

The Gambia

**Freedom of Expression
Still under Threat
The Case of Citizen FM**

ARTICLE 19

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I INTRODUCTION

In February 1998 Baboucar Gaye, the proprietor of Citizen FM, a private radio station bringing a mix of music and topical news stories to a wide audience in the Greater Banjul area of The Gambia, was arrested by the police and briefly detained. The station was closed down by the authorities and essential equipment confiscated. Six months later he was convicted of operating a radio station without a licence and was ordered to pay a fine and forfeit the station's equipment to the government. Baboucar Gaye lodged an appeal which opened on 30 April 1999. The government failed to appear to argue its case, so the hearing was postponed to 14 June 1999. Official harassment of Citizen FM has been motivated overwhelmingly by a desire to silence an independent and inconvenient voice on the airwaves.

At the same time as Citizen FM was coming under attack during 1998, a government-sponsored consultative process with the aim of agreeing a comprehensive national communication and information policy (NACIP) for The Gambia was getting under way. The process appears now to be approaching completion. The proposed NACIP is certainly needed. The present legal and institutional framework for the regulation of communication and information in The Gambia is poorly developed and archaic. However, a range of vital issues have not been adequately addressed so far through the government-sponsored NACIP process. For example, as proposals stand, the independence of public broadcasting and key regulatory authorities are not adequately guaranteed, there is no clarity as to how licences to private broadcasters will be issued in future and there is no commitment to freedom of information. The case of Citizen FM raises fundamental questions about the good faith of the government of The Gambia's stated commitment to respect for human rights, including freedom of expression, and casts an unwelcome shadow over the NACIP process.¹

¹ This report updates our 1998 report entitled *Unfinished Business. Memorandum to the Gambian Government from ARTICLE 19, The International Centre Against Censorship* (ARTICLE 19: London, February 1998). ARTICLE 19 has not received a reply from the Gambian Government to the issues raised in this report. The report is also based on ARTICLE 19's participation at a three-day stakeholders workshop in February 1999, involving representatives of government, the United Nations Development Programme (UNDP), media and other interested civic groups, and organized by the Department of State for Works, Communication and Information, on the new NACIP. We wish to thank the Department of State for Works, Communications and Information for its invitation to ARTICLE 19 to attend the workshop and for its willingness to circulate our May 1999 Memorandum to the Government (attached to this report) to members of the Sub-Committee on NACIP.

Nor is Citizen FM the only part of the private media to suffer official harassment. Over the past year, the independent daily newspaper, the *Observer*, has continued to come under pressure from the authorities. Most recently, it has been sold to a pro-government businessman. In early June 1999, two leading journalists working on the newspaper were sacked by the new owner. This ongoing pressure against the two most important independently minded media outlets in The Gambia also helps to create a wider culture of self-censorship within the media. A point has been reached where the media is unable fully to carry out its twin responsibilities of informing the public and acting as a watchdog of government.

The international community has a responsibility to take meaningful steps to help safeguard fundamental human rights in The Gambia but shows little appetite for doing so. The Commonwealth Ministerial Action Group on the Harare Declaration (CMAG) still has The Gambia on its remit. But it appears currently to have fallen into a state of inertia on The Gambia. CMAG should send a fact-finding mission to The Gambia and set out specific steps, including with regard to freedom of expression, which the Gambian Government should take in order to meet the commitments that it has made under the Harare Declaration. Finally, all international donors should use their influence to ensure that NACIP fully accords with international human rights standards before providing financial support towards its implementation.

II THE CASE OF CITIZEN FM

Baboucar Gaye, proprietor of Citizen FM and Ebrima Sillah, its news editor, were arbitrarily arrested and taken into detention by officers of the National Intelligence Agency (NIA) on 6 February 1998. The radio station was forcibly closed by armed troops on the following day and essential equipment was confiscated. Both men were held incommunicado. Baboucar Gaye was held beyond the 72-hour limit permitted by the Gambian Constitution, despite the willingness of supporters to pay bail to secure his release. The day after his release on 10 February, Baboucar Gaye was again detained and held for a further two days. Only after his second release was he finally charged with the offence of “operating a radio station without a licence”. Ebrima Sillah was not charged, but was required to report regularly to the NIA.

A press release by the Department of State for Works, Communication and Information in collaboration with the Department of State for Justice, issued before

Baboucar Gaye was officially charged, gave the real reasons why the radio station was being targeted.² An unconfirmed story broadcast by Citizen FM about a shake-up in NIA staff was described in the press release as having “national security implications” and of being “not palatable, deceptive and irresponsible”. It also called two of Citizen FM’s programmes, called *Night Piece* and *Review of the Papers*, “destructive and inflammatory leading to confusion”. The directive also justified the closure on the additional ground that Baboucar Gaye had not paid the required licence fee for 1997.

Baboucar Gaye was eventually convicted of the offence of operating a radio station without a licence under Section 7(1) of the Telegraph Stations Act (CAP 74:01 of the 1990 Laws of The Gambia and Regulation 4, made under Section 12 of the Act). He was ordered to pay a fine of 30 Dalasis (around US\$30) and to forfeit the station’s equipment to the government. While the case was before the courts, the Secretary of State for Works, Communication and Information conceded in parliament that other private radio stations had also been operating without having paid their licence fees for the same period for which Citizen FM was prosecuted.³ He defended the decision not to prosecute the other stations on the sole ground that Citizen FM was the only station which had been sent a reminder. Baboucar Gaye stated in court that he had made several attempts to pay Citizen FM’s licence fee for 1997 but had been defeated in his efforts by administrative obstruction. The appeal hearing finally opened before the High Court, Banjul, on 30 April 1999. However, it was immediately adjourned until 14 June 1999 after the government’s legal representatives failed to turn up.

Citizen FM has clearly been singled out for rough justice. The authorities appear to have been particularly concerned that reports in the English-language independent print media were, thanks to Citizen FM, reaching a far broader audience through radio broadcasts made in both Mandinka and Wolof, two of the most widely spoken languages in The Gambia. Citizen FM’s broadcasts, which were listened to by a large number of people within the Greater Banjul area, were an embarrassing counterpoint to the anodyne broadcasts of the state-owned Gambia Radio and Television Service (GRTS).

² Press Release, Department of State for Works, Communications and Information, 9 February 1998.

³ Hansard Debates of the National Assembly, 13 March 1998. Also see *The Point*, 16 March 1998.

The forcible closure of Citizen FM has also effectively closed down *New Citizen*, a weekly newspaper that was published on the same premises by Baboucar Gaye. This has happened even though the equipment required to publish the newspaper was not covered by the court order relating to the radio station.

In 1995, when Citizen FM was set up with approval from the Secretary-General of the Office of the Chairman (the head of State), Colonel (Retd.) Yahya Jammeh, its aims were declared to be to use “the advantage of radio to conquer illiteracy, and empower people, especially at the grassroots level” and to exploit “the major role which radio can play in supporting development in all its aspects: Health, education, the environment, children, women etc.”.⁴ These laudable aims have now been halted for political reasons for over a year. ARTICLE 19 urges the authorities to permit Citizen FM to broadcast again without delay and immediately to return the equipment which was forfeited as a result of the court case to its rightful owners. In addition, they should immediately remove the obstacles which prevent publication of the *New Citizen*.

III OFFICIAL HARASSMENT OF THE *OBSERVER* NEWSPAPER

Another part of the private media which has been repeatedly attacked by the Gambian authorities, is the *Observer* newspaper. In April 1998 seven staff members, including two Senegalese nationals, were arrested and detained for four days. It appears that their detentions were prompted by the newspaper’s coverage of the trial of Baboucar Gaye. Although the seven detained were eventually released without charge, they did not immediately return to work because they were threatened with further harassment if they did so. On 9 June 1998, Sule Musa, a Nigerian journalist with the *Observer* was arrested at his home by the police and deported to Nigeria the following day. No reason was given for his deportation, but it seems it might have been linked to his perceived reaction to the death two days previously of General Sani Abacha, the former military head of state of Nigeria.

In August 1998, three *Observer* journalists, including Demba Jawo, President of the Gambia Press Union (GPU), were briefly detained, apparently in connection with a story about a collapsed wall which had revealed the presence of military

⁴ Station Concept for CITIZEN F.M.: THE VOICE OF THE PEOPLE, produced by GAMEDIA INTERNATIONAL, undated.

equipment within the grounds of State House. On their release, two days later, they were not charged, but told that their story had compromised state security. International human rights standards require that no restrictions on freedom of expression on the grounds of national security may be imposed unless the government can demonstrate that it is necessary in a democratic society to protect a legitimate national security interest. ARTICLE 19 does not believe that any such restrictions could be justified in the case of the story which was published in the *Observer*.

Representatives of private newspapers are not invited to official news briefings and Colonel (Retd.) Yahya Jammeh has never granted an interview or held a press conference with the independent media since he became head of State. Also, for almost a year the premises of the *Observer* were under open surveillance by officials of the Department of Immigration; this stopped in March 1999. Officials were stationed at the gates of the premises on a regular basis and occasionally checked the identity papers of anyone entering the premises. This represented a deliberate policy of intimidation, aimed particularly at the newspaper's non-Gambian workers. Previously, in November 1997, Muhammed Ellicot Seade, editor-in-chief of the *Observer*, was summarily deported. And this was not the first time an editor of the newspaper had been treated in this way – in October 1994, Kenneth Best, who founded the *Observer*, was deported from The Gambia after a series of interrogations and detentions. Most non-Gambian journalists have by now either been deported or have left the country to escape official harassment.

In May 1999, the *Observer* was sold by former Editor and owner, Kenneth Best, to Amadou Samba, a lawyer and businessman. The new proprietor has reportedly stated that he will not interfere with the editorial policy of the paper. However, indications that he is close to the government have raised concern. Within two weeks, the new managing director, Sarriang Ceesay, had dismissed his deputy, Theophilus George, and the news editor, Demba Jawo. Sarriang Ceesay gave no reason for the sackings, beyond saying it was as a result of restructuring. Demba Jawo, who is also chairman of the Gambia Press Union, said he felt his dismissal may have been connected to articles he had written which were critical of the government. The editorial independence of the one remaining independent newspaper in The Gambia appears to have been fatally compromised.

IV. THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE REGULATION OF THE MEDIA

If freedom of expression is to be strengthened and safeguarded in The Gambia, there is an urgent need for reform of the legal and institutional framework for the regulation of the media.

The Gambia has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). Yet its media-related legislation in many respects contravenes the provisions of Article 19 of the ICCPR and Article 9 of the ACHPR. This is all the more disturbing in view of the fact that the African Commission on Human and Peoples' Rights has its secretariat in Banjul and frequently meets there. The Gambia is also currently a member of the UN Commission on Human Rights.

In this context, we welcome the current endeavour to formulate a national communication and information policy (NACIP). A stakeholders workshop held in February 1999, which ARTICLE 19 attended, discussed an August 1998 draft of the policy. In mid-May 1999, ARTICLE 19 submitted a **Memorandum to the government of The Gambia on the NACIP**, which pointed out serious inadequacies in the August 1998 draft. For example, ARTICLE 19 argued that the August 1998 draft failed to guarantee the independence of public broadcasting and key regulatory authorities, that there was no clarity as to how broadcast licences would be issued to private broadcasters in future and that there was no commitment to freedom of information. The Memorandum also addressed the need for constitutional reform and for the amendment or repeal of key repressive military decrees and other laws which violate freedom of expression. ARTICLE 19's Memorandum has been made available to members of the NACIP Sub-Committee which was formed after the February 1999 stakeholders workshop and given responsibility for agreeing the final text of the policy before it is considered by government at cabinet-level.

ARTICLE 19 has recently been informed that a revised version of the August 1998 draft of the NACIP was presented to the Sub-Committee on 25 May 1999. Our understanding is that the May 1999 draft does not adequately address any of the issues raised in our May 1999 Memorandum. We call on the government of The Gambia to ensure that the revised version is measured against ARTICLE 19's May 1999 Memorandum to see how far it is consistent with international standards with regard

to freedom of expression. Where the revised version falls short of those standards, officials should take all necessary steps to remedy these inadequacies before a final text of the NACIP is presented to cabinet for approval.

ARTICLE 19's May 1999 **Memorandum to the government of The Gambia on the NACIP** is attached to this report as an Appendix.

V CONCLUSION AND RECOMMENDATIONS

Both the general legal atmosphere and the individual circumstances surrounding the Citizen FM case and the *Observer* newspapers leave little room for optimism. This report was written ahead of the 14 June 1999 hearing scheduled for the appeal which Baboucar Gaye has lodged against his conviction for operating a radio station without a licence. The fact that the government representative did not appear at the first appeal hearing before the High Court allows for the possibility that the government has no desire to see this matter resolved quickly and that they have every intention of prolonging the silencing of Citizen FM. The government has it within its power to accept Baboucar Gaye's appeal which would open the way for the radio station to resume broadcasting.

The NACIP process also provides reason for concern as there appears to have been little attention paid to how it might form part of a comprehensive reform of legislation to ensure that The Gambia's laws comply with its international obligations in the field of human rights.

ARTICLE 19 is also concerned about the recent sale of the *Observer* newspaper to a pro-government businessman and the dismissal of two of its leading journalists. With Citizen FM silenced and the possibility of greater influence over the *Observer*, it seems that the two beacons of independent journalism are being extinguished.

ARTICLE 19 recommends that the government of The Gambia should:

- Allow Citizen FM to resume broadcasting immediately and return all confiscated equipment;
- End all harassment of journalists, including threats to deport non-Gambians working in the profession;

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- Review the Constitution, repeal or amend repressive decrees, and other laws (for example, sedition, “false news”, secrecy, criminal defamation) to bring them into line with international standards;
- Guarantee by law the editorial independence of the GRTS;
- Ensure that all public structural, organisational and regulatory authorities established under the new NACIP are statutorily independent from government and fully consistent with The Gambia’s international human rights obligations;
- Ensure that the proposed National Media Commission has no regulatory powers with regard to the private press;
- Ensure that all processes for the granting of licences and franchises by regulatory authorities are fair, transparent and non-discriminatory and reflect the needs of minority groups;
- Ensure that licensing processes do not withhold licences solely on grounds of partisan or religious content. The only reason for withholding or revoking a licence should be in cases of communication where there has been direct incitement to violence or statements likely to incite violence;
- End the *de facto* requirement that private radio stations must transmit news broadcasts by the publicly-owned Radio Gambia;
- Divest state ownership and control of the *Gambia Daily* and *Upfront*.

ARTICLE 19 calls upon CMAG:

- To undertake fully and energetically the task which it has been given by the Commonwealth Heads of State/Government, that is, to monitor the situation in The Gambia "with a view to promoting full compliance with the Harare Principles".⁵ At the eleventh meeting of CMAG in April 1999, the communiqué simply stated that CMAG had reviewed in The Gambia and had agreed to "keep it under consideration";⁶
- To this end, to send a fact-finding mission to The Gambia ahead of its twelfth meeting in September 1999;

⁵ Report of the CMAG on the Harare Declaration to Commonwealth Heads of Government (London: Commonwealth Secretariat, Sept. 1997), 7-9.

⁶ Eleventh CMAG meeting , concluding statement , 29 April 1999, Point 13.

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- To ensure that its fact-finding mission fully consults with civil society organizations, including representatives of the mass media, during its visit;
- On the basis of the report of the fact-finding mission, which should be made public, set out clear bench marks which the government of The Gambia should meet in order to move towards full compliance with the Harare Declaration.

ARTICLE 19 urges the UNDP and other prospective donors:

- To use their influence on the Gambian Government to ensure that the NACIP fully accords with international human rights standards before providing financial support towards its implementation.

**MEMORANDUM TO THE GOVERNMENT OF THE
GAMBIA ON THE NATIONAL COMMUNICATION AND
INFORMATION POLICY (NACIP)**

**ARTICLE 19, THE INTERNATIONAL CENTRE
AGAINST CENSORSHIP**

13 MAY 99

ARTICLE 19 has a long track record of concern about issues relating to freedom of expression in The Gambia.⁷ We believe that if freedom of expression is to be strengthened and safeguarded in The Gambia, there is an urgent need for reform of the legal and institutional framework for the regulation of the media. The present framework is poorly developed and archaic. In this context, we welcome the current endeavour to formulate a new National Communication and Information Policy (NACIP). However, we believe that a range of vital issues have not yet been adequately addressed during course of the NACIP consultation and drafting process. For example, the independence of public broadcasting and key regulatory authorities has not been adequately conceptualized, there has been insufficient discussion of how broadcast licences will be issued in future and there has been no clear acknowledgement of the need for freedom of information legislation. We believe that the objective of all those participating in the consultation and drafting process should be to ensure that the final NACIP fully meets The Gambia's international human rights obligations. At present, we are worried that it will fail to do so.

The following observations are based on the draft policy presented to a three-day stakeholders workshop held in Banjul in February 1999 organized by the Department of State for Works, Communication and Information. Participants included representatives of government, the United Nations Development Programme (UNDP), media and other interested civic groups. ARTICLE 19 also attended.⁸ We understand that in the near future a revised draft policy is due to be presented to the Sub-committee on NACIP by the Department

⁷ In 1998 ARTICLE 19 published a report entitled *Unfinished Business. Memorandum to the Gambian Government from ARTICLE 19, The International Centre Against Censorship* (ARTICLE 19: London, February 1998). ARTICLE 19 has still not received a reply from the Gambian Government to the issues raised in this report.

of State for Works, Communication and Information.⁹ We hope that this Memorandum will be useful as a checklist against which to measure the revised draft policy.

The Gambia has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). Yet its media-related legislation in many respects contravenes the provisions of Article 19 of the ICCPR and Article 9 of the ACHPR. This is all the more disturbing in view of the fact that the African Commission on Human and Peoples' Rights has its Secretariat and frequently meets in the Gambian capital, Banjul.

The final NACIP cannot meet the Gambia's international human rights obligations unless it is implemented in the context of an overall favourable legal climate for the protection and promotion of human rights. This Memorandum consequently begins by addressing the need for constitutional reform and for the amendment or repeal of key repressive military decrees and other laws which violate freedom of expression.

(a) Constitutional Provisions

Article 207 (3) of the 1996 Constitution states that "The Press and other information media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia". However, this is soon contradicted by Article 209, which states that these provisions are subject to laws required in the interests of "national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of others". The Constitution also stipulates that a National Media Commission will be established to set up a code of conduct to "ensure the impartiality, independence and professionalism of the media". A National Media Commission Bill was made public in late 1998. As explained below, key aspects of the Bill pose a threat to freedom of expression unless they are amended.

Further, the Constitution fails to define sufficiently clearly and narrowly the circumstances in which human rights may be legitimately restricted. It makes the exercise of human rights subject to vague criteria such as "the public interest". In addition, the wording of Article 25(4) allows for "reasonable restrictions" upon the rights to freedom of expression, thought, conscience and religion, assembly, association and movement "in the interests of the sovereignty and integrity of The Gambia". This wording is also too vague, providing a

⁸ We wish to thank the Department of State for Works, Communication and Information for its invitation to ARTICLE 19. Many of the documents which made up the draft policy presented to the February 1999 workshop were dated August 1998. Some were undated.

⁹ This Sub-committee is formed of the rapporteurs from the working groups from the February 1999 workshop.

licence for abuse, and should be reviewed. The Constitution also violates these standards by permitting the derogation of fundamental human rights in a “state of public emergency” without setting out clear criteria for determining what constitutes such an emergency.

(b) Military Decrees and other laws

Decrees No. 57 of 1995 and **66 of 1996**, which provide for detention without charge or trial and nullify writs of *habeas corpus* are still in place, as is **Decree 89 of 1996**, which prohibits members of the government which was overthrown in 1994 from participating in political activities. Also still in force are **Decrees No. 70 and 71**, which increased from 1000 Dalasis [US\$100] to 100,000 Dalasis [US\$10,000] the registration bond which newspapers are required to post as surety against fines or damages which may be imposed in future by a court in sedition, “false news” or defamation cases against journalists. It is worth noting that Decrees No 70 and 71 apply specifically and exclusively to private newspapers. These decrees not only contradict provisions in the Constitution, they also violate The Gambia’s international legal obligations.

The Criminal Code provides for the offence of criminal defamation. Article 178 states: “Any person who, by print, writing,...unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed “libel”. The sentence is a fine or a maximum of two years’ imprisonment (or both). ARTICLE 19 believes that the use of criminal law to punish defamation is unacceptable. In practice it is used primarily to restrict political speech and criticism.

The Criminal Code further unduly restricts freedom of expression by its retention of archaic offences which have their origins in the colonial period. These offences are sedition and publishing “false news”. Article 51 defines sedition as including an intention “to bring into hatred or contempt or to excite disaffection” against the head of State, the Government or the administration of justice. Article 52 (1) states that any person who “(b) utters any seditious words; (c) prints, publishes, sells....any seditious publication” is liable to a term of imprisonment of two years. Publishing or reproducing “false news” is defined in Article 59(1) as “any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace,” which the person knows or has reason to believe is false. It carries a two-year prison sentence. These definitions are excessively broad and give the authorities potentially enormous scope to act against any expressions of dissent of which they disapprove.

Finally, although by signing up to the ICCPR the government undertook to safeguard the right of every person to acquire information, an Official Secrets Act (1922) remains in

place which unduly restricts access to information on grounds of national security. The Official Secrets Act should be scrapped and replaced by a Freedom of Information Act (see below).

(c) Towards a National Communication and Information Policy

ARTICLE 19 welcomed the opportunity to attend the three-day workshop held in February 1999 which was attended by a broad cross-section of stakeholders. In the keynote address to the workshop, the UNDP's Resident Representative in The Gambia, Zahra Nuru, emphasised the importance of a well-informed populace for development. She stated that development is not possible if cultures and climates of misinformation prevail in a country.

The aim of the NACIP is to promote an effective public/private partnership in the field of communications and information services, which will be "underpinned by a transparent and efficient regulatory framework". To achieve this, it sets out a wide-ranging regulatory framework. NACIP is intended to embrace postal/courier services, the print media, broadcasting as well as telecommunications and information technology.

ARTICLE 19 is concerned that the NACIP process is taking place without sufficient regard to The Gambia's international human rights obligations. For example, the draft policy presented to the February 1999 workshop contained advice to the legal draftsman which made no mention of the need to ensure it complies with The Gambia's treaty and other obligations under international law. Instead, the advice focused on administrative, regulatory and financial matters. It also made special mention of the need to ensure 'the exemption from regulatory oversight by P(ublic) U(tilities) R(egulatory) C(ommission) of vital public agencies such as the Police, emergency services, the Armed Forces, National Security agencies, etc'. Unless The Gambia's international human rights obligations are fully and properly addressed in the formulation of the final NACIP, the prospects for development and democracy – for the two objectives are in our view indissolubly linked - can only be harmed rather than assisted.

i) Regulation of the media

Taking its cue from the 1996 Constitution, the draft policy presented to the NACIP workshop in February 1999 included a proposal for a National Media Commission (NMC). The Bill formalising the Commission is currently being finalised. For the purpose of this Bill, "Media" is defined as "all forms of mass communication". The NMC is to have numerous functions, including accrediting media practitioners, providing a Code of Conduct for media practitioners and setting standards with regard to the content and quality of materials for circulation and broadcast, as well as handling complaints by individuals or others.

Although the draft policy presented to the February 1999 workshop stated that the NMC will be set up as an autonomous independent body, the Bill proposes that the President would appoint the chairperson of the Commission and that the Permanent Secretary of the government department responsible for information would be a member. Such an appointments process would mean that a future NMC could not be considered fully independent of government.¹⁰ Further, ARTICLE 19 is concerned that the Bill proposes that the NMC shall have regulatory powers over the private print media. ARTICLE 19 believes that this would open the way for continued official harassment of the private print media if they sought to publish stories which were embarrassing to those who enjoy power and influence in The Gambia. Self-regulation, combined with the voluntary pursuit of high professional standards, is the ideal form of regulation of the private print media.

There was a general acceptance at the workshop held in February 1999 that the public broadcasting network, GRTS, is biased in favour of the government and lacks editorial independence.¹¹ For example, political opponents of the government are denied direct access to the public media. The draft policy presented to the February 1999 workshop undertook to accord GRTS, the public broadcasting network, “greater independence”.¹² The workshop generally agreed that GRTS workers could not be expected to be impartial unless they were protected against official interference in law. Some participants suggested that the impartiality of the state-owned media would be facilitated by the NMC. According to the draft policy presented to the February 1999 workshop the NMC’s responsibilities will include ensuring that “all State-owned newspapers, journals, radio and television stations accord fair opportunities and access to State-owned media machinery for the presentation of divergent views and dissenting opinions”. However, if it is not envisaged that the NMC is to be fully independent of government, it is difficult to see how it can fulfil this responsibility successfully. In the end, ARTICLE 19 believes that the only way to safeguard independence and impartiality in public broadcasting is to ensure that all regulatory bodies and the public broadcasters themselves are statutorily independent in law and that the government has no substantive role in appointment processes to these bodies. “Greater independence” for GRTS will not suffice.

¹⁰ The draft policy presented to the February 1999 workshop refers to another regulatory body which, unlike the NMC, has not yet been translated into draft legislation. It proposes to establish a Communication Regulatory Commission (CRC), which would be an “independent body under the Department of State for Works, Communications and Information” responsible for the telecommunications and broadcasting sector. It would have responsibility for issuing, suspending and revoking operating licences for communication service providers and allocating radio frequencies, including to the Police, Security and Armed Forces, and ensure fair and just competition between public and private communication information service providers.

¹¹ ARTICLE 19 documented this in *Unfinished Business*.

¹² Draft policy, 34.

ii) Issuing broadcast licences

ARTICLE 19 is also concerned by suggestions in the draft policy presented to the February 1999 workshop that no more than two private terrestrial television stations would be granted licences, so as to ensure the commercial viability of the recently established national television service is not threatened by too much competition.¹³ Such a recommendation undermines the principle of freedom of expression by unduly limiting access to the airwaves. Its undesirability is further illustrated by the fact that, at present, the national television and radio stations remain subject to government control and interference, and are failing to play a genuine “public service” role.

The draft policy also proposed that private religious radio or television stations should not be allowed, in order that the “harmony that exists between religions” in The Gambia can be protected. In addition, it states that “programmes that border on improper exploitation of viewers or abusive treatment of their religious views and beliefs ... will not be allowed on any Radio or TV.”¹⁴ While the concerns about religious disharmony are understandable, such a blanket ban is misconceived and unwarranted. ARTICLE 19 believes that broadcasters should not be subjected to regulation except where broadcasting, including that of a religious nature, directly incites hatred or violence or is likely to incite hatred or violence. Further, it is vital to ensure that broadcasters generally are not punished simply for broadcasting views which are considered likely to incite hatred or violence, provided that they themselves do not endorse those views and provided also that they broadcast contrary views.

It is also essential that the requirement that private broadcasters carry Gambia Radio news broadcasts on a daily basis be ended immediately. This requirement is not stipulated in law but it has become a condition for the issuing of broadcast licences. There was a widespread belief at the February 1999 workshop that this practice was drawing to a close. ARTICLE 19 hopes that this is the case.

iii) Freedom of information

An important element in any forward-looking NACIP should be measures to promote freedom of information. The draft policy presented to the February 1999 workshop recommended only that future policy should “[f]acilitate equal and fair access to official information by the media, except where national security is compromised”.¹⁵ This is an issue on which the draft needs major amplification. Freedom of information is the lifeblood of democracy. At the very least, NACIP should call for a Freedom of Information Act and set out the guiding principles for a future freedom of information regime. ARTICLE 19 has

¹³ Ibid., 33.

¹⁴ Ibid., General Regulations, 50.

¹⁵ Ibid., 38.

elaborated guidelines on freedom of information. They are summarized below in the hope that they can assist debate on this crucial issue in the context of NACIP:

- 1 Freedom of information legislation should be guided by the principle of maximum disclosure;
- 2 Public bodies should be under an obligation to publish key information;
- 3 Public bodies must actively promote open government;
- 4 Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests;
- 5 Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available;
- 6 Individuals should not be deterred from making requests for information by excessive costs;
- 7 Meetings of public bodies should be open to the public;
- 8 Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed; and
- 9 Individuals who release information on wrongdoing – whistleblowers – must be protected.

iv) Missing links in the draft policy presented to the February 1999 workshop

The future of the government-owned newspapers, the *Gambia Daily* and *Upfront*, has not been raised in the context of the discussions about the future NACIP. These newspapers continue to display strong pro-government bias. While governments are entitled to publicize information about health, access to government services, legislation pending or enacted or court decisions, there is no need for a government newspaper to publicize the statements and opinions of government departments, ministers or officials. Governments already have extensive access to the media by virtue of their position in public life. Government newspapers also pose a threat to the competitiveness of the independent press because official subsidies allow them to undercut the cover price of rival newspapers, as both the above newspapers do. ARTICLE 19 urges that the Gambian Government divests itself of ownership and control of these newspapers.

However, the most important missing link in draft policy presented to the February 1999 workshop was the lack of a clear commitment to creating a favourable overall legal climate for the exercise of the right to freedom of expression. While the NACIP workshop agreed that Decrees No 70 and 71 of 1996 should be repealed, there was no reference by participants to the need to repeal or reform other laws such as those dealing with “false news”, sedition, defamation and official secrets.

RECOMMENDATIONS

The Gambian Government should:

- Review the Constitution, repeal or amend repressive decrees, and other laws (for example, sedition, “false news”, secrecy, criminal defamation) to bring them into line with international standards;
- Guarantee by law the editorial independence of the GRTS;
- Ensure that all public broadcasting and regulatory authorities established under the final NACIP are statutorily independent from government and fully consistent with The Gambia’s international human rights obligations;
- Ensure that the proposed National Media Commission has no regulatory powers with regard to the private press;
- Ensure that all processes for the granting of licences and franchises by regulatory authorities are fair, transparent and non-discriminatory and reflect the needs of minority groups;
- Ensure that licensing processes do not withhold licences solely on grounds of partisan or religious content. The only reason for withholding or revoking a licence should be in cases where there has been direct incitement to violence or statements likely to incite violence;
- End the requirement that private radio stations must transmit news broadcasts by the publicly-owned Radio Gambia;
- Divest state ownership and control of the *Gambia Daily* and *Upfront*.

In June 1999 ARTICLE 19 will be publishing a report which will address, *inter alia*, the issues raised by the NACIP process in The Gambia. We would welcome the opportunity to include in our report the response of the Government of The Gambia to this Memorandum.