

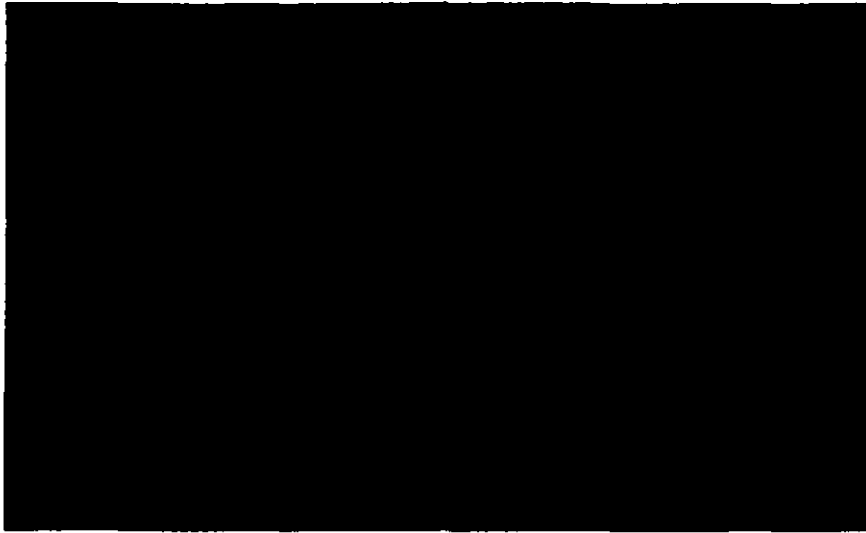
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**THE GAMBIA: PRE-ELECTION ASSESSMENT 1996**

**FINAL REPORT**

September 1996

Written by

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## **I. SUMMARY FINDINGS**

Despite the apparent promise that a newly ratified constitution and scheduled presidential and parliamentary elections hold for a return to constitutional multi-party democracy in The Gambia, the International Foundation for Election Systems (IFES) Assessment Team finds little reason for optimism. The Armed Forces Provisional Ruling Council (AFPRC) has carefully crafted a transitional program to fulfill its expressed desire to remain in power. Although voters will have a choice of four candidates during the September 26th presidential election, a number of factors discussed in this IFES report seriously call into question the competitive nature of that election.

There is cause for some optimism in regards to the parliamentary elections planned for December 11th. Should the new President of the Second Republic of The Gambia quickly demonstrate a clear commitment to constitutional democracy by taking the oath of office and thereby invoking the new Constitution, a critical turning-point in the transitional process will have been reached. Other steps will be also be necessary in order to provide for a sufficiently open and competitive electoral process. For example, the repeal of the various AFPRC decrees which severely restrict the human and political rights of the Gambian people, and the release of all political detainees, should be considered minimum pre-conditions.

### **The Provisional Independent Election Commission**

#### ***Independence:***

There is serious concern regarding the independence of the Provisional Independent Electoral Commission. The Chairman and Vice Chairman have both publicly announced the need for a three month period between the lifting of the ban on political parties and the presidential election. Concurrently, the Chairman of the AFPRC has said that the election would be held on 11 September. The election date of 26 September was announced in a press release by the PIEC which said, "an agreement has been reached." The PIEC will be in violation of the Election Decree election decree if it holds the election on 26 September. Most of the foreign advisors expressed extreme skepticism and real professional distress over the decisions and operations of the PIEC.

#### ***Capacity:***

There are no Gambian professional staff assigned to the PIEC. All the Gambians at the Commission, including the Commissioners themselves, are on short-term contracts and there has been no effort to institutionalize the PIEC's capacity even though under the new constitution the PIEC will become a permanent independent electoral commission. There are no counterparts for the five foreign advisors and in fact if the advisors left there is serious doubt if the Commission could conduct an election.

***NIA Involvement:***

We have serious reservations regarding the involvement of the NIA with the PIEC. It has become evident that the Commission's independence is severely constrained not only in the area of overall policy direction, but also in its day-to-day operations. For example, just prior to the August 8<sup>th</sup> referendum some 2,000 applicants for Presiding Officer positions were called to the PIEC office for interviews. Initially, representatives from the National Intelligence Agency (NIA) were to officially participate in the selection interviews along with PIEC (ex-pat consultants) personnel.

**Human Rights and the Media**

***Human rights:***

The AFPRC's human rights record continues to be poor with reported widespread abuses. Decrees which circumvent the judicial system have abrogated due process and allowed the government to search, seize and detain without warrant or legal proceedings. Political parties were banned as were all political activities and communications.

***The media:***

Print journalists have been particularly targeted by the AFPRC and have been victims of harassment, interrogation and intimidation. The NIA tried to participate in a recent election coverage workshop held by the Gambia Press Union. This gives rise to serious concerns regarding the press's ability to operate without fear of harassment and intimidation. In spite of imposed self censorship the press carefully addresses issues.

**Civic Education**

An effective civic education program does not exist in the Gambia. The Civic Education Panel (CEP) created by the AFPRC is viewed as partisan and not having the skills, resources or vision to carry out a civic education program. NGOs are interested in conducting civic education programs but overall do not have the capacity or technical expertise to carry out a comprehensive program without assistance. Since the departure of NDI no international organization has focused on providing support to conduct civic or voter education.

**Political Parties**

The lifting of the ban on political parties and political activities and freedom to openly and actively campaign without fear of harassment or intimidation is viewed by Gambians and the international community as a major benchmark of the AFPRC's commitment to the democratic process.

***Prior to lifting of the ban on political parties and repeal of the Political Activities (Suspension) Decree, 1994:***

There was overwhelming agreement on the part of our contacts that even with the lifting of the ban on party activities there were still many serious constraints impacting their full participation in the election process. These included timing of the presidential elections, financial constraints and restrictions on who could contest elections. All parties would register in spite of the constraints. A number would contest both the presidential elections and parliamentary elections; others thought the process too flawed. All thought three months was an adequate period of time to register and contest the elections.

*After the lifting of the ban on political activities and repeal of the Political Activities (Suspension) Decree, 1994:*

There was a great deal of apprehension regarding the contents of the new decree and the delay in its release was seen as a deliberate move by the government to keep the political parties off balance and unable to move ahead with their plans to reorganize and register. There was also uniform agreement that the date for the presidential election must be moved back to December 11<sup>th</sup> to give them adequate time to campaign.

## II. THE ASSESSMENT MISSION

In July 1996, USAID contracted the International Foundation for Election Systems (IFES), a non-partisan, non-profit organization dedicated to supporting the process of democratic transition around the world, to conduct a pre-election assessment in The Gambia. This assessment was to accomplish three objectives:

- ▶ Collect and analyze information regarding the current state of preparations for presidential elections then scheduled for September 11 and parliamentary elections planned for December 11, 1996 and make recommendations to USAID and the U.S. Embassy in The Gambia regarding the provision of financial and technical support to the electoral process.
- ▶ Identify possibilities for appropriate interventions which would support the electoral process by enhancing transparency and public accountability through the participation of civil society and political parties.
- ▶ Advise as to the utility of providing international observers for both elections.

In addition, the IFES mission was also asked to determine if there was not only a role to be played external organization in support of broadening participation by the Gambian people in the transition process. The backdrop to this question was the National Democratic Institute for International Affairs' (NDI) Democracy Education Project (DEP) which began in August 1995 and ended abruptly with the withdrawal of NDI's staff in January 1996. The DEP project was aimed at assisting several of the key aspects of The Gambia's transition: the Constitutional Review Commission; the Electoral Review Committee; civic and voter education; the development of

political parties; training of domestic election observers; the possible deployment of international election observers; and the provision of post-election support to newly elected parliamentarians.

Unfortunately, this multi-faceted program was cut short after the expulsion by the Gambian government of NDI's Gambia-based program director because, according to the AFPRC government, "your activities and utterances since your arrival in this country have been unhelpful in that instead of facilitating the desired smooth transition to democratic civilian rule, they militate against the objective."<sup>1</sup>

For its part, NDI felt constrained by both the general political/social environment and the specific operational constraints imposed by the government:

*The Institute is troubled by a number of crucial issues that could affect negatively the legitimacy and credibility of the democratic transition. Many of these issues were officially established as benchmarks by the AFPRC last July.*

*Our concerns include the delay in releasing the draft constitution and electoral law for public comment, the continued ban on political activity, the partisanship of individuals appointed by the government to carry out civic education programs, increased harassment of journalists and new restrictions on civil liberties, such as the promulgation of Decree 57 which allows the Minister of the Interior to detain individuals for up to 90 days without probable cause. These developments continue to add to an atmosphere that hinders the ability of Gambians to participate fully and freely in the civic and political life of the country during this critical period. Many of these issues were raised in NDI's report on our April 1995 assessment mission to The Gambia. At that time, we recommended that "the transition process should be broadened to encourage increased participation by various segments of the Gambian civil society."*

*We also find ourselves unable to comply with the conditions established recently by the AFPRC for NDI's continued program activities. According to the Terms of Reference proposed by the AFPRC, NDI would be required to work exclusively through government agencies under the direction of the AFPRC.<sup>2</sup>*

During its three week stay in The Gambia, the IFES Team was able to meet freely with a variety of Gambians and others concerned with the transition from military to civilian rule. It was present to unofficially witness voting during the August 8<sup>th</sup> constitutional referendum, and in the days following, it saw prospects for an opening of political space which would allow for multi-party competitive elections, swing dramatically from an almost total closure, to cautious optimism that accompanied the announcement of the lifting of the ban on political parties that an opening of

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<sup>1</sup> Letter from Mr. M. B. Wadda, Secretary General of the AFPRC to Ms. Tanya Domi, NDI Field Director, dated 4 November 1995.

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political space had been created, and back to the grim realities of military rule with the issuance of the Political Activities Resumption 1996 Decree (No.89).

### III. BACKGROUND TO THE TRANSITION

*The Gambia provides interesting examples of many of the issues affecting small states, and of how policies designed to overcome the problems or maximize the advantages play out over time. Because The Gambia has been independent since 1965, and a republic since 1970, there are a variety of issues which have arisen in connection with the democratization process, and over 25 years of political democracy as the context for resolving these issues... there are four primary ramifications that state size (or, more specifically a small scale social structure) may have for the political development of The Gambia and other small states. The first is the impact of multiple-role relationships on political interaction among elites, and between elite and mass groups. The second is the role of political leadership and elites in small states. Third is the role of political institutions in small states. Finally, the international role of The Gambia as a small state must be considered. The overall effect of these components in combination with one another in the case of The Gambia and possibly other small states is to provide increased stability and to moderate what might otherwise be extreme politics.<sup>3</sup>*

#### The Jawara Years

With its republican constitution supporting a presidential system and a unicameral legislature, The Gambia was cited as one of the oldest and best functioning multi-party democracies in sub-Saharan Africa. After gaining independence from Britain in 1965, regular general elections were held (1972, 1977, 1982, 1987 and 1992), human rights were generally respected, and a free press developed. At the same time a de facto one party state was created through the hegemonic rule of Sir Dawda and the PPP.

Over the course of his thirty plus years in power, Jawara developed a highly effective (in terms of retaining control) patronage system which fit perfectly the realities of The Gambia's small size and population:

*Political leadership is a crucial influence on the character of social relations within a state. This is a result of their increased prominence in small states. This prominence is the result of a number of factors. For example, constituency representation in the legislature in small states such as The Gambia takes on a very different meaning than in a larger country. This is because the representatives are typically well known on a personal level by a large proportion of their constituents. Perhaps more importantly, representatives in The Gambia have authority exceeding their counterparts in other countries. They are not the objects of*

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<sup>3</sup> Dana Ott, "Democratization in Small States: An Analysis of The Gambia and Trinidad and Tobago," pp. 167 - 168.

*vilification that so often characterizes political figures in other countries, in fact they are typically viewed as local heroes.*<sup>4</sup>

Thus, even though little progress was made towards raising the overall standard of living or educational level of the Gambian people and allegations of government mis-management and corruption were wide-spread, political opposition to the President was rather muted and, for the most part, remained firmly committed to act within the democratic structure. The absence of a truly militant opposition, is according to Ott, the result of two other factors:

*First, there is the issue of party definition. Opposition parties in The Gambia have typically been composed of breakaway members of the PPP, with a few notable exceptions. Those breakaway elements have generally left the PPP not because they found their political ideology to be at odds with the PPP, but rather because they were dissatisfied with the ruling party on a personal level. This has created a situation in which the opposition parties have been unable to distinguish themselves from the PPP. On the one hand, they aspire to convince voters that they truly represent a new direction for The Gambia. But on the other hand, they cannot provide substantive criticisms of the policies of the PPP, since their own views are quite similar.*<sup>5</sup>

Indeed, prior to the July 22<sup>nd</sup> coup, the most serious challenge to Jawara's rule was a violent 1981 coup attempt staged by a group of radical socialists who had received some military training and other support from Libya. Although some 3,000 Gambians were killed, shops looted, and property destroyed, general elections were successfully – and peacefully -- held within 6 months of the rebellion.

#### **The Armed Forces Provisional Ruling Council (AFPRC)**

On July 22<sup>nd</sup> 1994, a group of five young army officers led by seized power from the democratically elected government of The Gambia. This group soon formed a new military government, the Armed Forces Provisional Ruling Council (AFPRC) and suspended the Constitution. A series of banned political parties and activity, placed severe constraints on freedom of the press and nearly all other human rights.

Reasons given for the 1994 coup vary, but the official explanation is that the level of corruption and mis-management by the Jawara government had reached such levels that the members of the AFPRC felt obliged to act on behalf of the Gambian people. Indeed, in the early months of the regime, commissions of inquiry into the activities and assets of numerous public officials were conducted and their findings of ill-got-gains and AFPRC measures to re-coup state resources were published. Other observers have suggested that a set of more simple and direct

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<sup>4</sup> Dana Ott, "Democratization in Small States: An Analysis of The Gambia and Trinidad and Tobago," p. 171.

<sup>5</sup> Dana Ott, "Democracy in Africa: Problems and Prospects with Special Reference to The Gambia," p. 11.

reasons are also likely to have played a role in the junior officer's decision to take power: they had been insulted by President Jawara's accusation that they had been plotting against him, and they had not been receiving their pay in a timely fashion.

Soon after taking power, the AFPRC announced that it would return the country to civilian democratic rule within four years. This announcement was met with considerable internal and international opposition and a National Consultative Committee (NCC) was appointed to "obtain the views of the people." Having traveled throughout the country, the NCC reported that the Gambian people felt that a four year transition was too long and recommended that the return to democracy should take place in two years. This recommendation was accepted by the AFPRC and the program for the transition to democracy was announced by Captain Jammeh on July 22, 1995, the first anniversary of the coup:

*The Transition Program is therefore in two parts, namely the Timetable setting out the various administrative steps leading from the takeover to the swearing-in of the new civilian government in July, 1996, on the one part, and a number of socio-economic development projects on the other. The two parts constitute the Transition Program but are not linked in any way...The Government is, of course, responsible for securing the funds with which to finance the entire program...we still invite our development partners to help finance any item in any part of the program they choose. Most of them are, however, interested in the governance part only and, even there, only a few have offered help. Instead, we have been repeatedly advised to abandon the development projects and shorten the governance timetable to three or at most six months to cover a hurried registration exercise and swift General and President elections. to some partners that is apparently what democracy is all about. We should rush to elections irrespective of the irregularities, gerrymandering, indirect elections, and the nomination of known sympathizers which enabled the former regime to perpetuate itself in power for over thirty years despite the people's yearning for a change since the overthrow of the regime in 1981.<sup>6</sup>*

The key elements of the governance part of the Transitional Program included:

- ▶ creation of a Constitutional Reform Committee to review the 1970 Constitution and prepare a new draft constitution for submission to the AFPRC ;
- ▶ creation of an Electoral Reform Committee to review and make recommendation regarding needed reforms in the electoral system;
- ▶ creation of an independent electoral commission to organize and administer the electoral process;
- ▶ re-setting of constituency boundaries;

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<sup>6</sup> "Statement by H.E. The Chairman of the Armed Forces Provisional Ruling Council and Head of State, Captain Yahya A.J.J. Jammeh on the 22<sup>nd</sup> July, 1995."

- ▶ public review of the new draft constitution;
- ▶ registration of voters;
- ▶ holding of a national referendum on the new draft constitution;
- ▶ lifting of the ban on political parties and political activity;
- ▶ conduct of multi-party democratic elections for president and national assembly;
- ▶ handing over of power to the newly elected civilian government.

#### IV. THE ELECTORAL ENVIRONMENT

*At a certain level of abstraction, States are bound to conduct their internal affairs, so that 'the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections.' The principle of effectiveness of obligations requires that States adopt laws and procedures or systems of internal organization which are conducive to and do not obstruct the attainment of particular goals established by international law. This principle in turn carries certain implications with respect to the choice of options in regard to free and fair elections, even if none can be specifically framed as an international duty. These 'markers' for effective implementation, the indices for free and fair elections, are nonetheless evident in the practice of established democracies and States in transition, considered in relation to the attainment or failure to attain the stated objective.<sup>7</sup>*

From the body of international law and practice, a set of categories of activities and criteria has been developed by the Inter-Parliamentary Union which provides a framework for the analysis of electoral processes. This analytical framework, which has proven particularly useful in dealing with transitional situations such as The Gambia, includes the following elements:

- ▶ Electoral law and system;
- ▶ Constituency delimitation;
- ▶ Election management;
- ▶ The right to vote;
- ▶ Voter registration;

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<sup>7</sup> *Free and Fair Elections: International Law and Practice*, by Guy S. Goodwin-Gill, Inter-Parliamentary Union, 1994, p. 27.

- ▶ Civic education and voter information;
- ▶ Candidates, political parties and political organization, including funding;
- ▶ Electoral campaigns, including protection and respect for fundamental human rights, political meetings, media access and coverage;
- ▶ Balloting, monitoring and results; and
- ▶ Complaints and dispute resolution.

### Electoral Law and System

*The choice of system reveals a wide disparity, or even richness, of practice. In many cases, the choice is not so much the result of conscious legislative decisions, as the product of a particular historical and political evolution. As such, it is not necessarily a model to be emulated out of context... The general and distant objective set by international law – genuine periodic elections guaranteeing the free expression of the will of the electors, which shall be the basis of the authority of the government – allows considerable room for variation. Whether an electoral system departs from the permissible range is most likely to be answered by reference to other peremptory international law principles, such as non-discrimination. Does the 'variation' have the intent or effect of disenfranchising or devaluing the voting power of particular sections of the population for reasons that ought to be irrelevant to the exercise of political rights, such as race, religion, national or social origin, sex, language, political or other opinion, association with a national minority, birth or other status?<sup>88</sup>*

This assessment will focus on the legal framework for the presidential elections now scheduled for September 26<sup>th</sup> since the legal/political environment created during the run-up to this election will necessarily set the tone for the National Assembly poll planned for December 11<sup>th</sup>. There are, in relation to the presidential contest, two documents which together form the legal framework which sets the parameters of the political contest:

***The Political Activities Resumption Decree 1996 (Decree No. 89), dated August 14, 1996***

*This Decree may be cited as the Political Activities Resumption Decree, 1996.*

2. *The suspension of political activities is hereby revoked and no person, political party or organization shall be subject to any restriction on the exercise of any political right:*

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<sup>88</sup> *Free and Fair Elections: International Law and Practice*, Guy S. Goodwin-Gill, Inter-Parliamentary Union, 1994, p.p. 31-32.

*Provided that such person, political party or organization shall in the exercise of such right by governed by the Elections Decree, 1996 and any regulation, rules order or notices made thereunder.*

*(1) Notwithstanding section 2 the persons described in the Schedule are hereby banned from participating in any political activity or in sponsoring any –*

*person contesting any election for political office,*

*(a) political party, or*

*(b) political organization.*

*The political parties listed in the Schedule are hereby banned from participating in any form of political activity in The Gambia.*

*(1) Any person who contravenes this Decree commits an offense and shall on conviction be liable to imprisonment for life.*

*Any political party or organization which contravenes this Decree commits an offense and shall be liable on conviction to a fine of one million dalasis, or in default all its members who subscribe to is constitution shall be eligible to imprisonment for life.*

*The Political Activities (Suspension) Decree 1994, is hereby repealed.*

#### *SCHEDULE*

*All persons who held the offices of President, Vice President and Ministers in the Government of the Republic of The Gambia during the thirty years preceding [sic] 22<sup>nd</sup> July, 1994.*

*Peoples Progressive Party*

*National Convention Party*

*Gambia Peoples Party*

*The Elections Decree 1996 (Decree No. 78 )*

*Effective from January 2, 1996*

*Elections Decree 1996, Part XI - Transitional Provisions*

*(2) If at the time of holding the first elections to an elective office under this Decree the Constitution of the Republic of The Gambia, 1970, as suspended and modified, remains*



*in force, the qualifications, in addition to those prescribed under this Decree, for a person to be nominated for election to such office shall be such as the Provisional Independent Electoral Commission may determine.*

*(3) For purposes of determining qualifications to an elective office under subsection (2), the Provisional Independent Electoral Commission shall have regard to the recommendations, as may be adopted or modified by any lawful authority, of the Constitutional Review Commission established under the Constitutional Review Commission Decree, 1995.*

### **Constituency Delimitation**

*... how a State delimits its electoral boundaries remains very much a product of its overall choice of electoral system. The general aim remains the same, to translate the will of the people into representative government. Again, State practice and the very disparities between States themselves in terms of population, geography, distribution and resources, reveal the range of possible and permissible variations. Substantial differences in the representation/population ratio between electoral units, however, raise a number of questions.... does the disparity have the effect of disenfranchising a group or groups of the population contrary to the international norm of non-discrimination? Or does the unequal division have a political impact, in the sense of affecting the outcome of the election? Either case raises the possibility of a violation of international law, although a breach will normally be determined only by what actually happens in fact.<sup>9</sup>*

Under the provisions of the PIEC Decree (No. 62) and the Elections Decree (No. 78) a new delimitation of electoral boundaries was carried out earlier this year. Using national census data, the Commission reviewed existing boundaries and adjusted them to accommodate 41 constituencies which apparently reflect current realities of population distribution. A review of voter registration data however, indicates that the key concept in constituency demarcation – the equal representation of each voter – appears to have been grossly violated.

Because electoral boundary demarcation is completed on the basis of total population, rather than registered voters, and therefore comparison of constituency populations using registration figures can in cases where voter registration numbers are low, can be problematic. However, the recent registration drive in The Gambia captured data on over 90% of the estimated voting age population thereby making comparison of constituency size based on the number of registered voters appropriate.

A quick review of voter registration totals by constituency (as provided by the PIEC for the August 8<sup>th</sup> constitutional referendum) shows an alarmingly wide variation of constituency sizes. For

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<sup>9</sup> *Free and Fair Elections: International Law and Practice*, Guy S. Goodwin-Gill, Inter-Parliamentary Union, 1994, p. 35.

example, the Serrekunda East Constituency in the Kanifing Administrative Area has a has the largest total electorate of 39,004 registered voters. The Janjanbureh Constituency in Janjanbureh Administrative Area, on the other hand, has only 1,150 registered voters. This is by no means the only example of the disparity in constituency size, there are numerous others only slightly less extreme.

In our discussions with various interested Gambians, the IFES Team heard numerous complaints regarding a perceived regional preference in the demarcation process. According to many of the individuals we spoke with, a distinct preference – allegedly reflected in small constituency sizes -- was given to areas with high concentrations of members of AFPRC Chairman Jammeh's Jolla ethnic group. While more heavily populated urban areas, with more diverse populations and areas with concentrations of Mandika people who, according to nearly all the Gambians the Team spoke with are more likely to oppose the AFPRC regime, were assigned to considerably larger constituencies.

While it is not possible for the Team to substantiate these allegations, the obvious wide disparity in constituency size does give rise to serious concerns about the methodology used in creating the new constituency boundaries.

#### **Election Management**

*In a free and fair election, an independent and impartially administered electoral process is essential... Countries in transition frequently... also suffer a lack of trust among the political players; 'for a democratic election to occur, all major parties...must accept the process and accept the results.' Experience shows that confidence is only likely where the election machinery is and appears to be impartial...<sup>10</sup>*

An independent electoral authority was created for the first time in the history of The Gambia when the AFPRC issued the Provisional Independent Electoral Commission (PIEC) Decree 1995 (No. 62) on December 20, 1995. The new seven member (a chairman and six others) Commission were to be appointed by the Chairman of the AFPRC and, with the assistance of a Secretary to the Commission also appointed by the Chairman, were given the following functions:

- ▶ conduct and supervise the registration of voters;
- ▶ to demarcate electoral boundaries;
- ▶ to conduct and supervise all public elections and referenda;
- ▶ to register political parties;

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<sup>10</sup> *Free and Fair Elections: International Law and Practice*, Guy S. Goodwin-Gill, Inter-Parliamentary Union, 1994, p.35

- ▶ to ensure that the dates, times and places of public elections and referenda are fixed and that they are publicized;
- ▶ to announce the results of all elections and referenda; and
- ▶ to revise or replace all registers of voters existing before the commencement of this Decree.<sup>11</sup>

### **Commission Independence**

According to the PIEC Decree, in conducting its business the Commission, "shall not be subject to the direction or control of any person or authority."<sup>12</sup> The PIEC's apparent lack of independence however, has already become a factor in the electoral process.

Much has been made of the public debate between PIEC Chairman Gabriel Roberts and AFPRC Chairman Jammeh regarding the setting of the date for the elections. According to the Elections Decree, the PIEC is responsible for setting the timetable for elections, however prior to the referendum the PIEC Chairman was quoted in the press as saying that there should be a three month interval between the unbanning of political parties and the presidential elections. Within days, Capt. Jammeh gave a national day speech saying that the elections would take place on September 11 as scheduled. Roberts replied that the PIEC was in discussions with the government regarding the date. Jammeh replied that the issue was most certainly not under discussion.

Just after the August 8<sup>th</sup> referendum, PIEC Vice Chairman Bishop Johnson was also quoted in the press as being in favor of a three-month interval between the unbanning and the first elections. On Friday August 16<sup>th</sup> -- the day after AFPRC Chairman Jammeh announced the lifting of the ban on political parties -- the PIEC announced that "an agreement had been reached" to move the date of the election to September 26<sup>th</sup>.

It is clear that the PIEC is in an extremely difficult situation especially if it attempts to assert too much independence, however the public debate over the date of the presidential polls is especially significant because it became an issue due to the unwillingness of the AFPRC to lift the ban on political parties until the last possible moment. Originally, and per a Memorandum of Understanding between the European Commission and the AFPRC government covering the provision of assistance to the election process, the ban was to have been lifted immediately following the completion of voter registration in June. As a product of this understanding, the PIEC set the September 11<sup>th</sup> date which, had the ban been lifted as agreed, would have allowed three months for the parties to organize.

After registration ended, Chairman Jammeh announced that the ban would not be lifted until after the referendum then scheduled for August 7<sup>th</sup>. As a result of this change, further EC assistance was frozen and consideration of additional requests to the British High Commission, delayed. Now

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<sup>11</sup> Provisional Independent Electoral Commission Decree 1995 (Decree No. 62), Section 6.

<sup>12</sup> PIEC Decree No. 62, Section 7.

that the ban has, at least in a pro forma sense, been lifted, it is unclear whether additional aid will be forthcoming.

The Elections Decree also seem to support the view that more time is needed in order for the Commission to implement its various provisions. A quick reading of the Decree seems to indicate the need for 80 to 90 days for complete implementation. A more "flexible" approach (eliminating and shortening certain tasks/time frames) indicated a need for at least 45 days.

Thus it appears that the Commission is likely to be in violation of the Elections Decree should it maintain the newly established election date of September 26<sup>th</sup>. This insistence on an early date, despite the provisions of the decree leads to questions about the PIEC's independence. On the other hand, should the AFPRC government act to modify the Elections Decree in order to "legalize" a September 26<sup>th</sup> election, the perceived lack of independence will become a legal fact.

### **Lack of Institutional Capacity**

Section 9 of the PIEC Decree states that, "the Commission may in consultation with the Public Service Commission engage such employees as may be necessary for the efficient performance of the functions of the Commission."<sup>13</sup> However in our meetings with the various international donors, foreign technical advisors and members of the PIEC itself, it is evident that the Commission has not engaged sufficient Gambian professional staff to adequately administer the electoral process.

Apparently, and despite contractual obligations by the PIEC to provide Gambian counterparts for each ex-patriate advisor, the PIEC has rather pointedly not hired any permanent professional staff to serve as counterparts to the advisors. This failure is particularly problematic in both the near and long term.

First the failure of the Commission to take full advantage of the substantial technical and financial assistance provided by the international community, (especially from the United Kingdom, the Commonwealth Secretariat, the United Nations Development Program and the European Commission) means that a very significant opportunity to build institutional capacity has been squandered. This is even more troubling since, under the terms of the newly ratified Constitution for the Second Republic there is to be a permanent independent electoral commission. Although apparently none of the current PIEC members have previously been involved in election administration or is expected to be part of a permanent commission, the lack of foresight on the part of the Commission in failing to hire professional Gambian staff, is inexcusable. The experience gained by professional staff during this process and through the interaction with the highly qualified and experienced technical advisors provided by the international community could have laid a substantial human foundation for a future permanent Independent Electoral Commission.

In the short-term, it is obvious that should the advisors be withdrawn, the PIEC would be hard pressed to sustain the newly installed computerized voter registration system or design a system

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<sup>13</sup> PIEC Decree No. 62, section 9.

for registering political parties. Indeed, it appears that the Commission would be unable to conduct an election at all if were not for the advisors. This is not to say that there are not talented, experienced Gambians capable of administering elections. Indeed, the IFES team was frequently reminded that Gambians had run their own elections for the previous thirty years. Unfortunately none of the current Commissioners has apparently ever previously been involved in election administration, nor do they seem likely to continue on after the upcoming election cycle.

#### National Intelligence Agency Involvement

The Team has serious reservations regarding the involvement of the National Intelligence Agency (NIA) with the PIEC. During conversations with a variety of sources it has become evident that the Commission's independence is severely constrained not only in the area of overall policy and direction, but also in its day-to-day operations.

For example, in preparation for the August 8<sup>th</sup> referendum some 2,000 applicants for Presiding Officer positions were called to the PIEC office for interviews. Initially, representatives from the National Intelligence Agency (NIA) were to officially participate in the selection interviews along with PIEC (international consultants) personnel. When the problematic nature of this arrangement was brought to the Commission's attention, the reaction was surprise that anyone was concerned about this situation. When the consultants refused to participate in the interviews, NIA personnel were moved to a separate location a few buildings away and interviewed applicants were required to go from the PIEC office to the NIA location. Once at this location, they were required to submit two photographs (not apparently a PIEC requirement) and undergo an additional interview.

Later, when selections were made, the list of names was sent to the NIA, apparently for approval, and was returned with numerous changes. Indeed, changes to the list of presiding officers were apparently made rather mysteriously at several junctions by individuals/organizations outside the PIEC.

The IFES Team has repeatedly been told by nearly every individual/organization interviewed (both Gambian and international) that NIA agents routinely follow and infiltrate any organization or individual suspected of being remotely "political." We were constantly told that our phones and hotel rooms were mostly likely bugged and searched while were out.

In a related concern, Part II, 7. of the Elections Decree requires, "a person who is appointed an election officer ... shall subscribe to an oath for the due execution of office and an oath of secrecy." This oath reads:

*I...having been appointed...do swear that I will not directly or indirectly reveal such matters as may be committed to my secrecy or relate to the execution of my duties with respect to election processes which require confidentiality.<sup>14</sup>*

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<sup>14</sup> Elections Decree 1996 (No. 78), Schedule II

It is difficult to understand why such an oath should be required of PIEC personnel in an open and accountable electoral system.

### The Right to Vote

*Formal constitutional or statutory recognition of the citizen's right to vote is common to most States and plays both a substantive and a confidence-building role... The right to vote is not absolute, however, and may be subject to reasonable restrictions which are 'not arbitrary and do not interfere with the free expression of the people's opinion'.<sup>15</sup>*

In Part III, Section 12 (1) of the Elections Decree (No. 78), the right to register to vote in The Gambia is given to any citizen who has, "attained, or will on the date of the holding of the next election attain, the age of eighteen years" and "is resident, or was born in that constituency." While the provisions of Section 13 list a number of disqualifying factors, these are relatively standard.

The most important development in regards to voting rights during the transition, is the lowering of the age of majority from 21 to 18 years. This move was universally viewed by those Gambians the Team spoke with as a welcome change. In addition, it is very much in keeping with international norms (a 1989 study by the Inter-Parliamentary Union showed that some 109 of 150 states surveyed had adopted the 18 year age of majority).

### Voter Registration

*...and publication of verifiable lists of electors have an important part to play in building and maintaining the confidence of the electorate, and thereby contributing also to ensuring free and fair elections. Given the inherent opportunities for disenfranchising substantial portions of the population through manipulation of the registration process, transparency is called for. Political parties have a fundamental role in getting their supporters to register, double-checking provisional lists, and challenging errors.<sup>16</sup>*

On numerous occasions, Gambians of all political persuasions commented that the voter registration campaign conducted by the PIEC was by far the best ever held in The Gambia. They agreed that the process had been fair and that eligible voters had not been systematically disenfranchised.

Nearly all, however commented that they had heard numerous reports -- or in once case, new someone personally -- of non-Gambians (mostly Senegalese from Casamance) being encouraged to register in large numbers.

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<sup>15</sup> *Free and Fair Elections* p. 42

<sup>16</sup> *Free and Fair Elections* p.50

The Team would also like to note that the generally positive comments regarding voter registration were made prior to the lifting of the ban on political activity and therefore prior to any review by individuals or organizations other than the PIEC. The lack of transparency and involvement of political parties in the voter registration process raises a number of questions regarding the registration process. These questions cannot easily be answered without political party involvement in reviewing the register.

While provision of a copy of the list is not mandated by the Elections Decree, the principle that it should be made available is accepted. In Part III.33.(2)(a), Commission is directed to:

*Cause to be prepared a number of copies of every master register and master supplementary register sufficient for foreseeable elections and for sale to members of the public.*

Given the severe financial and other constraints on the political parties going into this election cycle, specific attention should be given to provide copies of the voter register to any and all political parties. The registration event lasted several weeks from April into June and registered over 440000 Gambians over the age of 18.

Despite the public confidence and the large numbers of voters registered, problems with the new register emerged when it was put to use during the constitutional referendum. For example, there were numerous reports of voters showing up at "their" polling station on referendum day to cast their vote, only to find that their names were not on the list for that location. This became such a consistent problem throughout the day that the PIEC eventually instructed polling officials to permit any Gambian registered to vote, to cast his/her ballot at any polling station.

While the prompt and pragmatic action of the Commission served no doubt, to facilitate the participation of a considerable number of Gambian voters who may have otherwise been disenfranchised, it is unclear what actions the PIEC is taking to correct this situation. This problem will, in the case, of the presidential elections, be easily remedied in the same way it was for the referendum. The National Assembly elections scheduled for December however, will necessitate concerted action by the Commission to clarify to the Gambian public which voters are assigned to which polling station.

#### **Civic Education and Voter Information**

*Again, the principle of effectiveness of obligations, supported by the actual practice of States in situations marked by deficiencies in this field, such as the lack of experience with voting in a democratic environment with 'real' choices, shows how both civic education and voter information can be central in attaining the objective of a free and fair election. Election observer missions have repeatedly stressed the necessity for civic education, voter information and poll worker training, confirming the necessity for active programmes in situations of transition or change if the result is to be truly representative of the will of the people. As with voter registration, a passive government policy, leaving political education*

*to the parties, churches, and NGOs, may not be sufficient to establish the basic conditions for the conduct of free and fair elections.<sup>17</sup>*

An effective civic education program does not exist in the Gambia. The Civic Education Panel (CEP) created by the AFPRC to oversee civic education is viewed by nearly everyone the Team spoke with as partisan and not having the skills, resources or vision to carry out a civic education program. Realizing a need still existed for voter education the PIEC signed an agreement with the CEP to conduct voter education programs in preparation for the Referendum. The CEP focused on community based civic education while the PIEC focused on the technical aspects of the constitution and voter education.

This joint program consisted primarily of radio and television programs discussing the constitution. Problems, however, existed with this approach. Television coverage does not extend beyond the Banjul area and persons answering questions on the draft constitution were not always knowledgeable and frequently reread the passage in question rather than clarifying the issue. At this time the working agreement between CEP and the PIEC is no longer in effect. Political parties which usually play a role in civic education activities were prohibited from doing so in the Gambia as a result of the ban on their activities.

There was widespread concern that an effective civic education program had not been conducted nor had there been an opportunity to openly debate the draft constitution in a National Assembly or through a free press. The amended final draft constitution was available only a day before the vote making it impossible for people to know what the document actually contained. Additionally, the July 22<sup>nd</sup> Movement, the political arm of the AFPRC, had been active in the rural areas giving conflicting messages about the upcoming vote. The result was general confusion as to what a YES or NO vote actually meant.

The person most frequently mentioned as trying to conduct a civic education program is Halifa Sallah, Editor and Chief of *FOROYAA*, the former political organ of the People's Democratic Organization for Independence and Socialism (PDOIS). *FOROYAA* conducted civic education programs on Radio 1 FM (which reaches only the urban area) made cassette tapes of their broadcasts to take to the rural areas and published a series of information pamphlets on the constitution. *FOROYAA* has continued to print its paper in spite of the decree which bans the organs of political parties established before 1994. The party symbol no longer appears on the paper.

Non-governmental organizations (NGOs) are interested in conducting civic education programs but are not clear under the current decrees as to what they can or can not do and are hesitant to take action until they can be guaranteed safety. However, NGOs in the Gambia tend to be only one or two persons and do not have the organizational capacity to carry out a civic education program.

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<sup>17</sup> *Free and Fair Elections* p.p. 51 - 52



Since the departure of the National Democratic Institute (NDI) no international organization has focused on providing support to conduct civic or voter education. The Commonwealth has two advisors working with the PIEC. One is a civic education specialist the other a media consultant; however, it appears they did not have the mandate, staff or resources to carry out a wider program. Future civic education activities is to be guided by the Constitution which calls for the establishment of a National Council for Civic Education by the National Assembly within six months of its establishment.

Issues which hampered the effectiveness of the CEP were lack of political objectivity and capacity to design and implement a nation wide program. The political objectivity of the CEP was questioned as its Chairman was the Vice Chairman of the July 22nd Movement, the political arm of the AFPRC, and some of its members are also members of the July 22nd Movement. As they had no informational materials to handout they frequently gave their personal opinions during civic education programs which gave many the impression they were a front for the AFPRC. It appears they stopped doing this later in the program, however, the damage had already been done.

Gambia had a democratically elected government for 30 years of elections; however, elections based on issues or that voters should make independent decisions are new concepts. Previously a significant number of people voted as they were told to vote by someone with authority or power. A comprehensive multifaceted civic education program needs to be designed and implemented. A significant part of it would have to be done in the villages by trained civic educators as approximately 70 percent of the population is illiterate and newspapers are not easily distributed throughout the country. State radio covers about 70 percent of the country but in the remaining 30 percent reception is bad and many people do not have radios. The remaining radio stations and television only covers the Banjul area. Cassettes with civic education programs have been effective but again relies on a tape deck to use which is not commonly available.

#### **Candidates, Political Parties and Political Organization**

*Article 25 of the 1966 covenant on Civil and Political Rights confirms the entitlement of every citizen to take part in the conduct of public affairs, to vote and to be elected. State practice in turn confirms that this right is not absolute, but may be subject to reasonable limitations, and the criteria for individual candidature commonly follow those necessary for voting: minimum age, residence and absence of disqualification... Other limitations in turn may seek to protect the integrity of the system... The prevailing jurisprudence on denial or restriction of political rights indicates that such measures will violate individual rights if unreasonable, arbitrary or disproportionate; while the State may be free, for example, to restrict the activities of those who previously abused a position of executive or legislative authority, to deny political rights on the basis of political opinion poses a direct challenge to the democratic process itself.<sup>18</sup>*

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<sup>18</sup> *Free and Fair Elections* p.p. 54 - 55

During our stay in The Gambia, the IFES Team witnessed a great swing in the political fortunes of nearly all Gambians identified with the "political class." Our first round of visits to individuals previously identified as "politicians" came just before the August 8<sup>th</sup> constitutional referendum when confusion regarding the true meaning of a "yes" or "no" vote was the dominant topic of discussion. We met with these same individuals/groups again after AFPRC Chairman Jammeh's announcement of the lifting of the ban on political parties, but before the actual content of the Political Activities Resumption Decree 1996 (No. 89) became public.

### **Prior to the Lifting of the Ban on Political Parties**

As described elsewhere in this report political parties and political activity were banned in the Gambia in the summer of 1994. The lifting of the ban on parties and political activity and freedom to openly and actively campaign without harassment was seen as a major benchmark of the AFPRC's commitment to the democratic process.

A Memorandum of Agreement between the European Union and the AFPRC identified the lifting of the ban on political parties following voter registration as one criteria for receiving financial assistance to support the registration process. The AFPRC's refusal to lift the ban upon completion of voter registration was seen as a major set back and one that gave the donor community reason to halt further financial assistance and to take a wait and see attitude. Gambians saw it as further justification that the AFPRC could not be trusted to do what they had promised.

There was complete agreement by Gambians and members of the international community that the ban on political parties must be lifted and that this must happen soon in order for the parties to register, nominate candidates and campaign for the presidential and parliamentary elections. Gambians take great pride in their democratic tradition and know that for debate on the issues to occur and a choice provided political parties need to be active. There is, however, a lack of trust of the old political parties by many Gambians. An active campaign to discredit political parties and elected officials was undertaken by the AFPRC through the July 22<sup>nd</sup> Movement. Many Gambians think, independently of AFPRC propaganda, that the old parties and their politicians profited from the past or if they did not profit they did not attempt to stop the corruption. This contributed to the feeling held by some who think that political parties do not play a beneficial or constructive role in democracy. We heard that parliamentarians once elected rarely visited their constituents to discuss issues and simply rubber stamped legislation.

During the course of the Assessment members of the Project Team contacted persons familiar with the former political party system. There was overwhelming agreement that even when the ban on party activities was lifted there were still many serious constraints impacting their full participation in the election process. These included timing of the presidential elections, financial constraints and restrictions on who could contest elections.

All parties would register in spite of the constraints. A number would contest both the presidential and parliamentary elections; others thought the process too flawed to participate. There was consensus that three months was an adequate time for political campaigning and all had varying

degrees of mistrust of the PIEC and doubted its independence. Even though the Elections Decree which governed this election did not put qualification restrictions on presidential candidates there were concerns that a new decree would be issued specifically prohibiting certain people or parties from being involved in the election process

A major factor impacting the contesting of the presidential election was the short period of one month between the lifting of the ban on political parties promised immediately following the Referendum and the actual election. Estimates were that it might take from one to three weeks for the political parties to complete the registration process and be approved by the PIEC, leaving very little time for actual campaigning. It would be almost impossible for new parties to organize in this short period of time and an advantage given to the more established parties.

The established parties were concerned about the presidential candidate age and qualifications restrictions contained in Section 62 of the draft constitution. Section 62 disqualifies for election as President anyone over the age of 65 and "anyone who, while holding public office in the Gambia has been compulsorily retired, terminated, or dismissed from public office; or has been found guilty of any criminal offense by any court or tribunal established by law; or has been found liable for misconduct, negligence, corruption or improper behavior by any commission or committee of inquiry established by law." These restrictions impact most directly the old political parties which would have a difficult time to identify a new candidate who would have the political knowledge or name recognition to be elected.

We were also asked about their impressions regarding the draft constitution which was scheduled for Referendum. While all were concerned about certain aspects of the constitution the younger politicians saw it as a document that could be used to move the Gambia through the transition from military rule to democratic form of government. There were indications that the old political parties were telling their followers to vote NO on the Referendum believing that the current situation was better than having a constitution which would be a legal platform on which the AFPRC could operate. We also heard that a NO vote would be a sign to the AFPRC that they no longer had the support of the people and they would automatically relinquish power; this theory hardly made sense.

There was concern that if the AFPRC decided to contest the elections they would have a distinct advantage given they are currently in power and that their political arm the July 22<sup>nd</sup> Movement has been active in rural areas for sometime.

#### **After the Lifting of the Ban**

The Chairman of the AFPRC and Head of State, Captain Yahya Jammeh, announced on August 14, 1996, that the Decree lifting the ban on political activities and repealing the Political Activities Decree 1994, Decree No 4 had been signed into law. The Decree, while not yet published had been leaked to the press and reports via the BBC had revealed a good deal about its content.

In our follow-up meetings with our contacts a good deal of apprehension regarding the contents of the new decree was evident and the delay in its release was also seen as a deliberate move by the government designed to keep those interested in political activity off-balance and unable to move decisively ahead with their plans to re-organize and register as parties. Skepticism was also expressed about the capacity of the PIEC to fairly administer the party registration question, not to mention the overall election process.

When asked, our contacts said that mounting a viable campaign for the scheduled presidential election date of 11 September would be extremely difficult, but that they felt obligated to try. They uniformly said that they thought that the presidential election should be moved back so that there would be at least three months between the unbanning of the parties and the election. In our previous talks with PIEC members, they too said that three months from unbanning to elections would be desirable. All thought that they would have little or no problem mounting strong campaigns for the scheduled parliamentary elections on 11 December.

Financial and logistical problems and the need for time to educate the public about their party platforms and programs were cited as the major reasons for pushing-back the date for presidential elections. Concern was also expressed regarding the detention decrees' continued existence and the possibility that they could be used to effectively prohibit campaign activities.

On Thursday, August 15 the PIEC announced that presidential elections would be held on August 26th. While this was a later date in reality it gave the parties no more time to prepare as one week had already elapsed between the YES vote on the Referendum and the lifting of the ban on political activities. On Friday, August 16, a BBC report from the Gambia announced that the decree lifting the ban on political parties did as predicted, prohibit specific persons and parties.

Captain Yahya Jammeh, Chairman of the AFPRC and Head of State announced on Saturday, August 17th that he would be a candidate for the presidency and his party, the Gambia United party would be inaugurated on August 19th.

#### **Electoral Campaigns, Including Protection and Respect for Fundamental Human Rights, Political Meetings, Media Access and Coverage**

*A successful election does not depend solely on what happens on election day; the totality of the process must be examined, including preliminary issues such as the nature of the electoral system, voter entitlement, voter registration, party organization and civic education. The indices of a free and fair election are especially important with respect to the conduct of the election campaign, at which point a number of fundamental human rights come into play, together with the responsibility of the State...<sup>19</sup>*

#### **Human Rights Law and Practice**

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<sup>19</sup> *Free and Fair Elections* p. 62

### The Law

The AFPRC's human rights record continues to be poor with reported widespread abuses. The AFPRC rules by decree which are immune from judicial review. These decrees have abrogated due process and allowed the government to search, seize and detain without warrant or legal proceedings. These decrees are still in effect:

#### National Security (Detention of Persons) Decree 1995, Decree No. 57 (25<sup>th</sup> Oct. 1995)

*This Decree... shall be deemed to have come into force on the 22<sup>nd</sup> July, 1995.*

*The provisions of this Decree shall not apply to members of The Gambia Armed Forces and The Gambia Police Force.*

*(1) The Minister of the Interior may where he is satisfied that the arrest and detention of a person is in the interest of security, peace, and stability of The Gambia, order the arrest and detention of such person.*

*The order for the arrest and detention of a person under the subsection (1) shall be in the form prescribed in the Schedule, and such order may be made with such conditions as the Minister of Interior may determine.*

*A person who is arrested and detained under this Decree shall be brought before the Supreme Court within ninety days from the date of his arrest.*

*A judge before whom a person arrested and detained under this Decree is brought may remand such person in custody for such reasonable period as the court may determine; or may grant such person bail on such terms and conditions.*

*The Minister of Interior may at any time during the ninety days period of detention of any person revoke, the detention order made under this Decree with respect to that person.*

*An application for a writ of habeas corpus ad subjiciendum shall not lie at the instance of any person arrested and detained under this Decree or on behalf of such person.*

*No suit, prosecution or other legal proceeding shall lie against any person for anything done under this Decree.*

#### National Security (Detention of Persons) (Amendment) Decree 1995, Decree No. 59 dated November 2, 1995

*...shall be deemed to have come into force on the 22<sup>nd</sup> day of July, 1995.*

*...Decree No. 57 ... is amended by repealing section 5 and replacing it as follows:*

*"5. Any person who is arrested and detained under the Principal Decree and who is not released within ninety days shall be brought before a Court, which may remand such person in custody for such reasonable period, or grant such person bail on such terms and conditions as the court may determine."*

### Practice

Those most frequently targeted for human rights abuses are members of the former government, civil service employees loyal to the former government, members of the press, members of non- governmental organizations and persons involved or suspected to be involved in counter coups or demonstrations against the government. Political parties were banned as were all political activities and communications.

According to U.S. Department of State's Human Rights Practices, 1995 Report, "While the AFPRC did not suspend provisions of the Constitution prohibiting torture and other cruel and inhuman or degrading punishment, it ignored these provisions in the treatment of former ministers and military and police detainees ... And although total numbers are not available, most prisoners detained under the AFPRC's anti-corruption campaign or for security reasons are political prisoners." A number of contacts stated that the government wished to be viewed by its actions rather than by its decrees and there had been no action on these decrees for several months. There can be no disagreement that as long as the decrees are left standing they seriously limit Gambian human rights and the movement to a democratic society.

The judiciary still is a respected institution in the Gambia and the Courts have decided in several cases against the government. The AFPRC, however, has circumvented the government by establishing independent Commissions of Inquiry. The African Center for Human Rights is expanding its protection activities and is establishing a collaborative agreement with Amnesty International in response to the current human rights situation in the Gambia.

### Media

Print journalists have been particularly targeted by the AFPRC. The press has been subjected to harassment, interrogation and detention. The Liberian-born publisher of the Daily Observer was deported because of his vocal skepticism about the AFPRC, and later six members of his staff were arrested and questioned about an advertisement which appeared in their paper which the AFPRC thought contained a coded message for the opposition. Three journalists from the Point Newspaper were acquitted of charges of inciting public alarm after a lengthy trial. Even after the journalists were cleared of wrong doing they continue to be harassed. Foreign journalists have been deported or have left the Gambia fearing for their safety.

In addition, Decrees 70 and 7, issued by the AFPRC in February 1996, leveled the threat of massive fines and bans on publishing for infractions of the pre-coup Newspaper Act which contains provisions for sanctions against publications which threaten to disturb public order.

**Newspaper Act (Amendment) Decree No. 70, 1996**

2. ... *"Principal Act" means the Newspaper Act Cap. 32.04.*
4. *Section 13 subsection (2) is repealed and replaced as follows --*  
*"(2) Every person guilty of an offence against this Act shall on conviction*
  - (a) in relation to the contravention of section 7, be liable to a fine of one hundred thousand dalasis and*
  - (b) in relation to the contravention to any other provision of the Act, be liable to a fine of not less than ten thousand dalasis and not more than fifty thousand dalasis."*

**Newspaper Act (Amendment) (No.2) Decree No. 71, 1996**

3. *The Principle Act is amended by inserting ... the following section --*
  - 7A. (1) *All bonds executed under section 7 of the Principle Act in the sum o one thousand dalasis are hereby canceled, and every newspaper previously printed or published with such bond shall not be printed or published unless a bond of one hundred thousand dalasis is given and executed.*
  - (2) *Within fourteen days after the coming into force of this Decree, no newspaper shall be printed or published without a bond of one hundred thousand dalasis previously given and executed with the Registrar General....*
- 13A. *The Court shall in addition to imposing any penalty prescribed for the contravention of any provision of the Principal Act order that the Newspaper shall not be printed or published.*

The effect of the 100 percent increase in the surety bonds required by the government, greatly reduced the freedom of the press by creating self- imposed censorship rather than direct

government intervention. In spite of the implied threat, the press continues to carefully address issues.

The Gambia Press Union in cooperation with the BBC held an election coverage workshop for the press in mid-August. Reports indicated that the NIA made several attempts to attend the proceedings. They were unable to do so but their attempt to monitor the event again poses serious questions regarding the press' ability to operate without the fear of harassment.

There is one government and two private radio stations and one government television station. There were no reports of the private stations being harassed but that could be as a result of self censorship rather than tolerance by the AFPRC.

## V. RECOMMENDATIONS

Initially, the members of the IFES Assessment Team felt strongly that there was both the need and the very real possibility that the August 8th referendum would create a sufficient "opening of political space" for the conduct of a truly competitive electoral campaign despite the existence of numerous decrees substantially restricting civil rights. The Team identified a series of discrete, targeted interventions which we believed could serve to both enhance the transparency of the Gambian elections and increase the participation of political parties and civil society.

And although the Team met with initial difficulties in meeting with the PIEC, our eventual discussions with Commission members, especially Vice-Chairman Bishop Johnson, proved fruitful. Local non-governmental organizations already planning a variety of civic and voter education activities and the training of local election observers were identified. Meetings the Team met with various political actors who gave with positive indications of their willingness to work cooperatively.

However, the announcement of the Political Activities Resumption Decree, 1996, Decree No. 89 on August 19, led the Team to the unfortunate, but obvious conclusion that the hopes of the Gambian and international communities which had been raised in the aftermath of the referendum, were false. Despite the best efforts of many Gambians and the support of various international donor nations, an open, transparent and competitive multi-party presidential election expressing the will of the Gambian people is unlikely under the current conditions.

In retrospect, this conclusion is not surprising. There has been little procedural openness or transparency since the work of the National Consultative Committee was completed. Benchmarks established by the international community in cooperation with the AFPRC were consistently ignored.

The political space does not exist at this time for the following recommendations to be



implemented for the presidential elections. It is too soon to tell what conditions will exist leading up to the parliamentary elections in December. Therefore, the only recommendation which we would recommend be implemented regardless of the political situation is support to the African Center for Democracy and Human Rights in its ongoing effort to become involved in civic education and election observation and monitoring.

### Presidential Elections

IFES recommends against the provision of on-site assistance at this time due to the AFPRC's maintenance of the following conditions:

- 1) severe restrictions on persons and parties wishing to organize and contest the election; and
- 2) the tight scheduling of the presidential election which does not allow adequate time for political parties to organize and campaign.

There is an opportunity however, for IFES to provide limited support from Washington, DC to Gambian non-governmental organizations interested in observing and monitoring election activity . We recommend:

*1). Provision of additional information resources regarding democratic transitions, electoral processes, election observation and monitoring to the African Center for Democracy and Human Rights:* The Center has an established resource center which appears to be well used. We propose adding to this collection a number of resource materials on civic and voter education, election administration, observation and monitoring and to work with the Center to publicize their availability to other interested Gambians. This way local groups can have ongoing access to materials regardless of the continued involvement of international organizations.

### Parliamentary Elections

After the presidential election on September 26th, a number of critical steps could be taken by the new President, which could sufficiently alter the political environment for the parliamentary elections to allow for a reasonably open and competitive election process. Such a series of related critical steps or "benchmarks" would necessarily include:

- ▶ swearing-in of the newly elected President within a reasonable period of time after the declaration of election results. This is particularly important given the provision of the Constitution of the Second Republic, Chapter XXII, Schedule 2, (Transitional and Consequential Provisions) which state that:

*"the person duly elected President of The Gambia in accordance with the Electoral Decree 1996 shall be the first President of the Second Republic of The Gambia and shall assume office as President on the date he or she is sworn in... This Constitution shall come into effect upon swearing-in of the first President."*

- ▶ repeal of the following AFPRC decrees:
  - ▶ State Security (Detention of Armed and Police Personnel) Decree No. 3 1994 and various amendments (Decree Nos. 7, 26 and 43);
  - ▶ National Security (Detention of Persons) Decree No. 57 1995 as amended (Decree No. 59);
  - ▶ Newspaper Act Cap. 32.04 as amended by Decree Nos. 70 and 71;
  - ▶ Resumption of Political Activities Decree No. 89 1996;
  - ▶ Release all political detainees;

Should these actions be taken by the new President within a reasonable period of time after the election, the IFES Assessment Team recommends that, depending on timing and actual need, a combination of the following activities in support of greater civil society involvement in the electoral process and/or the strengthening of political parties be undertaken:

***1). Work with non-governmental organizations to conduct voter education programs:***

Non-governmental organizations are interested in implementing both civic and voter education programs. However, they do not have the experience, technical expertise or financial resources to do this. We recommend a consultant work with these group to develop voter education messages and strategies which can be used with their specific target groups. USAID is in the process of giving grants to a number of non-governmental organizations to support human rights and democratization programs. Depending on the timing of the technical assistance it would be useful for these groups to be involved in the process so their capacity for voter education program design and implementation could be strengthened.

The core groups tentatively identified by the IFES Team to participate in the voter education program are the African Center for Democracy and Human Rights Studies, Catholic Relief Services (CRS), Islamic Social Relief Agency (ISRA) and TANGO the coordinating organization of Gambian NGOs.

***2). Conduct local election observation training:*** During the Referendum on the draft constitution a number of non-governmental organizations involved their staff in election observations. Also, a number of our contacts frequently commented on their interest in observing the upcoming presidential and parliamentary elections.

We recommend a training consultant work with interested groups to develop local capacity to observe elections in a systematic and informed way following international standards for local election observation. This would provide the opportunity to further strengthen civil society's capacity for involvement in the process.

The Gambian organizations expressing interest in election observation/monitoring are the African Center for Democracy and Human Rights Studies, ISRA and TANGO.

**3). *Provide a copy of the voter registration list to all registered parties:*** Assuming that a list was not made available to all parties for the presidential election, this would be done in an attempt to equalize resources for all parties. Additionally, copies of other documents considered relevant to the electoral process would be provided.

**4). *Conduct party polling agent training:*** Polling agent training is required prior to the conduct of an election. We recommend conducting this training for the parliamentary elections in cooperation with local non-governmental organizations. Adequate training was not provided for the Referendum and there is no reason to think a better training will be held in preparation for the presidential elections especially given the short time frame leading up to it. An IFES trainer would design and coordinate the training program using local trainers from the political parties, non-governmental organizations and PIEC staff. Members of non-governmental organizations would be invited to attend so they can learn new information on the election process and be seen by the other participants as an important player in the process.

A successful model which has been used in Ghana trains the party agents with the presiding officers so there is consistency in information and it provides an opportunity for dialogue between the election commission and the political parties. This approach is not possible at this time given the legal constraints regulating our work with the Government of the Gambia.

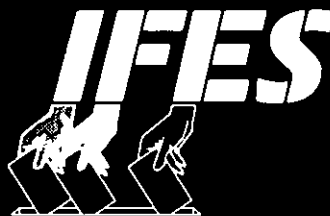
The African Center for Democracy and Human Rights Studies expressed interest in working on training materials and the organization of training events.

**5). *Facilitate communication between the political parties and the PIEC:*** Depending on the climate which exists leading up to the parliamentary elections we would recommend organizing a series of meetings between the political parties and the PIEC to be facilitated by local NGO leaders. The third party involvement will be important given the lack of trust which will surely exist at this time between the political parties and the PIEC. The successful implementation of this recommendation depends on the following:

- 1) the ability of the political parties to separate the presidential election which from all indications will be completely unfair from the parliamentary elections

which may have some opportunity for fairness if the Constitution is put into effect; and

2) some interest by the political parties and the PIEC that they want to enter into a such a dialogue.



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