

**Law 6/2004
of 17 June**

There being a need to introduce anti-corruption mechanisms, in terms of Article 135 (1) of the Constitution, the Assembly of the Republic hereby determines:

**CHAPTER 1
General Principles**

**ARTICLE 1
(Object)**

The object of this Law is to strengthen the current legal framework pertaining to the fight against the crimes of corruption and illegal financial gain.

ARTICLE 2

(Scope of Application)

1. This Law applies to people who commit the crimes mentioned in Article 1 who are managers, officers or officials in central or local government, in public enterprises or parastatals or private companies outsourced to provide public services.
2. For purposes of this Law, a public officer or official is deemed to be any person that exercises or participates in public or similar services, in respect of which such person has been appointed or nominated pursuant to a law, by election or by resolution of the competent entity.
3. The provisions of this Law are applicable also to any persons not falling within the categories mentioned in the paragraph above but who promote or contribute towards the crimes mentioned in Article 1.

**ARTICLE 3
(General Principles)**

1. When carrying out their duties, the entities mentioned in the Article above shall adhere to the principles of legality, equality, non-discrimination, impartiality, ethics, public spirit and fairness.
2. Compensation shall be made for damages caused to public or private property or interests as a result of the actions or omissions of the managers or civil servants.
3. All assets accruing to the entities mentioned in the Article above, who become illegally enriched as a result of the actions or omissions referred to in clause 2 of this Article shall be forfeited to the.

**ARTICLE 4
(Declaration of Assets)**

1. People holding or exercising a public office with decision-making powers in State departments, local government institutions, public companies and institutions, as well

State representatives in private companies in which the State is a shareholder shall submit a declaration of their assets, which shall be kept by such services.

2. Such declaration shall include movable, fixed and semi-movable assets, cash, shares and bonds held or kept inside or outside the country. Laws and regulations may render such declaration applicable to the assets of spouses or partners, children and other dependents of the declarant. From these declaration shall be excluded only the objects and utensils for domestic use.

3. The declaration of assets shall be updated every year as well on the date on which the incumbent vacates his post, position or function or terminates his term of office.

4. The declaration mentioned in clause 1 may be called for at any time in disciplinary or criminal proceedings.

ARTICLE 5

(Justification of Administrative Measures)

1. Besides those cases in respect of which the law expressly so requires, justification is required for administrative measures that, totally or partially:

- a) negate, suppress, restrict or, by any other means, affect rights or impose or augment rights, duties or sanctions;
- b) in the use of discretionary powers, also affect legally protected interests;
- c) resolve complaints or appeals;
- d) decide against the wishes or opposition formulated by the interested party or against the official view, information or proposal;
- e) decide in a different manner or give a different interpretation and application to the same legal precepts;
- f) imply the annulment, modification or suspension of a previous administrative measure.

2. The justification shall be expressed by the succinct exposition of facts and law which led to the decision, and may consist of a mere agreement with the justification for a previous decision, information or proposal, which, in this case, constitute an integral part of the respective action that must be transcribed.

3. The adoption of justifications that, because they are obscure, contradictory or insufficient, do not clearly state the justification for the action shall be considered an absence of justification.

4. The justification for oral actions covered by clause 1 that have not been minuted shall, upon the request of the interested parties for purposes of contestation, be reduced to writing and communicated in full to such interested parties within seven days by registered mail or personal delivery within forty eight hours.

5. The failure by the interested parties to exercise the right conferred in the clause above does not prejudice the effects of a possible lack of justification for the actions.

ARTICLE 6
(Anti-corruption contractual clause)

1. All contracts to which the State, local authorities or other public companies are a party shall include an anti-corruption clause in which the parties undertake not to offer, whether directly or indirectly, benefits to third parties nor request, promise or accept, for their own benefit or the benefit of others, offers for purposes of obtaining a favourable decision in respect of the services to be offered.
2. The omission of the above clause renders such contract null and void.

**ARTICLE 7 (Passive
corruption in an illegal act)**

1. The entities mentioned I in Article 2 that, on their own or through another person, with such person's consent and approval receive money or any other assets not due to them, in return for performing an action that implies the violation of the their duties shall be punished with a prison sentence of between two and eight years and a fine of up to one year.
2. The penalties mentioned in Article 318 of the Penal Code shall also be applicable to the entities mentioned in Article 2.
3. The same penalty shall be applied when the gain requested or received from the persons referred to in Article 2 are non financial in nature, provided that it is for committing an action which implies the violation of the duties and responsibilities or the omission of an action that they should carry out, which, essentially, consists is:
 - a) giving favourable treatment to a specific person, company or organization;
 - b) performing an action, taking or contributing to a decision that implies obtaining benefits, compensation, bribes, loans, adjudication or signing of contracts in general, recognition or granting of rights and the exclusion or extinction of duties, in violation of the law;
 - c) give information o public tenders against the rules of fair competition;
 - d) fraudulently supply information on examination tests.
4. However, if the deed is not carried out, the prison sentence will be for up to one year and the fine of up to two months.
5. Should it be a case of a mere omission or delay in carrying out the action related to the duties, but in violation of such duties, the sentence shall be, respectively, in the cases of clause 1 and 2, a prison term of up to two years and corresponding fine and, in the case of Clause 3, a prison sentence of up to one year and a fine of up to six months.
6. If the offers or promises accepted are voluntarily repudiated, or the money or value of the advantage is returned before the deed is performed or before the omission or delay, the provisions of this Article shall cease to apply.

ARTICLE 8
(Passive Corruption in an Illegal Act)

The entities mentioned in Article 2 that, on their own or through another person, with such person's consent and approval request or receive money or a promise of money or any other assets or otherwise not due to them, in return for performing an action that does not imply the violation of their duties and forms part of their tasks shall be punished with a prison sentence of up to one year years and a fine of up to two months.

ARTICLE 9
(Active corruption)

1. Any person who gives or promises to the entities mentioned in Article 2, either personally or through another, money or any material or non material privilege not due to them for the purposes referred to in Article 8, shall be punished with the penalties mentioned in such Clause

2. If, however, the crime was committed to prevent the agent or other family members to the third degree being exposed to the danger of being punished or subjected to a criminal sanction, the judge may attenuate the penalty for extraordinary reasons.

3. The provision in clause 6 of Article 7 is only applicable to the person who commits the act of active corruption if such person voluntarily accepts to repudiate the promise or return the money or other material asset that he may have been given or received.

4. The agent is also exempt from such penalties if the commitment of such crime resulted at the request or order of tie official as a condition for the practice of acts of their respective competence and the first informs the authorities of such crime.

ARTICLE 10
(Financial Interest in a Business)

1. The entities in Article 2 which, with the intention of obtaining, either for themselves or for a third party, an illegal financial gain, injures in a legal deal the company's interests which, in whole or partly, owing to the position he holds, he should be administrating, overseeing, protecting or conducting shall be punished with a prison sentence of two to eight years and a fine of up to one year.

2. The same sentence shall be applied to the entities set out in Article 2 that, in any manner, obtain financial gain as a result of a legal or civil action, relating to interests which he had, owing to his duties at the time of the act, partially or totally at his disposal, administration or supervision, even though those were not violated.

3. In the same terms will be punished the entities set out in Article 2 who, in any manner, receive any type of financial gain owing to charging, receiving, settlement or payment which, by virtue of their duties, they are exclusively or partly responsible for ordering or making, provided that there is no financial loss to public funds or for the interests thus executed.

CHAPTER II
Penalties and Procedures

ARTICLE 11
(Penalties)

Without prejudice to other criminal, civil or administrative penalties provided for in this Law and other applicable legislation, the people who commit the crimes mentioned in the articles above shall be subject to the following supplementary measures:

- a) loss of assets or possessions accrued;
- b) full compensation for damages caused;
- c) expulsion from the profession;
- d) prohibition to subcontract to the State or public enterprises or to receive tax or credit benefits or incentives.

ARTICLE 12

(Initiation of Procedures)

1. Any person may request the competent administrative authority, police or Public Prosecutor's office to carry out an investigation of the facts pertaining to the crimes set out in this Law.
2. The complaint or accusation must be presented in writing or set out in a statement and signed, or it may be done anonymously, with information on the facts, who was responsible for committing them and the evidence available.
3. A substantiated dismissal of the complaint or accusation will be ordered if it does not comply with the provisions in the paragraph above, without prejudice to the possibility of the Public Prosecutors office taking other initiatives to investigate and prosecute the cases brought to its attention.
4. The Public Prosecutor's office may order the investigation of crimes under this Law which may have come to its attention by any other means.

ARTICLE 13

(Protection of the Informant)

1. No informant or complainant may be subjected to disciplinary procedures or prejudiced as regards his professional career or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to this Law.
2. Any person who acts against the provisions of the clause above shall be punished by a prison sentence of six months and a fine of one month.

ARTICLE 14
(Information Given in Bad Faith)

1. A complaint or accusation made in bad faith against the entities mentioned in Article 2 shall be deemed a crime if the informant is aware of the innocence of such entity.

2. The crime of complaint made in bad faith, as referred to in this Article, shall be punishable by a prison term of up to six months and a fine of one month and the complainant or informant shall compensate the person charged for moral and material damages which may have been caused.

ARTICLE 15
(Suspension of Official)

The competent head may, on his initiative or upon the proposal of the Public Prosecutor's office suspend the entities set out in Article 2 from their posts, employment or duties for a maximum period of ninety days, without prejudice to their remuneration, if such a measure is deemed necessary for purposes of facilitating the investigation.

CHAPTER III
Organization and Powers

ARTICLE 16
(Prevention and Fight)

The Public Prosecutor's office shall be responsible for preventing and fighting the crimes referred to in this Law.

ARTICLE 17
(Powers of the Public Prosecutor's office)

The Public Prosecutor's office, in the course of its duties and with the cooperation of the respective police authorities shall carry out the following prevention tasks, amongst others:

- a) Collect information concerning facts that can support the suspicions of the commitment of crimes of corruption;
- b) Request inquiries, probes, inspections and other procedures that may be deemed necessary to establish conformity of certain actions or administrative procedures within the scope of the relations between the Public Administration and private entities.
- c) Propose measures which* will lead to a reduction in the crimes mentioned in this Law.

ARTICLE 18
(Legality of Procedures)

1. The procedures to be carried out by the Public Prosecutor's office by virtue of the powers delegated to it by this Law must always be documented and may not violate the rights, freedoms and guarantees of citizens.
2. The Public Prosecutor of the Republic shall be kept informed regularly of the procedures carried out within the scope of preventing the crimes set out in this Law.

ARTICLE 19
(Central Anti-Corruption Office)

1. Within the Public Prosecutor's Office and answerable directly to the Public Prosecutor of the Republic shall be established a Central Anti-Corruption Office.
2. The powers and functions of the Central Anti-Corruption Office are, amongst others:
 - a) carry out inquiries and Investigations of complaints and accusations where crimes of corruption are suspected to have occurred;
 - b) through the judicial authorities summons people to present, in writing, information in writing on their assets in the country and abroad, specifying the dates on which such assets were acquired and how they were acquired;
 - c) conduct the preliminary investigations, for which it may request documents, information, account statements, registers and other details on the person suspected of having committed the crimes set out in this Law;
 - d) order the detention of people summonsed and, in terms of the law, ensure that they appear before the investigative judge;
 - e) carry out searches in any place to obtain incriminating evidence;
 - f) enjoy free access without prior warning to Public Administration institutions, government entities, the administrative services of local authorities, for purposes of investigation.
3. In order to speed up the procedures referred to in this article, one judge shall always be on duty.
4. Besides magistrates from the Public Prosecutor's office the Central Anti-Corruption Office can contract or appoint people for a specific period or for specific cases, provided such people display the required integrity, impartiality and experience.
5. The Public Prosecutor of the Republic may, if required, request the secondment of competent police officers.
6. Whenever the conditions are suitable, provincial anti-corruption offices may be established for purposes of this Law!

ARTICLE 20
(Powers of the Judicial Authority)

Persons nominated or contracted in terms of Article 19 (3) shall be invested with the powers of the judicial authority;

ARTICLE 21
(Obligation of Audits)

1. Whenever a private or public audit reveals indications of a crime mentioned in this Law, the Central Anti-Corruption Office shall be informed of such fact.

2. A public auditor will be subject to the following sanctions if he violates the provisions above:

- a) be suspended from exercising such function for thirty days and a fine of 1 to 10 minimum salaries, on a first occurrence;
- b) be suspended from exercising such function for three months a fine of 11 to 30 minimum salaries, on a second occurrence;
- c) be dismissed from public office, on a third occurrence.

3. A private auditor will be subject to the following sanctions if he violates the provisions above:

- a) suspension of licence for thirty days and a fine of between 500 and 1000 minimum salaries, on a first occurrence;
- b) suspension of licence for three months and a fine of between 1001 and 2000 minimum salaries., on a second occurrence;
- c) cancellation of the licence, on a third occurrence.

4. The entities mentioned in Article 19 (4) will be responsible for instituting the required case against the auditors referred to in paragraph 1 of this Article.

5. The court in the area where the crime was committed shall have the jurisdiction for deciding on the case mentioned in the paragraph above.

ARTICLE 22
(Confidentiality)

1. Any person carrying out any activity within the scope of the powers and functions of the Central Anti-Corruption Office must abide by the duty of confidentiality as concerns any matters that may have come to his attention in the course of his duties.

2. The duty to maintain confidentiality shall also extend to the name of people who supplied any information of relevance to the activities of the Central Anti-Corruption Office.

3. The above provision ceases to be effective once the criminal case is instituted.

**ARTICLE 23
(Regulations)**

The Council of Ministers must introduce regulations to this Law within six months.

**ARTICLE 24
(Repeal)**

All provisions contrary to this Law shall be repealed.

**ARTICLE 25
(Coming into Force)**

This law shall come into force on the date of publication.

Approved by the Assembly of the Republic on 12 May 2004.

The Speaker of the Assembly of the Republic, Eduardo Joaquim Mutembe.

Promulgated on 31 May 2004.

For publication.

The President of the Republic, JOAQUIM ALBERTO CHISSANO