by then Minister of Finance Mr. Abdou Kolley to OP[723] for the facility to be split into EAGL utilizing USD15 Million (currently being used) and GNPC USD8 Million[724] . Based on earlier instructions to open up the fuel supply market, MOFEA had facilitated the intervention of GNPC as GNPC had been given approval to imports its own products. GNPC ordered products from a Moroccan refinery and a 3 year contract was signed

The Commission has limited information on the facility and recommends that a further review is carried out.

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[722] Exhibit SC59A – OP letter dated 2nd MAY 2012 ref. PR/C/513/Vol. 12/(18)
[723] Exhibit SC59A – MOFEA letter ref. MF/C/186/ (32) dated 14th June 2013
[724] Exhibit SC59A – Revolving USD8 Million Facility no. ITFC/1432/TTI/GM0012 on MOFEA letter ref. MF/C/186/ (32) dated 14th June 2013

FINDINGS

(a) Taiwan Financed Generators

The total sum provided by EXIM Bank was USD30,541,294. USD14,855,294 for the Transmission & Distribution lines and USD15,686.000[1] for the generator sets. A reconciliation of the loan amount, the contract sums and the money advanced from CBG shows that GTG received USD16,658,700 in 2001 instead of the agreed USD15, 686,000, USD972,700 more than the price agreed for the generators. The Commission finds GTG liable for this sum. As the circumstances of CBG pre-financing the generators were fraudulent, or otherwise concealed, the Limitation period did not run until the discovery of fraud.

The Commission cannot find any justification for single sourcing the contract for the procurement of the 3 generators and the transmission and distribution line to GTG. The contract price was pre-determined and imposed on NAWEC. It is the Commission's firm view that this project including the generators supplied by GTG was an arrangement for the unjust and fraudulent enrichment of GTG, the Ex-President and those involved i.e. Messrs. Baba Jobe, Mohamed Bazzi, and Amadou Samba, and not in the best interest of NAWEC.

(b) HFO Contracts

A fuel tank 10,000cm should have been built by GTG as stated in the HFO Agreement signed in 2002 but this was not done. In a letter from Mr. Bazzi to NAWEC re. SUPPLY of 5000+10% of HFO in August 2001, he explained the following:

The percentage charged by Global Trading Group (GTG) and Euro financing is 17% on CIF whereas the amount charged by EIF/Shell on their supply agreement was 14.4% leaving a balance of ***about 3% financing the tank project at half die****.*

*(1) Total Value of Contract annually = 40,000*USD271 (taking the extreme case of our last order when the Platts was at a very high level,) =USD10,840,000*

*(2) The financing component of the project is 3%*USD10,840,000 = USD325,000*

*Over a five year period, that will translate into USD325,000*5= USD1,626,000 which is about the cost of the proposed tank at Half Die in 1996 although a 2002 revision of the costing was around USD2,200,000."*

GTG wrote offering free transportation and free storage at the Mandinari Storage facility to **NAWEC in 2006 rather than building the tank**. Evidence that this was acceptable to NAWEC was not obtained. GMS, another sister company of GTG, was given the contract to manage NAWEC.

The Commission concludes that the extension of the contract at a mark-up of 17% when it was clear that the 3% was for fuel tanks which had not been built and at a time when Messrs. Mohamed Bazzi and Fadi Mazegi (who were the owners and directors of GTG) were also through GMS responsible for the management of NAWEC was not effected in good faith but rather was fraudulent. GTG exercised undue advantage when they imposed on NAWEC a mark-up of 17% in 2007-2012 which was then perpetuated. Time has not run here in relation to the Limitation Act and therefore, NAWEC is entitled to a refund of **USD3,886,981.53 from GTG**

(c) IPP

The Commission finds that the amount paid by NAWEC for an IPP comprised of used generators of indeterminable age, which remained the property of the Seller after the investment period was extremely high and cannot be justified by any risk factors. The Commission finds that the GEG IPP was expensive and unaffordable for NAWEC and The Gambia. NAWEC management did not have the freedom to negotiate the contract given the pressure they were put under by OP.

The IPP license issued to GEG signed by the President and the GIPZA Special Investment Certificate (SIC) issued to GEG by The Gambia Investment Promotion and Free Zones Agency (GIPFZA) exempting them from various taxes for the 5-year period (from 25th May 2006 to 25th May 2011) of the IPP which shows that the investment made by GEG was stated to be USD18,103,800[2]. The SIC indicates that each of the generators cost USD576,239.50. 5 generators were included and these plus all installation costs and civil works total approximately USD12 Million.

The total capacity charge paid by NAWEC including the amount incorporated in the NAWEC Bond is USD41,609,163.01[3], more than 100% return on investment. Evidence was also provided where expected output was not achieved and should have had an impact on the capacity charge. The cost is not justifiable and the difference should be recovered from the Ex-President. The difference of USD23,505,363 should be recovered from the Ex-President who forced NAWEC into the contract.

(d) Global Management Systems management of NAWEC

GMS were given substantive control of NAWEC and exploited their position as managers of NAWEC to their advantage by not only controlling the bidding processes but also tendering for the same projects. The management contract only succeeded in further weakening NAWEC capacity to manage itself.

(e) SSHFC Funded Generators

- *Clause 7.3 of the 2010 agreement states that in the event of a delay in the completion of the works contract attributable to the contract, a penalty of 1% of the total amount of the contract will apply per day.* The contract should have been completed in 2011 but was not until 2013. However, this clause was not applied by SSHFC and EAGL is liable to pay 1% of Euros 1,840,600 equaling Euros 18,406 per day. The Commission is of the view that by August when this Commission shall commenced the 6 year limitation period for such a claim had not expired.

- *Proper* review of the so called investment was not done by MOFEA prior to the funds being disbursed.

(f) NAWEC Bond

- EAGL never submitted the amount of LCs opened for Light Fuel Oil (LFO) supplied. This sum was repaid by Oil Marketing Companies (OMCs) from pump sales/ receipts and should have been used by EAGL to settle the debts owed to the respective bank(s). EAGL clearly diverted the funds. Why these debts were included in EAGL's debts to banks of USD38 Million is a big question.

- Mr. Kebba S. Touray the then Minister of Finance masterminded the Bond between EAGL and Government transferring all of EAGL's liability i.e. free from any debt to NAWEC. The Commission notes that in February 2017, Mr. Touray set up a company with Mr. Fadi Mazegi which indicates a clear conflict of interest. This suggests a deeper relationship between them other that what Mr. Touray led the Commission to believe and perhaps a less obtive motive.

(g) Aqua INC (Aqua Gambia Limited)

- The viability of the Aqua project as an investment for NAWEC was not determined. A shortfall of **D341,454.13** not paid to NAWEC arises as a result of a comparison between the revenue stated in the audited financial statements and the extract of NAWEC's share of the total revenue collected on the site in the concession area. Agua is liable to make good this short fall.

(h) Unpaid NAWEC Bills

The Ex-President ought to be liable for amount of:

D51,681,164.98 for free electricity connections / electricity and water extension works undertaken by NAWEC for various projects related to the former President **on his behalf.**

The unsettled bills/ outstanding amount of **D63,355,201.60** should be recovered from Ex-President Jammeh using his assets as it relates to electricity and water bills not paid for by his businesses namely Sindola Hotel, KGI and KFF.

(i) Request for NAWEC Funds by OP

The Ex-President ought to be liable for USD589,169 transferred by NAWEC to OP based on instructions from OP. These funds were made available by ROC on Taiwan as financial assistance for NAWEC.

(j) Use of NAWEC Property at Fajara Booster Station

GTG took advantage of their position as mangers to occupy premises belonging to NAWEC rent free. They are liable to pay rent for the premises for the period of their occupation.

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[1] Exhibit SC87 – Agreement signed between GTG and NAWEC for the supply of Generating Sets dated 19th January 2001 – Clause 3a ‘Purchase Price’
[2] Exhibit MS122
[3] See SC103- Global Trading Group Capacity Charge Invoices from August 2006 to August 2011.

RECOMMENDATIONS

The following are our recommendations:

(a) General Comments

- NAWEC should be transferred back to its line ministry (Ministry of Petroleum & Energy) to ensure proper management. There should not be any interference from OP but rather briefings can be given when requested by the line Ministry together with NAWEC.

- It is our understanding that alternative sources of energy are being considered. The urgency and need cannot be overemphasized. Some of the other options for energy should be explored by NAWEC. Dependence on heavy fuel oil has been assessed to be harmful to the environment which Government is fully aware of. Substantial sums of money would not be tied up in spare parts and this would positively impact on the cash flow situation of NAWEC. Some of the options worth considering are:

    1. Solar Power

    2. Hydropower is also known as a renewable energy source because it is renewed continuously during the natural water cycle. This process includes usage of falling water to generate electricity. The economic realities will have to be assessed of building a Dam.

    3. Wind Turbines. The capital and operational costs will have to be assessed.

Other neighboring countries should be engaged and studies carried out of how they are dealing with energy.

- NAWEC is too large a company. To promote efficiency in operations, the electricity and water components should be separated and run by two companies. Private Sector Participation should be encouraged and considered in some of the areas.

(b) Taiwan Financed Generators

The contract sums and the money advanced from CBG show that GTG received USD16,658,700 in 2001 for the cost of 3 generators instead of the agreed amount of USD15, 686,000. The **difference of USD972,700** more than the price agreed for the generators should be recovered from the directors of GTG namely Mr. Bazzi and Mr. Fadi Mazegi.

(c) HFO

The cost of building a **new farm tank of USD2 Million** should be recovered from Messrs. Mohamed Bazzi and Fadi Mazegi. This amount was excluded from the Bond and should be accounted for.

(d) IPP

The difference of USD41,609,163.01 paid as capacity charge and the USD18,103,800 stated in the Special Investment Certificate issued by GIPFZA in the sum D23,505,363 should be recovered from GTG N.V. or its directors.

- The cost of the IPP should be recognized by NAWEC in their accounting records as the IPP was an investment. The plant was transferred to NAWEC since 2013 and based on the testimony of Mr. Amat Cham, he stated that cost was not capture in records.

(e) SSHFC Funded Generators

- *Clause 7.3 of the 2010 agreement states that in the event of a delay in the completion of the works contract attributable to the contract, a penalty of 1% of the total amount of the contract will apply per day.* The contract should have been completed in 2011 but was not until 2013. However, this clause was not applied by

SSHFC and EAGL is liable to pay 1% of Euros 1,840,600 equaling Euros 18,406 per day.

(f) NAWEC Bond

- EAGL should be requested to submit the amount of LCs opened for Light Fuel Oil (LFO) supplied. This sum was repaid by Oil Marketing Companies (OMCs) from pump sales/ receipts and should have been used by EAGL to settle the debts owed to the respective bank(s). EAGL clearly diverted the funds. Why these debts were included in EAGL's debts to banks of USD38Million is a daunting question.

  Failure to submit the information within a reasonable timeframe should result in EAGL bearing full responsibility for the cost of the LFO which was never sold to NAWEC in the first place.

- Mr. Kebba S. Touray the then Minister of Finance masterminded the Bond between EAGL and Government transferring all of EAGL's liability i.e. free from any debt to NAWEC. It is disappointing to note that in February 2017, Mr. Touray set up a company with Mr. Fadi Mazegi which is a clear conflict of interest.

(g) Aqua INC (Aqua Gambia Limited)

- The concessional agreement with Aqua should be reviewed and assessed with a view to determining if this is a viable investment for the Gambia. The status of equity contribution should be reviewed and technologies that were supposed to have been brought in by Aqua should be reviewed.

- The **shortfall of D341,454.13** not paid to NAWEC should be settled by Aqua immediately. The shortfall is as a result of a comparison carried out between the revenue stated in the audited financial statements to the extract of NAWEC's share of the total revenue collected on the site in the concession area.

(h) Free Electricity Connection

The outstanding amount of **D51,681,164.98** should be recovered from the assets of Ex-President Jammeh. This was costs incurred by

NAWEC a number of electricity and water extension works undertaken by NAWEC for various projects related to the former President without being paid for.

(i) Unpaid NAWEC Bills

The unsettled bills/ outstanding amount of **D63,355,201.60** should be recovered from Ex-President Jammeh using his assets as it relates to electricity and water bills not paid for by his businesses namely Sindola Hotel, KGI and KFF.

(j) Request for NAWEC Funds by OP

USD589,169 transferred by NAWEC based on instructions from OP should be recovered from Ex-President Jammeh. These funds were made available by ROC on Taiwan as financial assistance for NAWEC.

(k) Use of NAWEC Property at Fajara Booster Station

GTG should be charged rent for use of NAWEC’s property for all THE years they occupied the property.

CHAPTER 6 - GAM PETROLEUM STORAGE FACILITY

OVERVIEW

The storage of fossil fuels for The Gambia's fuel needs became critical due to concerns connected to the location of the 50-year old Shell depot in the middle of an urban settlement in Banjul. The Shell depot posed serious health and safety risks and therefore, constant anxiety to the people of the Capital. The depot had limited capacity which had become inadequate to service the growing fuel needs of The Gambia.

In April 1984, World Bank carried out a study and assessment on the Energy Sector[725]. The Gambia was experiencing petroleum supply problems due mainly to recurring foreign exchange shortages caused by depressed export revenues. IMF recommended that GOTG investigate options to reduce petroleum import costs and improve GOTG's capabilities to monitor the petroleum sector. World Bank evaluated alternative arrangements and recommended least cost petroleum supply options.

One of the options identified was "terminal relocation" from Banjul. Three locations were identified a) along Bund Road, (b) a site on the Atlantic Coast, and (c) a site on the bank of the Gambia River near Mandinari Point. The mission found that it was most economically feasible to construct a new terminal at Bund Road for about USD4.4-8.3 Million when compared to the other locations that might cost about USD8-10 Million[726]. The level of investment required with the present Public Sector Investment Program (PIP) was too high, they felt that it would be unlikely the venture would ever be given high priority.

About Euros 20.3 Million paid by three Public Enterprises (PEs) namely SSHFC, GPA, GNPC and the Government of The Gambia was applied towards the acquisition of 58% shares in Gampetroleum Storage Facility Limited (herein referred to as 'Gampetroleum') from 2008-2015. The PEs made this investment based on orders from Ex-President Jammeh. This investment and matters concerning it are within the mandate of the Commission.

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[725] Exhibit MS303 – Joint UNDP/ World Bank Energy Sector Management Assistance Program Activity Completion Report No. 035/85

[726] Exhibit MS303 – pg. xi of Completion Report No. 035/85

The GAMFUELS PROJECT DEPOT[727]

In May 2002, the Government commissioned a South African Firm, Grinaker-LTA Process Engineering (Grinaka-LTA) in partnership with Africa Advisory Services[728] to perform a feasibility study on the economic and technical aspects for the re-locating and construction of a new fuel storage depot. This had been preceded by a pre-feasibility study performed by LTA Process Engineering (*which later merged with Grinaker*), Project Development Africa and HSBC Equator Bank[729] completed in June 2000. The site identified was in Bund road, which was deemed unsuitable due to environmental concerns. Government required that other sites be investigated and two other sites Mandinari and Kuloro/Bonto were identified in the 2002 study, and Bonto was subsequently selected. In minute sheet 29 signed by the then Commissioner of Petroleum (Mr. Lamin A. M. Njie), a proposal was initially made for the storage facility to be constructed at Bund road close to the Banjul refuse dump site. However, the site is within the wetland area identified as RAMSAR Site because Gambia is a signatory to the Convention and its mission is the 'conservation and wise use of wetlands by national action an international cooperation as a means of achieving sustainable development throughout the world'.

The Project was called GAMFUELS and the feasibility study at Bonto was to be the subject of a bankable document for the sourcing and provision of finance for a new 30,000m^3 fuel depot projected to serve the country up to 2010. The Bonto Study was completed in 2003 by Grinaker-LTA Process Engineering. It was to be a fully contained facility with self-contained power supply of international standard. The cost of the project was estimated at USD29 million including capital costs estimated at USD19.36 Million with 2 possible offloading systems – a buoy mooring system at USD13 Million and or a jetty off loading facility at USD10.6 Million and a payback period of 10 years. Grinaka-LTA did not, however, carry out an Environment Impact Assessment Study (EIA).

Following the submission of the Study, the Office of the President summoned a meeting of Government stakeholders. The recommendations of this meeting were submitted to the ex-President and included sourcing for funding from the Government of South Africa or other private sources, private sector participation, centralized procurement of hydro-carbon needs through competitive bidding, an EIA, ensuring that private sector financing must be accompanied by strong financial commitment, and for provision to be made

[727] Exhibit MS275C

[728] Africa Advisory Services was commissioned with the task of sourcing and structuring a suitable financing agreement

[729] HSBC Equator Bank initiated the prospect of developing a project using finance available through South African financing agencies

for storing burnt oil sludge (used HFO) from NAWEC for reprocessing locally or re-export. The recommendations were accepted by Ex-President Jammeh (See *minutes (3) and (4) of MS275C*).

The GAMFUELS project generated significant private sector interest. The then Secretary General proposed to the Ex-President that "**Given the numerous interests shown in setting up of the petroleum storage facility based on the Study done by the South African Company, I would further propose that clear criteria are set out, based on which bids can be invited from interested investors. The selection of the investor can be guided by evidence of financing, time frame leading to commissioning and meeting of the required environmental impact conditional ties**." The then SG also supported the recommendation from the Commissioner of Petroleum that a fee of USD10,000 be charged for a copy of the study which was to be made available to investors. This was endorsed by Ex-President Jammeh[730].

A negotiation framework was developed for a facility at Bonto which set out the following key elements:

1. Government Interest

   - Relocate the current Shell Depot out of Banjul.
   - Ensure that there is always a 180 days stock available in the country.
   - Ensure that there is no single monopoly in the new venture.
   - Ensure that safety and international environmental standards are maintained.

2. Government concessions

   - Land
   - Investment incentives as contained in the Investment code.
   - Exclusivity (10) years not to allow any new depot construction from the date of project commission.

3. Negotiation Terms

   - Storage capacity - A minimum capacity of 60,000MT----
   - Project construction period - A maximum of 18 months.
   - Financing Terms- The best financial offer.
   - Source of financing- Give evidence of the availability of funds and terms and conditions of the funding.

[730] See minute 29, 31 & 32 Exhibit MS275C

4. Project participation

   - Government participation (minority shareholder)
   - Local Gambian participation
   - International participation

Minute 63 extracted from file no. OP151/362/03/PART I showed that Ex-President Jammeh endorsed this framework and increased the minimum capacity of the proposed facility to 180 days/ six months stock. His position was clear, **"exclusivity cannot be entertained especially for 10 years. The minimum capacity stated also is not acceptable as it is too small**." As a result, the minimum stock capacity of the proposed facility was increased to 180 days/ 6 months with a storage capacity of 60,000MT, and all mention of Exclusivity was removed.

A letter was sent to Shell Marketing Gambia Limited ref. OP151/362/03/(46) dated 2nd October 2003 on Government's decision to relocate the fuel depot outside the city of Banjul.

INTERESTED INVESTORS

Interest was shown by three main groups of investors:

By letter dated 3rd April 2003, a US based company, Global Management Group Limited (GMG) proposed to finance, design, build and operate an 83,000MT petroleum terminal for the Gambia. GMG purchased the said Government feasibility documents for USD10,000. GMG's team comprised of REDD Engineering and Construction, Geopinion and Mr. John Adamson (Geologist).

On 7th April 2003, a company called Euroafrican Oil Company through its Managing Director, Mr. Mohamed Bazzi had presented to the Office of the President its intent to construct a 20,000 tons storage at Bund Road not only to enhance the national stock capacity but also to create a hub for refueling aircrafts within the sub-region. Euroafrican Oil Company was requested to submit a more detailed proposal[731]. After the GAMFUELS Study was approved, Global Trading Group N.V. (GTG), a company based in Belgium, through Mr. Mohamed Bazzi, submitted a proposal by Gam Petroleum Storage Facility Limited (Gampetroleum) to build a fuel depot to be owned by a consortium of the following companies GAMSEN 30%, Global Consortium

[731] Exhibit MS275B

30%, Petroleum Companies (Shell, Total, Elton and Castle) 30% and other private operators 10%.

On 5th December 2003 Grinaker-LTA Process Engineering also submitted a proposed export credit facility with Gambia National Petroleum Company (GNPC) under the South African Export Credit scheme with the ABSA Corporate & Merchant Bank, South Africa in which GNPC was to be the borrower. GNPC was established in November 2003 as the main beneficiary of the GAMFUELS Project.

Shell did not participate in this process although it was invited to purchase the Study. On the 7th October 2003, the Department of State for Defense wrote to Secretary General conveying the decision of the National Security Council that the Shell depot be moved to the Kombo's because of the "environmental and security risks the Shell fuel depot at Half-Die, Banjul poses to Banjulians". The depot was required to be relocated within 18 months. Shell's request to build additional tanks to store PMS had previously been turned down and Shell informed that Government was committed to building a storage depot outside Banjul[732].

The proposals submitted were assessed between January and April 2004 by Ministry of Finance & Economic Affairs (MOFEA), Ministry of Trade Industry & Employment, Gambia Divestiture Agency and Gambia Investment Promotions and Free Zones Enterprises (GIPFZA). Presentations were made to the Government Committee[733].

AWARD OF CONTRACT

On the 27th April 2004, GMG proposed the submission of a joint proposal to the United States Trade Development Agency for a feasibility Study for the Fuel depot which caught the interest of the Commissioner of Petroleum. On the 24th June 2004, a letter was sent to GMG ref. OP151/362/03/(106) of Government signing the joint submission of proposal for feasibility study to US Trade and Development Agency. In August 2004, the then Commissioner of Petroleum, Mr. Lamin O. M. Njie, following his visit to USA for the submission of the joint proposal, recommended the signing of a letter of intent with GMG mainly because of the significant financial support that GMC had lined up on the following terms[734]:

[732] Exhibit MS275B – File no. OP151/262/01(PART III)

[733] Exhibit MS275C – Letters dated14th January 2004, 20th Jan 2004 & 4th February 2004 with refs. ENG55/212/01/Part II(11) & GIPFZA/4/9/VOL.I/(50) & GIPFZA/6/1/1.26/VOL.I/(2) 2004 respectively

[734] See Minute 107 of Exhibit MS275C

(a) The depot is a BOOT project (transfer to GNPC and date to be agreed)
(b) Six months security stock of all products including HFO
(c) Pump price regulated
(d) A USTDA study to be conducted by October 2004
(e) An EIA study by November 2004
(f) Project Commencement date April 2005
(g) Project construction period not more than 14 months
(h) Construction at International standards with SGS certification
(i) Ensure availability of products (import products)

The proposal was supported by the Secretary General Ngum. (*See Minute 108*). On the 13th September 2004, the ex-President minuted back to SG Ngum: "Keep on hold as this project is part of the agreements being worked out with the Kharafi Group and it would complicate matters if GMG puts in money and an agreement is eventually reached with Kharafi". (*See minute 109*).

Mr. Edi Mass Jobe (Witness no. 243)[735] testified that he had tried to secure funding through the Ministry of Trade at the time because **MEPID** had disappeared through private sector. Mr. Edi Mass Jobe further mentioned that the first time that Kharafi came to The Gambia to look for Projects, the Government invited him (Mr. Jobe) to do presentation and that is why at some point the Kharafi people went to the Site to have a look at it. He also mentioned that he together with Mr. Amadou Samba had approached banks to get financing to build the depot but they were unsuccessful.

A letter was written to GMG on the 8th October 2004 indicating that the GAMFUELS project was to be put on hold. On the 11th October, 2004 the National Environment Agency (NEA) invited 20 Government departments and agencies to review the Gam Petroleum Storage Facility draft EIA document for the building of a facility at Mandinari. It was attended by Managing Director Gampetroleum, and a Consultant by the name of Mr. Edirisa M. Jobe described as (an employee of Elton). Mr. Jobe[736] testified that he represented the interest of one of the private investors Mr. Amadou Samba due to their close family relationship. He further testified that he had a good relationship with the villagers of Mandinari as he owns a LPG Plant in the area and this was one of the reasons he was engaged to participate. Subsequently, he was made a director of Gampetroleum he said to act as a guide on technical and engineering matters and to improve corporate credibility and governance[737].

[735] Transcript of Mr. Edi Mass Jobe dated 25th September 2018 – pg. 6
[736] Transcript of Mr. Edrissa Mass Jobe dated 25th September 2018 – pg. 8
[737] See Witness Statement of Mr. Edrissa Mass Jobe dated 13th July 2018

On the 20th October 2004 (folio 113)[738], the Office of the President wrote to Gampetroleum informing them that The Gambia Government had granted them permission to start construction of the Gam Petroleum Storage Facility to be located at Mandanari Village. The letter also stated that the company was granted "exclusive right as sole importer of petroleum products into the Gambia for a period of five years from the date of commencement of operation of the facility". The letter was signed by Mr. Lamin A. M. Njie for Secretary General and no one was identified in the cc line. Efforts were made to reach him which proved futile. The facility was also granted duty waivers. There is nothing in MS 275C or any other file of the Office of the President explaining the basis of this decision. A contract was not signed with Government. The GAMFUELS project was not mentioned. The rights granted were not specified. The Secretary General, Alieu Ngum has in a statement[739] said that he was not aware of the letter dated 20th October 2004.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

An EIA study designed to identify and assess the environment and socio-economic impacts of the construction and operation of a new Petroleum Storage Facility project was a requirement for the GAMFUELS project. Gampetroleum Storage commissioned an EIA on the land in Mandinari which was subsequently approved by the National Environment Agency (NEA). The EIA was conducted by Duwajabi International Commerce & Energy Corporation. Based on the draft report[740] submitted to NEA, the process was consultative and involved not only the NEA but Brikama Area Council, Fire Services, Departments of Forestry, Fisheries, Water Resources, Parks and Wildlife and meetings with the Villagers of Mandinari and surrounding villages such as Makumba, Kunkujang Jattaya, Galoya and Kubunneh.

Various surveys were required to be, and were carried out, on the impact of the proposed project including a socio-economic survey which assessed the impact of the project on the people i.e. the owners and users of the land and environment, in accordance with the policy objectives of The Gambia Environmental Action Plan (GEAP).

This survey found that if the project was implemented at Mandinari, the main construction site of the facility would be on the rice fields of Mandinari Village. As such rice growers must vacate their lands and 52 fishermen will have to relocate to a new fish landing site. "**The opportunity cost for the two occupations - rice growing and fishing - would amount to**

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[738] Exhibit MS275C – Letter ref. OP/151/362/03/113)

[739] Exhibit MS27C – Witness Statement dated 19th September 2018

[740] Exhibit LL13

GMD6,889,630". The project impact on land ownership and community stability was rated from moderate negative to High negative.

Pages 31 & 32 of the EIA Report, on the Legal Requirements of Impacts of Petroleum Storage Facility Project with regard to the requirements of the Gambia Biodiversity and Legal Institutional Profile (1997), the Banjul Declaration for the Protection of Flora and Fauna, the Ramsar Convention for the Protection of Wetlands, Physical Planning and Development Control Act, Land Acquisition and Compensation Acts, and the National Environment Management Act (NEMA) 1994, the consultants stated that it was necessary for the oil company to, (among other things):

- Pay compensation or remuneration to those adversely affected by its operations whether individuals or communities or business enterprises.
- Promote community development through sponsorship of educational, production and infrastructural development projects.
- Encourage communal participation in employing the local youths where necessary.
- Comply with NEA recommended operations.

Another recommendation stated in the EIA Report, among other things, was that a well-equipped clinic or hospital is necessary in Mandinari or suburbs to cater for emergency cases, for the community to have basic utility services such as electricity and water, which are lacking, and that information, education and communication department training centers should be established to train employees and community members for preparing and responding to emergencies like oil spills or hazards.

One of the conditions was that the company should initiate and implement internal environmental audits to determine the nature and extent of the company's environment liabilities for presentation to NEA and stakeholders in the corporate annual reports. This condition was reiterated in NEA's Environmental approval letter ref. NEA/TSN/129/85/01/1/(19) dated 10th November 2004 addressed to Mr. Mohamed Bazzi MD of Gam Petroleum Storage Facility Co. Limited.

There is nothing to show that these recommendations were carried out.

THE GOVERNMENT IMPROPERLY ALLOCATED LAND BELONGING TO THE MANDINARI PEOPLE/ VILLAGE TO A PRIVATE ENTERPRISE

An application letter for land at Mandinari dated 17th November 2004 signed by Mr. Amadou Samba Chairman of Gam Petroleum Storage Facility was sent to the Department of State for Local Government and Lands copied to

Secretary General Office of the President and NEA, applied to the SOS for Local Government and Lands (DOSLGL) to establish and operate a petroleum storage facility at Mandinari Village. The letter also highlighted that the company planned to commence work in December 2004 and a copy of a survey report was said to be enclosed. The letter also refers to approval of NEA.

About a week later, the Office of the President wrote a letter ref. OP151/362/02/(127) dated 24th November 2004 to the Permanent Secretary, DOSLGL to the effect that the Government had approved the construction of the facility at Mandinari and requested that the land allocation process be expedited to enable construction starting in December 2004. An application form for the grant of land for industrial purpose was also submitted on the 17th December 2004.

Following receipt of the letter from Office of the President, the application was forwarded to the Minister who gave approval on the 7th December 2004 (*See minute 9, 10 & 11*). The allocation letter dated 7th December 2004 ref. SL/143/2004/(15) was issued on that day. The site allocated measured 299.41 m*301.73 m*299.68 m*302.22 m. One condition stated in the letter is that a lease would only be executed after substantial completion of the proposed project; and "**as much as possible to abide by recommendations resulting from an Environmental Impact Assessment (EIA).**" Notwithstanding, a lease was issued and signed by the Minister and PS Department of State for Local Government two days later on the 9th December 2004 bearing S.R. No. K351/2004. Lease document was also signed by Mr. Amadou Samba.

The file contains an unsigned 'Valuation Report of a year to year tenancy of property at Mandinari…' valuing the property at D1,943,600. There is no indication that this was in any way acted upon. Mr. Manlafy Jarjue (Witness no. 203) then Secretary of State for Local Government and Lands said he received instructions to work with the village to facilitate the allocation of the land. He believed that Government had an interest in the project and thus made sure that everything was expedited. He attended a meeting with the Chief and Governor of the area, visited the site and met with the villagers. The Villagers accepted allocation of the land but according to the Minister, were not compensated. A sum of GMD1 Million was given to Villagers which was described as "Colanut'. He believed that his presence and that all the officials might have given the Villagers the impression that it was a government project. He said he did not ask questions when he later realized otherwise because: "I was working under an authority that was absolute and when he said make sure it happens, you make sure that it happens".[741]

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[741] Transcript of Mr. Manlafy Jarju dated Monday 25th June 2018 – pg. 3

The current Alkalo of Mandinari Mr. Fah Ceesay (Witness no. 202), who took active part in the process said, Gampetroleum is a Government parastatal. He described the meetings that took place and the concerns of the villagers about giving up their livelihood. He said Chief Eric Janneh intervened in one such meeting and told them that 'when the King says there would be a road through your head, your head would break but the road would pass through'. He was also personally warned when he tried to push for a better deal for the village. Finally, agreement was reached through Messrs. Edrissa Jobe and Manhal Oueidat, that the project would provide the village with a water system free of charge, electricity free of charge, upgrade the central mosque, build new structures for the community health post, provide medical facilities, and give priority in employment to qualified villagers. These turned out to be empty promises. He admitted that D1 million colanut was given. Chief Eric Janneh told the villagers that Government owned all the land in Kombos and that the money was merely given for Colanut as a token of respect[742]. There is nothing on record to show that the process of issuing the lease went through the usual channels as required for deemed leasehold land under the State Lands Act. Mr. Fah Ceesay said later in 2011 they requested for NAWEC water stand pipes and Mr. Edrissa Jobe arranged a meeting with Messrs. Mohamed Bazzi and Manhal Oueidat. Mr. Mohamed Bazzi said he would arrange it through NAWEC since NAWEC owed them a lot of money, but did not follow through.

SPECIAL INVESTMENT CERTIFICATE IS GRANTED

On the 1st April 2005, Synergy Group applied for a Special Investment Certificate (SIC) on behalf of Gampetroleum Storage facility which it said would be constructed in two phases of 30,000MT and 60,000MT with a USD20 million capital expenditure. The business plan submitted indicated at page 2 that Mr. Mohamed Bazzi owned 51% shares and Amadou Samba the remaining 49%; this is contrary to what is stated on the Memorandum and Articles of Association dated 8th July 2003 that Mr. Amadou Samba owns 1% and Mohamed Bazzi owns 99%[743]. The Government of the Gambia had signed an exclusive supplier agreement with the company on October 20th 2004 to be the sole importer of petroleum products into The Gambia for a period of 5 years from the date of commencement of operation of the facility.

GIPFZA wrote back asking for further information on 13th April 2005 and requested, among other things, a statement of what percentage of the net profit after tax would be retained in The Gambia. The Company responded on 30th April 2005 that 50% of net profit would be retained in country. Based on an internal assessment carried out by a Technical Consultant Dr. S. Cahill

[742] Transcript of Mr. Fah Ceesay dated Monday 25th June 2018 – pg. 8
[743] Exhibit SC121

and opinion communicated to Mrs. Fatou Jallow (Acting Director of Investment Promotion) on the 17th May 2005, it was resolved that Capital expenditure estimated at USD4 Million would be waived but not sales tax or corporate tax. The rational and overriding principle for this Dr. Cahill explained is that GOTG via incentives approved by GIPFZA should aspire to gain in the form of taxes and value added at least the equivalent of what it is prepared to forego in the form of waivers and taxes. Therefore, to waive sales tax would disimprove the situation drastically and waiver of corporate tax would also have a negative effect. On the 13thJuly, 2005 the draft SIC was submitted to the Minister of Trade for signature. The accompanying terms and conditions are not on the file.

The signed Certificate dated 12th July 2005 indicates that the SIC is for 5 years from that date. Mr. Kebba S. Touray (Witness no. 75), the CEO of GIPZA wrote to the Secretary General on the 4th January 2006, indicating that the project was not covered by their Act and did not qualify for an SIC nor did it qualify under the Free Zones Act 2001, however, given its strategic nature a full SIC was recommended covering:

(a) Withholding tax and tax on dividend;
(b) Exemption from customs duties on the following
    - The approved capital equipment, machinery, appliances, furniture and fittings to be used in establishing the Project
    - Exemption from sales tax on the items mentioned above;
(c) Exemption from turnover tax; as well as a
(d) Special scheme for accelerated depreciation.

The file does not indicate what triggered this letter, but from the sequence of events, it is assumed that there was some query about the proposed SIC terms. The Secretary General replied on the 6th January 2006 ref. OP 151/362/02/(167) conveying approval of ex-President Jammeh to offer Gampetroleum a full SIC Incentive package.

The file shows that on the 14th June 2007, GIPZA requested for actual investment and employment figures which did not seem to have been provided. A letter of 14th May 2010 requesting for audited accounts during the SIC life span did not receive a reply.

A letter issued by GIEPA on the 24th January 2012 to PS Ministry of Trade in response to a letter on the subject matter of SIC renewal for Gampetroleum and Global Electic also referred to a letter from OP, PR/C/697A/VOL.5/(29-RCC) “directing that an urgent redress to the issue be found”. GIEPA responded that it was not possible to extend the SIC under its law, and referred to the two SICs that expired and recommended that either the package being enjoyed be given as part of the agreement between the two companies and NAWEC …. as part of the renewal of the PPA, or alternatively, Government, through the Ministry of Finance, could avail the incentives as a standalone package for a strategic investment. There is no record that such an incentive was granted.

GAMPETROLEUM OWNERSHIP

GAM PETROLEUM was incorporated as a private limited liability company on the 9th July 2003 with a share Capital of D100, 000 divided into 100,000 ordinary shares of D1 each. The first Memorandum and Articles of Association showed that the original shareholders were Mr. Mohamed Bazzi owning 99% shares and Mr. Amadou Samba 1%. They were also the directors of the said company. Ms. Dagain Nyang (an employee at TK Motors Limited) was the first secretary of the company.[744]

Changes in ownership occurred before the sale of shares to State Owned Enterprises (SOEs)/ Public Enterprises (PEs)[745]. On 17th March 2005, Mr. Mohamed Bazzi transferred 48% of his 99% shares to an Offshore Company called Amasa Investment Company Limited. The shareholding then changed to: Mohamed Bazzi- 51%, Amasa Investment 48%, and Amadou Samba 1%. On the same day, Amadou Samba also transferred 1% of his shares to Amasa Investment Company Limited. The shareholding then became- Mohamed Bazzi- 51% and Amasa Investment Company Ltd- 49%.

Following receipt of the directive for the PEs to buy shares in the company, the shareholders made further changes to the ownership structure. On 28th March 2008, Amasa Investment Company Limited and Mohamed Bazzi transferred 48% and 51% shares respectively to Gampetroleum Company Limited, a Company registered in Nevis, West Indies (the Offshore Company). The Offshore company thus was thereby vested with 99% shares in the Storage Company and Amasa Investment Limited retained 1%.

On the 15th August 2008, a request was made to the Company Registrar to cancel the 1% transfer from Mr. Amadou Samba to Amasa Investment and recommend the revised structure of Mohammmed Bazzi 51% shares, Amasa Investment 48% and Amadou Samba 1%.[746]&[747]

On 1st March 2009, the Offshore Company (Gam Petroleum Limited of Nevis, West Indies) was issued a share certificate as the registered shareholder of

[744] Exhibit MS124A

[745] Exhibit MS223B – Page 24 of DT Associates Final Report to the Shareholder representing The Government of the Gambia

[746] Exhibit MS223B

[747] Exhibit MS220D

99,000 shares of D1 each[748] and Amadou Samba retained his 1% (1000 shares).

After the purchase of the shares by the PEs the shareholding of the company as at 18th March 2009 was - Capital 350,000 shares @ (Euros 1,000 par value) totaling Euros 35 Million.

Offshore Company	- 182,000	18,200,000	52%
SSHFC	- 108,500	10,850,000	31%
GPA	- 35,000	3,500,000	10%
GNPC	- 24,500	2,450,000	7%

The inaugural meeting of the Shareholders and Board of directors of the Storage Facility Company was held on the 18th March 2009. It was resolved at the said meeting that the Memorandum and Articles of Association be amended to reflect the increased share capital. Share certificates were issued to reflect such. However, the share capital was not increased. Instead Share certificates issued on 18th March 2009 in the Storage Company were cancelled (subsequently returned in December 2009) and all the shareholders were issued with shares in the Offshore Company[749] as follows:

- SSHFC – 31.3%
- GPA - 10.1%
- GNPC - 7.1%
- FADI MAZEGI - 10.4%
- MOHAMED BAZZI - 31.1%; and
- AMADOU SAMBA - 10% shares

In a letter dated 1st October 2014 addressed to DT Associates ref. GP/41/1014/004/LF, the Company Secretary - Ms. Loubna Farage[750], stated that "*in order to save the company revenue at its very first year of operation, it was advised and agreed that the best option would be to indirectly invest in the offshore company (Gam Petroleum Limited) whose only business is in the Storage Facility as it owned 99% shares".* It is presumed this was alluding to the stamp duty cost of 3% payable to increase the share capital from 100,000 to Euros 35 Million.

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[748] Exhibit MS124 – Share Certificate

[749] Exhibit MS124C

[750] Exhibit MS220D

On 14th January 2010[751], the 1% share remaining for Amadou Samba in the storage facility was transferred to Premier Investment Group SAL Offshore. The Share Transfer Agreement for the said sale dated 8th February 2010 was registered on 10th February 2010 S.R. No. 26/2010 Vol. 17 MD *(See MS220D)*. Premier Investment Group SAL Offshore[752] is a company incorporated and registered in Lebanon Beirut on 16th January 2010 whose shareholders are Messrs. Muhammed Bazzi (70% shares), Fadi Mazegi (25% shares) and Wael Bazzi (5% shares).

On the 26th January, 2010[753] Ms. Farage finally made a request to Registrar of Companies for cancellation of all previous shares and for subscribers of Gampetroleum to be as follows: Gampetroleum Ltd (Offshore) 99% and Amadou Samba 1%. As at this time all PEs and individual shareholders had their shares in the Offshore Company. Premier Investment was the holder of 1% shares.

In the letter dated 1st October 2014, the Company Secretary (Ms. Loubna Farage)[754] confirmed the shareholders as at that date to be Gampetroleum Limited (Offshore) with 99% and Premier Investment Group Sal (Offshore) 1% and that the share transfers were duly registered with the Registrar of Companies.

OP Directive issued for Public Enterprises (PEs) to acquire shares in Gampetroleum

By letter dated 15th February 2008[755] to Gampetroleum, the Secretary General, conveyed directives that 49% of their shares should be opened up to Government and other public enterprises like Social Security and Housing Finance Corporation (SSHFC), Gambia Ports Authority (GPA) and Gambia National Petroleum Corporation (GNPC) to participate in the shareholding structure. The reason was that a bilateral cooperation arrangement had been signed by the Government of the Gambia that had implications governing fuel storage facilities stating that such a strategic investment should not be handled solely by Private Enterprises.

[751] Exhibit MS124B
[752] Exhibit MS122 – Incorporation documents of Premier Invest Group SAL
[753] Exhibit MS223B
[754] Exhibit MS220D
[755] Exhibit MS220D – Letter from Office of the President ref. OP151/262/03/Part II/(34)

The Ministry of Finance & Economic Affairs organized a meeting with the three PEs and followed it with a letter in April (See ADM 265/448/01/(155) which attached a letter of 18th March 2008 from Gampetroleum showing the cost of the facility. This letter, signed by Mohamed Bazzi, Managing director, stated the storage capacity of the facility was 51,000MT, that the Shell Facility in Banjul had been acquired solely for Heavy fuel and bitumen storage and that the total cost of the two terminals was Euros 32 Million and the price per share Euros 3,200. It requested information on the allocation of the shares to the PEs following which a presentation would be made to them.

This was followed by another letter dated 10th April 2008 wherein Mohamed Bazzi stated that there was a mistake in the previous letter and that the figure stated of Euros 32 Million did not factor the cost of transforming the Half Die Depot from light fuel to storage depot which would cost Euros 3 Million. The total cost was now Euros 35 million (10,000 shares @ Euros 3,500). A meeting of Gampetroleum and the PEs was held on the 30th June 2008 at which a presentation was made to them. A valuation and profit and loss forecast was presented. On 3rd July 2008, Mr. Fadi Mazegi wrote on behalf of Gampetroleum indicating that **"Further to the meeting held in our office on Monday, the 30th June 2008, we write to confirm the irregularity of the above statement distributed at the meeting held on the 19th June 2008. As you correctly pointed out, the said statement depicts the value of all the shares of Gampetroleum Company Ltd to Euros 33 Million instead of Euros 35 Million**." The letter went on to explain that Euros 2 Million in respect of civil works had been erroneously omitted.

The Statement of Affairs was consequently replaced. The Company was valued at Euros 35 million based on an unsigned Statement of Affairs dated 31st May 2008 allegedly prepared by DELOITTE an audit and tax advisory firm.[756]&[757]. Further directive conveyed by the MOFEA was given on the 25th November 2008 that SSHFC should purchase additional 11% shares in Gampetroleum.[758] At completion, the shares cost €3,500 per share. SSHFC shares were paid for in installments. Injury Compensation Fund (ICF) and National Provident Fund (NPF) treasury bills had to be liquidated as seen on a memo to the Senior Finance Manager at SSHFC.

[756] Exhibit MS112A

[757] Exhibit SC113

[758] Exhibit MS227 - Letter ref. ADM 265/448/01/Part 8/(28) from MOFEA to SSHFC

No.	Name of PE	% Shareholding	Euros €	Acknowledgement of full payment for purchase of shares
1)	SSHFC	31%	10,850,000	20 Jan. 2009
2)	GPA[759]	10%	3,500,000	X
3)	GNPC[760]	7%	2,450,000	X
	Total		**16,800,000**	

X – Confirmation letter not seen

ABSENCE OF DUE DILIGENCE

None of the PEs carried out any sort of due diligence or valuation to ascertain the share price of the investment prior to the purchase of the Shares on [date]. All the PEs wrote individually and jointly to Managing Director of the Storage Company on 20th May 2008[761] requesting a meeting to discuss the following items:

(1) Valuation of the investment and Independent Valuer of the Assets and Liabilities;
(2) Representation in the Board of Gampetroleum;
(3) Financial Projections of Gampetroleum;
(4) Payment Plan of the share to be purchased.

A pre–negotiation meeting took place in June 2008 (See minutes dated 19th June 2008) but item 1 above was not discussed[762].

[759] Exhibit SC112C – GPA Payments
[760] Exhibit MS224
[761] Exhibit MS220
[762] International best practice states that the purchase of substantial shares or assets that a comprehensive due diligence investigation of the target company is undertaken including agreeing the terms of the sale in a Sale and Purchase Agreement (SPA). The SPA then sets out a clear process that would involve an extensive legal and financial due diligence,

There was ample time for exhaustive diligence as all payments were made in installments[763]. DT Associates described as auditors of Gampetroleum could not be regarded as independent for that purpose particularly when they were instructed, not by the proposed purchasers, but the sellers who had the exclusive rights of requesting for revisions; which they in fact did when the value was increased from Euros 32 & Euros 33 million to Euros 35 million. We have seen nothing in the many files reviewed which specifically prevented the PEs from demanding a due diligence process, the need for which GPA raised. Mr. Muhammeh L. Gibba in his testimony said the time allowed did not permit them to carry out any due diligence.

In addition to the lack of due diligence surrounding the share prices, there were issues with improper valuation, lack of management oversight, misappropriation of fuel from a private entity without proper authorization.

Re-Independent valuation of the Shares

The need for an independent valuation of the shares was first raised at the Board meeting 29th September 2010 by Mr. Edward Graham following continuous losses resulting in none payment of dividend. He requested an independent valuation to ascertain the true value of the assets and circulated a Terms of Reference (TOR) for consideration. Mr. Fadi Mazegi indicated that previously a valuation had been done by SGS at the cost of USD1 Million but the result was unsatisfactory[764]. Mr. Mazegi in his testimony before this Commission has denied any such valuation was done. Six months later at the meeting of 29th March 2011 when the minutes were being considered, the Board Chairman, Mr. Amadou Samba stated that the asset valuation should have been done at the due diligence stage when the shareholders were purchasing the shares and that they should now be more concerned about the value of the shares and not assets. The idea of an independent valuation was abandoned as not being the right time[765].

The complaints about non-payment of dividend led to the Office of the President writing to Gampetroleum on 5th March 2013 (OP 328/01 TEMP (187-IS) to engage the services of DT Associates formerly Deloitte & Touche, to evaluate the company[766]. This resulted in a Report which valued the

including an independent valuation of the assets of the target company to justify the price demanded by sellers.

[763] Such due diligence could have been carried out while the sellers were holding on to the 40% deposit. The deposit in fact was too high as the standard deposit pending due diligence does not usually exceed 10%.

[764] Exhibit MS220D – Board minutes of 29th September 2010 – Item 5

[765] Item 5 ‘ of Board Minutes

[766] Exhibit MS125E - Appendices

company at Euros 32.6 Million (GMD1.5 billion) as at 23rd April 2013 based on inflation adjusted net assets. The valuation was stated to be based 'purely' on an independent valuation of the most significant component on the company's balance sheet, the storage facility, adjusted for depreciation. The independent valuation was carried out by Sphinx Associates. The value of the assets was stated to be GMD937,586,000. The depreciated adjustment rate applied was 34% resulting in a total value of GMD1,490,534,000/ Euros 32.6 Million[767].

The report also showed that 95% of income of the company was from EAGL, a related party company whose shareholders were Messrs. Mohamed Bazzi (55%) and Amadou Samba (45%). EAGL was also responsible for managing the finances of Gampetroleum, and the company had been making recurring losses since inception. Thereafter, a letter issued from the Office of the President on 27th May 2013 that the Executive was of the view that "the total value of Gampetroleum as shown in the report compared to the total amount paid by shareholders should determine the real percentage of the respective shareholdings.[768] The MD GPA also wrote requesting that the Storage facility should have independent finances and administrative units for transparency and accountability and for the shareholders to be represented in the management[769]. He also reminded the company that share certificates were yet to be issued. Nothing seems to have changed after this valuation.

MANAGEMENT ARRANGEMENT

At the first General meeting[770] of Gampetroleum Storage Facility after the PEs became shareholders it was agreed that the Board would be re-structured to comprise 8 directors as follows:

Gam Petroleum Limited	4 directors
SSHFC	2 directors
GPA	1 director
GNPC	1 director

The Board proceeded to elect 9 directors as follows:

Amadou Samba	-	Board Chairman
Tumbul K. Danso	-	Managing Director representing SSHFC

[767] Exhibit MS125E – pg. 54
[768] Exhibit MS227A
[769] See letter of Mr. Muhammadou L. Gibba dated 29th July 2013
[770] Exhibit SC113 – Minutes of first Annual General Meeting held on Wednesday 18th March 2009

Edward Graham - Deputy Managing Director representing SSHFC
Momodou O.S. Badjie - Managing Director representing GNPC
Muhammed L. Gibba - Managing Director representing GPA
Muhammed Bazzi - Director and CEO representing Gam Petroleum Limited
Fadi Mazegi - Director representing Gam Petroleum Limited
Edrissa Mass Jobe - Director representing Gam Petroleum Limited
Manhal Oueidat - Director & representing Gam Petroleum Limited

Deloitte was purportedly re-appointed as auditors although there is no record that they had previously served as auditors. In fact, Gampetroleum had not submitted signed and audited financial statements prior to the purchase of shares by the PE's.[771]. The Quorum for meetings was fixed at 75% of the shares, voting was to be based on shareholding represented, and decisions were to be by a majority of votes i.e. 51%.

Directors of the PEs changed over time due to removals and replacements at the institutions concerned. It is not clear from records when Ms. Loubna Farage became Secretary of the Company but at the Board Meeting of 14th October 2009, she was listed as Company Secretary[772]. Before Ms. Farage, Mr. Manhal Oueidat was Company Secretary. .

Board meetings were infrequent[773]. Management letters, which accompanied the audited accounts, were also not routinely distributed to board members.

A Joint review was carried out by GPA, SSHFC and GNPC of Gampetroleum's financial statements for the years ended 31st March 2010, 2011 and 2012 respectively, and the following observations noted:

- the nomination of officers of the PEs to the facility,
- the share suspense account showed that their investments were not reflected as a percentage of the Euro 35 Million equity shareholding;
- none receipt of management letters
- pre - incorporation expenses as limited information was provided.

[771] The fact that a draft Statement of Affairs was prepared though unsigned by Deloitte is an indication that Deloitte had carried out work for Gam Petroleum before and that there was a relationship
[772] Exhibit MS137
[773] Exhibit MS224 - GNPC letter of complaint dated 10th September 2009

Memos[774] were sent to Gam Petroleum Storage Company seeking clarification on the issues raised.

Mr. Momodou Badgie testified that staff of PEs sent from their offices were not given the opportunity to work and had to return. Mr. Saihou Drammeh (Witness no. 204), current General Manager of Gampetroleum testified that it was not until 2015 when management changed that he was successfully seconded to Gampetroleum to under study the Operations Manager. It was also in 2015 that management of the accounting function of the Company was moved from EAGL to staff appointed by the new board. Mr. Saihou Drammeh testified that when he took over there was neither a finance manager nor an audit manager. The finances were handled by EAGL staff and were not handed over. It is only now during this Commission that EAGL submitted some of their Gampetroleum Accounts.

APPROPRIATION OF TOTAL INTERNATIONAL FUEL

On the 24th October 2014, a claim was made by Total Oil Trading SA (TOTSA), *(the Exclusive supplier of Petroleum products to EAGL and an international client of the storage facility)* to Gam Petroleum for the appropriation of its petroleum products by EAGL valued at USD24,188,951.05 plus interest. Under the signed 'Storage Agreement' entered into between TOTSA and GP dated 15th February 2012 (as amended), GP should not have released any of TOTSA's products from the storage facilities without authorization of TOTSA. As a result of the unauthorised release, GP was responsible for the losses and had to compensate TOTSA. Gampetroleum also failed to inform TOTSA at the time of the release which fact was communicated to Gampetroelum in a letter dated 27th November 2014 from TOTSA[775].

Based on a letter from TOTSA, it was the then Minister of Finance Mr. Kebba S. Touray that showed them a copy of a letter dated 11th September 2014 from Mr. Fadi Mazegi, a director of the Storage Facility *(TOTSA was not copied in the lette*r) which stated that heavy fuel oil owned by TOTSA and valued at USD24,750,000 had been released from the storage facilities to NAWEC due to a national emergency. Mr. Kebba S. Touray confirmed that NAWEC is a public institution and the Government undertook to pay TOTSA within 24 months.

The Storage facility also wrote to TOTSA on the 21st October 2014, that following its stock report of September 2014, instructions had been received

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[774] Exhibit SC112B - Memos dated 5th January 2011, 8th June 2011, 1st June 2013 and review minutes
[775] Exhibit MS229 – Storage Agreement between TOTSA and GP

from Government requiring it to release all TOTSA's product to NAWEC due to a national emergency and that they had been assured by the Ministry that arrangements were in place to pay the full amount of USD24,188,951.05.[776] This letter is contrary to the letter of 11th Sep. 2014 written to MOFEA as not just heavy fuel oil was released but other products also held at the Storage facility such as Jet A1, Gasoil, Gasoline and other products)

The Claim was subsequently negotiated by the Minister of MOFEA Mr. Kebba Touary, the Governor of the Central Bank of the Gambia Messrs. Amadou Colley and Edward Graham, Managing Director of SSHFC (the majority shareholder among the PEs) in Geneva Switzerland at a reduced price of USD18.6 million.[777]

Mr. Kebba S. Touray testified that Government was not aware of the appropriation of the fuel until after the fact. This is contrary to what Mr. Fadi Mazegi said in the letter that Government gave instructions for the fuel to be used[778]. CBG gave Government a loan, which was recorded in CBG's books in Dalsais. The negotiated and reduced compensation of USD18.6 million was added to NAWEC's debt with EAGL and currently forming part of the bond they are paying to Commercial Banks.

It is mentioned in the Board Minutes of 28th January 2015[779] that a Board Meeting was held by GP where the Governor of CBG and Minister of MOFEA attended in "the hope of resolving the TOTSA liabilities that were looming over the Company". The minutes of the said meeting were not provided to the Commission. Despite the gravity and seriousness of the act committed, there were no adverse consequences for EAGL, not even a vote of censure from the Gampetroleum Board.

The Minister of Finance & Economic Affairs Mr. Kebba S. Touray and the Minister of Energy, Dr. Edward Sanneh had on 8th December 2014 written a joint letter to the Office of the President[780] on 'Energy Sector Reform' setting out the NAWEC challenges (See Chapter 5) and a claim made by Total International against Gampetrleum for the conversion of fuel held in the storage depot. **"The management of Gampetroleum Storage Facility had supplied NAWEC out of stock owned by Total International without authority from Total International".** The stock was worth USD24,188,951.05 and the depot was used as collateral in the storage agreement between Gam petroleum and Total International. Total were

[776] Exhibit MS300A – TOTSA letter dated 24th December 2014 addressed to ex-President Jammeh and Mr. Balla Garba Jahumpa then Minister of Foreign Affairs
[777] Transcript of Amadou Colley dated 4th July 2018
[778] Transcript dated 4th July 2018
[779] Exhibit MS137 - Item 2 of Board Minutes
[780] Exhibit MS275A – Minute file PR/C/67/VOL.23

demanding full and immediate payment without which they would exercise their rights under the storage agreement that is: attaching and selling the depot resulting in loss of ownership by the shareholders.

The private sector shareholders who controlled the management of the facility indicated that the said stock was supplied to NAWEC and the amount forms part of the NAWEC USD64 Million debt purportedly owed to EAGL. The private shareholders thus expressed the wish to use their shares proceeds to settle the liability with Total. The PEs would buy the 52% shares of the private shareholders and pay the proceeds of the sale to Total.

These were the events that triggered the above directive for the private shareholders to be bought out and the proceeds used to settle debt.

Ex-President Jammeh also directed in minutes (49) of MS 275A that legal advice was needed to prosecute Mr. Mohamed Bazzi for causing the attachment of the depot without knowledge of other shareholders and for him to explain what he used the IDB facility for. Gampetroleum Board took no action against the private shareholders or EAGL as at March 2015, the PEs and Government controlled 58 % shares of Gampetroleum and for the first time asserted some control over the company.

PEs directed to purchase additional 10% Shares in the Private Enterprises

Mr. Amadou Samba (Witness no. 82) reached an agreement with the Minister of Finance & Economic Affairs for his 10% shares to be bought out to give the Government majority shares. He was bought out and the shares sold to and purchased by GPA (4%), GNPC (3%) and MOFEA (3%)[781].

By a letter ref. PR/C/674/VOL.23/ (53-IA) dated 29th December 2014, the Secretary General, conveyed directives that 10% of their shares belonging to Mr. Amadou Samba should be acquired by the Government of the Gambia. MOFEA was to acquire 3% of his shares, GNPC 3% and GPA 4% at Euros 1.4 Million.

A Share Sale Agreement[782] dated 11th February 2015 was prepared between Mr. Amadou Samba (the seller) and the purchasers. Clause 2 of this Agreement stated "**The Consideration for the sale of shares shall be 3,500,000 Euros equivalent to 10% of the company shares value as determined by DT Associates Valuation Report dated March 2013.**" The

[781] See transcript 4th July 2018 of Mr. Kebba S. Touray former Minister of MOFEA
[782] Exhibit MS118B – Share Sale Agreement between Amadou Samba and GOTG, GNPC and GPA

only DT Associates Valuation Report[783] tendered had valued the company at Euros 32.6 million. The Agreement was signed by Mr. Abdoulie Jallow for MOFEA, Mr. Lamin Sanyang, Managing Director GPA and Mr. Madun Sanyang, for Managing Director GNPC. The report was available, so it is not clear why the figure was misstated. On 11th February 2015 share transfers were finalized resulting in overall shares to GPA of 14% GNPC- 10% and MOFEA- 3%)[784] Mr. Amadou Samba testified that[785] the shares were sold at book value as a concession. However, from the PKF audited financial statements for the year ended 31st March 2015, total capital and reserves book value was actually D1,132,510,000 and total equity and liabilities D1,134,044,000 due to accumulated losses of D63,324,000. This made it even less than the value stated.

Walk about Board resolution dated 12th February 2015 was obtained by GPA. Payments were made in installments due to the liquidity position of GPA. A Memorandum of Understanding was signed on the 11th February 2015 between MOFEA and GPA as MOFEA prefinanced payment of the shares and GPA refunded at a later date.[786]

No.	Name of PE	% Shareholding	Euros €
1)	SSHFC	31%	10,850,000
2)	GPA	14%	4,900,000
3)	GNPC	10%	3,500,000
4	MOFEA	3%	1,050,000
	Total	**58%**	**20,300,000**

[783] Exhibits MS125E & MS223B
[784] Exhibit MS118C
[785] See transcript dated 30th November 2017
[786] Exhibit SC112B – MOU was signed by the PS MOFEA –Mr. Abdoulie Jallow and the MD GPA – Mr. Lamin L. Sanyang

IMPACT OF THE ACQUISITION ON PEs

It is clear from the records that the PEs were under pressure from Office of the President as indicated by Managing Directors of GNPC and SSHFC (testimonies 27th June 2018 and 5th July 2018 respectively.) GPA invested GMD224 Million when the net balance available to them was GMD150million. The concern of the board was also raised that this would put their investment on hold in particular their core business which was the ferry services.

GNPC in fact wrote to the Office of the President that it only had GMD174,130,407 on 25th June 2008[787] as its bank balances and if it were to purchase the 9% shareholding as directed by the ex-President it would have to pay GMD99,792,000.00 and the Company was planning to go downstream also with the cost of the Petroleum House. GNPC requested for percentage reduction and suggested for SSHFC to buy the 2% (with the option of repurchase) or for them to buy lesser percentage. The Ex-President however, through letter dated 21st July 2008 addressed to MOFEA (responding to a previous letter from the Ministry on the matter) insisted that that the Government's proposed shareholding of 49% could not be reduced as proposed by GNPC. This led to the Directive in July 2008 for SSHFC to buy the 2% shares. It is submitted therefore that GNPC and GPA were forced to invest in Gampetroleum without regard to their own investment plans.

POLICIES OF THE PEs ON INVESTMENT

The PEs powers of dealing with their property, business and funds are vested in the Board of Directors. Investments however must have the prior approval of the line ministry.

SSHFC

Section 38 of the SSHFC Act (Cap 52:01) states that: "The Corporation may invest from time to time with approval of the Minister in a company registered in the Gambia as the Board thinks fit".

SSHFC produced an investment policy which was in draft form[788]. However, it is mentioned in section 2.4.2 *'Objectives of the Investment Policy'* that investments should be made with a view to maximizing income by protecting and safeguarding and promoting the interest of the Corporation, by directing investments into safe, high yielding investments and to prevent/ minimise

[787] Exhibit MS224
[788] Exhibit SC125

loss. The Ministry of Finance & Economic Affairs (MOFEA) is the line Ministry of SSHFC. The initial directive for the PEs to invest in Gampetroleum was copied to MOFEA[789]. MOFEA thereafter summoned a meeting with the PEs and requested them to start the discussions with Gampetroleum.

It is worth mentioning that the directive for investment in Gampetroleum was accepted by the SSHFC Board as conveyed by letter dated 25th April 2008. The board raised concerns about lack of detailed information on the appraisal and financial projections of the Company, which management proposed to discuss with Gampetroleum. The Minister of MOFEA granted SSHFC approval on 10th June 2008[790] to make 40% down payment (GMD92 Million) and for the balance to be made when the company provided the required information.

The first payment toward the share purchase for the sum of D92milllion was made in June 2008 by the Managing Director, Mr. Tumbul Danso. There is no evidence that the payment was approved by the Board before it was made. It was only on 1st July 2008 that the Board was presented with financial projections and approved the investment[791].

Furthermore, it is noted that the resolutions of 1st July state that "The facility was built and pre-financed by the majority shareholder Euro African Group Limited (EAGL)". There is no indication that the Chairman of the then Board, Amadou Samba, who was a shareholder and Director in Gampetroleum and 45% shareholder of EAGL disclosed the nature of his interest in accordance with Section 10(7) of SSHFC Act.

GPA

Under section 20 of the Ports Act cap 68:01, it is the duty of the authority to conduct its affairs on sound commercial lines. The Act does not provide for investment and thus the provision of the Public Enterprises Act in relation to investment and general business principles would apply to any investment contemplated by it.

Following the meeting of the PEs on 9th April 2008 and letter dated 22nd April 2018[792] requesting PEs to start detailed discussion with Gampetroleum, the Director of Finance (Mr. Abdoulie Tambedou) by memo dated 28th April 2008 advised the Managing Director Mr. Muhammed Lamin Gibba that a chartered Accounting firm needed to be appointed to provide audited financial

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[789] Exhibit MS112B
[790] Exhibit MS227
[791] Exhibit SC47C – Walkabout board resolutions dated 1st July 2008, 4th August 2008, and 26th November 2008
[792] Exhibit SC112B

statements and valuation of the Company or a joint valuation exercise by the finance officers of the PEs conducted. There is no evidence that the Managing Director acted on this advice,

Management presented the project to the Board at an emergency meeting held on the 26th May 2008 following the 1st directive to purchase shares.[793]

The Board noted the following:

(1) The depreciation value was considered too short for such an investment
(2) Deloitte might be conflicted
(3) To provide technical details of tanks as some of the costing appeared to be questionable
(4) Dividend payment policy to be clarified
(5) Provision for corporate tax not made in the financial analysis submitted by Gampetroleum
(6) Expenses looked inflated
(7) The need to have a technical team that would come up with a detailed report highlighting all aspects of the venture and which would consist of civil engineers and accountants
(8) For DOSFEA to serve as referee in the interest of fair play and to seek Government's interest

The GPA board also mentioned that "**In view of the huge cost involved in this venture, the Board wondered over the implication of suspending all other projects relating to the Ferry Services and if so what the opportunity cost of doing so would be."** Despite these unresolved concerns, the Board resolved that:

(1) GPA to invest as directed
(2) To have an independent revaluation of the investment, including GPA, Trust Bank, SSHFC and GNPC
(3) DOSFEA to be actively involved in the whole process
(4) Dividend payment policy to be clearly spelt out
(5) Depreciation policy was too short for this type of investment
(6) To look into the revenue basis for the throughput fee of $25
(7) To convene meeting of shareholders to discuss above

The Gampetroleum shareholders' meeting of 19th June 2008 does not reflect that the GPA representative raised the above issues[794]. At the meeting of 6th August 2008, the Board was informed that payment of 30% towards the shares was made following Board approval by resolution dated 28th July 2008. The Board noted that the shareholding should be clarified and to

[793] Exhibit SC112C
[794] Exhibit MS137

reflect the 1% ownership of Mr. Amadou Samba. The Board resolved that the Incorporation documents of the Company be made available. There is nothing to show that the Board revisited the issues previously raised.

GNPC

At the time of the 1st Investment, GNPC was registered as a private company with Government holding 80% shares, NAWEC 10%, Gambia Telecommunications Company Limited (GAMTEL) - 4%, Gambia International Airlines (GIA) - 3% and GPA - 3%. The power to invest under the memorandum and articles of the incorporation of the Company[795] then rested on the Board of Director, the Public Enterprise Act, the Companies Act and generally accepted business principles.

Mr. Momodou Badjie during the 4th Board of Directors meeting on 26th September 2008, presented a Management report highlighting that GNPC approved purchase of 7% shares in the Storage Facility. Euros 1,470,000 had already been paid towards the share purchase leaving a balance of Euros 980,000.00[796]. The only comment from the Board on this was for GNPC to enquire whether other PEs met their obligations. There is no evidence that anything else regarding the purchase went to the Board.

A request was also made to Gampetroleum for audited accounts of the Company. Same was not provided. In fact, none existed.

Gambia Government

Following approval of the President of the buyout of the private shareholders i.e. 52% and the directive that an independent audit be carried out, matters progressed fairly quickly. DT Associates was engaged to carry out this audit, but this was treated as a separate activity from the proposed sale. The Accountant General was instructed to open a bank account at the CBG which was done - account no. 1101004634. The PEs were notified to make payments into the account via letter dated 20th January[797]. GNPC wrote to state that 22% (GMD442,750,000) was way above their means with cash balances of GMD75,260,466.90 and liabilities owed. As stated, SSHFC said they could not afford it either. GPA also wrote a letter dated 8th January regarding the Euros10.5 Million they were expected to pay for 30% of the shareholding. The response on 26th January 2015 was that: "The President of the Republic has given instructions for you to work out the payment plan/terms with MOFEA". GPA then submitted a plan for payment of Euros 7 Million over 35 months and the offsetting of loan repayments due to the MOFEA. After meetings convened by MOFEA, it was finally decided that

[795] Exhibit SC1

[796] Exhibit MS224A

[797] Exhibit MS300A

only 10% additional shares would be purchased. Mr. Amadou Samba one of the private investors was identified for buy out and his shares were subsequently purchased with Government buying 3%, GPA 4% and GNPC 2%. CBG pre-financed payment due to Mr. Amadou Samba based on the request of MOFEA as GNPC and Government did not have the funds to pay.[798] This statement was confirmed in MOFEA letter written to the Governor of CBG Mr. Amadou Colley to transfer Euros 3.5 Million (equivalent of GMD190,575,000 to Mr. Amadou Samba's account at GTB.[799]

MANAGEMENT OF THE COMPANY POST ACQUISITION OF SHARES

The Company was initially managed by EAGL, the storage facility's only local client. This was abnormal and gave rise to a serious conflict of interest. The significant findings were highlighted in the 2015 DT Associates report[800]. However, the findings were glossed over by the Board in its meeting of 28th January 2015[801] as deliberations seemed not to have focused on these matters:

1) The Company had no fixed assets register
2) No Bank Account operated by the Company during period of construction.
3) Majority expenses for constructions were carried out by EAGL others by GP company directors or employees before commencement
4) Loan documents for the project (financiers)were not provided i.e. Total International loan to EAGL, TBL, KBC Bank Belgium, Lebanese Canadian Bank SAL.
5) No accounting policies developed
6) Management fees to EAGL for 3 years totaling Euros360,000 not supported by documents and not verified
7) Huge payments were paid to expatriates and subcontractors[802]
8) Absence of approved budget deterred the Company on monitoring spending
9) No evidence of how through put calculated and losses accounted for during period of no agreement between EAGL and the Company.
10) The Throughput agreement with EAGL was signed on 26th March 2009. No evidence that charges were approved by the Board.
11) EAGL not paying correct exchange rates to the Company
12) No profits from 2013(time expected to make profits), and the company only started making profits in 2015.

[798] Exhibit MS301 - Witness Statement of Mr. Amadou Colley dated 19th September 2018
[799] Exhibit MS301 – MOFEA Letter ref. MF/C/108A (28) dated 12th February 2015 to CBG
[800] Exhibit MS223B – see pgs.11-14, 31-32
[801] Exhibit MS220B – Agenda item no.2
[802] Exhibit MS221 – Contract of Capital Gas

13) No evidence of payment of Corporate Tax after expiry of Special Investment Certificate (SIC)
14) GP was not in control of its payments and payments not supported
15) Employees of EAGL included in GP payroll and expenses of EAGL consumed a large portion of the total operating expenses of GP.
16) GPA fuel shipment records differed from GP's
17) Throughput agreements not renewed.
18) Throughput fees of USD800,000.00 was waived for EAGL in 2014 supposedly to ease NAWEC financial budget (on letter dated 18th May 2015 to OP from Board Chairman indicating this waiver)[803]
19) Payments to main subcontractor Capital Gas for contract services in some instances paid to individuals.
20) Board was informed Tug Boat was purchased but this purchase was not reflected in financial statements.

FINANCIAL HIGHLIGHTS

- Exchange Rate Reconciliation between EAGL and Gampetroleum - EAGL had exclusive rights to import petroleum products (i.e. Light Fuel - Petrol, Gas Oil, Jet fuel and Kerosene) for The Gambia. The date of commencement of this monopoly is not certain but probably dating back to early 2000[804]. Mr. Mohamed Bazzi said that [805] the monopoly started in or around 2002. As stated above, from the commencement of operations in 2009, EAGL was the main client of Gampetroleum accounting for 95% of its income although they could only use 25% of the capacity of the depot which impacted on the profitability of the company. This continued until June 2014 when the exclusivity was finally terminated by the ex-President. GNPC became a client in 2014 and by 2015 the market was entirely liberalized.

  The price structure for petroleum products was determined by the Ministry of Finance & Economic Affairs and the exchange rate stipulated. Based on the evidence of Mr. Saihou Drammeh, from 30th April 2015 to 28th February 2017, EAGL while managing the finances of Gampetroleum, applied a different exchange rate to that determined by MOFEA which resulted in Gampetrleum being under paid by D28,993,805.82 for the period. According to Mr. Drammeh, a demand was made for settlement of amount. The then finance director (Mr. Alhajie Jabang) thereafter met with Mr. Wael Saad the finance Manager at EAGL whereby a document dated 19th August 2017 was prepared and signed off purporting to be a reconciliation of exchange

[803] Exhibit MS112B
[804] Exhibit MS63
[805] Transcript dated 9th October 2018 – pg. 4

rate difference between the two companies resulting in a nil reconciled balance[806].

Based on the evidence of Mr. Alhagie Jabang (witness no. 223), former finance manager at Gampetroleum, he explained that the exchange rate difference had been brought to the attention of the Board numerous times and no action was taken. He further confirmed signing the document but his signing did not mean that he waived the amount.

- The audited FS prepared by PKF showed that significant amounts were spent on spare parts[807] . Spare parts expense classified under cost of sales in the financial statements increased from D12.779 Million in 2011 to D22.369 Million in 2012 and from D22.369 Million in 2012 decreased to D8.441 Million in 2013 considering that the storage facility was newly built and had only commenced operations on the 1st April 2009.

  Furthermore, Note 8 of the 2011 financial statement showed that an inventory of spare parts valued at D24.764 Million was maintained at year end. Again the rational for such is not known considering that the storage facility was newly built.

- Related Party transactions – although no dividends were paid out to shareholders, payments were made to companies owned by Shareholders for various services carried out.

  Based on the evidence of Mr. Amadou Samba (Witness no. 82)[808], he explained works were carried out by companies owned by Shareholders. GAMSEN Construction did extensive Civil works including bases for tanks, back filling as land was swampy and compacted the site and fencing. Mr. Daniels also explained whilst giving evidence that Mr. Samba supplied cement and provided a crane.

  Afric Star is a company owned by Mr. Tony Ghattas that carried out Civil Works at the storage facility.

  Capital Gas (Gambia) Limited[809] is a company incorporated and registered in Gambia on the 12th November 2007 that carries out business in Steel Structure, Pipe Line, Depot is owned by Mr. Antonio

806 Exhibit MS220C – Reconciliation between Gampetroleum and EAGL
807 Exhibit MS125D
808 Transcript dated 19th July 2018
809 Exhibit MS233B – Memorandum and Articles of Association

Pedro Daniels (60%) and his son – Mr. Fares Daniel (40%). Mr. Antonio Pedro Daniels (Witness 209)[810] said that he was approached by Messrs. Mohamed Bazzi, Fadi Mazegi and Tariq Musa in 2003, started work but there was no company set up. He further mentioned that he had a verbal agreement with Messrs. Mohammed Bazzi and Fadi Mazegi to carry out works on the depot at Mandinari. He was the head of team responsible as he provided the Engineering team is my team, the Supervision team.

Mr. Antonio Pedro Daniel (Witness 209) confirmed building the Depot, including the Pipeline and Mooring System. He further mentioned that he was given USD20, 000 for all the team every month. Witness further said that he was promised to be given shares when the Project finished.

However, on the audited financial statements[811] prepared and presented for the years ended 31st March 2010-2012, note 16 on related party transactions did not disclose anything. There was no note in the financial statements for the year 2010.

- Donations – Substantial unbudgeted donations also continued even after the takeover by new management as evidenced by payments of D3.7 Million made to Ex-President Jammeh's political party (APRC) in preparation for the December 2016 elections. Donations were also made to the former First Lady's foundation to the knowledge of the Board up to 2016. Mr. Yankuba Badjie the Director General of NIA (Witness no. 220) confirmed facilitating the meeting so that donation could be presented to Ex-President Jammeh. However, General. Sulayman Badjie received money on Ex-President Jammeh's behalf.[812]

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[810] Transcript dated 11th July 2018

[811] Exhibit MS125D

[812] Exhibit MS254 – Witness Statement of Mr. Yankuba Badjie

FINDINGS

(a) Decision to award contract to Gampetroleum was taken solely by Ex-President Jammeh. This decision was not taken to Cabinet.

The Mandinari land was allocated to a private company and the only compensation to the villagers was cash of GMD1 Million, which is grossly understated considering the strategic location and size of the land and that they lost their source of livelihood. The procedure for obtaining a lease of the land is set out in the State Lands Regulations. It has not been shown that the procedure was followed. The land could not have been compulsorily acquired from the village, because the project however strategic, remained a private investment.

Furthermore evidence that the annual audits to assess the impact of the facility on the environment was carried out could not be provided. Other recommendations of the company stated in the EIA report were not respected except the upgrading of the mosque. This is exploitative and regrettable.

The Mandinari land did not belong to the Government of the Gambia. Government by virtue of the State Lands Act holds the land in trust. The land was therefore irregularly acquired and the people of Mandinari are entitled to full compensation fairly assessed. The approval for the allocation of the lease was subject to the conditions of the EIA Report. There is no evidence that the villagers knew about the EIA report and their entitlements under the Report. They are entitled to compensation from Gampetroleum at the minimum amount of D6,889,630 recommended by the Report and the fulfillment of the terms of the allocation by the State as set out in the allocation letter of 7th December 2004. It was wrong of the Ministry not to have ensured that this was complied with. Mr. Amadou Samba should be liable for 30% of any compensation assessed to be paid to the villagers and the cost of fulfilling the terms of the EIA.

(b) Based on an internal assessment carried out by a Technical Consultant Dr. S. Cahill and opinion communicated to the Mrs. Fatou Jallow (Acting Director of Investment Promotion) on the 17th May 2005, it was resolved that Capital expenditure estimated at USD4 Million would be waived but not sales tax or corporate tax. The rational and overriding principle for this he explained is that GOTG via incentives approved by GIPFZA should aspire to gain in the form of taxes and value added at least the equivalent of what it is prepared to forego in the form of waivers and taxes. Therefore, to waive sales tax would disimprove the situation drastically and waiver of corporate tax would also have a negative effect.

(c) The PEs purchased shares in the Storage Company on the directives of the Ex-President - *dated 15th February 2008, 21st July 2008, 25th November 2008 and 29th December 2014*. It is therefore submitted that the Ex-President was involved in the application of funds amounting to Euros 20,300,000 in total for the acquisition by the PEs of 58% of Gampetroleum:

The Power of the President to direct PE Investment

By the Constitution the President's powers over public enterprises (Section 175) is limited to the appointment of the Board members in consultation with the Public Service Commission, and the appointment of the Chief Executive in consultation with the Board.

The President under section 7 of the Public Enterprise Act Cap 87:01 (enacted in 1990) had the general power to make regulations applicable to any PE in respect of staff appointments, reviews, transfers and promotions; capital investment appraisal; procurement; and disposal of assets. No such regulations have been issued. Any such regulations if made after the Constitution came into effect in 1997 would be subject to the power vested in boards of PS's to appoint all staff other than the CEO. By section 8 of the Act major investments cannot be made by a PE without prior consultation with their Line Ministries. The 1997 Constitution which supersedes the Act vests in the Board of Directors authority over capital investment appraisal, procurement and disposal or assets.

There is no provision in the Social Security and Housing Finance Corporation Act (Cap 52:01(the applicable Act at the time of the directive) or the Ports Act Cap 68:01 giving the President Powers to influence or direct the investments of PEs. GNPC at the time was a private company governed by the Companies Act and the Government had no power to interfere with its management except through the Board.

It is therefore absolutely clear that the President never had the powers to direct PEs to make any investment. If at the time of the investment he was also the Minister responsible for the administration of the sector then the law required consultation prior to the investment being made.

The Ex-President's continuous interference in matters relating to Gampetroleum placed the PE's under constant pressure and prevented them from acting in the best interest of their institutions and thus jeopardized their investments.

(d) The Price - GIEPA's file on GamPetroleum shows the project cost was estimated at USD20 Million based on which the SIC certificate issue. In 2007, GIEPA requested the Company to produce record of value of the Company after completion of the construction of the storage facility but same was not produced. A letter written by Minister of Finance dated 5th September 2006 showed that the expected cost of the Storage Company was USD18 Million[813]. There were no audited or even management accounts for the construction phase to support the Statement of Affairs of 31st May 2008 for the price of Euros 35,000,000.

The testimony of Mrs. Penda Sankareh of DT Associates has also cast doubts on the authenticity of the Statement of Affairs. She states that there was no record found showing that Deloitte had prepared the document. There is record that shows that in 2014 during the engagement of DT Associates to carry out the evaluation of the storage facility it disclosed that it had once prepared a statement of affairs for Gampetroelum[814]. There is no evidence that the statement of affairs presented by Gampetroleum is that prepared by Deloitte & Touche since same was not signed. It remained an informal document which ought not to have formed the basis of such a substantial transaction. Deloitte was not invited to the presentation of the Statement of Affairs by the Gampetroleum management as ought to have been expected by the PEs.

The Management letter from PKF[815] (Gampetroleum auditors) also indicates that, from inception, the Company did not keep an asset register for the years ended 31st March 2010 to 2011. However, an unqualified audit opinion was given on the financial statements for all the years concerned which again implies that this is flawed. This seriously put the accuracy of the Statement of Affairs dated 31st May 2008 into question. Furthermore, the management letters for the years 2012 to 2015 showed that Gampetroleum had an asset register in place only for this issue to be reported in the 2016 management letter.

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813 Exhibit MS63

814 Exhibit MS227A

815 Exhibit MS232C

Some of the assets listed in the Statement of affairs were also not physically available when the new management took over in 2015.

There is also no indication that the PEs verified the liabilities of the Company at purchase as stated. The Auditors were not provided with documents relating to the Liabilities.

The accuracy of the statement of affairs was therefore in issue.

(e) It was also in 2015 that management of the accounting function of the Company was moved from EAGL to staff appointed by the new board. Mr. Saihou Drammeh says when he took over there was not a finance or audit manager. The finances were handled by EAGL and were not handed over. There was no separation in powers or management between EAGL and GP.

It was discussed at the board meeting of 9th March 2015, that Mr. Fadi Mazegi being a shareholder, director and acting general manager of Gam Petroleum was not suited for transparency purposes. This is a clear conflict of interest. This resulted in a change being made ten years after operation commenced.

(f) None payment of Transaction Taxes -The DT Associate Report to the PE shareholders[816] indicates that according to the management of Gampetroleum, the shares were bought in the Offshore Company and the Offshore shareholding of 99% in the Storage Facility to avoid payment of Tax. A situation which is incomprehensible having regard to the fact that the Ministry of Finance was involved in the sale and these were public funds that were being spent and the private shareholders were liable to pay the taxes. The Board accepted the report as status of the Company but even then no comment was made on the blatant tax avoidance.

Note

The failure to pay Capital Gains Tax (CGT) on the share transaction was illegal and unjustified. This was the sale of a capital asset by a local company. The share transfers were taxable under the Income and Value Added Tax Act 2012 in force. The sale was not disclosed to the Commissioner General of Income Tax. The sellers remain liable to pay capital gains tax on the sale calculated at the minimum tax rate of 5% of the purchase price of Euros16.8 Million which amounted to Euros 840,000 plus interest and penalty.

[816] Exhibit MS223B

(g) The Exchange Rate Reconciliation - Management did not have the power or authority to waive moneys found to be due from a creditor to the company. The action of EAGL directors as managers of Gampetroleum was fraudulent and in beach of their fiduciary duty to the company. The sum of D28,993,805.82 therefore remains due from and owing by EAGL and is recoverable from the directors at the time - Mohamed Bazzi and Fadi Mazegi. EAGL appears to have stopped operating and is not known to hold any assets in The Gambia.

(h) The share price for the purchase of Mr. Amadou Samba's 10% should have been based on the DT Associates Valuation Report of March 2013 which valued shares for Euros 32.6 million and not Euros 35 million. Mr. Samba was overpaid Euros 240,000. We assume that this was a mutual mistake.

RECOMMENDATIONS

(a) Adequate compensation has to be given to the people of Mandinari for use of the land. The cost of the compensation should be borne jointly in equal shares by Messrs. Mohamed Bazzi and Amadou Samba. The minimum compensation to be paid is D6,889,630 which is the opportunity cost of not using the land by the villagers in particular for fishing and agriculture. It is recommended that the President should cause the Minister of Lands and Regional Affairs to refer the assessment of compensation to the Land Commission.

(b) The DT Associate Report indicates the shares were bought in the Offshore Company and the Offshore holding 99% in the Storage Facility to avoid payment of Tax. A situation which is incomprehensible having regard to the fact that the Ministry of Finance was involved in the sale and these were public funds that were being spent and the private shareholders were liable to pay the taxes.

Capital Gains Tax (CGT) on the share transaction should be determined by the Commissioner General of Gambia Revenue Authority and payment demanded from the parties concerned. This was the sale of a capital asset by a local company. The share transfers were taxable under the Income and Value Added Tax Act 2012 in force. The sellers remain liable to pay capital gains tax on the sale calculated at the minimum tax rate of 5% of the purchase price of Euros16.8 Million which amounted to Euros 840,000 plus interest and penalty. This sum shall be payable by the selling shareholders in the proportion in which they sold their shares to the PEs.

(c) The Exchange Rate difference of D28,993,805.82 highlighted in the reconciliation should be paid by EAGL and its directors Messrs. Mohamed Bazzi and Fadi Mazegi.

(d) Mr. Amadou Samba should refund the overpayment of the sum of Euros 240,000 less any tax paid on the overpayment.

(e) Another independent valuation of the company should be carried out by experts to determine if the initial cost of the investment communicated to the PEs of Euros 35 Million was not overstated by the initial investors Messrs. Mohamed Bazzi, Fadi Mazegi and Amadou Samba. The fact that the cost of the investment was changed several times from Euros 20Million to Euros 32Million and finally Euros 35 Million is a cause for concern. An authentic Statement of Affairs was also not provided. If the cost is determined to be overstated, the funds will have to be refunded by Messrs. Mohamed Bazzi, Fadi Mazegi and Amadou Samba.

(f) The shares owned by Messrs. Mohamed Bazzi and Fadi Mazegi as private investors should be attached.

CHAPTER 7 – GAMBIA FOOD & FEED INDUSTRIES (GFFI)

Overview

In 2010, GOTG entered into a joint venture with PEARL Investment Sal Offshore, which is registered in Lebanon Beirut, for the establishment of rice and animal feed mills in The Gambia. A shareholders' agreement was signed on the 29th July 2011. The agreement states that PEARL is a Lebanese Investment Company whose mission is to invest in industrial, commercial and agricultural projects outside Lebanon and to identify, build, own and manage agriculture related projects, including rice and animal feed processing plants.
Pursuant to the agreement, two companies were set up: (1) GFFI Feed Limited (for the animal feed plant), and (2) GFFI (for the rice mill).[817]

The rice and animal feed mill processing plants were located at Kamalo Mile 5, Banjul. The Department of Lands and Survey signed an undertaking that GFFI is allowed to use the land at Kamalo, Mile 5 for a period of 99 years. The total cost of the project was estimated at USD12,414,000, with USD10,164,000 and USD2,250,000 allocated for GFFI and GFFI Feed Limited, respectively.

As discussed more fully below, GFFI and GFFI Feed Limited were improperly established at the direction of Ex-President Jammeh.

The Parties

Conapro Dena BMS SAL is an offshore joint stock company incorporated under the laws of Lebanon registered in Beirut with registration number 1801192/2005.

Pearl Investment SAL Offshore is an offshore joint stock company incorporated under the laws of Lebanon and registered in Beirut with its registration number 1804312/2010

Based on the documents reviewed, it is clear that PEARL and Conapro Dena BMS SAL are sister companies (related entities) as Saoud Ghandour signed as representative for both companies on documents.

[817] Exhibit MS91B – Memorandum and Articles of Association dated 26th July 2010. Paragraph 3a of the said documents states the 'Objects' of the company that is to carry on the business of production of animal, poultry and aquatic feeds for the cattle, poultry and fish industry.

Euro African Group Limited (EAGL) signed an agreement with GOTG to exclusively supply fuel to The Gambia.

Negotiations that led to the Rice and Animal Feed Mills

Representatives of Conapro Dena BMD SAL, Messrs. Saoud Ghandour and Rosard Ghandour of Lebanese descent, were introduced to Ex-President Jammeh through Mr. Ansumana Jammeh, the Gambia's Ambassador to Qatar, during President Jammeh's visit to Doha in 2010.[818] During this visit, Conapro presented a proposal to sell GOTG a rice mill plant on a turnkey basis.[819] Under the proposed partnership with GOTG, Conapro would be given exclusive control to operate the rice mill plant.[820] Mr. Njogou L. Bah testified that ex-President Jammeh held a closed-door meeting in 2010 with the Conapro investors and Mr. Ansumana Jammeh at the State House in Banjul.[821] As a result of this meeting, the parties also agreed to establish an animal feed plant because the Ex-President countenanced the project.

Mr. Njogou L. Bah (Witness no. 20) further explained that the Conapro investors were mainly interested in supplying fuel to The Gambia and they were interested in other sectors such as mining and agriculture. After the meeting with ex-President Jammeh, Mr. Njogou L. Bah attended a meeting with other officials *from various ministries, including Finance, Foreign Affairs, Petroleum and Justice*, during which he was told to sign a contract with the Conapro investors that day. Mr. Njogou L. Bah also testified that this contract was to take effect after the expiry of the existing one with Euro African Group Limited (EAGL). Under the then-existing contract with EAGL that was signed dating from 2002, EAGL had the exclusive rights to supply the Gambia with all its petroleum products. Mr. Njogou L. Bah also testified that the Conapro investors were interested in other sectors, which led to the proposal of a joint venture partnership on the rice and feed mills project. The sales contract for the supply for fuel was signed by Dr. Njogou Bah on the 21st October 2010 between Conapro and GOTG but it was never executed as EAGL (the then supplier) was found to be cheaper and more flexible in the financing arrangements. Conapro was informed about the EAGL contract that would expire in a few months. CONAPRO were called for a second meeting where the Ex-President made it clear to them that they had a contract with Euro Africa Group (EAGL) for the exclusive importation and

[818] GOTG brought criminal charges against Mr. Ansumana Jammeh for his role in these contracts. A summary of these charges are provided below.

[819] Exhibit MS91 – Audit Report pgs. 11 & 12 'A Turnkey investment is where the Government was asked to only pay for its shares in the investment and the investors will do everything such as establishing the company, managing and hiring of staff'.

[820] Exhibit MS91B – NAO File no. HC127/316/05 – Letter dated 1st October 2013 sent to NAO signed by Saoud Ghandour CEO for PEARL Investment SAL

[821] Transcript dated 14th November 2017 – See pg. 1

supply of fuel in the country and would expire some months later. CONAPRO expressed their interest in staying in the Gambia until the expiration of the EAGL contract when their contract would be renegotiated. A food and feed mill joint venture with the Government was proposed, after the President had shared with them how expensive animal feed from Senegal was.

In a 20th May 2010 letter from Office of the President (OP) to GPA, GNPC and SSHFC, Mr. Ebrima Camara, directed those public entities (PEs) to take shares in a venture with a foreign company, i.e., those public entities should invest in a feed mill factory and rice processing plant.[822] Mr. Momodou O. S. Badgie,[823] then MD of GNPC, following receipt of letter notifying the PEs of the directive, attended a meeting at OP chaired by Mr. Njogou L. Bah, then SG. They were not previously consulted.

Contracts between GOTG and Conapro

As noted above, Conapro entered into two contracts dated 20th May 2010 with GFFI and GFFI Feed Limited to construct, respectively, a rice mill and an animal feed mill in the Gambia.

In addition to the rice and animal feed mill projects, Conapro entered into other contracts with GOTG regarding:

a) A mandate for a gold mining project, which was dated to August 2010,
b) Construction of a 20 MW power plant at Brikama, which was discussed around July 2011,
c) A proposal for the provision of heavy fuel oil to NAWEC and a power plant in Kotu Area, which discussed in August 2011, and
d) A proposal for the provision of operation and maintenance services to NAWEC, which was discussed around May 2012.

Shareholding Structure of GFFI and GFFI Feed Limited

For the GFFI FEED Limited, 80% and 20% of the outstanding shares were held by GOTG (represented by SSHFC, GNPC, and GPA) and PEARL, respectively.

For the GFFI Rice Mill, GOTG (represented by SSHFC, GNPC, and GPA) and PEARL each held 50% of the outstanding shares).

For the projects, SSHFC, GNPC, and GPA made equity contributions of USD 4,473,300, USD1,063,300, and USD1,376,400, respectively, for a total of

[822] Exhibit MS97 – OP letter dated 20th May 2010 ref. OP 217/45/01/TEMP:E/(20)
[823] Transcript dated 13th November 2017 – See pg. 11

USD6,913,000. Details of how the USD6,913,000 was spent was not provided by the investor.

The share capital of the company is D600,000 divided in 600,000 ordinary shares of D1 each.

Management

Based on the status report submitted by Mr. Mustapha B. Colley (Witness no. 143),[824] Chairman of GFFI's Board, PEARL Investment SAL entered into a turn-key type project agreement with CONAPRO DENA BMS SAL to execute the project as designed

In 2012, GOTG proceeded to elect 10 directors as follows:

Mustapha B. Colley	-	Board Chairman
Secretary General		
Edward Graham	-	Managing Director representing SSHFC
Abdoulie Cham	-	Director of Finance representing SSHFC
Momodou O.S. Badjie	-	Managing Director representing GNPC
Muhammed L. Gibba	-	Managing Director representing GPA
Modou Sarr	-	Member
Hassan Badjie	-	Member
Talal M. Agha	-	Member
Salah Al. Sankary	-	Member

Communication of Mr. Mustapha B. Colley's appointment as Board Chairman was sent via letter[825] dated 17th October 2012 on GPA letterhead signed by Mr. Muhammed L. Gibba. Attached to the letter was another letter REF. PR/C/513/TEMP:A/(4) dated 8th October 2012 emanating from OP to the MD of GPA of ex-President Jammeh's approval to proceed with establishing the Board and Management structures. In effect, the Board was set up in 2012, which is two years after operations commenced.

A memorandum was sent by Mr. Muhammed L. Gibba (then MD of GPA) to Inspector Jammeh, Sgt. Drammeh and team, Fraud squad and Police dept dated 8th January 2014 with the subject being 'Person information about/ on GFFI' where he highlighted writing a letter of recommendation to OP advising GOTG to set up a board to steer the affairs of the company.

[824] Exhibit MS91C
[825] Exhibit MS91C – Letter ref. GPA/CONF.321/Vol. 1/(37)

However, as per the signed shareholder agreement clause 4 page 7 of the said agreement, the board was to consist of 6 directors. PEARL Investment SAL shall appoint 2 directors, GOTG 3 Directors and 1 appointed by both parties. PEARL Investment SAL had the right to choose the Chairman. The Board is presumed to have been nonexistent as minutes of meetings were not submitted.

One concern regularly expressed by the PEs was lack of evidence of the contributions from PEARL Investment SAL. Despite numerous efforts made to obtain information, nothing was forth coming. Mr. Njogou L. Bah also confirmed that evidence of the investors injecting capital into the business was not provided. The so-called investors were reluctant to disclose any information to prove payment despite the efforts of Mr. Ansumana Jammeh. Due to these non-disclosures, ex-President Jammeh ordered that an audit be carried out on GFFI.[826] The continued reluctance to disclose this information resulted to Ex-President Jammeh ordering the arrest of officials of PEARL Investment working at the mill. The investors abandoned GFFI and fled the country.

Operations

The GFFI Feed Limited feed mill was completed and commissioned in 2012. Mr. Gibba, then MD of SSHFC,[827] testified that the Gambian shareholders were not informed. He noticed a great deal of activity arround the mill one and when he finally visited the mill he realised that production had begun in the feed mill but installation of the rice mill was not completed. Mr M.L. Dibba testified that the quality of the product was questionable and the 'investors were in complete control. It was after he raised these issues with the Ex-President that he directed that a board be set up chaired by Mustapha Colley..

GOTG through SSHFC contributed an additional USD500,000 on the 9th May 2011 from the Corporation's Provident Fund account[828] as working capital to cover purchase of raw materials, additives, pay salaries and running expenses. The funds were paid into a Trust Bank Limited USD bank account[829]. However, due to financial constraints resulting in non-settlement of invoice and loss of the biggest client, Kanilai Family Farms (KFF), operations stopped.

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[826] Transcript dated 14th November 2017 – See pg. 4 & 5
[827] Transcript dated 14th November 2017 – See pg. 12
[828] SSHFC letter to TBL ref. SSHFC/G/98A/VOL.3/(347) – Instruction to transfer USD500,000 from the Provident fund account no. 111-10765701
[829] Exhibit SC31 – OP letter dated 6th May 2011 and ref. PR/C/473/Vol I(1)

Regarding the rice mill, installation works were 90% complete.

PEARL Investors SAL was entrusted with employing of staff including experts from overseas. GOTG had no supervisory or regulatory oversight on the companies.

The status report prepared by the Board stated that the operating environment was not conducive in terms of hygiene for a feed and feed factory setup. Other key documents were not provided such as:

i) Project Appraisal document;
ii) Business Plan and
iii) Environment Impact Assessment were not provided.

Bank Accounts

A USD account (120-120-99101) in the name of GFFI was opened at Trust Bank Limited (TBL) by OP and the SG then signed on the 8th May 2011.

In a letter to TBL dated 6th October 2011 from OP, Mr. Ousman Jammeh, then Secretary General, identified the new signatories to the account:

- Mr. Saoud Ghandour
- Mr. Rachad Ghandour
- Mr. Alhagie O. Ceesay (Chief of Protocol at OP)

The three persons mentioned above replaced the initial signatories to the account by the name of Mr. Ebrima O. Camara (former SG) and Mr. Abdoulie T.B. Jarra (a former PS at OP).

A GMD account (110-120-99102) was also opened on the 19th March 2012 at TBL based on a request from OP. The signatories to the account are the same as mentioned above.

The signatory of Mr. Alhagie O. Ceesay on both the USD and GMD accounts was changed to Mr. Mustapha Colley (Chairman of the Board). Again, this was done by a letter dated 21st May 2013 and ref. OP 328/01 TEMP (191.15) from OP.

Transfer of funds to a foreign account

Monies were transferred from the bank accounts of the PEs to a foreign bank in the name of Conapro Dena B.M.A (Offshore) SAL.

While funds were transferred to Conapro, no due diligence was carried out by the GOTG shareholders prior to investments being made. As confirmed in the Management letter on the special audit carried out by National Audit Office (NAO),[830] there were no business plans or projections about the projects.

Arbitration

The 21st October 2010 Oil contract was for an initial period of 3 years, Conapro claimed that GOTG requested that the first shipment of product under the sales contract be delivered. GOTG breached its obligations under the Oil Contract by not notifying Conapro of the quantities to supply, procure issuance of a letter of credit, make proper arrangements with the operator at Mandinari Oil Terminal for Conapro's vessel to be able to berth.

The Oil contract was automatically renewed on the 22nd October 2013 as none of the parties expressed their intention six months prior to the expiry of the Oil contract. GOTG breached again its obligations.

On the 3rd April 2014, Conapro brought proceedings[831] before the English Commercial Court against GOTG's Ministry of Petroleum, alleging that GOTG had breached terms of the Oil contract.[832] Conapro sought compensatory damages for its loss of USD32,087,625 an a declaration to indemnify Conapro from any loss as a result of any claim or arising out of the Nimex contract caused by GOTG's breaches of the Sales contract plus interest.

GOTG filed a defense and counterclaim through by its English Solicitors Mayer Brown International LLP dated 4th January 2016. The defense argued that the Oil contract had been procured by bribery and that the contract amount should be returned to GOTG.

On the 5th May 2017, a settlement agreement[833] was signed between Conapro Dena-MS SAL and GOTG and PEARL Investment SAL, whereby GOTG was ordered to pay USD4,600,000 but in installments:

1) USD1,000,000 by 31st May 2017
2) USD1,000,000 by 30th November 2017
3) USD1,000,0000 by 31st May 2018

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[830] Exhibit MS91A – Management letter on Special Audit covered period 1st Jan.2011 to 31st December 2012 dated 7th November 2013
[831] Exhibit MS88 – Claim No. CL_2014-000127 – Page 2 of the Settlement Agreement
[832] Exhibit MS88 – Sale and Purchase of il contract signed on the 21st October 2010
[833] Exhibit MS88

4) USD1,000,000 by 30th November 2018
5) USD600,000 by 31st Mary 2019

With payment of the full settlement amount, the parties will release all claims against each other.

Mr. Cherno Marenah (Witness no. 23),[834] Solicitor General & Legal Secretary, testified that all installment payments were by MOFEA – Central Government. Mr. Marenah further testified that following the payment of the full settlement amount, the PEs will solely own the plants.

[834] Transcript of Cherno Marenah dated 8th November 2017 – pg. 5 & 7

Ansumana Jammeh[835]

On the 12th May 2016, GOTG filed criminal charges against Mr. Ansumana Jammeh, former Ambassador to Qatar, in case number HC/222/16/CR/075/AO. The criminal complaint alleged that Mr. Ansumana Jammeh engaged in a scheme to defraud GOTG—for example, if Mr. Ansumana Jammeh assisted Conapro to get the contract to supply fuel to Gambia, then "*he [Mr. Saoud Ghandour] will make him [Mr. Ansumana Jammeh] happy"*[836]. The criminal complaint further alleged that Mr. Ansumana Jammeh used his position within Government to obtain information to assist Conapro formulate a proposal for the Oil Supply contract, particularly in connection with "premium calculations". Payments totaling over USD1.5 million were paid from June 2010 to January 2011 to Mr. Ansumana Jammeh through one of his businesses, Maligam International Import and Export,[837] by Mr. Saoud Ghandour. Monies were subsequently withdrawn and spent on items including a Lexus RX3 vehicle for the benefit of Mr. Ansumana Jammeh. Mr. Ansumana Jammeh subsequently pleaded guilty to (1) abuse of office, (2) official corruption, (3) receiving property to show favor, and (4) conspiracy and economic crimes. A criminal fine of GMD24,647,028 was imposed, Mr. Ansumana Jammeh did not have to serve a custodial sentence. In addition, his properties located at Bijilo bearing Serial Registration no. K579/2009, and at old Yundum bearing Serial Registration no.K336/2010 and his vehicle worth D1, 00, 000 were forfeited to the State. However, according to the correspondence from the Sheriff Division of the High Court, there was no execution of this Judgment because no steps were taken by the state to execute the judgment.

Mr. Ansumana Jammeh claimed that he is a brother of ex-President Jammeh.[838] & [839]

Investments in the rice and animal feed plants were inconsistent with the PEs' mandates

It is clear from the records that the PEs were under pressure from Office of the President, as indicated by Mr. Momodou O. S. Badjie Managing Director

[835] Exhibit MS158B
[836] Exhibit MS158B – Under Summary of facts
[837] Exhibit BB112D – Deed of Partnership dated 26th June 2008
[838] Exhibit MS88 – Particulars of Claim
[839] Transcript of Mr. Ansumana Jammeh dated 23rd August 2017 – pg. 2

of GNPC.[840] Mr. Badjie further mentioned that GNPC was not financially strong to invest a lot and that as GNPC deals in petroleum products, the Institution was thinking of other areas rather than investing in a rice and feed mill.

Mr. Muhammeh L. Gibba (Witness no. 26) said when giving evidence that the PEs were under a lot of pressure and duress to comply with the directive.[841]

The PEs' powers of dealing with the property, business and funds of the corporation are vested in the Board of Directors. Investments however must have the prior approval of the line ministry.

SSHFC

Section 38 of the SSHFC Act (Cap 52:01) states that: "The Corporation may invest from time to time with approval of the Minister in a company registered in the Gambia as the
SSHFC produced an investment policy which was in draft form[842].
The Ministry of Finance & Economic Affairs (MOFEA) is the line Ministry of SSHFC.

GPA

Under section 20 of the Ports Act cap 68:01, it is the duty of the authority to conduct its affairs on sound commercial lines. While the Ports Act does not provide for investment, the Public Enterprises Act applies to any investment contemplated by GPA.

GNPC

At the time of the 1st Investment, GNPC was registered as a private company, with GOTG holding 80% of outstanding shares, NAWEC 10%, Gambia Telecommunications Company Limited (GAMTEL) 4%, Gambia International Airlines (GIA) 3%, and GPA 3%. The power to invest under the memorandum and article of the incorporation of the Company[843] then rested on the Board of Director, the Companies Act and generally accepted business principles.

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840 Transcript of Mr. Momodou O. S. Badgie dated 13th November 2017 – pg. 8
841 Transcript of Mr. Muhammed L. Gibba dated November 2017 – pg. 10
842 Exhibit SC125 –Draft SSHFC Investment Policy
843 Exhibit SC1

Due to the financial constraints of the PEs, additional funds were not injected into GFFI for operations to recommence on the feed mill.

Ex-President Jammeh improperly directed PE investments

By the Constitution, the President's powers over public enterprises (Section 175) is limited to the appointment of the Board members in consultation with the Public Service Commission, and the appointment of the Chief Executive in consultation with the Board.

The President under section 7 of the Public Enterprise Act Cap 87:01 (enacted in 1990) had the general power to make regulations applicable to any PE in respect of staff appointments, reviews, transfers and promotions; capital investment appraisal; procurement; and disposal of assets. No such regulations have been issued. Any such regulations if made after the Constitution came into effect in 1997 will be subject to the power vested in boards of PE's to appoint all staff other than the SOE. By section 8 of the Act major investments cannot be made by a PE without prior consultation with their Line Ministries. The 1997 Constitution which supersedes the Act vests in the Board of Directors authority over capital investment appraisal, procurement and disposal or assets.

There is no provision in the Social Security and Housing Finance Corporation Act (Cap 52:01(the applicable Act at the time of the directive) or the Ports Act Cap 68:01 giving the President powers to influence or direct the investments of PEs. GNPC at the time was a private company governed by the Companies Act and the Government had no power to interfere with its management except through the Board.

It is therefore clear that the President did, and does, not have the powers to direct PEs to make any investment. If at the time of the investment he was also the Minister responsible for the administration of the sector then the law requires consultation prior to the investment being made.

FINDINGS

(a) The decision to award contract to PEARL Investment SAL was taken solely by Ex-President Jammeh following closed door meetings at the State House with so called investor.

No due diligence was carried out on these investors nor was the viability of such a joint venture partnership analyzed and assessed.

An oil supply contract was signed between the two parties despite there being an existing contract with another supplier EAGL, which led to costs of USD4,600,000 being awarded to PEARL Investment SAL. Tax payers' funds were used to settle this liability, which could have been avoided if due process had been followed. The Commission finds it incomprehensible that the SG and the Ministries of Finance and Petroleum could have failed to first compare the price and terms offered by Conapro with the terms of the EAGL contract which was current before they signed it.

(b) The PEs purchased shares in GFFI on the directives of the ex-President Jammeh. The Commission concludes that the Ex-President was involved in the application of funds amounting to USD6,913,000 in total for the acquisition of shares in GFFI.

The Gambia Investment & Export Promotion Agency (GIEPA) is the national agency responsible for the promotion and facilitation of private sector investments into The Gambia. In offering investor–facilitation services, the Agency acts as investors' first point of contact provides information on relevant procedures for setting up a business and helps form the necessary network of contacts in The Gambia for successful business operations.

There is no evidence that GIEPA were involved in the investment.

(c) There is no evidence that the PEs consulted within their various boards in connection with any of the investments. The interests of the Gambian shareholders were not protected as management of the mills were totally left in the hands of the so called investor.

(d) Even though the project cost was estimated at USD12,414,000, there was no record of actual incurred expenditures.

(e) GFFI is set up as a private owned company and why directions were being given by OP is a cause for concern. OP instructed TBL to open bank accounts for the company in 2011 and 2012. The Board should have been responsible for setting the direction of the company and management carrying them out in this case.

RECOMMENDATIONS

(a) Due to the time lapse involved since the feed mill plants became nonoperational; it is recommended that Government takes immediate steps to sell the Plant i.e. to private investors. The investors will be able to get the plant operational

(b) In order to facilitate the sale, the following steps are suggested to quicken the pace and avoid further deterioration of the assets. Substantial amounts of money have been invested so far and should not be allowed to go to waste.

- Appoint a liquidator
- Valuation of the assets by a professional valuer
- Conduct sale in a transparent manner.

(c) The proceeds realized from the sale should be apportioned to the three PEs that contributed towards the capital of GFFI.

(d) The settlement fee of USD4,600,000 paid by the Gambia Government using tax payers funds should be recovered from Ex-President Jammeh. The reason being that he gave the directive for PEs to invest in the company without following the proper process for investment opportunities in the Gambia. Some of the PEs concerned did not have the finances to make such an investment and had to divert funds that should have been used on their core operations.

(e) Immediate steps should be taken by the Attorney General to execute the criminal judgment against Ansumana Jammeh.

CHAPTER 8 - THE GALLIA FERRIES

1. INTRODUCTION

Gambia Ferry Services Company (GFSC) is a subsidiary of the Gambia Ports Authority. The ferry services have always operated under pressure due to limited capacity. By 2010, they were facing a great deal of challenge in terms of transporting people and goods within the Gambia.[844] There were long queues waiting to embark and cross the river at different crossings points by any means. Safety was a key issue. Travellers from Senegal trying to cross the country were particularly affected.[845] GPA was under pressure to commission more ferries. GPA launched an international tender process in 2010, under Gambia Public Procurement Authority (GPPA) procurement process, to identify and buy 4 new ferries. On the 7th October, 2010, a letter was sent to GPPA for the approval of tender documents for the selection of consultants for the purchase of 4 new double ended ferries, which was approved.[846] The invitation to tender with complete bidding documents were then sent to five overseas consultancy firms namely, Osk Shiptech A/S, Navigator Projects, Scheepbouw Noord Nederland, Freek Mthorst and Worldonline. Osk Shiptech A/S of Denmark's bid was selected because it was more responsive to GPA's needs. GPPA approved the award of the Consultancy.[847] On the 9th February 2011, a letter of award was issued to Osk Shiptech A/S of Denmark with an enclosed draft contract for signature.[848] The project was derailed by the Gallia Holdings Limited and Gambia Government proposed Joint venture. The Joint Venture was centered on two second hand ferries from Greece but was to encompass the entire GPA ferry fleet.

The Commission was told, after an expenditure of over EUR11 million, that the ferries could not be used. They were abandoned. The Joint Venture resulted in arbitration which was settled by the payment of USD4 million in favour of the Greek partners.

[844] Transcript of Mr. Njogou Bah dated 14th November, 2017
[845] Exhibit SC35 submission claims filed on behalf of the Gambia.
[846] Exhibit SC44
[847] See Approval letter- ref. GPPA/GPA TR6/10 addressed to MD of GPA Exhibit SC44
[848] Exhibit SC44

2. OVERVIEW

A. GALLIA HOLDINGS

Mr. Mustapha Bojang, the Gambian Consul in Jeddah, introduced Gallia Holding Ltd, a company incorporated in the Marshall Islands[849], represented by Greek investors; Mr. Kriyakos Kyvelos, Athanasios Liagkos and Stavros Galanask, to the Ex- President in June 2010[850]. The Honorary Consul of The Gambia in Greece accompanied them to the meeting with the Ex-President. Present at the meeting were Minister of Foreign Affairs Mr. Momodou Tangara (with whom they had first sought audience), Secretary General Njogou Bah and other ministers. They explained that they had vast experience in Ferrying and wanted to invest in the ferry services in partnership with the Government both at the management and operation levels to make it profitable and efficient. Mr. Njogou Bah (Witness no. 20) said the President was attracted because he believed it was his “duty to ensure better services were provided and thought this would bring that solution”. He directed them to go to GPA immediately after the meeting. [851]

B. PRESENTATION AT GPA

Mr. Momodou Lamin Gibba (Witness no. 26) said he received a call from the Permanent Secretary Office of the President informing him that Greek investors who turned out to be Gallia Holdings Ltd were at the Office of the President. They intended to sell Ferries to the Government in order to solve the Banjul - Barra crossing problem. A meeting was called with all the Directors from GPA and the Greek Investors. They made a presentation and circulated photos of the proposed Ferries PAPAGEORGIOU IV and SOPHIA P.

Mr. Gibba told the Commission that he noted at that meeting that the Draughts of the Ferries were more than 3.5 meters while the ferries in the Gambia were 1.7meters and explained to the Greeks investors that the Ferries would not work in the Gambia. Hali Abdoulie Gai, Deputy Managing Director of Gambia Ferry Services, was also at the meeting. He said they had told the Greek investors that a due diligence exercise needed to be carried out and believed the Greeks were not happy with their reception at GPA.[852]

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[849] Exhibit SC 42 Incorporation certificate of Gallia Holding ltd
[850] Exhibit SC35 Government’s Claim Submission
[851] Testimony of Njogou Bah and Momodou L. Gibba
[852] Transcript of Mr. Hali Gai dated 19th October 2017 at page 4 lines 66- 67

It should be noted that M.L. Gibba's concern about the draught of the Ferries he had raised with the Greek investors was not documented; nor were minutes of the meeting recorded.

After their presentation at GPA, the Greek investors returned to the State House. Later that day, the Ex-President called Mr. M. L. Gibba expressing his disappointment about the meeting with the Greek investors. He said he tried to convince the Ex -President that, technically, the ferries were not suitable; but the President became angry at him saying that Mr. M. L. Gibba was opposing his ideas. A day after the meeting, the Ex-President summoned all GPA management to State House. Present at the meeting were the Ex -President, GPA Management and Heads of Army and Police. The Ex-President was angry, publicly 'lambasted' them and ordered them to be cooperative with the Greek Investors. He did not invite any opinion on the matter from the GPA Management.

M. L. Gibba also told the Commission that he objected to the ferries because the designs of the ferries were unsuitable for the Gambia and the Greek investors did not take time to research what exactly was needed in the Gambia; but the Ex -President did not always listen to advice. It seemed as if it were a done deal as far as the President was concerned.

C. A FIRST TRIP TO GREECE

The Greek Investors issued an invitation to Government Officials to visit them in Greece and see the type of ferries in question and to discuss the proposal for a partnership further. The offer was accepted. A delegation was formed to travel to Greece to be headed by the Secretary General Njogou Bah. The funding of the Greece Trip was by the Office of the President. The composition was determined by the Office of the President.[853]

According to Mr. Gibba, GPA was not officially informed about the Greece Trip. He received a call from the Office of the President informing him of the arrangements for the trip and the composition of the delegation. He objected to sending Mr. Hali Gai, the officer in charge of ferries and Mr. Kebba Manneh, the Technical Manager, because he was of the view that they came from a different background and might not be able to pass good professional judgment in relation to the project. He said he suggested Mr. Halifa Bah, Director of Ferries and Mr. Abdoulie Camara, Director of Marine Engineering because they would be able to assess the ferries and give a good report. The Ex-President did not accept his suggestion. [854]

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[853] Transcript of Mr. Njogou Bah dated 14th November 2017.
[854] See Testimony of M.L. Gibba

According to Mr. Kebba Manneh (Witness no. 81), the former Manager Technical Services at GFS, he received a call from the Office of the President requesting for a copy of his passport. He then called M. L. Gibba to inform him and M. L. Gibba told him to comply because it was an executive order. He took his passport to the Ministry of Foreign Affairs where he was informed that he was to travel to Greece. [855] Mr. Njogou Bah believes it was Mr. Hali Gai who identified Mr. Kebba Manneh. Mr. Kebba Manneh testified that it was while on the way to Greece that he asked and was told that they were to inspect ferries Gambia Government was interested in and that were identified by the people from the Office of the President.

The first delegation that went to Greece comprised Mr. Njogou Bah, Secretary General; Mr. Kebba Touray, Ambassador to Spain accredited to Greece; Mr. Mustapha Bojang, Gambian Consul General in Jeddah; Mr. Mustapha Yarbo, Permanent Secretary II Office of the President; Mr. Hali Abdoulie Gai, Director General Gambia Ferry Services; and Mr. Kebba Manneh, Manager Technical Services. The focal person for the project was Mr. Mustapha Yarbo.

The delegation arrived in Greece on the 2nd February, 2011 and went with their Greek partners to Rio where the vessels were located. Mr. George Karakasis, a Greek National and Naval Architect/Marine Engineer, joined the Gambian Delegation at the Inspection.

The inspection of both vessels was facilitated by the owners. The vessels were landing crafts because they only had front landing systems unlike the roll in and roll out ferries[856]. They had a one-ended entrance but, according Njogou Bah, it was agreed that a platform would be built for that. At the time of the inspection, one ferry was in the water and the other was dry docked. The issue of dredging (to make the landing sites deeper for the vessels) was raised and GPA concluded that dredging was to be done as has been done before.

Exhibit MS95B, a report tendered by Mr. Njogou Bah, gives highlights of the trip. According to the report, the visit was meant to ascertain the condition of the vessel and their suitability for The Gambia. The engines were started and tested on the spot and data relating to the life of the vessel provided. The delegation noted the vessels capacity and the facilities available and observed that if deployed could immediately address the existing demands. They discussed the sustainable operation of the ferries on two dimensions. These were the availability of spare parts for the engines and availability of facilities (shipyard) for regular maintenance. The Greek partners assured the

[855] Transcript of Mr. Kebba Manneh dated 24th October 2017
[856] Transcript of Mr. Hali Gai dated 19th October 2017

delegation that the investment plan had created enough spare parts for five years and also informed them that the manufacturers of the ferry engines were still in business. The state of the ferries was also discussed and it was agreed that all the ferries needed further cleaning up and refurbishment to make them more presentable. The ferries were to be subjected to further survey and testing (ultra sound for the thickness of the steel and sea testing) to make sure they were in the right state especially for the SOPHIA P ferry.

As for the long-term sustenance and growth of the shipping sector in the Gambia, the need to establish a training center to train the seamen was discussed. They agreed on having a shipyard for yearly dry docking and regular maintenance. [857]

Financing arrangements were also discussed. It was agreed that all prices would be maintained in euros because of currency fluctuations. An initial sales arrangement was referred to which required a deposit of 20% upon signing of the provisional agreement and 80% on departure of the vessels. It was agreed that a trustee account would be opened into which the funds would be lodged for payment to the vessel owners. As regards ownership, the Greek investors insisted on a controlling share of 55% and 45% for Government, and contributions were to be based on this ratio. Each ferry would finance its own cost and contribute 25% of profit to the management company and any shortfall would be apportioned among the ferries.

It was agreed that following the practice in the shipping industry (explained by the Greek investors), each vessel would be incorporated into its own joint venture company. A third company would own the 3 existing ferries of Gambia Ferry Services and a fourth management company would be responsible for the operations of all 15 companies, i.e., the 2 joint venture companies and the 13 GFS owned companies. It was agreed that the core management team for the management company would be Greek, comprising a managing director assisted by a technical, operations, finance and admin directors as a 'temporary' arrangement designed to 'transfer expertise and eventually responsibility to Gambians'. Each of these expert positions was to have a Gambian deputy director.

The Report also shows that on the 4th February 2011 the delegation had discussions with lawyers on matters relevant to the kind of project and partnership envisaged. They agreed on the following:

- the joint venture companies would be incorporated under the laws of the Gambia.
- in the event of a dispute, settlement procedures will be governed by English common law

[857] Exhibit MS95B

- the two vessels fly the Gambian flag during operations. With regards to sailing to the Gambia, the Greek partners would review the cost of the option of flying under the Gambia flag compared to other flags and choose the least cost option.
- a memorandum of agreement for the purchase of vessels would be drafted and agreed upon by the Gambian partners.

To facilitate the drafting of the agreement, there was the need for the following information:

- the name of the vessels, the joint venture as well as the management companies.
- the name of the members of the Board of Directors.
- the authorized name for the trust account
- tax (corporation tax and expatriate tax) exemption status of the companies.

It was established that the Government of the Gambia would be the other Partner.[858]

According to Mr. Kebba Manneh[859], the whole team went on board to do the inspection. After the inspection, he requested for the vessels to be taken out of the water for dry docking so that the 'water integrity' of the vessels could be ascertained, but this was not done. They also requested for the Log Books of the Engineers, it was given but was written in Greek. Gallia promised to translate the Log Books and send to the Gambia but it was never done. Manneh said he did tell the team that the ferries were not suitable because the landing facilities were not available. He said he also pointed out that the main engine of the Aljamdu was Lister Blackstone which is out of production but Mr. Kyriako's gave assurances about spares. He added that of the two ferries inspected on the first trip, only one was eventually available. He was invited on the second trip for a second ferry to be inspected. Mr. Manneh said he was an electronic and electrical engineer and admitted that that was not the competent qualification for the acquisition of ferries. He also confirmed that his managing director M.L Gibba had told him that if he had a choice in the matter he, Manneh, would not have gone. He said he was not asked about his competence. It was the Office of the President that decided he should go on the trip.

It is to be noted that Mr. Manneh never submitted a report. He told the Commission that he said everything he had to say during mission meetings.

Mr. Njogou Bah told the Commission that it could be detected through GPA's actions that they were not keen on the ferries. GPA wanted to deal with

[858] Exhibit MS95B
[859] Transcript of Mr. Kebba Manneh dated 24th October 2017

Damen Shipyard because of the ramps available at GPA[860]. They went along with the Gallia project because it was a directive from the Office of the President, so they had no choice.

When they returned, Njogou Bah reported to the Ex-President and was ordered to form a task force committee for the investment. It was after this first trip that the Ex-President apparently approved the joint venture.

On the 17th February 2011, Secretary General Njogou Bah wrote to GPA conveying an executive directive for restructuring of the Gambia Ferry Services. It stated:

> "This is to inform you that Executive approval has been given for the restructuring of the Gambia Ferry Services as an autonomous institution to accommodate new partnership arrangements with a Greek Company aimed at improving service delivery through investment, capacity building and expansion.

The restructuring process begins now with the constitution of a task force under the Office of the President charged with the mandate to work out separation of ferries from the GPA and the incorporation of the new company.

The directive further requires the task force to complete this process by 1st May 2011 and the GPA is required to continue to provide the necessary logistics, financial and operational support to the ferries during the transition period."

A task force was constituted on the instructions of the Ex-President. It comprised Mr. Njogou Bah as Chairman, Mr. Mustapha Yarbo, Mr. Mod Secka Permanent Secretary Ministry of Finance and Economic Affairs, Mr. Momodou Lamin Gibba, Mr. Hali Abdoulie Gai, Mrs. Fatou Jallow Chief Executive Officer GIEPA, Pa Harry Jammeh Solicitor General and Mr. Kebba Touray the Ambassador of The Gambia to Greece. Its terms of reference were to determine the Statement of Assets and Liabilities of the Ferries, review partnership between the Government and Gallia, the incorporation of the Companies, determine the working capital requirement of the new companies and the management structure of the new ferries.[861]

[860] Transcript of Mr. Njogou Bah dated 14th November 2017

[861] See testimonies of Hali Abdoulie Gai, Momodou Lamin Gibba, Njogou Bah and Exhibit SC42 (1)

C. THE SECOND TRIP TO GREECE

The second Delegation for the Inspection of the Ferries arrived in Athens on the 3rd March 2011. They were Mr. Kebba Touray, Ambassador to Greece; Mustapha Yarbo, Permanent Secretary Office of the President; Pa Harry Jammeh, Solicitor General; Hali Gai, In charge of Ferries; Mr. Kebba Manneh, Director Ferry Technical Services; and Mr. Momodou Sabally, Director of Budget Ministry of Finance.

A report, dated 7th March 2011, issued by Mr. Hali Gai and addressed to the Secretary General Njogou Bah, indicates that 3 vessels were inspected — PAPAGEORGIOU, KANPHE, and SOPHIA. The first was found to be designed with a bias towards passengers (2000 maximum) as opposed to vehicles (60 at most) and was recommended for Banjul-Barra. The price was EUR1,750,000. The two other ferries were designed with a bias towards vehicles. KANPHE was preferred because it was in a better state of Hull and Machinery. The report stated **that the Ferries must be subjected to dry docking for the rehabilitation and refurbishment by the technical team prior to the Sea Trials.** [862] That was to see whether the ferries were seaworthy.[863]

Item 4 on the report – Very Urgent Recommendations - had 6 items:

- Payment of 20% deposit to procure the first Ferry
- Incorporation of the companies
- Formation of different Board of directors for the three companies
- Appointment of the Deputy Managing Director as head of the Gambian team and Director of operation by the Government of The Gambia.
- The ferry to be deployed at Trans-Gambia shall be named "Aljamdu while the ferry to be destined for Banjul/Barra shall be named Kansala"[864]
- Construction of slipways at both Barra and Banjul

Mr. Hali Gai (Witness no. 74) said his Managing Director, Mr. M. L. Gibba, was aware of the report.[865] However, Mr. M. L. Gibba said none of his staff reported their Greece Trip to him.[866] Mr. **Njogou Bah also said Hali Gai reported to Office of the President because the reporting line was changed from GPA to OP.[867]** Hali Gai said the last recommendation was not carried out because all the arrangements and orders came from the

[862] Exhibit SC39 at page 2 Paragraph 4.
[863] Transcript of Mr. Hali Abdoulie Gai dated 19th October 2017 at page 7 lines 137- 139
[864] This was intended to be Aljamdu- clarified in the Testimony of Hali Gai.
[865] Transcript of Hali Gai 19th October 2017 at page 9 lines 194 -195
[866] See Testimony of M. L. Gibba
[867] See Testimony of Njogou Bah

Office of the President. The Office of the President managed the whole project and there was no technical team to do the technical verification of the bottom of the ferries and other things that were supposed to be done.

Mr. Hali Gai said the report also indicated that bank accounts were opened during the trip, and a memorandum of agreement as well as a joint venture agreement signed.

A Power of Attorney referenced OP 283/376/01/PART XYI (34-MSY) dated 3rd March 2011 from the Office of the President authorized Mr. Momodou Sabally as Director of Budget Ministry of Finance and Kebba S. Touray as Ambassador to Greece on Gambia's side, and Stravros Galanakis on Gallia's side to open Gallia Holding Ltd and Sabally Momodou and Kebba S. Touray (joint account) Account at PRONANK SA PASALIMANI BRANCH (077) 120 GRIGORIOU LAMBRAKI AVE, 158 32 PIRAEUS, HELLAS GREECE. The account was to be managed under the instruction of the Ex-President. Clearance had to come from the Office of the President whenever payments were made in to the Account.[868]

E. THE JOINT VENTURE AGREEMENT

Pa Harry Jammeh said he was Solicitor General at the time. He left for Greece without any prior knowledge of the agreements in the expectation that he was going to negotiate the purchase of ferries and expected to engage in negotiations. He first saw the Joint Venture Agreement when Hali Gai gave them to him in the plane[869]. However, Mr. Hali Gai said he gave him the JVA in his hotel room. A day after their arrival, Pa Harry Jammeh met the Greek Investors' lawyers, they discussed the Agreement and made changes to the clauses but he could not remember what changes were made. He told the Commission that "the trip was a camouflage of the reality. The trip was designed to give it some semblance of legitimacy but it was a done deal". The parties were already in agreement. No radical changes could be made because the agreement was already negotiated, probably with the Ex-President. He said they were also told that a directive had been received that they should sign before they returned home. He did not visit the ferries. He was taken straight to the lawyers. He signed as a witness, but some members of the team were not happy about the manner they were instructed to sign because they expected a negotiation process, and then come back write a report, etc.[870] He denied that he gave away his integrity as a lawyer. He agreed the directive was not proper. He said they dared not

[868] See Testimony of Momodou Sabally
[869] Transcript of Pa Harry Jammeh dated 13th November 2017
[870] Transcript of Pa Harry Jammeh dated 13th November 2017

disobey a directive. The choice was not to return to The Gambia. His life might have been at stake even as SG.[871]

According to Mr. Hali Gai, he was not told he was to sign a contract in Greece[872] until they received a directive from the office of the President that they should sign the agreement before returning to the Gambia. Based on the Power of Attorney given by the Office of the President, Hali Abdoulie Gai, as Deputy Managing Director, signed the Joint Venture Agreement and the Memorandum of Agreement between the Republic of the Gambia and Gallia Holding Limited in Greece on the 5th March 2011 in the presence of Pa Harry Jammeh who witnessed the JVA.[873]

The Joint Venture Agreement was a Public Private Partnership to buy two ferries Kansala and Aljamdu previously called PAPAGEORGIOU IV and SOPHIA P. The Gambia Government held 45% shares and Gallia held 55% shares. [874] The Government's 45% was shared among SSHFC 45%, GPA 45% and the Ministry of Finance 10%.[875] The Memorandum of Agreement was about the sale of PAPAGEORGIOU IV Vessel[876] to Gallia Holdings and Gambia Government by the owners.

F. INCORPORATION OF THE JOINT VENTURE COMPANIES

There was no initial start-up capital to determine the level of investment that was going to be committed for the ferry project. The Joint Venture Agreement required that there exists:

- a Ferry Service Management Company Limited to be responsible for all 15 ferries in the Gambia including Kansala and Aljamdu;[877]
- the Kansala Ferry Company Limited which Gallia had 55% and SSHFC had 45% and a share capital of D1,000,000 divided into 10, 000 ordinary shares of D100.00 each[878];
- the Aljamdu Ferry Company Limited in which Gallia had 55% and GPA had 45% - Share capital of D1, 000, 000 divided into 10, 000 ordinary shares of D100 each; and
- the Gambia Ferry Service Company where GPA had 80% and the Government had 20% which was to own the 13 already existing ferries in the Gambia.

[871] See testimony pages 13-14.
[872] See testimony of Hali Gai
[873] Exhibit SC37A and SC35(1)
[874] Exhibit SC35(1)
[875] see testimony of Ousman Jobarteh & situational report
[876] Exhibit SC37A
[877] See testimony of Abdoulie Tambedou, Exhibit MS95B and Exhibit SC35(1)
[878] Exhibit SC42 Articles of Association Kansala Ferry Company ltd

The companies were incorporated in Gambia on the 27th April, 2011 under the 1955 Companies Act.[879] The Management Company had 5 Directors. The Managing Director, Director of Technical Service and Director of Finance and Admin were Greek. Mr. Hali Gai as Deputy Director and the Director of Operations were Gambians. Mr. Kyriaskos was the Managing Director of the Gambia Ferry Service Company and was paid EUR6000 every month.[880] The Management Company was to oversee all the 4 companies formed by the Joint Venture Agreement.

G. CONTRIBUTIONS TO THE JOINT VENTURE BY GPA AND SSHFC

On the 8th March, 2011 the Office of the President wrote to the Ministry of Finance and informed it of the joint venture in which government had a shareholding of 45% and that a directive had been issued for SSHFC to participate in the venture by making the initial deposit of 20% towards the purchase of the ferry PAPAGEORGIOU IV. The cost was EUR1,750,000 and 20% amounting to EUR350,000 the shareholding would be agreed subsequently. Ministry of Finance wrote to SSHFC the same day conveying the directive. SSHFC Board approved by a Walk-about resolution the same date. SSHFC paid the sum into the Greece account.[881] SSHFC also made initial payment of EUR88,781 for Ferry Kansala Company Ltd.[882]

SSHFC received another letter dated 30th March 2011 conveying a directive from the Office of the President that an amount of EUR979,375.00 should be paid into the Euro Account of Gallia Holding (i.e. GR 080540077700003 460 250 12O14). The Board approved the payment and Trust Bank Ltd paid the amount to the Account in Greece. [883]

Hali Abdoulie Gai said that as Officer in Charge of Ferries he received a letter ref OP 268/376/01/PART XVI (41)-MYS dated 11th April 2011 from the Office of the President asking GPA and SSHFC to pay 45% into the Joint Investment Agreement for the purchase of Kansala and Aljamdu ferries.[884] The letter stated:

"……The structure of the Joint Venture is such that there will be two (2) companies each owning a ferry and a management company, the owning companies are named as follows: **Ferry Aljamdu Company Limited**, **Ferry Kansala Company Limited** given the strategic importance of this venture to

[879] Exhibit SC44 and SC35 (1)
[880] See Testimony of Hali Gai
[881] See exhibit SC 35 (2) & SC50
[882] See Exhibit SC42 (23)
[883] See Exhibit SC35 (3) and SC 44 letter from SSHFC to Managing Director Trust Bank
[884] See testimony of Hali Abdoulie Gai

the economic and social wellbeing of our people. An executive directive has been issued for **GPA** to take up Government's stake in this Joint Venture. This means financing the participation in the **Ferry Kansala Company Limited**, participation on the Board of Directors of both **Ferry Kansala** and Company Limited and Management Company and contributing towards any starting capital for the management company. Please find attachments; spread sheet and cost break down of the **Kansala** ferry."

The Task Force invited the Director of Finance, Abdoulie Tambedou, Hali Gai and M.L. Gibba to a meeting at the GPA Boardroom. Tambedou was shown the Directive from the Office of the President that GPA and other Institutions should invest in the procurement of ferries. Tambedou advised that a Board Resolution must be obtained first. A Board meeting was summoned and a Resolution was passed. They then sought approval from the Office of the President before they disbursed the money. Approval was granted. 45% translated to EUR1,175,000. On the 15th April 2011, Abdoulie Tambedou was directed[885] to make the initial payment of EUR1.7 million into the Greek bank account.[886]

According to Mr. Abdoulie Tambedou he did not see statements of Bank Accounts and did not receive any information regarding the payment for the vessels and did not see any receipt from the sellers. He then wrote to the Office of the President complaining that the Greeks should at least substantiate how the monies paid into their account was spent by providing statements of account and showing invoices from the vessel suppliers. The Office of the President replied and agreed that the Greeks should substantiate any additional funds to be paid by the Government. [887]

On the 26th April, 2011 Mr. Abdoulie Gai was demoted to director of operations due to allegations of tribalism in his deployment of staff.

Mr. Abdoulie Tambedou, Managing Director at the time, wrote an email to the Greek Investors on the 30th June 2011 giving his concerns and reservations on the investment. They replied with a statement of account showing all monies paid by GPA and SSHFC. They requested for additional payment of EUR559,000. He sent an email to the Office of the President advising that no further payment should be made. However, GPA received directive from the Office of the President that EUR559,363 be paid into the Joint Venture Agreement as settlement for the outstanding amount owed to Gallia.[888]

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[885] Testimony of Abdoulie Tambedou
[886] See Exhibit SC44 letter ref. GPA/CONF/325/VOL.1/ (46) written by GPA to the Managing Director Standard Chartered Bank (G) Ltd
[887]
[888] Exhibit SC42 a letter on 12th September 2011 from Abdoulie Tambedou Managing Director GPA to Momodou L. Gibba Managing Director SSHFC

The expenses of the shipyard, towing and logistic costs of the two ferries are shown in the Table 1 below: [889]

TABLE 1

ACTIVITIES	AMOUNT (EUR)
Price of two ferries	4,315,000
Shipyard expenses	820,000
Towing	700,000
Logistic	250,000
Refurbishment	510,000
Working capital	200,000
Total	6,795,000 Gambia's 45% = 3,058,000
Extra towing and shipyard expenses	559, 000 [890]

H. ARRIVAL OF THE FERRIES

By the 1st April 2011, Hali Abdoulie Gai was appointed Officer in Charge of GPA responsible for both GPA and the Ferry Services. In mid-July 2011 (before 22nd July celebrations), the ferries arrived in the Gambia. 8 people who went for engineering training plus Greek engineers escorted the ferries. GPA paid the Engineer's salaries without contribution from Gallia. The operation of the ferries was planned for the 22nd July celebrations. There were trials for Ferry Kansala in Farafenni. Hali Gai said he himself supervised the trial. The ferry operated as a trial run but it was discovered that the slipway in Farafenni was a problem for big vessels. It was realized that Yeli Tenda had no Dolphins (like a pool that is found inside the sea where ferries are docked so that the engines will not be on) to enable the ferry to dock. It had to keep its engine on using a lot of fuel. It was confirmed that Kansala was not ideal for Farafenni because it was destroying the rear parts of vehicles.[891] The operations in Farafenni were suspended.

[889] See testimony of Ousman Jobarteh & Exhibit SC42 ferry boat project analysis
[890] Exhibit SC42 email from Hali Gai to Abdoulie Tambedou
[891] Transcript of Hali Gai dated 23rd October 2017 at page 8, lines 174- 178

Aljamdu too could not operate at Banjul because there was no slipway and platform. Banjul had a mechanical landing bridge that interfaced with the ferries. Aljamdu had a ramp that had to be dropped on a platform. Mr. Gai said that was why at the tail end of his report of 7th March 2011 he had, as the last recommendation, construction of slipways for both Barra and Banjul.[892]

The Draught of the Kansala was 3.5 metres while the shoreline depth was at 1.7 metres. This caused a mismatch between the Kansala and the landing facilities. A comparison of the size of GPA ferries is shown in Table 2.

TABLE 2

CRAFT	LENGTH (M)	BREADTH (M)	DRAUGHT (M)
Aljamdu	75. 50	13. 30	3. 20
Kansala	73. 75	13. 62	3. 50
Barra	40	10. 35	1.40
Soma	40	10. 80	
Farafenni	40	10. 80[893]	

A debate had arisen on the most appropriate landing facility to use. It was concluded that concrete landing platform was less expensive. [894] From experience, Hali Gai knew the slipways were a big issue because the ferries would not operate without a slipway but not because the ferries had only one entrance and exit gate causing problems where huge trucks were to be loaded on deck.

The ferries were commissioned as part of the 22nd July Celebration. At the commissioning of the ferries, Aljamdu sailed from Banjul to Barra for routine testing in the sea. It was during one of its testing that the ramp fell in the sea and was lost. Kansala too sailed from Banjul to Farafenni where it was tested.[895] Mr Gai said there was potential for the ferries to have operated if he (Hali) was still at GPA in 2012 but never explained how. He was sacked on 16th March 2012.[896]

However, Kebba Manneh said the ferries never operated due to the incompatibility. [897]

[892] see testimony of Ousman Jobarteh and Hali Gai
[893] Exhibit MS 128
[894] Exhibit MS 128
[895] Exhibit MS128
[896] Transcript of Hali Gai dated 23rd October 2017
[897] See testimonies of Hali Abdoulie Gai and Kebba Manneh

I. CONSRUCTION OF SLIPWAYS

The ferries are landing crafts; because they are landing crafts they need a platform to rest their ramps. After the Joint Venture Agreement was signed, it became urgent to construct slipways for the ferries to be able to operate. GPA had to solicit an exemption from the GPPA tender process for the engagement of a consultant for the construction of Banjul/Barra slipways from the Office of the President. An executive approval was granted.[898] Managing Director Kyriakos of the Gambia Ferry Service Company and the Office of the President contacted the services of a local engineering consultant GAMECS to come up with the design of the ferry ramps, landing plates and construction of the slipways.[899] GAMECS had a meeting with Mustapha Bojang, Kyriakos and Ebrima Njie of National Road Authority for the construction of slipways on both **Banjul and Barra** to cater for the Landing Draughts. Sinco-Spa, a Senegalese Company built the slipways[900] for the sum of D78,000,000. GPA and SSHFC paid for the construction of the slipways 45% i.e. D35,100,000 for each[901].

Gallia Holding withdrew from the construction of the Slipways stating that it was provided in the Joint Venture Agreement that GPA should have done with the construction of the slipways before the ferries arrived and the cost would not exceed USD300,000 and not the USD3,000,000 being asked for.[902]

The Slipways were constructed by COPRI Engineers for the sum of D65,778, 739. Twenty six dolphins were built and rehabilitated the slipways in **Bamba Tenda/ Yelli Tenda** ferry crossing point. [903] According to Hali Gai, Edie Njie, Ebrima Njie the Director General of National Road Authority, Mustapha Bojang Gambia's Consul General to Jeddah and Kyriakos Kyvelos, MD Management Ferry Service Company confirmed that the work on the slipways had been perfectly done but the ferries never worked because of the 3.5 metres draught whereas the shoreline was 1.7 metres.[904]

However, Mr. Hali Gai said the ferries did not operate because the buying of the ferries had a wrong start, the manner it was handled was wrong. It was

[898] Exhibit SC42 letter from GAMECs to GPA dated……...
[899] Exhibit SC 40A and testimony of Edie Njie dated 11th December, 2017.
[900] Exhibit SC44 a situational report written to the SG OP on the 17th June 2011
[901] Exhibit SC 44 a letter written by the Office of the President to Hali Abdoulie Gai on the 12th September 2011 and Exhibit MS 128 consultancy report.
[902] Exhibit SC 44 an Email written by Stavros Galanakis to Abdoulie Tambedou
[903] Exhibit SC42 (48)
[904] Transcript of Ousman Jobarteh dated 19th October 2017 at lines 66-69

micromanaged by the Office of the President.[905] There was no evaluation of the ferries done.
Abdoulie Tambedou believed the ferries were bought in a rush by the Ex-President to have cheap popularity.

On the 16th March 2012, Mr. Hali Abdoulie Gai was fired. Mr. Abdoulie Tambedou was also fired on 22nd August 2012. They were charged for giving wrong information to the Ex-President and for economic crimes, for which they were prosecuted.[906]

On 29th October 2012, Mr. M. L. Gibba wrote a report to the Ex-President making informal submission that the Kansala and Aljamdu ferries were suitable for in-land transportation and not the Banjul Barra crossing point. In addition to the millions of dalasis spent on the joint venture agreement, GPA and others were paying the salaries of the crew. Kyriakos Kyvelos, MD Ferry Services, EUR6,000 (D200,000); Richard Bale, Captain EUR5,000 (D180,000); and Stavros Galanaskis, Naval Engineer, EUR3,000 (D100,000) per month. These payments were over half a million dalasis (D504,000) per month which represent more than half the total salaries paid to more than 450 ferry employees. He, therefore, suggested discontinuing the JVA by referring it to AG Chambers since the ferries were not operational.[907]

J. TOTAL COST

As of December 2013 the total cost of the JVA is EUR11,489,315. Government of the Gambia's cost is EUR7,665,376 and Gallia's cost is EUR3,823,930[908]. Gambia Government's share was contributed by SSHFC & GPA.

INSTITUTIONS	**EUR INVESTED**	**DALASIS**
GPA	4,356,832. 84	
SSHFC	3,308,543. 16	
GALLIA HOLDING	3, 823, 939.00[909]	

[905] Transcript of Hali Gai dated 23rd October 2017 at page 17, lines 389- 393
[906] See testimony of Abdoulie Tambedou and Exhibit SC42 settlement Agreement
[907] Exhibit MS97
[908] Exhibit SC37B Statement of Affairs
[909] Exhibit SC37B Statement of Affairs

K. THE ARBITRATION

Gallia tried to pull out of the Joint Venture by offering to sell their 55% shares in the JVA to the Gambia Government. There was lots of correspondence from Gallia threatening to go for arbitration. Though Momodou Sabally, then Secretary General, said he received an email from Galanaskis indicating that the matter should be amicably resolve.[910]

Gallia instituted arbitration proceedings against the Government of the Gambia at the London Court of Arbitration on the 19th December 2012 for refusing to buy their shares valued at EUR4.2 million. They said the Gambia Government was under an obligation to buy their shares. They also claimed for the return of EUR3,935,061 as the capital they invested.[911] Notice of the commencement of the Arbitration Proceedings was sent to the Gambia Government.[912] The Gambia is represented by Mayer Brown Legal Firm.[913]

A business plan was prepared by DT Associates to give a true Statement of the activities of the Ferry companies that were registered under the joint venture agreement for the Gambia's Defence in the arbitration proceedings.[914] This confirms that the acquisition of the ferries cost EUR6.39 million. The Gambia spent EUR4.35 million on civil and marine works; the pre-operating expenses amounted to EUR0.4 million. The total cost of the JVA for Gallia was EUR3.82 million and EUR7.67 million for the Gambia.[915]

Hali Gai said he was forced by the former Government to be a witness in the arbitration by making him and Abdoulie Tambedou sign a settlement agreement to be available for the arbitration; in exchange for their criminal charges to be dropped by the AG Chamber's. [916]

The ferries have been parked at Bond Road for 5 years waiting for the outcome of the Arbitration.[917] A month earlier the Attorney General went to Paris to negotiate with Gallia representatives but the Greeks were not willing to budge on their claim. The Arbitration Tribunal awarded EUR100,000 security for cost in favour of the Gambia Government. The Greeks put up a bank guarantee in the sum of EUR100,000 which the Arbitration Tribunal

[910] Testimony of Momodou Sabally

[911] See testimony of Ousman Jobarteh and Exhibit SC 42 (50) a letter dated 24th February 2012 from Gallia Holdings to Office of the President

[912] Exhibit SC 42 (9)

[913] Transcript of Cherno Marenah dated 8th November 2017 at line 223 -224

[914] Exhibit SC35B

[915] Exhibit SC37B

[916] Exhibit SsC41

[917] Transcript of Mr. Hali Abdoulie Gai dated 23rd October 2017.

accepted. The Arbitration is not ripe for hearing because an opportunity was given to the parties to settle.. [918]

The Commission was informed that the Kunta Kinteh Ferry in operation was acquired by GPA from Damen Shipyard of Holland. The contract was dated 27th January 2016 and the office of the President was not involved in the procurement.[919]

Mr. Njogou Bah believed that the failure of the project was partly contributed to by the lack of willingness on the part of GPA and this was manifested in the untimeliness of their actions and frustrated the Greeks.

Mr. M.L Gibba, on the other hand, said the project failed because the President did not listen to advice. They were not given the opportunity to advance the reasons for their position. He was told that GPA opposed the project and reacted to that. He admitted it was correct that they were unwilling but had reasons for it. The two ferries were unsuitable for GPA use.

FINDINGS

1. Ex-President Jammeh's anger at Mr. M.L. Gibba after the meeting with the Greek investors was tantamount to arm-twisting and executive influence.

2. From the testimonies of the witnesses and the inability of the ferry to operate for various technical reasons whether in Farafenni or Banjul, the Commission is of the view that the said ferries were unsuitable for the Gambia because of the 3.5 meter drafts compared to the shoreline draft of 1.7 meters and the absence of appropriate landing facilities.

3. The Ex-President caused the GPA to abandon procurement procedures usually applied in the acquisition of ferries to comply with his directives.

4. The Commission accepts the testimony of the Solicitor General as representing the truth when he said that "the trip was designed to give it some semblance of legitimacy but it was a done deal" and that the Ex-President had already negotiated a deal with the Greek investors.

5. GPA management was never keen on the ferries but had no choice because of the directive from the Office of the President to go along with the Gallia project. In the Commission's view the Office of the

[918] Transcript of Mr. Cherno Marenah dated 8th November 2017, lines 195 - 222
[919] Transcript of Mr. Abdoulie Tambedou dated 23rd October 2017

President managed the whole project instead of allowing GPA to do so, which prevented GPA from ensuring that competent and proper technical verification of the suitability of the ferries for Gambian waters was carried out.

6. The Commission finds that the Ex-President at best acted recklessly without heeding any advice and without complying with procurement rules contrary to the GPPA Act which required such a major procurement to be done through international tender, and ought to be liable for the resulting loss.

RECOMMENDATIONS

1. The Ex-President is responsible for the full EUR7,665,376 million lost by SSHFC (EUR3, 308,543.16) and GPA (EUR4,356,832.84) in this expensive venture with the GALLIA Holding Limited less any amount that may be realised in the sale of the ferries.

2. Both unusable Ferries should be sold and the proceeds used to repay the various Public Enterprises that financed the purchase.

3. Gambia Government should maintain its stance of refusal to buy their shares valued at EUR4.2 Million.