



# UNFINISHED BUSINESS

Memorandum to the Gambian Government from  
**ARTICLE 19, The International Centre Against Censorship**

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## Preface

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Over a year has passed since The Gambia returned to civilian rule in January 1997. The transition from military dictatorship to democratic rule was widely judged by independent observers to have been deeply flawed. The military head of state, Colonel (Retd.) Yahya Jammeh, simply donned civilian clothes and became his own successor. Yet the international community appears to have decided that The Gambia is "finished business". Ongoing violations of basic human rights by the ruling Alliance for Patriotic Reorientation and Construction (APRC), led by President Jammeh, have prompted only a muted response from the international community. International donors such as the European Commission and the Commonwealth have resumed assistance, but how effectively this assistance is being directed towards entrenching democracy and improving respect for human rights in The Gambia is open to question.

Thirteen months on, constitutional rule in The Gambia remains compromised by the continued existence of archaic laws and repressive military decrees on the statute books. Since January 1997, opposition activists have been restricted and harassed; some activists have been tortured. Some political parties and former public officials remain banned from

participating in the political life of The Gambia. The authorities have continued to refuse to instigate impartial investigations into past human rights violations, including those which occurred under military dictatorship between 1993-1997. Official harassment of journalists and the independent media has encouraged a culture of self-censorship which is inimical to freedom of expression.

The Gambia was one of three West African states — the others were Nigeria and Sierra Leone — placed on the agenda of the eight-member Commonwealth Ministerial Action Group on the Harare Declaration (CMAG) at its inception in November 1995. The Harare Declaration, agreed by Commonwealth countries at the 1991 summit, sets out the human rights principles which all members undertake to abide by. At the Commonwealth summit in Auckland in November 1995, The Gambia, Nigeria and Sierra Leone were declared to be in serious violation of their commitments under the Harare Declaration. CMAG was established to monitor their human rights performance and recommend measures for collective Commonwealth action aimed at the restoration of democracy and constitutional rule in those countries.

Between November 1995 and the culmination of the transition to civilian rule in The Gambia in January 1997, CMAG monitored the progress of the transition and sought to intervene in order to ensure that it would be free and fair. While it was publicly critical of some aspects of the transition, it provided assistance designed to strengthen it and encouraged other governments and intergovernmental organizations to do so too.

Presidential and parliamentary elections took place in September 1996 and January 1997, respectively, against a backcloth of continued restrictions upon free political activity. Opposition campaigning was disrupted by supporters of the military regime. Once the elections were over and the military had civilianized itself, CMAG had to decide whether to accept this *fait accompli* or declare the transition so flawed that it could not be accepted as credible. In the end, it appears to have adopted the view that while the transition was indeed flawed, it had some credibility — and its reality had to be recognized. This view removed the need to consider punitive measures of any kind, for which there was clearly no appetite within CMAG. Accordingly, while it continued to issue statements criticizing restrictions upon free political activity and official harassment of the opposition, the emphasis shifted in practice to "technical assistance". In March 1997 the Commonwealth Secretariat sent a "technical assistance" assessment mission to Banjul. This mission prioritized assistance which would "support the consolidation of democratic governance and institutions", focusing on the judiciary, the Independent Electoral Commission, the Auditor-General's Office, the Office of the Ombudsman, and Public Sector Reform.

Commonwealth Heads of Government endorsed CMAG's position at the Commonwealth summit in Edinburgh in October 1997. CMAG was asked to continue to monitor the situation in The Gambia "with a view to promoting full compliance with the Harare principles". The means specified for achieving this goal are moral pressure and "technical assistance".

The case of The Gambia illustrates perfectly one of the main weaknesses at the heart of the CMAG-led process of monitoring compliance with the Harare Declaration: the failure so far of the Commonwealth to set out in sufficient detail what that compliance should involve. Published elaborations of the general human rights principles contained in the Harare Declaration are required if uncertainties about what constitutes "compliance" are to be minimized in future. Had such elaborations existed from the time of its inception, CMAG would have been able to draw upon them in their assessment of The Gambia's transition to civilian rule. Perhaps then the Commonwealth might have paused before offering what was in effect a cautious endorsement of the transition by moving quickly towards "technical assistance" — an endorsement which the APRC has sought domestically to portray as complete and enthusiastic.

An opportunity to set in motion a process of elaboration of the Harare Declaration was missed at the Commonwealth summit in October 1997. CMAG, whose status was made permanent at the summit, should do so urgently in 1998.

The case of The Gambia also illustrates a weakness in current Commonwealth arrangements for the provision of "technical assistance". While the areas being targeted for technical assistance are all important to the consolidation of democracy in The Gambia, it is clear that the parameters of that assistance are ultimately subject to a government veto. This allows a government potentially to restrict "technical assistance" to areas which suit it. ARTICLE 19 will be observing with interest how far Commonwealth "technical assistance" to the Ministry of Justice in The Gambia, reportedly scheduled for 1998, assists in the comprehensive reform of archaic laws and repressive military decrees which is so urgently required to bring The Gambia into line with its international legal obligations under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

The discretion of governments to control the terms of "technical assistance" might to an extent be remedied if the Commonwealth also sought to involve not just governments but also wider civil society when formulating its "technical assistance". There is little evidence that it does so. For example, representatives of civil society in The Gambia interviewed by ARTICLE 19 in September 1997 without exception claimed that they had not been asked to meet representatives of the Commonwealth's assessment mission when it visited the country in March 1997; nor had they been consulted in any other way. Many were of the impression that the Commonwealth had entirely disengaged from The Gambia since January 1997.

The Commonwealth, including CMAG, should urgently review its policies and procedures regarding the provision of "technical assistance".

On 17 October 1997, ARTICLE 19 sent a *Memorandum* to the Gambian government which set out some of its concerns with regard to freedom of expression in the country as the first anniversary of the end of the transition to civilian rule approached. These concerns related to: the continuing harassment of journalists and opposition political activists by the Gambian authorities; laws, military decrees and aspects of the new

Constitution which continue to threaten human rights; and the institutional and legal framework for the regulation of the media. The *Memorandum* also set out 11 recommendations for action by the Gambian government to safeguard freedom of expression.

The *Memorandum* has been held back from publication until now to give the government of The Gambia time to respond to it. Unfortunately, no formal letter of reply has been received, although earlier there had been some official reaction to ARTICLE 19's concerns through the government-owned press following the visit of a representative of the organization to the country in September 1997. This official reaction largely failed to address the substantive issues raised by ARTICLE 19's representative during his visit.

ARTICLE 19 is now publishing the *Memorandum* in the hope that publication will persuade the government of The Gambia to reply to it.

Copies of ARTICLE 19's *Memorandum* were also sent on 17 October 1997 to ministerial representatives of CMAG and of governments on the Executive Board of the United Nations Development Programme (UNDP) during 1997-1998. The UNDP is due to provide assistance in the implementation of the Gambian government's National Communications and Information Policy (NACIP), once it has been finalized. In its *Memorandum*, ARTICLE 19 raises a series of concerns regarding proposals for the regulation of the media under the NACIP.

Since the visit of ARTICLE 19's representative in September 1997, there have been further instances of human rights violations against journalists and opposition political activists.

On 24 September 1997, a meeting of the opposition United Democratic Party (UDP) in a private house in Gunjur was disrupted by the police. Two members of the UDP were briefly detained and denied access to lawyers before being released without charge. In October 1997, the authorities banned a popular programme on Citizen FM, a private radio station. The programme reviewed stories covered by the public and private print media, thereby extending their coverage to members of the public within Greater Banjul who could not read. In November 1997, Muhammed Ellicot Seade, editor-in-chief of the privately-owned newspaper, the *Daily Observer*, was summarily deported to Ghana. His expulsion demonstrated that the government's long-standing policy of harassing foreign journalists working in the independent print media remains in force.

Since 1994, numerous foreign journalists have been summarily deported or intimidated until they felt forced to flee the country. One foreign journalist who has been forced to flee is Bruce Asemota, a Nigerian citizen. He fled The Gambia in November 1997 after a period in hiding. A freelance journalist, his troubles began in May 1996 when he was detained for 21 days following the publication in the *Daily Observer* of a story he had written about the Gambian police force. While he was in detention he was told that he was going to be deported. In the end this threat was not carried out and he was released without charge. However, he continued to file stories about the police force and in

December 1996 received a warning that he was going to be arrested again. He fled briefly to another country, intending to return when the heat had died down. However, on his return to The Gambia in August 1997 he received word that the police were still looking for him. After several more months in hiding he decided to leave The Gambia for good.

ARTICLE 19's representative met Bruce Asemota in September 1997 while visiting The Gambia. At the time, his fears for his safety led him to ask that there should be no publicity about his ordeal. ARTICLE 19's *Memorandum* to the government of The Gambia did not feature his case. Now that he has left the country, his story can be told.

Another recent alarming development is the official decision, made in January 1998, to double, at a stroke, the size of the broadcasting licence fee for private radio broadcasters from Dalasis 12,000 (US\$1,200) to Dalasis 25,000 (US\$2,500). Such an increase will threaten the commercial viability of existing private broadcasters, whose number has increased considerably over the past two years. Some observers believe that this action has been mainly prompted by official displeasure about Citizen FM, a private radio station which is seeking to develop an independent news gathering capacity and which has, in the past, carried comment critical of the government. ARTICLE 19 urges the Gambian government to demonstrate its commitment to encouraging broadcasting pluralism by reconsidering this drastic increase in the broadcasting licence fee for private radio broadcasters.

Finally, on 5 February 1998 two broadcast journalists, Baboucar Gaye and Ebrima Sillah, were arrested by security officials. The radio station at which they work, Citizen FM, was closed by the authorities the next day. The arrests and enforced closure appeared to constitute official retaliation for unwelcome stories which Citizen FM had been covering about the National Intelligence Agency. Baboucar Gaye, who is the owner of Citizen FM, and Ebrima Sillah were released on bail after several days in detention, only for Baboucar Gaye to be rearrested almost immediately. At the time of writing, he remains in detention and Citizen FM is still closed. In an official statement, the Gambian government claimed that the closure of Citizen FM was in part due to its owners' failure to pay licence fees due. Whatever the truth may be regarding this allegation, enforced closure was a wholly disproportionate response. This latest attack upon Citizen FM and two of its journalists appears to be another attempt to frustrate the radio station's efforts to develop an independent news gathering capacity and raises further serious questions about the Gambian government's commitment to encouraging media pluralism. ARTICLE 19 calls upon the Gambian government end all harassment of Baboucar Gaye and Ebrima Sillah and to allow Citizen FM to resume broadcasts without delay.

The transition to civilian rule may be over in The Gambia but the transition to respect for democratic and human rights is not. ARTICLE 19 again calls on the government of The Gambia to take the steps necessary to safeguard freedom of expression, as set out in the organization's *Memorandum* of 17 October 1997. The organization also calls upon the international community not to file The Gambia under the category, "finished business". Failure to consolidate and respect human rights in The Gambia raises the spectre of a renewed political crisis. In that event, both the people of The Gambia and the

international community may find themselves back to square one. The tragedy of Nigeria, trapped in a downward spiral of "permanent transition" and contempt for human rights, must not become the fate of The Gambia.

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## I Introduction

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Between 12-19 September 1997, Dr Jon Lunn, a representative of ARTICLE 19, the International Centre Against Censorship, visited The Gambia to inquire into the present situation with regard to freedom of expression. Below are set out some of ARTICLE 19's concerns arising from this visit.

ARTICLE 19 welcomes the return of The Gambia to civilian rule based on a new Constitution on 2 January 1997, although we remain concerned about the serious violations of human rights, including freedom of expression, which occurred during the transition period. In particular, we note that elections took place in the context of continued restrictions upon free political activity under **Decree No. 89 of 1996**, and that even on the day of voting at least one opposition political figure — Lamin Waa Juwara — was still being held without charge or trial by the authorities. We are concerned too, that opposition political figures were almost entirely denied access to Radio Gambia and Gambia Television during the course of electoral campaigning, both of which failed to act as genuine public service broadcasters during this crucial period. Journalists and the media organizations for which they worked experienced harassment and intimidation by the authorities, including arbitrary arrest and detention without charge or trial. Non-Gambian journalists working for the private print media were targeted; several were summarily deported.

Moreover, **Decrees No. 70 and 71 of 1996** increased one hundredfold (from Dalasis 1,000 [US\$100] to Dalasis 100,000 [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 civil defamation cases against journalists. Under these decrees, failure to post the bond within two weeks leads to enforced closure. Four private newspapers were forced briefly to close in March 1996. Although, eventually, they were able successfully to post the registration bond and resume publication, these decrees have been a major contributing factor in the entrenchment of self-censorship within parts of the private printed media which is inimical to freedom of expression.

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## II ARTICLE 19's Concerns

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On the basis of the recent visit of our representative to The Gambia, it is evident that the troubled legacy of the transition period with regard to freedom of expression is far from resolved. In some respects, official action or inaction since January 1997 raises questions about the seriousness of the Gambian Government's stated commitment to safeguarding human rights. There is still a long way to go before freedom of expression is fully safeguarded in The Gambia. Set out below are some of the reasons why ARTICLE 19 believes this is so, together with specific recommendations for action by the Gambian Government to safeguard freedom of expression.

### **a) Official harassment of journalists**

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ARTICLE 19 has learnt of a number of instances of official harassment of journalists since January 1997. For example, in July 1997 Yorro Jallow, a BBC correspondent and freelance journalist, was briefly detained following the broadcast on the BBC World Service of a story filed by him claiming that there had been a riot in Central Prison, Mile 2, Banjul. In September 1997, Ebrima Sillah, a journalist working for the private radio station, Citizen FM, was verbally threatened at a press conference by a government minister. Journalists in the private media allege that they commonly receive verbal warnings or threats from officials about stories they are seeking to cover. When an unwelcome story is published, they claim that one of the main official objectives is to try and force the journalist to reveal his sources. Journalists and other media professionals are also concerned that the authorities apparently remain prepared to misuse immigration laws and deport non-Gambians working for the private media who incur official displeasure. Most non-Gambian journalists have either been deported or have left the country to escape official harassment. Only a small number remain. Their situation is precarious.

ARTICLE 19 calls upon the Gambian Government to take all necessary steps to ensure that official harassment of journalists, including politically-motivated threats to deport non-Gambians working for the private media, ceases. The government should give a public undertaking to this effect.

### **b) Harassment of opposition political activists**

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While visiting The Gambia, ARTICLE 19's representative was informed about numerous occasions on which the opposition United Democratic Party (UDP) was prevented from holding political meetings because of the refusal of the police to issue a permit. The UDP is currently challenging the constitutionality of the legal requirement that a police permit must be obtained before a public meeting can be held. This requirement places unacceptable restrictions upon freedom of association and expression.

In June 1997 in Brikama, eight UDP members were prevented from holding a party meeting by the authorities. They were detained for several days, during which time they were severely ill-treated in a systematic manner amounting to torture. Our representative has seen video evidence of injuries sustained to their backs as a result of being beaten with heavy whips while being forced to crawl on their hands and knees before security officials. A water cannon was also allegedly used upon those detained. While this was taking place, security officials told them to leave the UDP and join the ruling Alliance for Patriotic Reorientation and Construction (APRC). The victims say that they continue to be harassed by security officials.

ARTICLE 19 notes that the Gambian Government announced in late-June 1997 that there will be a police investigation into the allegations of torture. However, three months after this announcement, we are concerned that those making the allegations have still not been interviewed.

ARTICLE 19 calls upon the Gambian Government to ensure that the harassment of opposition political figures ceases immediately. The government should publicly instruct all law enforcement and security force personnel that acts of harassment or intimidation will not be tolerated and that those responsible for such unlawful activities will be identified and punished. In addition, the Gambian Government should urgently establish an independent judicial inquiry into allegations of torture of UDP activists by security officials in Brikama in June 1997. If such allegations are substantiated by the inquiry, those responsible for these acts should be brought to justice and the victims paid compensation.

### **c) Laws and military decrees continue to restrict fundamental human rights**

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While the new Constitution states that it shall prevail over all laws and decrees — or parts thereof — which contradict its provisions, no steps have been taken by the Gambian Government since 2 January 1997 to repeal or amend laws and decrees which do so. The result is a confused situation which compromises the new Constitution. It also places The Gambia in violation of its international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). There remain fears that such laws and decrees are being retained on the statute book deliberately and might in future be used again.

For example, **Decrees No. 57 of 1995** and **66 of 1996** provide for indefinite detention without charge or trial and nullify writs of *habeas corpus*. Extensively used during the period of military rule, they are amongst those decrees which should be repealed without delay. Notwithstanding the fact that they have not been invoked since they were promulgated, **Decrees No. 70 and 71** should also be repealed. They are mechanisms of censorship which violate the right to freedom of expression.

Other laws which the government should urgently review include sections 41, 51 and 59 of the Criminal Code, which establish the criminal offences of sedition and publishing "false news". These offences are so broadly defined as to constitute an undue restriction upon freedom of expression. In addition, the Official Secrets Act should be repealed and replaced with a Freedom of Information Act which puts the onus on government to show why and when it should withhold information on security grounds.

The Gambian Government should not wait for other parties to seek to strike down offending laws and decrees through the courts, as is currently happening with regard to the legal requirement that a police permit be obtained prior to holding a public meeting. The government should be taking the lead in this matter. Failure to do so will raise suspicions that the Gambian Government is holding such laws and decrees "in reserve" for possible use in future.

#### **d) The new Constitution fails in important respects adequately to safeguard human rights**

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ARTICLE 19 recommends that at the same time as the Gambian Government reviews laws and decrees, it should also review the new Constitution to ensure that it too is brought into line with international standards. Amongst those provisions which require review is Article 35, which permits the derogation of human rights, including freedom of expression, in a "state of public emergency". International human rights standards recognize that there are some rights which are so fundamental that they should never be derogated from in any circumstances — the right to life; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right to freedom of thought, conscience and religion — but the new Constitution nowhere acknowledges this. In addition, the criteria for determining a "state of public emergency" in which limited derogations might be justified are not specified.

Further, the enjoyment of fundamental rights in Chapter IV of the new Constitution is subject to respect "for the public interest". Such vague wording leaves a government potentially free to use any pretext to limit the rights and freedoms enshrined within the new Constitution. In addition, the wording in Article 25(4) which 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" is also too vague and should be reviewed.

Finally, while the new Constitution explicitly states that freedom of expression includes freedom of the press and other media, ARTICLE 19 notes that there is no reference to freedom of information. Article 19 of the ICCPR, which the Gambia has ratified, affirms the right of every person to freedom of information. However, in order to reduce the scope for judicial interpretations of the new Constitution, it may be appropriate for the Gambian Government to propose the inclusion of an additional provision specifically guaranteeing the right of access to information held by the state. Such a provision would also give strong constitutional underpinning to a Freedom of Information Act.

**e) The institutional and legal framework for the regulation of the media fails to safeguard freedom of expression**

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ARTICLE 19's representative was informed while in The Gambia about work currently under way, coordinated by the Ministry of Works, Communication and Information, to formulate a National Communications and Information Policy (NACIP) which would embrace the broadcast and print media, and the telephone, postal and courier services. Appropriate legislation will follow the formulation of the NACIP. We wish to raise a number of important issues regarding proposals for the regulation of the media under the NACIP.

It appears that it is intended that a National Communications Commission (NCC) will be responsible for the regulation of the entire telecommunications sector. The NCC is to be established by law as an "autonomous body under the Ministry of Works, Communication and Information". In terms of its responsibilities regarding the media, the NCC is to issue licences or franchises to all media outlets, establish and monitor codes of practice on, *inter alia*, programme content, and promote and maintain the freedom and independence of the media.

With regard to the private print media, ARTICLE 19 does not believe that there should be a statutory regulatory body. Self-regulation by journalists through their professional organizations is more appropriate.

ARTICLE 19 is also concerned that the remit of the NCC may be too wide. While there is merit in having a single policy framework for the telecommunications sector, it does not follow that regulation should be through a single overarching body. ARTICLE 19 believes that the broadcast media is best considered as a distinct area for the purposes of regulation. ARTICLE 19 asks those involved in formulating the NACIP to revise their proposals to include provision for a designated broadcasting authority, separate from the regulatory arrangements that may be established for other areas of the telecommunications sector.

Radio Gambia and Gambia Television are currently part of the state-owned Gambia Telecommunications (GAMTEL). Both have consistently been used by governments in

recent years as mouthpieces for their views and have failed to play the role of public service broadcaster. In May 1997, a directive was issued by the Director of Broadcasting Services for Radio Gambia and Gambia Television prohibiting them from broadcasting programmes critical of female genital mutilation (FGM). It is widely believed that this directive was issued following official pressure. The coverage of the political opposition by Radio Gambia and Gambia Television remains extremely biased and limited.

Such official interference should end immediately. ARTICLE 19 calls upon the Gambian Government to make a public commitment that it will do so. At present, Radio Gambia and Gambia Television are the only broadcasters in the country with national coverage. It is vital that they present a diversity of views to the Gambian public in an independent and impartial manner.

However, to permanently reduce the scope for such interference in future, a range of legal and institutional measures are required. The NACIP should have at its heart a commitment to establish genuine public service broadcasting in The Gambia. The Director of Broadcasting Services for Radio Gambia and Gambia Television, Mr Tombong Saidy, claimed in a meeting with our representative that the "autonomy" of the regulatory authority proposed in the NACIP would ensure that public broadcasting was "semi-independent". He clearly viewed this as a major advance upon the present situation. ARTICLE 19 does not agree. Either something is independent or it is not — there can be no credible position in between.

ARTICLE 19 believes that the broadcasting regulatory body should have its operational independence guaranteed by law. Its governing body should be independent of government and should contain no government officials, members of parliament or representatives of political parties. Members of the board should not maintain any interest, financial or political, that could impair their ability to discharge their duties in a fair and impartial manner. The members of the board should be appointed for a fixed term, preferably after public hearings, according to publicly available criteria which guarantee diversity of political, ethnic, social and professional background. The selection process should contain safeguards to ensure that neither the government nor any political party will be able to dominate or undermine it. The directors of Radio Gambia and Gambia Television should be appointed by the board and should report to it alone. The directors of Radio Gambia and Gambia Television should be broadcasting professionals and should not hold a leadership position in any political party. Finally, editorial independence in all broadcasting institutions should be guaranteed by law.

The broadcasting regulatory body should also have the power to grant licences or franchises to private radio and television broadcasters. Having a regulatory authority which covers both public and private broadcasting facilitates the development and implementation of broadcasting policy, including a coordinated strategy to ensure that pluralism is achieved in broadcasting as a whole. The process for granting licences or franchises should be independent and non-discriminatory. A procedure should be established by law, whereby private broadcasters can apply for and be awarded broadcasting licences in a fair and non-discriminatory manner and at rates that are

commercially viable. In the past, the process has been secretive and, with regard to private radio, has included an obligation upon the applicant to link up with Radio Gambia news bulletins — an obligation which should now end.

The broadcasting regulatory body should have statutory powers to ensure pluralism of social, ethnic and political voices, so that the country's broadcasting fairly reflects the diversity of the population. Licence or franchise applications should be public, so that the merit of the application and the reasons for the authority's decisions are matters of public knowledge and debate. Broadcasting licences or franchises should only be revoked in the event of gross abuse by the broadcaster, such as direct incitement of ethnic violence.

These recommendations regarding broadcasting are based on ARTICLE 19's *Measures necessary to protect and promote broadcasting freedom*. A full copy of these measures is attached. **Recommendation 8** states that broadcasting can only be free from censorship and a means of freedom of expression if the general legal and political climate is favourable. The NACIP should endorse the repeal or amendment of laws and decrees which violate freedom of expression. In addition, **Recommendations 11** and **12** refer to the need for the establishment of an independent mechanism to ensure that all parties have equitable access to, and fair coverage in, the public broadcast media during elections. According to the Provisional Independent Electoral Commission, equity and fairness was conspicuously lacking during the transitional elections in September 1996 and January 1997. This issue should also be addressed in the formulation of the NACIP. In this regard, attached are ARTICLE 19's *Guidelines for Election Broadcasting in Transitional Democracies*.

ARTICLE 19 notes that Article 210 of the new Constitution provides for the establishment of a National Media Commission by January 1998. We would be interested to know how this constitutional provision relates to the measures for the regulation of the media currently being considered in the context of the NACIP.

Finally, we would like to make some brief comments regarding the government-owned newspapers, the *Gambia Daily* and *Upfront*. ARTICLE 19's position with regard to government-owned newspapers is that they undermine media pluralism. 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. They 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 is the case with both the *Gambia Daily* and *Upfront*. Our view is that both newspapers should either be privatized — or closed.

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### III Conclusion and summary of main recommendations

ARTICLE 19's recommendations for action by the Gambian Government to safeguard freedom of expression are summarized below:

**ARTICLE 19 calls upon the Gambian Government to:**

- 1 End all harassment of journalists, including threats to deport non-Gambians working in the profession, and of opposition activists.
- 2 Establish an independent judicial inquiry into the alleged torture of UDP activists in June 1997 by security officials.
- 3 Repeal or amend decrees — including **Decrees No. 57 of 1995** and **66 of 1996** and **Decrees No. 70 and 71 of 1996** — which violate the new Constitution and/or The Gambia's international legal obligations under the ICCPR and the ACHPR.
- 4 Review the laws on sedition, publishing "false news", secrecy and public meetings and bring them into line with international human rights standards.
- 5 Review the new Constitution to ensure that it is brought into line with international human rights standards.
- 6 End government interference in editorial policy and decision-making at Radio Gambia and Gambia TV.
- 7 Establish a designated broadcasting regulatory authority and guarantee its operational independence by law.
- 8 Guarantee by law the editorial independence of all broadcasting institutions.
- 9 Ensure that the process for granting licences or franchises to private broadcasters is fair and non-discriminatory.
- 10 End the requirement that private radio stations must transmit news broadcasts from Radio Gambia.
- 11 Privatize or close existing government newspapers — the *Gambia Daily* and *Upfront*.

While some of the above recommendations will necessarily take time to implement, recommendations 1, 2, 6 and 10 can be implemented immediately. In addition, some of the military decrees covered by recommendation 3 are so clearly in violation of the new Constitution and The Gambia's international legal obligations that they should be repealed at the earliest possible opportunity. For example, there is no credible excuse for

delay with regard to **Decrees No. 57 of 1995** and **Decrees No. 66, 70, 71 and 89 of 1996**, each of which has been singled out in this memorandum.

This memorandum is not exhaustive. There are other issues with regard to freedom of expression in The Gambia about which ARTICLE 19 has concerns. We will write to the Gambian Government outlining these additional concerns in the future.

Copies of this memorandum have been sent to the following representatives of the Gambian Government: His Excellency Colonel (Retd.) Yahya Jammeh, President of The Gambia; the Attorney-General and Secretary of State for Justice, the Hon. Mrs Hawa Sisay Sabally; the Secretary of State for Works, Communications and Information, the Hon. Ebrima Ceesay; the Secretary of State for Local Government and Lands, Captain (Retd.) Yankuba Touray; and the Director of Broadcasting Services for Radio Gambia and Gambia Television, Tombong Saidy. It is also being sent to the ministerial representatives of the members of the Commonwealth Ministerial Action Group and to ministerial representatives of states on the Executive Board of the United Nations Development Programme for the period 1997-1998.

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