



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Fifty Years On

**Censorship, conflict and media
reform in Sri Lanka**



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INTERNATIONAL CENTRE AGAINST CENSORSHIP

December 1998

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INTRODUCTION

Sri Lanka attained independence from Great Britain in February 1948, just ten months before the United Nations adopted the Universal Declaration of Human Rights. This year — 1998 — marks the fiftieth anniversary of both events. However, far from being a time when the ‘foundation of freedom, justice and peace’¹ could be celebrated in Sri Lanka, the Independence Day ceremonies of February 1998 were held under a tight blanket of security. Government troops remained engaged in a ferocious battle against cadres of the secessionist Liberation Tigers of Tamil Eelam (LTTE) in the northern part of the island. In the south, the planned Independence Day events were being hastily relocated in the wake of a devastating bomb attack by the LTTE at one of Sri Lanka’s foremost Buddhist shrines, the Temple of the Tooth in the centre of Kandy. Security concerns were paramount as foreign dignitaries flew in to attend the scaled-down ceremonies. Thus, on Independence Day, many residents of Colombo felt themselves confined to their homes, unable to move around the capital city because of the huge security presence. The failures of Sri Lanka’s state-building efforts over the last half-century, and the need to remedy this situation, were at the forefront of the President’s Independence Day address.

The long-standing conflict between the secessionist LTTE and the Sri Lankan government has had an enormous impact on human rights in Sri Lanka. Of particular concern to ARTICLE 19 has been its serious, detrimental impact on the rights to freedom of expression, information and association throughout Sri Lanka, although a far wider range of rights than these have been affected. In 1998, there still seemed little prospect of an early peace, and human rights protection — including particularly protection of the right to free expression — remained a crucial issue on the political agenda. In June, military censorship was introduced under emergency provisions and in August Provincial Council elections were indefinitely postponed on security grounds. Thus, even the right to exercise the franchise — a most fundamental democratic right — appeared to be under threat.

In a climate where security concerns are often paramount, infringements of such rights as freedom of expression can be made all too readily. Security concerns predominate, even affecting government policy on issues which do not have any direct relationship to the conflict or to national security. ‘National security’ imperatives can be, and are being, used to justify a broad range of curbs on human rights, including on freedom of expression, information, association and movement. Certainly, under the international human rights standards to which Sri Lanka has subscribed, it is legitimate to impose certain limited restrictions on these rights for reasons of national security. Problems arise, however, when restrictions are imposed

¹ Quoted from the Preamble, Universal Declaration of Human Rights, adopted by the United Nations on 10 December 1948.

in the name of national security which exceed these limits, as has frequently been the case in Sri Lanka. Indeed, the emergency powers available to the President under a proclaimed state of emergency have regularly been used to exert control over areas of life with no connection to the conflict whatsoever. Even the present government — which came to power on promises to uphold and strengthen human rights protection — has resorted to such practices, raising serious concerns amongst human rights defenders about its actual commitment to reform.

The conflict continues to have a dramatic impact on freedom of expression — as well as on so many other fundamental human rights — in the main areas of fighting in northern and eastern Sri Lanka. Parts of these areas are under the control of the Sri Lankan military and parts are under the control of the LTTE, but there are also areas where control is not clear-cut. Tens of thousands of people have been displaced from their homes and endure conditions of immense hardship. They, and others living in the north and east, often feel caught between the two warring sides; silenced in-between, they are unable to access the media that might make their plight better known.

The effects of the conflict are also felt far more widely, touching the lives of people living elsewhere in the island in manifold ways. At times, the effects are manifest in direct and violent ways. LTTE suicide-bombers have attacked several civilian targets in the south, leaving numerous people dead and injured and extensive damage to property. But security concerns are also experienced in the south in other, less murderous ways: security operations have regularly resulted in hundreds of Tamil people at a time being detained for questioning by the police, for example. Many people have recurring experience of such detentions, regardless of whether there is any evidence about them for the police to probe. At times, especially when such operations intensify, Tamil civilians are likely to experience such operations as direct harassment on the basis of their ethnicity.

Certain policy decisions at far broader levels, too, are also influenced by security concerns. These include the government's media reform policy and even the decision whether to hold elections or not when they are due. In August the state of emergency was extended to cover the whole of Sri Lanka, rather than the specified areas to which it had previously applied. Soon afterwards, the government announced that the elections to five Provincial Councils, which were due later that month, would be delayed. No date was given for when they would be held beyond the pledge that it would be before the end of 1998. The ostensible reason for postponing the elections was that adequate security could not be provided during the election period: with the army engaged in a critical offensive against the LTTE in the north of the island, soldiers could not be transferred from the north to provide security. However, there is no guarantee that military demands will have reduced by the end of the year, and opposition politicians have accused the government of using emergency powers to avoid a test of popularity at the polls. The government's democratic credentials are

being severely tested. A petition challenging the government's decision to postpone the Provincial Council elections has been filed in the Supreme Court by two members of the Free Media Movement.

The current government of Sri Lanka — the People's Alliance (PA), led by President Chandrika Bandaranaike Kumaratunga — came to power on a manifesto which promised to provide redress for the numerous violations of human rights committed during 17 years of rule by the previous United National Party (UNP) administration. The PA promised numerous reforms in the field of human rights. Recognizing the crucial place of freedom of expression for the development of a flourishing democratic culture, it placed particular importance on the need for media reform. Indeed, in October 1994 the Cabinet approved a new, reformist media policy. But despite these promises, and despite four years in power, the PA has not yet introduced the reforms to the media that it promised. Indeed, in April 1997 it even attempted to rush legislation through Parliament which would have significantly *increased* direct governmental control of the broadcast media, contrary to any internationally recognized standards on freedom of expression and the media.² Fifteen challenges were filed in the Supreme Court, which on 5 May 1997 declared the Bill to be unconstitutional. Since then, a new Media Minister has taken office with a renewal of reformist pledges and a Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media has been appointed. The Select Committee, however, had not completed its work by September 1998 and the timetable for production of its final report is not known. It is to be hoped that the appointment of the Parliamentary Select Committee on media reform will not provide an excuse for the government to delay longer, and that it will soon lead to genuine, positive — and long-promised — reforms relating to freedom of expression.

Within Sri Lanka, media reform remains a subject of vibrant debate and campaigning, with a growing number of organizations and parties campaigning on media issues. Indeed, the extent of public interest in this issue was reflected in the fact that the Parliamentary Select Committee received over 40 submissions from the public. Although such organizations span a broad spectrum politically, a consensus appears to be emerging among them on the key areas of reform that are needed to provide the legal and institutional frameworks necessary for the development of media freedom. A symposium on 'Media Freedom and Social Responsibility' was held in Colombo in April 1998 which was jointly organized by the Sri Lanka Working Journalists' Association, the Free Media Movement, the Editors Guild of Sri Lanka and the Newspaper Association of Sri Lanka, together with the World Association of Newspapers and the Centre for Policy Alternatives. The symposium marked an unprecedented level of collaboration and consensus-building between quite different

² Sri Lanka Broadcasting Authority Bill, published in *The Gazette of the Democratic Socialist Republic of Sri Lanka* on 21 March 1997.

media organizations within Sri Lanka, and culminated in the adoption of the ‘Colombo Declaration on Media Freedom and Social Responsibility’.³

This report examines the current status of freedom of expression in Sri Lanka, concentrating particularly on media freedom. In continuing its series of reports on Sri Lanka since the change of government in 1994,⁴ ARTICLE 19 hopes to make a positive contribution at the international level to ongoing local efforts to reform the legal and administrative environment for the media in Sri Lanka. While reform has been long delayed but continually promised, cases of criminal defamation have continued to be brought against newspaper editors, and press harassment and censorship have continued unabated in various — and sometimes life-threatening — forms. Urgent and determined action is needed to halt this trend.

RECENT TRENDS

In its last report on Sri Lanka, published in March 1997,⁵ ARTICLE 19 noted a worrying rise in inter-party political violence in the south during 1996, especially in the run-up to various local elections. It observed that:

The PA government has prided itself on the steps which it has taken towards creating a more open and tolerant political climate in the south, and to ending the atmosphere of fear, violence and intimidation which had earlier been an integral part of the political process. It must now take steps to ensure that such conditions are not allowed to return.

Since then, there have been a number of developments which signal a further deterioration in democratic practice in Sri Lanka, and which have a direct bearing on freedom of expression and association. These include aspects of the regulations proscribing the LTTE, which were introduced on 27 January 1998 in the wake of the attack on the Temple of the Tooth; the manner in which numerous Bills were rushed through Parliament without debate in the absence of the main parliamentary opposition party; and the use of emergency powers to cancel elections to Provincial Councils in the south.

³ See Appendix 2 for the text of the ‘Colombo Declaration’.

⁴ See *An Agenda for Change: The Right to Freedom of Expression in Sri Lanka* (London: ARTICLE 19, Oct. 1994), *Words Into Action: Censorship and Media Reform in Sri Lanka* (London: ARTICLE 19, March 1995), *Silent War: Censorship and Conflict in Sri Lanka* (London: ARTICLE 19, March 1996) and *Reform at Risk? Continuing Censorship in Sri Lanka* (London: ARTICLE 19, March 1997).

⁵ *Reform at Risk?*, note 4 above, at 3.

Northern and eastern Sri Lanka

The examples cited above concern actions by the government, but the violent — indeed, murderous — manner in which the LTTE has opposed the government's attempts to establish at least some degree of civilian administration in Jaffna must not be overlooked.

The LTTE is well-known for the repressive regime it imposes on those living under its control or coming under its influence. It has ruthlessly eliminated both people within the Tamil community who actively oppose its policies and methods, as well as many members of other communities — be they senior political figures or ordinary civilians.

Since December 1995, when the LTTE were ousted from their former stronghold, Jaffna has effectively been under military administration. The government has taken steps to develop a civilian administration in the Jaffna area, but these have been violently opposed by the LTTE. In January 1998, the government held elections to 17 local councils in Jaffna, the first elections to have been held in Jaffna since the early 1980s. The LTTE opposed the elections, and candidates campaigned in an atmosphere of fear. Nine cadres of the Eelam People's Democratic Party (EPDP) were killed by the LTTE, including two candidates, but in the end, all of the 'mainstream' Tamil political parties participated and some 50 per cent of registered voters present in the peninsula voted.⁶ Mrs Sarojini Yogeswaran of the Tamil United Liberation Front (TULF) was elected as Jaffna's first woman mayor. Her slaying by the LTTE on 17 May 1998 was emblematic of their methods of opposition.

Mrs Yogeswaran had been widowed as the result of an earlier LTTE assassination in 1989, when gunmen in Colombo killed her husband, a TULF parliamentarian, together with the then leader of the TULF. On being elected as Mayor of Jaffna in January 1998, Mrs Yogeswaran had refused military protection, believing that through her actions she should exemplify the change she desired from the prevalent 'gun-culture' to non-violent and democratic politics. Yet she, too, was killed at her home by an unknown gunman, who is generally believed to have been from the LTTE. Subsequently, many elected councillors stepped down from office in the face of LTTE threats.

Mrs Yogeswaran's successor as Mayor of Jaffna, Mr P Sivapalan, was killed just four months later when a bomb exploded at Nallur Municipal Office, Jaffna, on 11 September 1998. This attack, too, has been widely attributed to the LTTE.⁷

⁶ K Samuel, 'Straining Consensus: Government strategies for war and peace in Sri Lanka 1994–1998' in J Armon and L Philipson (eds.) 'Demanding Sacrifice: War & Negotiation in Sri Lanka', Issue 4 of *Accord: An International Review of Peace Initiatives*, (London: Conciliation Resources, Aug. 1998).

⁷ This bomb also killed at least 11 other people, including the military and police commanders for the area, several other security forces personnel and a number of civilians.

A recent report by University Teachers for Human Rights (Jaffna) (UTHR(J)) provided this telling description of the continuing, pervasive influence of the LTTE within Jaffna even two years after they were ousted by the military. It points to the silencing effect that the LTTE has been able to have on the population, even before the political assassinations described above:

A need for diversity in newspapers and in the printed word is deeply felt but has proved very hard to realize in the context of Jaffna. The chief obstruction is the real threat posed by the LTTE which used its agents to promptly smell out any development that would pose a long-term threat to it. The slightest talk that the LTTE is prying into something suffices for a warning. A second obstruction is the absence of presses. During its reign the LTTE took over nearly all the presses which have either been moved to the Vanni, or were lost during transportation there No publication has given a hint of the deep anger felt by the mass of the people against the LTTE over what they experienced during and after the forced exodus of 1995.⁸

In addition to the pervasive, insidious control of expression as described by the UTHR(J), the LTTE has also continued to commit numerous more direct attacks, some of which have had devastating effects, killing large numbers of non-combatant civilians. They also took hostages and were reported to have tortured and 'disappeared' prisoners.

Some of those whose killings were attributed to the LTTE had clearly been targeted on political grounds. In July 1997, two parliamentarians were killed in separate incidents in Trincomalee in the east. The first, Arunasalam Thangathurai, was a Member of Parliament for the Tamil United Liberation Front (TULF), a party which supports the ruling coalition. He, together with five other people, was killed in Trincomalee on 5 July 1997 in a grenade attack on a meeting at a school. The second was Mohammed Moharroof, Member of Parliament for the opposition UNP, who was killed with five others on 20 July when the jeep he was travelling in was ambushed. Other abuses by the LTTE during 1997 included attacks on international shipping destined for Jaffna, which killed several crew members, and the taking prisoner of 35 Muslim and four Sinhalese villagers from Irakkakandy, Trincomalee District. These prisoners were all released later in the year, when they were handed over to the International Committee of the Red Cross and returned to their families. Nine crew-members from a passenger ferry were also taken prisoner by the LTTE in July 1997 before the latter destroyed the vessel. The two Indonesian crew-members were soon

⁸ 'Jaffna: Current Situation & Prospects: The political mood', Vol. 5, No. 4 & 5, *Pravada*, (Colombo: 1998).

released, but the Sri Lankans were held for longer. The one Tamil crew-member was not released until July 1998; however, the Sinhalese and Muslim crew-members had not been released by September 1998.

Attacks attributed to the LTTE did not remain confined to northern and eastern Sri Lanka. At least 18 people were killed and over 100 injured in a bomb attack in the vicinity of the World Trade Centre and the Galadari Hotel in Colombo in October; in January 1998 a suicide bomber launched an attack on the Temple of the Tooth in the hill-town of Kandy, attacking one of Sri Lanka's most revered Buddhist temples.

The banning of the LTTE and freedom of expression and association

The bombing of the Temple of the Tooth in Kandy shortly before the fiftieth anniversary of Independence celebrations provoked a considerable hardening in the government's attitude. On 27 January 1998, a new emergency regulation was promulgated to ban the LTTE and 'every other organization and ... every body or group of persons engaged in activities substantially similar to those carried out or formerly carried on, by the organization styled as the Liberation Tigers of Tamil Eelam'.⁹ In addition to prohibiting membership or association with the LTTE, and support for or assistance with any of its activities, the regulation also bans the communication (or attempt to communicate)

to any other person in any manner any order, decision, declaration or exhortation made or purported to have been made by such proscribed organization or by any member thereof or any information relating thereto for the purpose of advancing the objectives of such proscribed organizations.

On conviction for an offence under this regulation, the prescribed punishment is between 7 and 15 years' imprisonment.

'For the avoidance of doubts,' there is a provision to protect the right of any international organization which has an agreement with the government, and which has been 'specified' by the Defence Secretary, to engage in humanitarian assistance. However, there is no similar provision protecting the right of journalists to speak to members or associates of the LTTE and report on LTTE actions or statements. The 'chilling' potential of such a regulation is clear. The regulation tries to deny to the Sri Lankan public information that is readily available abroad, for the LTTE issue regular

⁹ Emergency (Proscribing of Liberation Tigers of Tamil Eelam) Regulations No.1 of 1998.

press statements outside Sri Lanka and put considerable resources into publicizing their cause internationally. Sri Lankans with access to the Internet can readily access such material if they wish to do so; but the majority have no access to such technology and are deliberately denied information on the LTTE's stated position.

Reporting the conflict — before military censorship

News reporting of the conflict in northern and eastern Sri Lanka has long been dominated by press statements put out by the Sri Lankan government authorities on the one hand, and the LTTE on the other. Independent reports or depictions of the conflict and its impact on the people in the area remain rare.

At times, the reports emanating from the two sides are diametrically opposed. On 3 February 1998 — the eve of Sri Lankan Independence — there seemed little doubt that hundreds of people had been killed in the previous few days in fighting in Kilinochchi District. The LTTE had launched several attacks on army camps in the area, which government news sources said had been successfully repulsed. Yet anyone who also read the news reports put out by the LTTE would have been left confused: had the Sri Lankan army inflicted huge losses on the LTTE or had it been the other way around? And who now controlled Kilinochchi itself? Was it the government — as the Defence Ministry reports claimed — or was it the LTTE, as their news releases proudly announced? The reports emanating from the two sides were directly contradictory — reflecting both sides' use of propaganda and misinformation in the pursuit of their objectives. And as has been the case for so long now in the Sri Lankan conflict, no independent news sources were in the area, so there was no non-partisan account of events.

Such conflicting reports of events on the battlefield in Sri Lanka are commonplace. Statements to the press made by each side in the conflict frequently differ and often contradict each other. Only rarely do accounts based on independent reporting become available: such reporting from the battlefield has been almost non-existent. Indeed, so restricted are the possibilities of reporting the conflict from the areas directly affected that the journalists in Sri Lanka generally take the view that there is no possibility, even when there is no formal censorship in force.

Twice in the past, at times when major military offensives had been launched in the north, the PA government has imposed formal censorship of reporting on military matters under emergency regulations.¹⁰ It was imposed for the third time in June 1998, as discussed below. In addition, whether the formal censorship was in force or not, journalists have found it extremely difficult to gain access to the conflict zones. For well over two years, the military has refused to permit journalists to travel

¹⁰ Formal censorship imposed under emergency regulations was in force in the last three months of 1995, and for almost six months in 1996, from 19 April until 8 October.

freely to these areas, or to the areas under LTTE control where hundreds of thousands of internally displaced people were residing. At times, the military has taken journalists on supervised tours of the area, but they have not generally been permitted access at other times. Access to the northern city of Jaffna became easier for journalists, both local and foreign, after it came under Sri Lankan military control in December 1995. However, for those journalists who want to go to the north there are serious administrative obstacles to overcome, and there is no guarantee that permission will be granted at the time it is wanted. Before they travel, journalists must first apply to the Director of Information, who in turn makes a recommendation to the Ministry of Defence. As one Sri Lankan journalist put it to ARTICLE 19, journalists ‘have to obtain virtually a licence from the Government to practise their profession in another part of their own country.’ Once they have received written permission, they can purchase an air ticket from a private flight operator and travel to Jaffna. Access to other parts of the north is also decided on a case by case basis. The same journalist commented:

Journalists operating from Colombo (both foreign and local) are officially accredited by the Government Information Department. Then why the need for further clearance? Is it not to pick and choose? You can always administratively delay the people who you don’t like allowing.

In practice, despite intensive and bloody fighting in the north for well over a year as government troops have tried to open a land supply route to Jaffna, there has been almost no independent reporting of the military operations themselves, nor of their impact on the people living in the area, or on the environment. Operation ‘Jayasikuru’ (‘Sure of Victory’) began in May 1997; it had not achieved its goal well over one year later. Only in late February 1998 did the military take a group of some 40 local and foreign journalists to the front line. They reported a scene of devastation. To quote just one:¹¹

The fighting has also reduced hundreds of homes, shops and other buildings along the road to rubble. Some have been destroyed in the fighting, but others have been deliberately blown up by the LTTE, an army commander said. ‘Lots of the buildings were booby trapped or destroyed by the LTTE to prevent us from occupying them,’ said Major General Neil Dias, an army commander leading the campaign.

¹¹ D Cruz, ‘Sri Lanka’s bloody battle for key highway to worsen’, Reuters, 19 Feb. 1998.

The devastating impact of the campaign on civilians in the area could only be guessed at, for civilians had left the area that the journalists were allowed to visit and to ARTICLE 19's knowledge, none attempted to follow their trail.

Many thousands of civilians who lived along the road have fled deeper into the jungles, leaving their cattle to graze on grass growing in uncultivated paddy fields.

ARTICLE 19 believes that it is essential for obstructions to the free flow of information on matters pertaining to human rights or humanitarian issues to be lifted. Journalists should not be prevented from entering conflict areas except where their presence would pose a clear risk to others.¹² The same principle also applies to representatives of inter-governmental or non-governmental organizations with a mandate relating to human rights or humanitarian issues. Yet, in Sri Lanka this principle is not adhered to. The flow of information relating to serious humanitarian and human rights issues in the conflict areas has been curtailed to the point that it is frequently very difficult to know what is the actual situation on the ground. Claim and counter-claim in a propaganda battle between the two parties to the conflict frequently serve to mask the real situation and its implications for those who live in the area concerned. More broadly, the denial of such information to the Sri Lankan public at large means that the people are denied the opportunity to exercise their democratic rights on the basis of an informed assessment of the actual situation in the country.

Indeed, if the experience of Peace Brigades International (PBI) is typical, the government appears to have become particularly concerned to influence the manner in which Sri Lanka is portrayed internationally. PBI felt obliged to close down its operations in Sri Lanka earlier than originally planned after government ministers told the organization that their representatives' visas would not be renewed unless they agreed to submit their reports to the government for prior approval. In a letter of protest to President Kumaratunga, dated 24 April 1998, PBI said:

We must, however, express our most serious concern and surprise over the recent actions taken by your government with respect to our organisation. On 4 March 1998 at a meeting with members of the Ministries of Defence, Foreign Affairs and Plan Implementation and Parliamentary Affairs, we were informed that we would be unable to continue our work in Sri Lanka without agreeing to new and strict conditions. In particular, those conditions included the demand that we refrain from publishing reports outside Sri Lanka without first

¹² See Principle 19 of *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (London: ARTICLE 19, 1996).

submitting them to the appropriate government ministries. No such condition had ever been imposed before, not even under the UNP government. As a non-governmental organisation with a firm commitment to non-partisanship and independence, it was unthinkable that we could condition our work in this way. As a result our on-island representatives did not receive the necessary recommendation for residents' visas to be issued. Under these circumstances we were forced to withdraw much more abruptly than we had planned.

The imposition of military censorship

On 5 June 1998, the President re-imposed direct censorship on reporting of certain security matters under emergency regulations. When censorship had been imposed in the past — from 21 September to 20 December 1995 and from 19 April to 8 October 1996 — a civilian authority had administered it. This time, however, the Deputy Chief of Staff of the Army was appointed as the 'Competent Authority' under the censorship regulations, the first time a military censor has been appointed. Media organizations in Sri Lanka and abroad expressed dismay at this development, which the Free Media Movement described as 'a flagrant violation of the commitment made by this government in its election manifesto to defend media freedom'.

At the time that the censorship was imposed, a renewed offensive had begun in the north, where government troops were attempting to capture the town of Mankulam while still trying to achieve their objective of opening a land route to Jaffna. The military had already imposed an informal news blackout on these operations. As reported in the *Sunday Times*, Colombo, of 31 May 1998:

Troops were advancing on two fronts in what appeared to be a move to encircle Mankulam ... Details of the operation were being clouded in top secrecy with no reports reaching either Army Headquarters or the rear headquarters in the Wannu. The authorities have decided on a news blackout until substantial gains are made. Hence there will be no regular news releases or announcements.

Days later, military censorship was imposed.

The 1998 censorship regulations¹³ differed in some respects from those which had been in force in 1995 and 1996.¹⁴ A welcome exclusion from the issues subject to

¹³ Emergency (Prohibition on Publication and Transmission of Sensitive Military Information) Regulations, No.1 of 1998.

¹⁴ These are discussed in *Silent War* and *Reform at Risk*, note 4 above, at 6-9 and 8-10 respectively.

censorship was the subject of military procurements, for example, which had been explicitly included on the two earlier occasions. Nevertheless, the regulations remained very broadly phrased indeed, extending far beyond the legitimate restrictions that can be imposed under international law to protect national security. They apply to both Sri Lankan and international media, whereas on the two previous occasions the censorship regulations were enforced only in relation to the local media. Although in June it was reported that the Foreign Correspondents' Association of Sri Lanka had been told that the censorship would be lifted for the foreign media, no such action was taken.¹⁵

The regulations prohibit editors, publishers and broadcasters — 'whether in or outside Sri Lanka' — from printing, publishing, distributing or transmitting

any material which pertains to any operations carried out or proposed to be carried out, by the Armed Forces or the Police Force (including the Special Task Force), the deployment of troops or personnel, or the deployment or use of equipment, including aircraft or naval vessels, by any such forces, or any statement pertaining to the official conduct or the performance of the Head or any member of any of the Armed Forces or the Police Force.

On 17 August, the censorship was extended to ban coverage of news relating to the transfer of officers within the high command of the security forces. Information of this kind, the Defence Ministry claimed, could assist the LTTE.¹⁶

As drafted, the regulations forbid publication of *any* material on police or armed forces operations or deployment, including even statements made in Parliament or by government representatives. As they make no distinction at all between material threatening national security and matters which can legitimately be placed in the public domain, they also appear to ban even such statements as commendations of the performance of traffic police or crime fighters in areas far from the conflict. Furthermore, although the subject of military procurements is excluded from the issues subject to censorship, such disclosures may still be limited by the fact that discussion of the official conduct of any individual member of the armed forces and the police remains prohibited.

The regulations provide for the Competent Authority to issue 'such directions as he considers necessary to effect compliance' with the regulations if they are breached, and to issue orders prohibiting for a specified period the use of presses or other equipment which have been used in breach of the regulations. In the same order,

¹⁵ *Island*, Colombo, 17 June 1998.

¹⁶ *Sunday Times*, Colombo, 23 Aug. 1998.

the Competent Authority may also authorize steps to be taken to prevent further publication or transmission of prohibited material.

The regulations, read literally, impose a complete ban on publication or broadcasting of news relating to the subjects listed. They do not provide for prior censorship by the Competent Authority, although in practice this is how they are implemented. Reporting has continued to some degree and news releases are still issued by the relevant ministries. Reports relating to the conflict have been submitted to the Competent Authority for authorization — or prior censorship — before publication. With the approval of the Competent Authority, material apparently can be published on matters which the regulations ostensibly prohibit. Similar ambiguities were evident in the operation of the censorship under emergency regulations on the two previous occasions it was imposed by the PA government.¹⁷

As in the past, editors and journalists have again complained that the censorship is imposed in an arbitrary and sweeping manner. Again, the government has not substantiated its claim that media reporting provides the LTTE with useful strategic information that it would otherwise not know. Indeed, as sections of the Sri Lankan media have pointed out, some of the military's worst set-backs have taken place while direct censorship was in force.

The material which the censor has cut includes public statements by the President herself (despite the fact that she is also Minister of Defence and Commander-in-Chief of the Armed Forces) and material which had already been published in a state-owned newspaper and broadcast on state radio. As in the past, casualty figures and other material have not only been deleted, but have at times been altered by the Competent Authority, who has inserted his own figures.

Within days of the censorship regulations coming into force, the editor of a Sunday newspaper was notified by the Competent Authority that he had violated them in an article published on 7 June. This was just two days after the regulations were promulgated, and he had failed to submit the article for prior scrutiny. The editor explained that the article at issue had been printed before the regulations were imposed, and that it anyway referred to an operation carried out on 28 May 1998, a week before the censorship came into force. No further action was taken against the editor, who received a return notification from the Competent Authority saying, 'It is observed that you have violated the above emergency regulations'.

ARTICLE 19 has received copies of numerous examples of text which had been submitted to the Competent Authority and returned to the newspaper concerned with the censor's marks on the copy. In some cases, details and figures have been deleted. In others, however, whole articles have been cut altogether, including sections which do not relate to the security forces or the police at all, but to the

¹⁷ See *Silent War*, note 4 above, at 6-9; and *Reform at Risk*, note 4 above, at 8-10 for discussion of the operation of the censorship in 1995 and 1996 respectively.

actions of the LTTE, which are not covered by the censorship regulations. For example, one article contained the following deletion:

A Sri Lankan air force Russian built MI24 crashed on Friday in northern Vavuniya killing all crew members **[deleted: but unconfirmed reports said the helicopter was shot down by Tiger rebels.]**

The article continues its description of the crash, quoting a news release from Operations Headquarters. The last paragraph, however, was deleted altogether, despite relating in part to military procurements, a subject which should be exempt from censorship. It read:

[deleted: The present set of the MI 24's with the airforce were purchased under controversial circumstances by the defence ministry. When the purchases arrived in the country it was detected they were not worthy. The crash occurred barely two weeks after an unmanned aerial vehicle known as 'super scout in the skies' crashed in LTTE controlled area. But the news of the crash was swept under the carpet.]

ARTICLE 19 has seen several examples of changes introduced into a text by the censor, who had substituted the casualty figures given by journalists with his own. In one such case, the original text, as submitted to the censor, had read:

Since the renewed offensive was launched under a news blackout and later a total censorship, at least 437 soldiers have died, over 100 are missing in action and well over 2,800 are wounded.

The censor had crossed out the figures, and written the following note at the bottom of the page:

Correct details of KIA, WIA & MIA:

KIA — 247 killed

WIA — 1415 wounded in Action

MIA — 65 missing in Action

Censorship and radio broadcasting

The issue of radio broadcasting brought to the fore the ineffectiveness of government attempts to fully control the flow of information on the conflict. Sri Lankans have

access to international broadcasting as well as national, and Sri Lanka's own state radio organization, Sri Lanka Broadcasting Corporation (SLBC), has an agreement with the British Broadcasting Corporation (BBC) to broadcast a BBC Sinhala service news programme live, without any form of censorship or delay. It continued to do so even after the censorship was imposed, not wishing to put its agreement at risk. This meant that sometimes, SLBC would broadcast the government's own version of events in the north, only to follow this with the BBC broadcast which contained a different version that had not been approved by the censor. At times when military casualties have been particularly high and information has been subject to very close control, such as during the debacle at Kilinochchi in September 1998, these broadcasts have become particularly controversial. Indeed, in October the Director of Government Information informed the Media Ministry, the Defence Ministry and the Competent Authority on censorship of this anomaly asking for action to be taken. However, the Director-General of SLBC asserted that they would not stop broadcasting these programmes. 'The government has nothing to gain by stopping us from broadcasting this programme. The people will just tune in to the BBC directly on short wave.'¹⁸

Political polarization in the south

Politics in the south remains highly polarized, particularly over the new system of devolution of powers to proposed Regional Councils, which the PA government had hoped to introduce through a new Constitution. The Parliamentary Select Committee on Constitutional Reform failed to reach consensus on proposals for a new constitution, and in October 1997 the government presented to Parliament its own proposals for constitutional change.¹⁹ The opposition UNP rejected these proposals, however, and there appeared little chance that the government's proposals could be enacted by the present Parliament. The LTTE also rejected the proposals, so even if they are enacted, it is hard to envisage how they could be implemented in northern and eastern areas, where the LTTE remains a potent force.

The government's difficulties in pressing forward with its devolution plans — which are integral to its conflict resolution strategy — have had a clear impact on its attitude to a significant area of media reform. At present, the state owns and controls the largest newspaper group in the country: Associated Newspapers of Ceylon Ltd (ANCL, also known as 'Lake House'). The government had promised in its manifesto that it would 'broadbase' ownership of ANCL, removing it from governmental

¹⁸ 'Sri Lanka state media in brawl over censorship', Reuters, Colombo, 12 Oct. 1998.

¹⁹ The government has issued several drafts of its proposals for constitutional change since 1995. The October 1997 version represented the culmination of its consultations. They remain the most extensive proposals for devolution put forward by any government since independence, despite some aspects having been 'watered down' in successive drafts.

control. However, the Media Minister has now categorically stated that this part of the manifesto will not be implemented. He said that as the private media were generally hostile to the government's plans, it needed to retain control over ANCL in order to ensure that it could present its proposals for constitutional reform to the people in a clear manner.

In addition, allegations of political violence have again been made: the opposition UNP protested about attacks on a rally it held in February 1998 to protest against the granting to a foreign company of a licence to mine phosphate in the Eppawala area. Indeed, on 3 March the UNP began a month-long boycott of Parliament in protest against what it sees as the government's undemocratic methods. The government's response was to rush some 21 Bills and motions through Parliament without debate, in the absence of the main opposition party.

Among the bills rushed through Parliament in this manner was 'an extremely controversial and undemocratic'²⁰ piece of legislation affecting non-governmental organizations. This bill — which amended the Voluntary Social Service Organisations (Registration and Supervision) Act — was unexpectedly passed on 4 March 1998. It had first been published in 1995, when it was strongly criticized as interfering with the freedom of association of voluntary organizations and, in the Civil Rights Movement of Sri Lanka's words, making 'an already unacceptable Act worse'. As it had not been put to the vote in Parliament at that time, it was assumed that it had been withdrawn altogether. Instead, it was resurrected without notice in March and pushed through Parliament in minutes in the absence of the opposition. Attempts by several individuals and a non-governmental organization to challenge the validity of the amendment in the Supreme Court failed. Legislation can only be challenged in this manner within one week of being placed on the Order Paper of Parliament. The bill had originally been published some two-and-a-half years earlier. The Supreme Court ruled that a petition must be filed within one week of the *first* reading; the challenge could not be admitted as it had not been made within the time-frame stipulated by the Constitution. The Supreme Court thus had no jurisdiction to review the amendment, and made no determination on it.²¹ Such action by the government, however, represented a serious threat to democratic principles. As noted by the Civil Rights Movement of Sri Lanka:

The absence of the opposition should not, in CRM's view, be allowed to affect the rights of the public, particularly in a manner affecting freedom of association where strong representations had

²⁰ 'Hasty amendment violates freedom of association', Civil Rights Movement of Sri Lanka, E 01/3/98, 9 March 1998.

²¹ SC Application No SD 1/98, published in *LST Review* (Colombo: Law and Society Trust, March 1998).

been made, and where the passage of time could reasonably give rise to the expectation that these representations had been heeded.²²

Political violence and elections

As noted in *Reform at Risk?*, worrying levels of political violence were reported in the run-up to local government elections held in March 1997, including the killing of Nalanda Ellawala, a young PA Member of Parliament, in February 1997 by UNP supporters after he had filed his nomination for elections. The extent of election-related violence during these local elections was subsequently revealed in a report by the Centre for Monitoring Election Violence (CMEV), Colombo. The CMEV recorded 2,237 reported incidents of election-related violence in 30 police divisions between 5 February and 19 March.²³ The incidents included murder (six reported cases), ‘hurt’, ‘threat and intimidation’, assault, robbery and damage to property. PA members were believed to have been responsible for more instances of violence than members of other parties:

... the PA is allegedly responsible for just under half of the entirety of violence during the run-up to the polls and for almost twice the number of incidents allegedly committed by the other major contender at the election, the UNP.²⁴

The CMEV recorded a further 820 violent incidents on election day itself, although it believed the true figure may have been higher.²⁵

Political analyst Jayadeva Uyangoda recently discussed the link between elections and violence in Sri Lanka.²⁶ Indeed, Uyangoda noted that, ‘[a]lmost every election in Sri Lanka, whether national or local, has developed a peculiar tendency to generate violent behaviour among the contestants.’ As one important factor contributing to this tendency, he pointed to the almost complete domination of civil society in rural areas by party politicians and the link this has to violence:

... politicians who belong to the party which controls the central government — in the present instance, the PA — also control the civil society space through the deployment of almost all state

²² Ibid.

²³ *Final Report of Election-Related Violence during the Local Government Election Campaign*, (Colombo: Centre for Monitoring Election Violence, 25 April 1997), 2.

²⁴ Ibid.

²⁵ Ibid. at 6.

²⁶ J Uyangoda, ‘Elections: Why do they beget violence?’, Vol. 5 No. 8, *Pravada* (Colombo: 1998), 21-23.

institutions in the area. The police, the local army detachment, the divisional secretariat, the grama niladharis [village headmen], the pradeshiya sabhas [local councils], the agricultural office, the forestry office, the branches of state banks — all these institutions of the state are required to serve the interests of local political bosses of the ruling party. The hegemonic control thus exercised over the public sphere in the countryside is so perfect that a challenge is not easily tolerated. Intimidation and violence of opponents have thus become the ingredients of the practices of hegemonic control.

The expectation of violence at election time has now reached such a peak that the government argued that the Provincial Council elections due in late August 1998 could not be held without the presence of tens of thousands of soldiers to provide security to candidates and voters.

Criminal defamation

The government continues to pursue charges of criminal defamation against newspaper editors and journalists.

In Sri Lanka, defamation may be prosecuted as either a civil or a criminal offence. When prosecuted as a criminal offence under Section 479 of the Penal Code, the accused faces the prospect of a possible two-year prison sentence and a fine. ARTICLE 19 has long been concerned by the tendency in Sri Lanka for the government to bring charges of criminal defamation as a way of punishing those who criticize or expose government ministers or policies. Prosecutions of this nature — and, indeed, the very threat of prosecution — discourage the legitimate expression of political dissent or the public exposure of corruption or abuse of power. Journalists and editors may find themselves repeatedly having to attend court to answer charges in trials which may drag on for years, and which may then be dropped or fail; although sometimes a conviction or an out-of-court settlement is reached.

As the European Court of Human Rights has established, politicians must expect to tolerate more intense criticism than private individuals:

[F]reedom of political debate is at the very core of the concept of a democratic society The limits of acceptable criticism are, accordingly, wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and

deed by both journalists and the public at large, and he must display a greater degree of tolerance.²⁷

ARTICLE 19 — like various Sri Lankan human rights and media organizations — has long called for the offence of criminal defamation to be removed from the statute book altogether. This view accords with the recommendation of the Committee to Advise on the Reform of Laws Affecting Media Freedom and Freedom of Information, which submitted its report to the previous Media Minister in May 1996. In its report, which was made public by the government in September 1997,²⁸ the Committee made the following recommendation:

Section 479 [of the Penal Code], dealing with criminal defamation, should be repealed as, despite the several defences it allows, the possibility of such prosecution can discourage criticism of government ministers and policies or the expression of political dissent. The requirement of the Attorney-General's sanction for a prosecution has not proved an effective safeguard. If it is not to be repealed, the section should be amended so as to vest the decision whether or not to indict in a judge of the High Court with proper guidelines similar to those in English law, namely

- There should be a clear prima facie case;
- The libel must be so serious that it is proper for the criminal law to be invoked; and
- Public interest requires the institution of criminal proceedings. There should be provision for the accused to be heard against the application for permission to indict.

This recommendation has yet to be acted upon, despite a statement by the then Media Minister Dharmasiri Senanayake in December 1995 that the law on defamation would be amended in 1996. The Minister gave no details of the changes that he envisaged. In the event, the law has remained unchanged and continues to be used against journalists.

The present Media Minister, Mangala Samaraweera, has not made known any specific intention to reform the defamation laws, to ARTICLE 19's knowledge. At a meeting with ARTICLE 19 in January 1998, he said that the government could face difficulties when newspapers refuse to carry corrections or apologies for incorrect

²⁷ *Lingens v. Austria*, Judgment of 8 July 1986, Series A No. 103.

stories they had published, and that the government only pursued criminal defamation cases in such circumstances. However, he also said that the government was willing to examine the issue with a view to possible reform. The ‘Colombo Declaration on Media Freedom and Responsibility’ also calls for the repeal of the law on criminal defamation.

Current cases of criminal defamation

Some journalists in Sri Lanka have faced numerous prosecutions for criminal defamation. Indeed, one senior editor filed a petition in the Supreme Court claiming compensation for the succession of charges to which he has been subjected. The editor concerned — Victor Ivan, editor of the Sinhala-language weekly *Ravaya* — considered that the successive actions taken against him by both previous and present administrations constitute serious harassment in violation of his constitutionally guaranteed right to freedom of expression (see next section below).

Several other editors also faced criminal action for defamation during the past year, including the editors of the following newspapers:

- *Sunday Leader*, for the alleged defamation of President Kumaratunga in an article published on 3 September 1995. This case had not concluded at the time of writing.
- *Sunday Times*, for the alleged defamation of President Kumaratunga in gossip column. This case concluded in a conviction in July 1997; the editor, Sinhatissa Migara Ratnatunga, was sentenced to 18 months’ imprisonment (suspended for seven years) and a fine. He has filed an appeal.
- *Lakbima*, for the alleged defamation of President Kumaratunga in an article published on 19 February 1995. The editor, Bandula Padmakumara, was acquitted on 6 February 1998, but the Attorney-General has filed an appeal against this judgment. The content of the contested article in *Lakbima* was very similar to that of the *Sunday Times* article which led to Sinha Ratnatunga’s conviction some seven months earlier.
- A second case against the *Lakbima* editor and a journalist involved the alleged defamation of Minister of Posts and Telecommunications, Mangala Samaraweera, for an article published in October 1996 (before Mangala Samaraweera became Minister for Media). It alleged the misuse of public funds to furnish an official bungalow, for which the newspaper said the Minister was responsible. The editor of *Lakbima* maintains that the article is correct and therefore not defamatory. At

²⁸ Although the report was printed by the government in September, it was not widely distributed and was not made available to the public through the Government Publications Department. The report has been used as the basis for the Parliamentary Select Committee’s deliberations, however.

the first hearing, the prosecution said that they would be prepared to withdraw the indictment if the newspaper published an apology, and the judge deferred the case until 27 May 1998 to give time for this proposal to be considered. The editor maintained his position and the case continues.

- *Trisinhale*, for the alleged defamation of Housing and Construction Minister Indika Gunawardene. In August 1997, it was reported that the editor, Tilak Wehella, was considering pleading guilty and that the trial would begin on 3 September. ARTICLE 19 does not know the outcome of this case.
- *Island*, for the alleged defamation of former Navy Commander Vice Admiral Mohan Samarasekera in an article published in April 1996. At a hearing before the Colombo High Court in January 1998, the trial was postponed until May; it had not concluded at the time of writing.
- *Rajaliya*, for the alleged defamation of former UNP Member of Parliament Kalinga Obeywansa in an article published in February 1993, when the UNP was still in power. The editor, Denagamage Landewela, was remanded in June 1997 when he was unable to provide sureties for bail, and the case was postponed until October. He was then acquitted.
- *Trishule*, for the alleged defamation of the Principal of Nalanda College, Colombo in an article published in June 1995. The High Court, Colombo, issued notice on the editor in November 1997. ARTICLE 19 does not know the outcome of this case.
- *Gindara*, for the alleged defamation of President Kumaratunga. INFORM reported that the editor and eight others, including the newspaper's publisher, were arrested by the Maradana police in January 1998 and remanded by a magistrate.²⁹

The case of Victor Ivan, editor of *Ravaya*

Ravaya is a popular Sinhala-language weekly newspaper which, according to its founder and editor, Victor Ivan, is intended 'to expose corruption and injustices and to promote the establishment of a democratic and just society beyond race, caste, religion and other boundaries. Another object was to guarantee a peaceful society without terror'.³⁰ *Ravaya* was started as a monthly magazine in August 1986, but since November 1991 it has been published weekly.

Ravaya's exposures have concerned a wide range of public bodies and governmental authorities. The paper has carried articles on such issues as corruption, procedural irregularities and illegal transactions in bodies such as the Land Reform

²⁹ Situation Report: January 1998 (Colombo: INFORM).

³⁰ Supreme Court Application No. 89/98 (FR); *Majuwana Kankanamge Victor Ivan vs. Hon. Attorney General*.

Commission and Air Lanka, as well as exposures of individuals holding high public office.

The issues that *Ravaya* covers are clearly important matters of public interest. Indeed, official bodies that, at a later date, investigated some of the scandals originally exposed in *Ravaya* have on several occasions substantiated the newspaper's claims. Yet, since 1993 the editor has been subject to a series of criminal defamation charges.

Victor Ivan believes that there is a concerted attempt to harass him and to deter him from the crucial public watchdog role that he has chosen as a journalist, and which is so fundamental to the creation of a genuinely democratic environment. However, the fundamental rights petition that he filed in the Supreme Court failed.

One case against Victor Ivan involved allegations against the Minister for Coconut Industry in the previous UNP government who, according to a report in *Ravaya*, was making money from illegal land deals. After the change of government in 1994, an official inquiry found that *Ravaya's* allegations had been correct. Yet Victor Ivan had had to defend himself against a charge of criminal defamation and, at the time the official inquiry was held by the new government, was at the stage of appealing to the Supreme Court. He described the effect of such a case as follows:

[The official inquiry's] final meaning was that I was right by any standard. Whether I was right or the minister was wrong, it was I who was accused as a criminal under this draconian law. It was I who had to waste my time here and there. It was I who had to spend money. It was the politician who had acted against the public interest and not the man who represented the public interest who had the Attorney General's protection and patronage.³¹

So many cases have been filed against Victor Ivan that he says the excessive time he has to devote to preparing his defence and appearing in court interferes with his ability to attend properly to his work as editor of *Ravaya*. He fears that the potential threat of such prosecutions can have a detrimental chilling effect on editorial judgement:

... such cases take so long to be resolved that the editor has to waste a great deal of his time in the courthouse. Therefore, even though an editor has before him sufficient authenticated data, in consideration of the fact that he runs the risk of facing a long and tortuous period

³¹ Submission on 'Criminal Defamation and Sri Lankan Practice', (Ravaya Publishers).

of pressure, he may refrain from publishing the evidence he has against the powers-that-be.³²

‘Informal’ harassment and physical threats: The case of Iqbal Athas

Another journalist who has exposed senior public figures to scrutiny is Iqbal Athas, Consultant Editor and Defence Correspondent for the *Sunday Times*, Colombo. He also writes as a foreign correspondent for several overseas papers and broadcasters. In contrast to Victor Ivan, who has been subjected to harassment through the utilization of ‘legal’ channels in the form of criminal defamation suits, in Iqbal Athas’ case harassment has taken extra-legal and physically threatening forms. His experiences are reminiscent of the ‘vigilante rule’ that was meted out under the previous UNP government.

Iqbal Athas has been harassed periodically for over a year. At the outset, the Media Minister spoke out strongly against those who harassed him, saying their actions had not been authorized by the government nor by the security forces. In a letter to ARTICLE 19, he promised:

that the Government shall deal decisively with this type of situation by taking the appropriate legal steps. As long as this Government is in office, it must be stated unequivocally there will be no return to ‘vigilante’ rule.³³

In practice, however, the government failed to take adequate measures to prevent the situation from escalating to the life-threatening proportions that it reached in February 1998, despite warnings — which proved all too correct — of what might ensue.

At around 9.00 p.m. on 12 February 1998, a group of five plain-clothes gunmen broke into Iqbal Athas’ home after they had threatened and assaulted the guard at the gate. A larger number remained outside. Iqbal Athas was upstairs watching television with his wife. The gunmen threatened Mr Athas and other members of his household. They put a cocked gun to his head, and tried to make him go downstairs with them, leaving the other members of the household upstairs. It is believed that they were trying to abduct him. Before they could do so, however, one of their group called out that they had to leave quickly and they all fled without him.

³² In an article published in *Counterpoint*, Victor Ivan lists a total of 27 cases of defamation which have been brought against him in the six years that he has edited *Ravaya*. In addition to the criminal prosecutions discussed here, the list also includes a number of civil actions. See Vol. 3 Issue 7, *Counterpoint*, ‘How the law is used to silence the truth’, (Colombo: June 1996).

³³ Letter to ARTICLE 19 of 4 August 1997 from Minister of Posts, Telecommunications and the Media, Mangala Samaraweera.

They had not identified themselves, but Mr Athas believed them to be serving members of one of the security forces. Each man carried the same kind of weapon, thought to be a Browning automatic pistol. This weapon is standard issue in the Air Force.

Mr Athas complained to the police, and gave a statement. Disturbingly, police protection was not immediately provided. Protection was only forthcoming a few hours later, by which time the gang had made a second appearance outside his home and Mr Athas had made further complaints to the police and the Defence Secretary. On their second visit, the men did not enter the house again, probably because they could see that the Athas family now had several visitors.

The events of the night of 12 February were the culmination of a long-running saga of harassment and intimidation which began in July 1997. For about three weeks in July, Iqbal Athas' home in Colombo was subjected to direct surveillance carried out by unknown persons in a most conspicuous and threatening manner. The objective appeared to be to intimidate both Mr Athas and visitors to his home, and to gather information on his sources of information. Mr Athas had been reporting on corruption and other irregularities within the Sri Lanka Air Force at the time, and President Kumaratunga had appointed a Committee of Inquiry to investigate these matters.

The people watching the Athas household were seen noting down car number plates of visitors. They also questioned neighbours about activities at the house and spread false and potentially volatile information about why they were there. They said that they were investigating terrorist activity at the Athas house, in which his Tamil house staff were involved. Some neighbours were told that Athas himself was Tamil and suspected of terrorist activity. In fact, he is Muslim, not Tamil. Neighbours were requested to petition government authorities with complaints about terrorist activity at the Athas household. In the context of Sri Lanka, where communal violence has erupted several times in the past, such incitement through the spread of false rumour had the potential to unleash considerable violence. Subsequent investigations revealed that the people undertaking the surveillance were members of the Air Force Police and the CID, but there was no sign that any disciplinary action was being taken, despite the Minister's earlier assurances.

In a letter to the Media Minister of 26 September 1997, ARTICLE 19 stressed the importance of bringing the perpetrators to book:

If these findings [of the involvement of Air Force Police and CID personnel] are correct, and as the government had been informed by the security agencies (including the CID) that they had neither authorised, nor had any knowledge of, such a surveillance operation, we feel sure that you will be pursuing this matter further. We believe it is most important that the perpetrators of such unauthorised and illegitimate actions should be brought before the courts, not least as

a deterrent to them and to others against mounting such intimidatory operations again.

One month later, the Secretary to the Media Ministry responded, saying only that ‘the matter re. Iqbal Athas is being handled satisfactorily by the authorities’.³⁴

Far from being contained, however, the following month the harassment intensified. In October he had included in his column the findings of the Presidential Committee’s inquiry into the loss of 16 Sri Lanka Air Force planes. The committee had been highly critical of the role of the Air Force Commander, and had pointed to various irregularities, yet no known action had been taken on the basis of the committee’s report. After his public exposures, Iqbal Athas began to be denigrated on Sri Lankan television, radio and in the press. The allegations against him were made in the form of a purported confession by one Selvadurai Senthinathan, who was said to have worked as a translator for the LTTE and to have surrendered to the security forces. The intention behind the barrage of reporting appeared to be to brand Athas as a ‘collaborator’ with the LTTE, on the grounds that the LTTE monitored his weekly column, along with other newspaper publications. Indeed, the Deputy Minister of Defence and the Air Force Commander had also accused Mr Athas of being a ‘traitor’ and an ‘LTTE acolyte’.

Before the ‘confession’ was publicized, Iqbal Athas had contacted ARTICLE 19 and other organizations to express his apprehension that events would take the turn described here. He had been warned by sources in the Air Force two weeks earlier that a LTTE ‘surrendee’ was being coached to say that his defence column was of particular interest to the LTTE. He had also been warned that after this, violence was being planned against him. As described above, this is precisely what was to happen.

After the Senthinathan ‘confessions’ ARTICLE 19 again wrote urgently to the Media Minister and other authorities expressing its grave concern. It emphasized that:

a clear distinction must be drawn and upheld between investigative journalism which fulfils its crucial ‘public watchdog’ function by exposing matters of public concern, such as alleged corruption or other irregularities — whether in the defence establishment or in any other branch of government — and reporting which clearly and directly poses a threat to national security. In our view, there can be no doubt whatsoever that Mr Athas’ reporting falls clearly into the former category. Attempts to suppress reporting of this kind constitute an abuse of power and need to be immediately halted.

³⁴ Letter to ARTICLE 19 of 22 October 1997 from K C Logeswaran, Secretary, Ministry of Posts, Telecommunications and the Media.

This letter remained unanswered, and there was no sign that those responsible for these events were being investigated. At a meeting with officials at the Sri Lanka High Commission in London in January, ARTICLE 19 was assured that Mr Athas' reporting was not considered to constitute a breach of national security. Instead, an official tried to explain away the persistent harassment and intimidation of Mr Athas as a relatively insignificant matter which had arisen due to a long-standing personal animosity between Mr Athas and a senior figure in the defence establishment. Iqbal Athas has specifically denied any such history of personal animosity, however. Subsequent events also cast doubt on such an explanation. It appears far more likely that it is those who feel most threatened by Iqbal Athas' revelations about corruption who are behind these attempts to silence him. The escalation of the attacks on Mr Athas to truly life-threatening proportions underlines the extent to which those concerned were prepared to go, and the scale of the interests believed to be at stake.

The government's response to the raid on Iqbal Athas' house by gunmen has been mixed. On the one hand, the Media Minister expressed his 'sense of shock and disbelief' at the attack. On 13 January, the day after the raid, he said:

This incident will be investigated thoroughly. The president has already issued strict instructions to the relevant authorities to ensure that the offenders are dealt with in terms of the law irrespective of the position they hold or influence they wield.³⁵

He promised a full inquiry by the CID. In addition, police protection has continued to be provided at Mr Athas' house. On the other hand, the Deputy Defence Minister attempted to trivialize the events, claiming at a press conference that the raid on Mr Athas' house was merely an 'occupational hazard for journalists'.

In a surprise move earlier in March, the Defence Ministry announced a sudden change to the leadership of the air force. Despite the fact that the term of office of the Air Force Commander had been extended less than three weeks earlier, only 72 hours notice was given for him to relinquish his post on 5 March 1998 and go into retirement. The government gave no reason for this abrupt change. The Air Force Commander had denied any involvement in the raid on Iqbal Athas' house.

The CID did pursue inquiries into the raid on the Athas' house to some extent, and following an identity parade in May 1998, two suspects were remanded and then granted bail. The Defence Ministry suspended them from service. Mr and Mrs Athas had identified both men as having been among those who raided their home. One of the men had been a personal bodyguard of the former Air Force Commander, and the other was a Flight Lieutenant. However, no action had been taken in connection with

³⁵ Quoted in *Sunday Leader* (Colombo), 15 Feb. 1998.

two other senior officers — now retired — named by Mr and Mrs Athas as being involved.³⁶ Fears were expressed that the CID were dragging out the inquiry.

Another identity parade was held on 24 June, over four months after the raid took place. So many people were included in the parade that it was hardly surprising that members of the Athas family were unable to identify anyone. It included 26 men from the Special Air Borne Unit of the Air Force among the 209 people in the parade.

Despite the clear need to identify and bring to trial the people involved in the raid on Iqbal Athas' house, the inquiry appeared to have stalled. No charges had been brought by September, and Mr Athas continued to experience a degree of harassment at his home. Although he had initially been provided with two police guards for his protection, by June this had been reduced to one. This officer does not accompany him when he travels away from his home.

The authorities continue to keep a very close watch on Iqbal Athas' reports. He received a letter dated 19 September 1998 from the Director of Information, Government Information Department, which read as follows:

My Dear Athas,

This has reference to your article published in the Sunday Times every week.

I note with dismay that very often when reference is made on the ongoing 'Jayasikuru' operation it is described by you as an operation it has virtually stalled.

But I would like to bring to your kind notice that the media is being regularly taken to the north and provided an opportunity to see themselves and assess the situation. More over recently a group of local journalists inclusive of a representative from the 'Lankadeepa' were taken to the front line of the Jayasikuru operation. Those journalists who visited the frontline were full of praise of the conduct of the war and they appreciated the high morale of the soldiers who have sacrificed their lives for the motherland.

I am of the firm belief that it is high time you as a military analyst visit these areas to see for yourself the actual situation of the current operation without engaging in undermining the endeavours of our brave soldiers.

Therefore I make use this opportunity to invite you to visit any part of the operational area in the North at a time convenient to you. And I look forward to your early reply.

Thanking You,
Yours Sincerely,

Ariya Rubasinghe

³⁶ Situation Report: May 1998 (INFORM: Colombo).

Director of Information

Iqbal Athas replied as follows:

My dear Ariya,

I am in receipt of your letter dated 21st September, 1998, faxed to my residence last morning.

I must confess, I was somewhat amused at your statement. To use your own words: *'I note with dismay that very often when reference is made on the ongoing "Jayasikuru" operation it is being described by you as an operation it has virtually stalled.'*

I have written very extensively on various aspects of the ongoing 'Operation Jayasikuru' (Victory Assured) in the past several months. Since reportage of the conduct of this operation was brought under censorship from 5th June, 1998, I have, refrained from writing on it. Even the fewer references I have made thereafter were deleted by the Army Censor.

However, I note your 'dismay' now, that too when a censorship is in force, is over my reference to the ongoing operation being 'virtually stalled.' I have made this reference in the Situation Report of September 13, 1998, in the course of exposing a controversial military procurement — a subject, which you yourself said the Government wished us to continue to expose. This you did when your Department sent us copies of the Emergency Regulations governing the ongoing censorship. ...

You will observe that whilst dealing with the highly controversial procurement in question, I wrote:

'The question arises as to what urgency was to by-pass an established agreement with the Government of the People's Republic of China, particularly when the ongoing operation has been virtually stalled this year with the remote likelihood of it regaining momentum before the monsoons set in a month away from now.'

It is no secret that the renewed phase of 'Operation Jaya Sikurui', which was resumed on May 18th, 1998 led to heavy casualties. The advance of troops was stalled and a censorship was imposed on Jun 5th, 1998. I would have elaborated on this matter further in my report but chose not to because it would have necessitated the submission of my copy to the Army Censor.

As I have personally told you on many occasions, they have, perhaps due to their inexperience, been deleting even references that do not come within the purview of the censorship.

Quite apart from this, even to the most dim witted, it is abundantly clear that 'Operation Jaya Sikurui', which began on May 13th 1997, is yet to accomplish its

task — the recapture of some 74 kilometres of the A9 highway. **Is this not the result of the operation stalling at various phases?**

As for the conducted media tours to the north, once again to use your own words, the media *'is being provided an opportunity to see themselves and assess the situation.'* I do not propose to get involved in a controversy over this. To say the least, the media is aware of the difference between conducted tours and access to operational areas.

Whilst thanking you for conferring the title Military Analyst on me, I must once again confess, that your assertion that I am 'engaging in undermining the endeavors of our brave soldiers' is equally amusing if not hilarious. Of course, this assertion is very milder compared to what I have been subjected to by some very powerful sections of the defence establishment in the recent months.

Armed men broke into my residence, held an automatic pistol at my head, threatened, harassed and intimidated not only me but my wife and eight year old daughter. A concerted campaign was carried out to call me an LTTE acolyte. A 'surveillance' operation was mounted outside my residence and a bizarre campaign was launched in my neighbourhood that I was running a brothel. Why were all these done? Was it not to silence me?

These incidents of harassment, intimidation and even death threats came when I was exposing widespread corruption in the security forces. Your charge that I am 'undermining the endeavors of our brave soldiers' also, by strange co-incidence, arises from a report where I have, once again, exposed a questionable procurement.

However, I take great pleasure in accepting your offer to visit the operational areas in the north. I would kindly request you to grant me an appointment at your very earliest so I may meet you personally to discuss dates and other arrangements. This is because I propose to avail myself of your offer by next week. I can be reached on the following phones

With kind regards.
Sincerely

Iqbal Athas
Consultant Editor
Defence Correspondent

Further instances of harassment of journalists

Other media personnel have also recently faced harassment from the police or defence forces, usually on defence-related matters. The identity of those responsible, however, has not always been known.

Lasantha Wickrematunge, editor of the *Sunday Leader* newspaper, had only been back at his home for around 10 minutes on the night of 17 June 1998 when gunmen opened fire at his house, shooting at random. His vehicles and house were damaged and his driver, who was resting inside, escaped injury by inches. A white van had been seen in the neighbourhood of his house on preceding days, and a van of this type was seen fleeing the area soon after the attack. It was able to flee undetected, despite the considerable noise generated by emptying two magazines of ammunition from an automatic weapon and despite the presence of security roadblocks in the area. Although publicly condemned by the highest level of government, with the President herself ordering a full inquiry, very little has been done in practice to investigate this potentially murderous attack. It was reported that the CID had taken the investigation over from the local police, but the CID failed even to record a first complaint from the victim. Moreover, no forensic examinations were undertaken at the scene of the crime and the Wickrematunge family was told that if they wished the Government Analyst Department to examine the vehicle damaged in the attack, for example, they should deliver it to the Department themselves.

Less dramatically, several journalists have faced harassment by police or security forces seeking information on their sources. In February 1998 two reporters and the associate editor of a Sinhala-language weekly paper — *Silumina*, a state-owned newspaper — were questioned at length by the CID after the paper published a report on LTTE plans to infiltrate the tea plantation areas in central Sri Lanka. The report, quoting intelligence sources, claimed that LTTE operatives would remain dormant in the plantation areas under the cover of a trade union allied to a Sinhalese political party until such time as the LTTE was ready to launch an armed attack in the area. When the reporters refused to divulge their sources, the CID questioned their driver and took the vehicle requisition form relating to their journey.³⁷

More recently, on 14 August 1998 CID officers questioned the editors of the *Sunday Times* and *Sunday Leader* seeking information of the source of stories concerning two government ministers. The newspapers had published a copy of a letter written by a Minister to the Speaker of Parliament requesting the removal of the Chairman of the Parliamentary Select Committee appointed to examine allegations against officials of the Bribery Commission. The Free Media Movement described such action by the CID as ‘an act of intimidation’ intended to prevent publication of such items in the future.³⁸

Several foreign correspondents have also been harassed to reveal their sources. On 3 January 1998, a group of some 30 soldiers raided the Colombo home of the Sri Lanka correspondent for the *Indian Express*. They searched her papers, wanting to

³⁷ *Observer* (Colombo), 27 Feb. 1998.

³⁸ Free Media Movement, ‘Action Alert — Sri Lanka: Newspapers harassed by Criminal Investigations Department’, Colombo, 21 Aug. 1998.

know if she was in contact with the LTTE. In December 1997, security forces personnel had raided another Indian journalist's hotel room. That journalist was visiting Sri Lanka for the *Deccan Herald* and had visited Jaffna, the town which had been the northern stronghold of the LTTE but which, since December 1995 has been held by government forces. The raids provoked protest from the Indian High Commission in Colombo and from journalists' organizations.³⁹ The Media Minister responded by saying that in future, should the security forces wish to search or arrest a foreign correspondent, they must first inform the Director of Information and could only conduct the search in the presence of officials from the Information Department. He told ARTICLE 19 that the search of the *Indian Express* journalist's house had not been ordered by the government.

However, despite these assurances another foreign journalist — the Colombo correspondent of the Chinese Xinhua news agency — was arrested by police on the night of 28 February after the Ministry of Defence ordered that he be deported. He was held overnight at the CID headquarters, and then released without charge after the deportation order was withdrawn, reportedly as a result of diplomatic protests.⁴⁰ The correspondent had reported an attack by the LTTE on a naval convoy north of the Jaffna peninsula, and incorrectly speculated that the Commander of the Navy had been killed. According to the *Sunday Island*, neither the Director of Information nor the Foreign Ministry were informed prior to the arrest being made.

Another incident involved a provincial reporter working for the state-owned Sinhala-language paper, *Dinamina*. He was so severely assaulted after writing a report on the lucrative trade in illegal alcohol in the Aranayake area that he needed over a week's care in hospital. When he returned home, an armed gang stormed into the house and threatened him. The gang later threatened him at a relative's house, where he had sought refuge. After the first assault, President Kumaratunga and the Media Minister instructed the Deputy Inspector General of Police for Sabaragamuwa to investigate the events, and the Officer in Charge of Aranayake police station was soon charged for his alleged involvement in the assault and for attempting to frame the journalist as a dealer in illicit alcohol himself. Subsequently, three further police officers were charged following an identity parade.⁴¹ Such prompt action on the part of the authorities is welcome.

Direct censorship

In addition to the censorship imposed under emergency regulations, as discussed above, there have also been other recent instances of direct censorship. Some

³⁹ Reuters (Colombo), 6 Jan. 1998.

⁴⁰ *Sunday Island* (Colombo), 1 March 1998.

⁴¹ *Daily News* (Colombo), 25 Feb. 1998; *Sunday Times* (Colombo), 1 March 1998.

censorship has been imposed for reasons of physical and psychological health; some appears to have resulted from political lobbies putting pressure on the government to censor; and some has a security background.

Under the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka has ratified, restriction of freedom of expression is permissible on certain narrow grounds and under certain conditions. For example, Paragraph 3 of Article 19 of the ICCPR requires that restrictions on freedom of expression must be 'provided by law'. It also specifies that such restrictions must be 'necessary' for certain objectives to be achieved. These are the respect of the rights or reputations of others; the protection of national security or of public order; the protection of public health or morals. Restrictions, which are not made by law, which are made for other reasons, or which cannot be shown to be necessary for these purposes, are not legitimate under the ICCPR.

Censorship on 'public health' grounds

Three acts of censorship have been made for reasons of public health by the PA government, to ARTICLE 19's knowledge. In November 1996, the President instructed the state-owned newspaper group, Associated Newspapers, (which includes Sinhala, Tamil and English-language titles) to refrain from reporting news of suicides or attempted suicides. This directive was conveyed in a terse note, which read as follows:

H.E. the President has instructed that the A.N.C.L. Group of Newspapers should refrain from carrying news items of suicide and attempts to commit suicide.

Discussion of this subject in feature articles is not restricted.

Please inform your staff.⁴²

No reasons for such a restriction were given. Sri Lanka reputedly suffers from the highest suicide rate in the world.

Another ban relating to public health came in April 1997, when the government announced that smoking and drinking could no longer be depicted on television. The ban applied to all programmes, including those which had already been made.

More recently, in late February 1998, the President issued a new emergency regulation which prohibits publication or broadcast of certain pictures without the prior permission of the Competent Authority, who is named as the Director of

⁴² Quoted in *Midweek Mirror* (Colombo), 13 Nov. 1996.

Information for the purpose of this regulation.⁴³ The regulation applies to depictions of people ‘killed or injured as a result of a bomb explosion or any other act which constitutes an offence under the Prevention of Terrorism (Temporary Provisions) Act ... or any part of the body of any such person’. The introduction of this regulation was explained by the Media Minister as being for the welfare of children, because of the adverse psychological impact gruesome pictures of such victims could have. The imposition of this ban provoked controversy among media personnel. Some said that they would have preferred a form of self-regulation, and that the regulation as it stands will create a false impression in news reporting. The News Director of MTV said,

When there is war there is death. But with this regulation it will be war without death. We will not be able to cover a bomb explosion or even report from hospital. So we will not be able to give a true picture.⁴⁴

It has also been pointed out that the imposition of the regulation is inconsistent: if the intention is to prevent children suffering the presumed effects of viewing gruesome images, then the ban should apply to all such pictures. As it stands, it does not apply to pictures of victims of other kinds of violence, such as murder victims. Pictures of their bodies, however mutilated, can still be published without prior approval. In addition, not all psychologists agree that the sight of such pictures harms children as claimed. Some media personnel have argued that the use of emergency regulations was inappropriate to address an issue of this kind; instead, the government should have held discussions with editors and relied upon a form of self-regulation.

Censorship resulting from sectional political pressures

For the Sri Lankan government to succumb to sectional political pressures by imposing forms of censorship is not new. In a move which attracted widespread protest from local and international organizations, in November 1997 President Kumaratunga suddenly withdrew permission from the British Broadcasting Corporation (BBC) to film a version of *Midnight's Children* — the award-winning book by Salman Rushdie — in Sri Lanka. The BBC had already secured permission for filming from the Ministry of Foreign Affairs and the National Film Corporation. Its unit had been based in Sri Lanka for over two months preparing for filming to start in January when the permission was revoked. The Presidential Secretariat did not give the BBC any reason for its change of mind,⁴⁵ but it is widely presumed that the

⁴³ Emergency (Publication of Photographs) Regulations, No. 1 of 1998, 17 Feb. 1998.

⁴⁴ *Sunday Times* (Colombo), 22 Feb. 1998.

⁴⁵ *Sunday Island* (Colombo), 7 Dec. 1997.

government succumbed to pressure from a small group of Muslim parliamentarians in making its decision. This was despite the fact that *Midnight's Children* contains no material that could be construed as being offensive to Muslim opinion, and was written some ten years before Rushdie's more controversial *The Satanic Verses*, which has been declared as blasphemous by some strands of Muslim opinion. Indeed, the book *Midnight's Children* remains freely available in Sri Lanka, in contrast to *The Satanic Verses* which was banned some years ago.

The decision to ban the making of this film is the most recent in a succession of 'bans' of material on the grounds that it might offend some sectional interest. As well as *The Satanic Verses*, S J Tambiah's *Buddhism Betrayed?* and Taslima Nasreen's *Lajja* were banned on the grounds that they might offend sectional Buddhist and Muslim opinion respectively.

Two Sri Lankan academics wrote in a weekly newspaper of the dangers of such bans, calling for a more tolerant, pluralist environment:

What we have to strive to do is to create a more open and tolerant society in which we can, as individuals, decide what should and should not be read, what should and should not be seen. To do that, the government must learn not to cave into ethnocentric demands irrespective of what religious or ethnic community such demands may emanate from On the other hand, we could make things much easier by banning everything that is potentially offensive to anyone This way, we will be able to create a brave new world which even the fertile imagination of Aldous Huxley could not conjure. That would be a society where no one is offended and where harmony of silence and complacency prevails: a society where human beings are vegetables who do not read or see, who do not think or debate, who do not write or dissent, a society whose thoughts are formulated by politicians and ethno-religious vigilantes.⁴⁶

Other censorship

In August 1998, it was reported that defence authorities in Sri Lanka had stopped the production of a film — called *The Judgement* — depicting Sri Lanka in the year 2005 as a country split by politics after a separate Tamil nation had been created in the north. According to the producer,

⁴⁶ S Perera and A Hussein-Uvais, 'The advance of anti-intellectualism', *Sunday Times* (Colombo), 28 Dec. 1997.

[The defence authorities] wrote to us and told us in very polite language that the film was politically dangerous... The country is divided and those in the south feel they are getting nowhere while the north is well developed. So the people who are sick of having these conventional parties ruling them and making false promises look for a third force.⁴⁷

Without the cooperation of the military and access to military equipment, the film could not be produced. Such action by the defence authorities constitutes an unwarranted interference in freedom of artistic expression.

THE GOVERNMENT'S MEDIA REFORM PROGRAMME

Given the prominence of media reform in its 1994 election manifesto, the government's performance in this field has been extremely disappointing. First, the then Media Minister appointed four committees to report on different aspects of media reform. The recommendations of these committees, however, have not been implemented. Indeed, the government has said that it no longer intends to proceed with one important element of its original policy, which was to 'broadbase' ownership of Associated Newspapers of Ceylon Ltd, the state-owned newspaper group.

Then, in April 1997 the government suddenly — and completely unexpectedly — tabled a Bill in Parliament to establish a new broadcasting authority. Had this Bill been enacted, far from creating the independent, plural media environment that reformists have lobbied for and government policy statements appeared to support, it would have extended and institutionalized direct political control of the broadcasting media.

The Bill was tabled without any public announcement shortly before the long New Year holiday, when most workplaces are closed. Under Sri Lanka's Constitution, the constitutionality of proposed legislation can be challenged in the Supreme Court, but only within one week of the Bill being tabled in Parliament. Given the timing of this Bill, there was every chance that it would pass unnoticed and unchallenged, and become law. In the event, however, it was noticed and numerous media organizations and human rights organizations campaigned against it. A total of 15 petitions were filed in the Supreme Court challenging its constitutionality.

⁴⁷ Reuters (Colombo), 13 Aug. 1998.

In a landmark judgment,⁴⁸ the Supreme Court ruled that the Bill was unconstitutional and it was withdrawn. Of particular significance in the judgment was the Court's view:

that the principle of pluralism, of which the State is the ultimate guarantor ... must be safeguarded in order to ensure that freedom of thought and expression may not only survive but thrive and flourish vigorously.

Subsequently, a new Media Minister — Mangala Samaraweera — took office with a renewal of reformist pledges. He soon proposed the repeal of the Parliamentary Powers and Privileges (Amendment) Act of 1978, which had given Parliament itself the power to punish statements or actions that were deemed to interfere with its work, which was done in September 1997. He then established a cross-party Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media. Although the motion establishing the Select Committee was adopted in August 1997, it took several months for the committee to be set up and to start its work. It has yet to complete its deliberations.

The Select Committee's terms of reference emphasize the values of independence and pluralism in media reform. The Select Committee is mandated to make recommendations on various matters, including:

- the establishment of a new broadcasting authority 'which is efficient, competitive and responsive to consumer needs and to ensure that pluralism is achieved in broadcasting as a whole';
- the repeal or amendment of the Sri Lanka Press Council Law and other legislation which limits free expression and the independence of the media;
- the creation of a new Media Council 'to promote the freedom and responsibility of both the print and electronic media, the right to information of citizens and the maintenance of high standards of communication ethics';
- guidelines for government advertising;
- criteria for ensuring the independence of the Media Council.

While the terms of reference for the Select Committee promise the possibility of positive reforms through the creation of free, independent and pluralistic framework for the media, there is nevertheless concern that the Select Committee process itself may in fact delay the implementation of reform in certain areas. In particular, there is already a considerable body of work on the legislation that limits free expression and

⁴⁸ S.D. No. 1/97 – 15/97, determined on 5 May 1997. The judgment is reproduced in Law & Society Trust, *Fortnightly Review* (Colombo: May 1997).

the independence of the media, and which is contrary to Sri Lanka's obligations under the International Covenant on Civil and Political Rights (ICCPR). Some of these laws could simply be repealed without any new legislation needing to be drafted covering these matters. Indeed, the Committee on reform of media laws recommended the repeal of Section 479 of the Penal Code, which deals with criminal defamation, and Section 118 of the Penal Code, which is concerned with bringing the Queen or President into contempt. It also recommended the repeal of Section 16 of the Press Council Law of 1973, which prohibits newspapers from publishing proceedings of Cabinet meetings and other matters. In addition, it recommended the repeal of *all four* amendments to the Parliament (Powers and Privileges) Act of 1953 as well as the repeal of paragraphs 7 and 8 of the Schedule to the original Act. It recommended these changes in order to remove obstacles to the free and fair reporting of parliamentary proceedings, and to bring the Act into line with the provisions of freedom of expression contained in the ICCPR. The 'Colombo Declaration' includes similar recommendations on the laws which should be repealed. The present government, however, repealed only one of the four amendments to the law on parliamentary privilege and took no further steps. This was despite its October 1994 Media Policy promising that it would rescind the existing Parliamentary Privileges Act and replace it with a new Act which would not obstruct the free and fair reporting of parliamentary proceedings.

CONCLUSION

Until the Parliamentary Select Committee reports, the government's media reform programme appears to have been put on hold. The promise of reform remains for as long as the Select Committee sits; but Select Committees can take a long time to conclude their work, and meanwhile the practice of the government in relation to the media becomes ever more censorious, as this report has described.

Media freedom — and freedom of expression more generally — remain matters of vital public interest in Sri Lanka. The vigilance and prompt action of media and human rights organizations was able to prevent a highly retrograde and authoritarian Broadcasting Authority Bill from being sped through Parliament unchallenged. The numerous submissions which individuals and civil society organizations have made to the Parliamentary Select Committee are one indication of the extent of public concern on this issue. The adoption of the 'Colombo Declaration on Media Freedom and Responsibility' in April 1998 is another. It is surely now time for the government to act.

Since the PA government came to power in 1994, ARTICLE 19 has made a series of recommendations for the promotion and protection of freedom of expression.

It believes such reforms are vital to future peace in Sri Lanka and integral to the development of a genuinely democratic and pluralistic political culture. These measures are set out in the Appendix to this report, together with ‘updates’ on their current status. They are consistent with both the government’s stated policy of freedom of expression and with Sri Lanka’s international treaty obligations. If implemented, they would certainly help address, and prevent, the continuing human rights violations documented in this report.

In addition to the measures recommended in previous ARTICLE 19 reports for reform of the media environment, which are reproduced in Appendix 1, there is one further matter which it is imperative for the government to act on:

- **Censorship under emergency regulations must be lifted**

If there was ever any credibility in the government’s argument that irresponsible reporting by the media created security risks, and that therefore censorship was necessary, it has surely now been shattered. The greatest debacles suffered by the military have been while such censorship was in force: the loss of Mullaitivu camp in 1996 and the fall of Kilinochchi to the LTTE in late September 1998 — both with enormous loss of life — both happened during periods of censorship under emergency regulations. The protection of national security is certainly a legitimate ground for limiting freedom of expression, but such limitations must always be very narrowly drawn to ensure that they cannot be abused and used for other purposes. As practised in Sri Lanka, censorship appears to have other objectives. It denies the public their right to know what is really happening on the war front, and attempts to turn the media into a propaganda machine to serve the government’s interest. More and more of the state’s resources are being channelled into the defence budget, more and more young men are dying or suffering injuries in warfare, and increasing numbers of civilians suffer the ill-effects of long-term and multiple displacement. Yet the public is denied access to information that would help it properly understand and assess the government’s military and political strategies for the north and east and their prospects for success, while ‘national security’ concerns now pervade more and more areas of life.

APPENDIX 1

Implementation by the Sri Lankan Government of ARTICLE 19's Recommendations on Freedom of Expression

ARTICLE 19 published 25 recommendations on freedom of expression in its report, *An Agenda for Change: The Right to Freedom of Expression in Sri Lanka* (October 1994). Of these, 19 recommendations are directly concerned with, or affect, freedom of the media. These 19 recommendations are reproduced below with comment on their implementation to date. (Also included are ARTICLE 19's comments on implementation of March 1995, published in *Words into Action: Censorship and Media Reform in Sri Lanka*; February 1996, published in *Silent War: Censorship and the Conflict in Sri Lanka*; and March 1997, published in *Reform at Risk? Continuing Censorship in Sri Lanka*). Two further recommendations relating to public service broadcasting, which ARTICLE 19 made in *Words into Action*, are also included below, as are the main recommendations from *Silent War: Censorship and the Conflict in Sri Lanka*.

Recommendation 1: The Constitution should be amended to provide full protection of all the rights guaranteed under the ICCPR, and especially of those rights guaranteed under Articles 19, 21 and 22 of the ICCPR. There should be no restrictions on these rights on any grounds other than those permitted by the ICCPR.

November 1998: The government placed the last version of its proposals for constitutional reform before Parliament in October 1997. While the proposals would, if adopted, expand the protection of the rights to freedom of expression, association and assembly, and would bring Sri Lanka's constitution closer to the requirements of the ICCPR, they would still not conform to these requirements entirely.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 2: Article 16 of the Constitution should be repealed or amended to ensure that all laws in force are in keeping with constitutional provisions protecting human rights. All existing law should be reviewed and amended as necessary to ensure that it is fully consistent with international human rights law.

November 1998: The government's October 1997 proposals for constitutional reform retain the provision that all laws — both 'written and unwritten' — in force at the time the proposed constitution comes into force will remain valid, regardless of whether or not they are consistent with the provisions of the constitution. The draft also provides for the President to establish a Commission, within three months of the commencement of the constitution, to examine all existing written or unwritten law and report to the President on whether any such law is inconsistent with the provisions of the fundamental rights chapter.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 3: The Constitution should be amended to ensure that it protects the fundamental rights of all persons under the jurisdiction of the state, including non-citizens.

November 1998: The government's October 1997 proposals for constitutional reform would, if adopted, expand the protection of freedom of expression, association and assembly from the present 'citizens' to 'all persons'.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 4: The Sixth Amendment to the Constitution, which prohibits advocacy of a separate state, should be revoked in order to protect the right to freedom of expression.

November 1998: The government's October 1997 proposals for constitutional reform, if adopted, would require a Member of Parliament to swear to uphold and defend the Constitution of the Republic of Sri Lanka, but drops the requirement under the Sixth Amendment that an MP must also swear not to 'support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka'.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 5: The right to freedom of information should receive explicit protection under the Constitution and any restrictions on this right should be limited to those set out under the ICCPR. A Freedom of Information Act should be introduced to give effect to this right, and existing laws containing provisions which hamper the free flow of information in the public interest should be reviewed and amended accordingly.

November 1998: The government's October 1997 proposals for constitutional reform include, as an aspect of freedom of speech and expression, 'the freedom to hold and express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium'. The permissible restrictions on this right, if the proposals are adopted, would considerably exceed those permitted under the ICCPR, however. There have been no developments on freedom of information legislation; legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended in its final report that 'a Freedom of Information Act should be enacted which makes a clear commitment to the general principle of open government,' including the principles that: disclosure should be the rule rather than the exception; all individuals should have an equal right to information; the government should bear the burden of justification for withholding information; individuals improperly denied access to documents or other information should have the right to seek redress in the courts; the law should list the types of information that may be withheld and indicate the duration of secrecy,

and there should be legal provision for enforcement of access; the law should make provision for exempt categories such as those required to protect individual privacy, confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality and national security; the law should provide for administrative penalties, including loss of salary, for government employees who arbitrarily deny access to information; secrecy provisions in other laws should be subordinate to the freedom of information law, or should be amended to accord with it in practice and in spirit.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report, and said it would elaborate on its recommendation for a Freedom of Information Act in its second report, which had not been completed by late February 1996.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The government has expressed its support for providing a constitutional guarantee for freedom of information, but has not undertaken to introduce a Freedom of Information Act, to ARTICLE 19's knowledge. A committee has been established to review laws which affect media freedom and freedom of expression.

Recommendation 6: The remedies — both national and international — available against violation of fundamental rights should be reviewed and strengthened. The government should extend the jurisdiction of the Supreme Court in fundamental rights cases and allow the right of individual petition to the international tribunals established under the ICCPR and the Torture Convention.

November 1998: Legislation to create a new Human Rights Commission was passed in July 1996 and the members were appointed in March 1997. The Commission began to function around June 1997 and — among its broad range of other responsibilities — has taken over the role of the former Human Rights Task Force (HRTF). The government's October 1997 proposals for constitutional reform would, if adopted, extend the jurisdiction of the Supreme Court in fundamental

rights cases. Sri Lanka ratified the (first) Optional Protocol to the ICCPR in October 1997, thereby allowing the right of individual petition to the Human Rights Committee.

March 1997: The government decided in September 1996 to ratify the Optional Protocol to the ICCPR, allowing the right of individual petition to the Human Rights Committee. Otherwise, there is no change since March 1995.

February 1996: No change since March 1995.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The government has not undertaken to allow the right of individual petition to the tribunals established under the ICCPR and the Torture Convention, to ARTICLE 19's knowledge.

Recommendation 7: The Constitution should specify that emergency powers may only be used in exceptional circumstances as defined under international human rights law. They must never be used as a matter of expediency to circumvent the normal legislative process. The necessity for a state of emergency should be stated fully at the time of declaration, and whenever it is renewed, together with a statement of the conditions which must be achieved for the state of emergency to be lifted. Provision should be made for the courts to assess whether the declaration of a state of emergency and its prolongation are indeed justified.

November 1998: No change. The government's October 1997 proposals for constitutional reform do not contain these safeguards.

March 1997: No change since March 1995. The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. In April 1996 the state of emergency was extended island-wide.

February 1996: No change since March 1995. In its scrutiny of Sri Lanka's compliance with the requirements of the ICCPR, the Human Rights Committee made a similar recommendation. In February 1996 the state of emergency remained in force in specified areas of the country. The state of emergency must be renewed monthly by Parliament. However, Parliament does not vote on the content of the

emergency regulations. These can be introduced or amended at any time by the President.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 8: The Constitution should specify that no restrictions on fundamental rights — including on the right to freedom of expression and information — are permissible save in the exceptional circumstances specified in Article 19(3) of the ICCPR. All emergency regulations in force must be reviewed and amended to ensure that they comply fully with international human rights law and cannot be used to violate the right to freedom of expression and information. In particular, provision should be made for prompt and substantial judicial review of all detentions under emergency regulations.

November 1998: The government's October 1997 proposals for constitutional reform do not contain these safeguards, and would permit restrictions on fundamental rights — including on freedom of expression and information — to be imposed on broader grounds than are contained in the ICCPR. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made similar recommendations relating to restrictions on fundamental rights in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The emergency regulations have yet to be thoroughly reviewed for their compliance with international

human rights law. They still do not provide for judicial review of detentions under emergency regulations.

Recommendation 11: The Prevention of Terrorism Act should be reviewed and amended to ensure that it is consistent with international human rights law and that it cannot be used to violate the right to freedom of expression and information.

November 1997: No change since March 1995. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change since March 1995.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that all existing law be reviewed to ensure its compliance with the requirements of the ICCPR.

March 1995: The government's media policy does not mention the PTA as being among those laws which will be reviewed.

Recommendation 12: The 1978 amendment to the Parliament (Power and Privileges) Act of 1953 should be repealed. If the offence of contempt of parliament is retained, it should be subject to the freedom of expression safeguards set down under international law, and any contempt proceedings should be tried fairly before the courts, and not by parliamentarians themselves. The right to disclose information in the public interest, including about the activities of Parliament and its members, should be fully protected in law.

November 1998: This amendment was repealed in September 1997, returning to the Supreme Court powers to try persons violating the Act and to fine or imprison them. No further change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that all four amendments to the 1953 Act should be repealed, restricting to the courts the power to try such offences. The Media Minister said in December 1995 that this Act would be amended, but gave no details.

March 1995: The government media policy promises that ‘Priority will be given to rescinding the existing Parliamentary Privileges Act and replacing it with a new Act. The provisions of the new Act will not be an obstacle to free and fair reportage of the proceedings of Parliament; it will also transfer to the higher judiciary the responsibility of inquiry and punishment for any breaches of parliamentary privilege.’ These matters are under consideration by a committee reviewing legislation which affects freedom of expression.

Recommendation 13: Repeal the Press Council Law in order to safeguard press freedom and the principle of editorial independence.

November 1998: This matter, together with the creation of a new Media Council, is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier. It specified that the Media Council Act, which should replace the Press Council Law, should cover both print and electronic media, and that it should articulate the freedom of the media in terms of the requirements of the ICCPR, and seek to uphold and promote freedom of the media in these terms. The committee recommended that the objectives of the act should include: promotion of freedom and responsibility of the mass media of social communication; ensuring the right of citizens to be informed freely, factually and responsibly on

matters of public interest; ensuring the maintenance of high standards of communication ethics; keeping under review developments likely to restrict the supply of information of public interest and importance, and developments within the media which may tend towards monopoly, and taking appropriate remedial action. The committee recommended certain criteria to ensure the full independence of the members of this body, and specified that its powers should include the power to order a correction or apology, or to censure the particular medium of communication, depending on circumstances. There should be no provision in the Act prohibiting publication of cabinet decisions or other matters, and there should be no possibility of political interference in its functioning.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 16 of the Press Council Law, which prohibits the unauthorized publication by the press of the proceedings of Cabinet meetings and decisions among other things, should be repealed. It said that it would address in its second report the replacement of the Press Council Law by a Media Council Act. The second report had not been submitted by late February 1996. It was unclear from the reporting of the Media Minister's December 1995 speech — in which he said laws relating to parliamentary privilege, defamation and oaths of secrecy were among those to be amended in 1996 — whether the Press Council Law would be included.

March 1995: The government media policy promises 'reform' of the Press Council Law. This is under consideration by a committee reviewing legislation which affects freedom of expression. After it took office, the new government made new appointments to the Press Council.

Recommendation 14: Defamation law should be reviewed and amended to ensure that the media are able to freely perform their twin roles of informing the public and acting as a watchdog of government. In particular, Section 479 of the Penal Code, which makes libel a criminal offence, punishable by imprisonment, should be repealed, and politicians and other public officials should be expected to tolerate a higher level of criticism than private individuals in defamation cases.

November 1998: No change. The government continues to bring cases of criminal defamation against newspaper editors. Legislation which limits free expression and the independence of the media is now under

the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier. The government has made no changes to this legislation.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended the repeal of Section 479 of the Penal Code, or alternatively that an amendment be introduced to empower a High Court Judge to decide whether to indict for defamation, with specific guidelines. In his December 1995 speech, the Media Minister said the defamation law would be amended in 1996, but he gave no further details.

March 1995: The government media policy does not mention the law on defamation as being among those laws which will be reviewed.

Recommendation 15: Amend Section 120 of the Penal Code on sedition to protect the legitimate expression of dissent.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 120 of the Penal Code should be amended to prevent it from being used to stifle peaceful or legitimate criticism of the government.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 120 of the Penal Code should be amended to provide a narrower definition of sedition. It was unclear from the reporting of the Media Minister's December 1995 speech — in which he said laws relating to parliamentary privilege, defamation and oaths of secrecy

were among those to be amended in 1996 — whether Section 120 of the Penal Code would be included.

March 1995: The government media policy does not mention the law on sedition as being among those laws which will be reviewed.

Recommendation 16: Amend the Official Secrets Act to ensure that it does not threaten the right to seek, receive and impart information in the public interest.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier. The government has made no changes to this legislation.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that the Official Secrets Act should be repealed, and that instead, a narrowly defined exception could be made in a new Freedom of Information Act. In December 1995, the Media Minister said that laws relating to oaths of secrecy would be among those to be amended in 1996, but he gave no details of the proposed changes.

March 1995: The government media policy promises reform of the Official Secrets Act. This is under consideration by a committee reviewing legislation which affects freedom of expression.

Recommendation 17: End state ownership and control of Associated Newspapers; ensure the independence of the Sri Lanka Broadcasting Corporation, Sri Lanka Rupavahini Corporation and Independent Television Network by creating a governing board and financial structure for these bodies which is independent of government and which allows them to fulfil their public service functions; establish an independent broadcasting authority with sole discretion to grant licences to privately owned broadcasting stations.

November 1998: No change. The government has said that it will not end state ownership and control of Associated Newspapers, despite its election promise. Issues relating to broadcasting are under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. The government took no known steps towards removing Associated Newspapers from state control. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression made numerous recommendations relating to the electronic media and public service broadcasting, which were consistent with, and elaborated, ARTICLE 19's recommendations. These included: the need for legislation to set out measures to protect and promote broadcasting freedom, and which should state the public's right to receive information and opinion on matters of public interest; the principle of respect for pluralism (which should be reflected in all activities of publicly-funded media); and the policy of developing community radio. The committee said that the legislation should explicitly require that publicly-funded media must maintain a fair balance of alternative viewpoints at all times, and not only during election periods. There should be no disparity in the provision of services in Sinhala and Tamil. The law should also establish an independent public authority to lay down and oversee the implementation of broadcasting policy, and to have responsibility for licensing community radio and private broadcasting. Its membership should not be dominated by any political group, and should be sensitive to the basic principles of the policy.

The committee further recommended that the framework for state broadcasting should recognize the difference between the state and the public interest, and between the government *per se* and the interest of those who for the time being exercise governmental power. The law should guarantee the editorial independence of state broadcasting authorities, and the independence from government of their governing bodies. Members of the governing bodies should be appointed with a mandate to act as independent trustees of the public interest in broadcasting and not as representatives of government or any special interest.

With respect to private broadcasting, the committee recommended that licences should be allocated by the independent broadcasting authority described above, in a fair and non-discriminatory manner according to specified criteria. The granting of licences to a variety of private broadcasters should not be seen as a substitute for ensuring the pluralism and independence of publicly-funded broadcasting.

The committee also made several recommendations relating to the development of community radio, including that it should not be precluded from broadcasting news.

Complaints about violations of broadcasting freedom should be made to the proposed Media Council.

February 1996: The committee established by the Media Minister to advise on 'broadbasing' ownership of Associated Newspapers (ANCL) had submitted its report by April 1995. The government has not yet made known when, or how, it intends to proceed with ending state ownership and control of Associated Newspapers. The committee established by the Media Minister to advise on legal reform expressed its intention to address issues relating to the electronic media in its second report, which had not been submitted by late February 1996. The government has not made known any intention to create independent structures for Sri Lanka Broadcasting Corporation or Sri Lanka Rupavahini Corporation and Independent Television Network, nor to establish an independent broadcasting authority to grant licences to privately owned broadcasting stations.

March 1995: The government has promised to 'broadbase' ownership of Associated Newspapers and to free all existing media from government or political control. However, its media policy does not include any reference to the manner in which government control of the state-owned broadcasting organizations might be achieved, and no steps have been taken to develop this area of media policy, to ARTICLE 19's knowledge.

Recommendation 18: Permit the gathering of information and broadcasting of local news by private radio and television stations.

November 1997: News broadcasts relating to the conflict are subject to censorship under emergency regulations.

March 1997: This remains permitted, but some private stations have been barred from broadcasting news at times, apparently as ‘punishment’ for incorrect broadcasts.

February 1996: This is now permitted.

March 1995: The government media policy promises that: ‘All electronic media will be granted the right of gathering and disseminating news.’

Recommendation 20: Provide protections in law against the use of government advertising and other state resources to influence, threaten or reward newspapers or other media.

November 1998: No change.

March 1997: No protections against the misuse of government advertising have been introduced. Some newspapers have recently complained of bias in the allocation of advertising.

February 1996: ARTICLE 19 has not learned of any recent complaints about the misuse of government advertising to influence, threaten or reward newspapers or other media.

March 1995: The government media policy promises that: ‘Fiscal policies of the government shall not be used as an instrument of suppressing or controlling the media,’ and that ‘Government advertisements will be distributed among all media organizations without any favour or discrimination. The official responsible for the placement of advertisements will be expected to do so in keeping with the standard norms of judging the media for the purpose of advertising — namely circulation or reach, target segments of the population, quality and/or image of the publication or station.’ Some state advertising is now given to certain independent publications which received no advertising at all from the previous government.

Recommendation 21: Permit full reporting of the conflict in the north and east, including of any human rights abuses that have been committed. Provide ready access to the north and east for journalists who wish to cover the conflict, and issue full information to the public.

November 1998: Formal censorship under emergency regulations on reporting the conflict resumed on 5 June 1998 and remained in force in November. Again, this censorship has gone beyond legitimate national security concerns. Journalists still do not have ready access to the conflict areas and the government attempts to restrict public information on the conflict.

March 1997: Journalistic access to the north has remained barred by the military, except for very few occasions when journalists were taken on visits to the north under military escort. Formal censorship under emergency regulations was in force from April to October 1996, with no difference from the censorship that had been in force in late 1995.

February 1996: Since September 1995, the military has denied journalists access to the main conflict zones in the north, as well as other areas under LTTE control and in which the majority of those recently displaced by the conflict are residing. In addition, formal censorship was introduced between September and December 1995 under emergency regulations for reporting on military matters. In practice, this censorship went well beyond legitimate national security concerns. Humanitarian organizations which have spoken out about suspected violations of humanitarian and human rights law have been subjected to intimidation by verbal attacks from government, as well as threats from other sources. Reporting on the north and east continues to rely primarily on information issued by official sources. There is very little media coverage of possible violations of human rights or humanitarian law by government forces.

March 1995: Reporting on the north and east continues to depend primarily on information issued by official sources. Journalists have visited the northern areas controlled by the LTTE intermittently, with the government enabling access.

Recommendation 25: Ensure that the publication of information in the public interest is fully protected in law; charges such as defamation or sedition should not

be used to render issues sub-judice, thereby obstructing debate on important issues of public interest.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression elaborated on the principles to be contained in the proposed Freedom of Information Act (see above, under Recommendation 5). Criminal defamation charges continue to be used against newspaper editors.

February 1996: The committee established by the Media Minister to advise on legal reform has recommended that a Freedom of Information Act be introduced, and expressed its intention to elaborate on the principles of such an Act in its second report, which had not been submitted by late February 1996. Criminal defamation charges continue to be brought against newspaper editors for criticizing public officials.

March 1995: The government has expressed its support for providing a constitutional guarantee for freedom of information, but has not undertaken to introduce a Freedom of Information Act, to ARTICLE 19's knowledge. The government media policy does not mention the law on defamation or on sedition as being among those laws which will be reviewed.

Recommendations from *Words into Action: Censorship and Media Reform in Sri Lanka* (March 1995)

- 1) The independence of the public service media should be guaranteed in law.***
- 2) Public Service broadcasting should be governed by a board that is independent of government.***

November 1998: These matters are now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression made detailed recommendations relating to the electronic media, which are summarized above (under Recommendation 17).

February 1996: The committee established by the Media Minister to advise on legal reform has expressed its intention to advise on issues relating to the electronic media in its second report, which had not been submitted by late February 1996.

Recommendations from *Silent War: Censorship and the Conflict in Sri Lanka* (March 1996)

Immediately lift the restrictions on investigating and reporting on human rights and humanitarian issues in the north and east.

November 1998: No change. Formal censorship under emergency regulations on reporting the conflict resumed on 5 June 1998 and remained in force in November, and journalists were still denied ready access to the conflict areas.

March 1997: Restrictions have not been lifted; access to journalists remains barred by the military and emergency regulations on censorship were in force from April to October 1996. There has been some reporting in the Colombo press of ‘disappearances’ in Jaffna, however. There are signs that the government may grant more ready access to certain international human rights organizations; the United States Committee for Refugees was recently permitted access to Jaffna and the areas of the north under LTTE control, for example.

Institute full and impartial investigations into all allegations of violations of humanitarian and human rights law in the conflict and ensure that those responsible are brought to justice. The findings of any investigations into such reported incidents to date should be made public.

November 1998: The interim and final reports of the three commissions of inquiry into ‘disappearances’ appointed in 1994 have been published. Trials in human rights cases generally continue to drag

on for years. However, in a landmark case in July 1998, six soldiers and a policeman were convicted of the rape and murder of a schoolgirl and the murder of three other people who had gone to search for her in Jaffna in September 1996. This was the first time that such a conviction had been reached in a criminal trial. One of the convicted soldiers gave evidence concerning mass graves of victims of the security forces at Chemmani, Jaffna. While the government said these graves would be fully investigated, there is considerable concern that these inquiries have not been expedited.

March 1997: Investigations have been instituted into some reported violations in the north, and some criminal proceedings have begun. However, several trials in human rights cases have proceeded for years without conclusion, including some which began under the previous government. The final report of the commission of inquiry into 'disappearances' which had been appointed in 1991 by the then President Premadasa has not been made public. The interim reports of the three commissions of inquiry into 'disappearances' appointed in 1994 by President Kumaratunga have also not been made public.

Withdraw criminal charges of defamation of government officials against newspaper editors.

November 1998: No change; cases continue to be filed.

March 1997: Such cases continue to be filed against newspaper editors.

Cease the harassment of journalists and the newspapers on account of their critical reporting of government officials and policies.

November 1998: No change; reports of harassment continue.

March 1997: Reports of harassment continue.

APPENDIX 2

Colombo Declaration on Media Freedom and Social Responsibility

Preamble

We, the undersigned,

Convinced that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Bearing in mind that it is imperative if people are to be able to monitor the conduct of their government, be politically informed and to participate fully in a democratic society, that they have access to information;

Recognising that the journalist performs a critical role in society in facilitating the above;

Considering that public officials by nature of their office should tolerate more intense levels of criticism than private individuals;

Convinced that debate on public issues should be uninhibited and robust and that some erroneous statements are inevitable in a free debate, recognise the necessity for legal protection of critics of official conduct, who given the current law of criminal defamation would be deterred from voicing their criticism even if it is believed to be true and even though it is in fact untrue, thus dampening the vigour and limiting the scope of public debate;

Recognising that the application of censorship has often been arbitrary and erratic, and in violation of the public's right to know, and also in violation of international standards of freedom of expression;

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Noting with concern the acts of intimidation and threat to media personnel which have adversely affected the conduct of their duty;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage the government from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Agree upon the following proposals and recommend that the appropriate bodies undertake steps to promote their widespread dissemination, acceptance and implementation.

1 Constitutional Provisions

1.1 Constitutional Guarantees of Freedom of Expression

1.1.1 Sri Lanka's Constitutional guarantees of freedom of expression need to be brought in line with the Country's international legal obligations, especially the ICCPR that was ratified by Sri Lanka in 1980.

1.1.2 A better formulation of the words defining the freedom of expression, opinion and information in the Constitution, more in keeping with the words of Articles 19 (1), 19 (2) of the ICCPR is needed. i.e. —

Article 19 of the ICCPR —

1. Every one shall have the right to hold opinions **without interference**.
2. Every one shall have the right to freedom of expression; this shall include freedom to seek, receive, and impart information and ideas **of all kinds, regardless of frontiers**, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The October 1997 Draft of the Government Proposals for Constitutional Reform Article 16(1) has been formulated to an extent, in line with Article 19(1,2) of the ICCPR. However the underlined requirements (above) have been left out of this draft and it is proposed that they be included as additional safeguard to freedom of expression, opinion and information.

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- 1.1.3 The corresponding section in the draft Constitution (22nd November 1995) of the Minister of Justice and Constitutional Affairs which spells out this right in detail should be incorporated in the Constitution.

“This includes the freedom to seek, receive and impart information and ideas, either orally, in print, in the form of art or through any other medium of one’s choice. The right of expression may not be restricted by indirect methods or means, such as, by the abuse of government or private controls over news print, radio broadcasting frequencies or implements or equipment used in the disseminating of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

1.2 Constitutional Restrictions on Fundamental Rights

As a broad liberal Constitutional provision on freedom of expression will be rendered ineffective if the executive is permitted to restrict such a right easily, it is proposed that

(I) Government adopt a section similar to Section 36(1) of the 1996 South African Constitution, where such restriction should be reasonable, justifiable and necessary in an open and democratic society based on human dignity, equality, and freedom.

(South African constitution) Article 36(1) The Rights in the Bill of Rights may be limited only in terms of law of general application to the extent to the limit is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including a) the nature of the right, b) the importance of the purpose of the limitation, c) the nature and extend of the limitation, d) the duration between the limitation and its purpose and e) less restrictive means to achieve the purpose.

OR

(II) That the Government confines restrictions on fundamental rights to only such restrictions as permitted under the ICCPR Article 19(3)

Article 19(3) of the ICCPR —

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for the respect of the rights or reputation of others, and
for the protection of national security or of public order or of public health or
morals.

1.3 Parliamentary Privileges

The provisions in the constitution and of the October 1997 draft setting out restrictions relating to parliamentary privileges should be removed as this is in violation of Article 19 of the ICCPR.

1.4 Derogation of Fundamental Rights in times of Emergency

Restriction to fundamental rights in times of emergency should be limited only to the restriction of the right of citizens to approach the Court for redress to the extent set out in Article 4 of the ICCPR, as modified where necessary to suit the Sri Lankan context. These are

- i. They must be made only ‘in time of public emergency which threatens the life of the nation, the existence of which is officially proclaimed’.
- ii. They may only be ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law’.
- iii. They must not involve discrimination solely on the race, caste, colour, sex, sexual orientation, language, religion or social origin.
- iv. Certain specified rights that is Articles 6,7,8 (paragraphs 1 and 2), 11,15,16 and 18 of the ICCPR can never be derogated from whatever the circumstances.

Article 6 — protects the inherent right to life of every human being and contains provisions with regard to capital punishment.

Article 7 — states ‘no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment, in particular, no one shall be subjected without his free consent to medical or scientific experimentation.’

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Article 8 — states ‘no one shall be held in slavery, slavery and slave-trade in all their forms shall be prohibited.’

Article 11 — states ‘no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.’

Article 15 — states that ‘no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the offence was committed ...’

Article 16 — states ‘Every one shall have the right to recognition everywhere as a person before the law.’

Article 18 — states ‘every one shall have the right to freedom of thought, conscience and religion ...’

The October 1997 draft constitution in Article 27(1) has made provisions in keeping with requirements Articles 2–4 of the ICCPR. However it remains deficient in that it does not specify that the emergency must be limited to one that **threatens the life of the nation**.

1.5 Judicial Review of the Constitutionality of Legislation

The Constitution should be amended to permit **judicial review of legislation at any time, of both existing and future law**, on grounds of inconsistency with the Constitution and there should be no time limit on judicial review of enacted legislation. Article 16(1) of the Constitution should be removed in order to make this possible.

Article 16(1) of the Constitution is as follows — ‘All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the proceeding provisions of this chapter.’

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This section and its reproduction in the October 1997 draft should be repealed as it violates a fundamental principle of constitutional law. This particular provision is unparalleled in constitutional democracies.

2 Newspaper and Press Laws

2.1 The Official Secrets Act which defines official secrets vaguely and broadly should be repealed and a **Freedom of Information Act** be enacted where disclosure of information will be the norm and secrecy the exception.

2.2 The Freedom of Information Act should reflect principles of transparency and open Government. Such Law should specifically list the types of information that maybe withheld indicating the duration of secrecy. Legal provision should be made for enforcement of access with provision for appeal to an independent body. Such Law should, therefore, make provision for exempt categories such as protection of individual privacy including medical records, trade secrets, and confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality, and national security. Provision should be made to appoint an Independent Authority empowered to investigate complaints of arbitrary denial of information. Secrecy provisions of other Laws should be subordinate to the freedom of information law.

2.3 Press Council Law of 1973, section 16 thereof which prohibits newspapers from publishing proceedings of Cabinet meetings, decisions or Cabinet documents, which is arbitrary and restrictive and cannot be justified should be changed to permit the publication of matters before Cabinet as well Cabinet decisions.

(Insofar as it deals with official secrets and security related matters, the above observations on the **Official Secrets Act** would apply. Insofar as it deals with profane, obscene or indecent matter, this is already covered by the **Profane Publications Ordinance**.) Section 16 should be repealed *in toto*.

The Provisions dealing with criminal defamation — Sections 14 and 15 of the Press Council Law of 1973 should be repealed. The mechanisms by which citizens can seek redress for defamation should be strengthened.

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2.4 Press Council Act

The Press Councils law of 1973 should be replaced with a new Press Council Act. This Act should articulate the freedom and responsibilities of the print media in terms of the requirements of the ICCPR.

2.5 Broadbasing the ownership of the Associated Newspapers of Ceylon (ANCL)

The ANCL (Special Provisions) Law read as a whole unequivocally indicates the principle of broadbasing and not nationalisation. The PA government pledged in its manifesto to broaden the ownership of the Lake House in keeping with the intention of the legislation. A committee appointed for the purpose chaired by Mr Sidat Sri Nandalochana proposed a mechanism by which the company should be broadbased.

It is therefore recommended that

The recommendations of the Nandalochana Committee be followed, or
A modified version of these recommendations be implemented, broadbasing the ownership of the Associated Newspapers of Ceylon (ANCL)

3 Offences under the Penal Code

3.1 Section 118 which makes it an offence to bring the President of the Republic into contempt by, “contumacious insulting or disparaging words (spoken or written)” should be repealed as it is sufficiently covered under the civil Law of Defamation.

3.2 Section 120 dealing with sedition, which is a 19th century formulation being too wide in scope, should be repealed or modified in keeping with International Human Right Laws.

3.3 It has been the practice of successive governments to use Section 479 dealing with Criminal Defamation against the media. This section should be repealed as it discourages criticism of Government Ministers and expression of political dissent. In its stead, provisions both in the Broadcasting Act and the Press Councils Act providing citizens with redress in the case of defamation should be strengthened, providing an adequate deterrent. It should also provide the right of reply according to internationally accepted norms.

4 Contempt of Court

There should be a Contempt of Court Act in order to clarify the substantive and procedural Law concerned, which would define precisely the scope of Contempt of Court and the Sub-Judice Rule, broadly structured on the lines of the UK Contempt of Court Act of 1981, which specifies, *inter alia*, the conditions under which non-divulgence of a source is permissible.

5 Banning of Publications

The Law should be clarified with regard to the banning of publications and the Customs embargo on importation of publications, in order to prevent interference, except on grounds that are constitutionally permissible and are compatible with the freedom of expression and information.

6 The 6th Amendment to the Constitution

The provisions of the 6th Amendment to the Constitution which impinge on the freedom of expression and prohibit and impose drastic penalties for the peaceful advocacy of secession, should be repealed.

7 Emergency Rule

7.1 Censorship and other restrictions under Emergency Rule

7.1.1 Expression shall not be subject to prior censorship except within the framework prescribed by the ICCPR and such regulations which restrict expression should be notified by Gazette, publicized in all sections of the media in all three languages immediately and should lapse if not approved by a resolution of Parliament within two weeks.

7.1.2 That the policy of censorship be guided by the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1st October 1995.

8 The High Cost of Newsprint

The exorbitant duties presently imposed on newsprint make the price of education and information through newspapers costly to the economically deprived. The import duty acts as a deterrent for better distribution and dissemination of knowledge. It is proposed that a zero rate of duty be levied on imports.

9 Public Broadcasting Service

9.1 All State funded and managed broadcasting services in Sri Lanka should be converted to publicly owned bodies and not subject to any form of State control.

9.2 Values of Public Broadcasting should be safeguarded by ensuring that the governing bodies of the Broadcasting Authority should have a balanced and independent composition.

10 Electronic Media

10.1 An Independent Broadcasting Authority

There should be an independent broadcasting authority which is genuinely independent of any form of governmental or non-governmental pressure to oversee the implementation of the broadcasting policy, and be responsible for the licensing of community radio, public and private broadcasting including technical aspects, the legislation should specifically state the public's right to receive information and opinion on matters of public interest, and specifically state the principle of maintaining a fair balance of alternative points of view. The selection process for the members of this body must be such as to ensure it is not dominated by any political group.

10.2 Community Radio and Television

A policy for the development of community radio and television should be set out in Law. A regulatory authority should ensure that at least 50 per cent of the programming should be within the declared aims of the community service.

11 Protection of Sources

Legislation to protect the confidentiality of media sources should be introduced.

12 Review of Legislation

Laws should be reviewed and amended in keeping with contemporary internationally accepted norms. In particular, The Obscene Publication Laws of 1927, The Public Performances Ordinance of 1912, The Public Performance Board Act and the Profane Publications Act of 1958 should be reviewed.

13 Responsibilities of Media Institutions and Personnel — Voluntary Code of Ethics

1. All media institutions/personnel shall adhere to a code of conduct which should include —
 - a) The media shall be obliged to report news accurately and objectively
 - b) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts.
 - c) Only that which may reasonably be true having due regard to the source of the news, may be presented as a fact. Where a report is not based on fact or is founded on opinion, supposition, or allegations, it shall be presented in such manner as to indicate clearly that such is the case.
 - d) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. When such verification is not practicable, that fact shall be mentioned in the report.
 - e) Where it is subsequently appears that a report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.
 - f) All current and potential situations of Conflict of Interest faced by individuals and/or media institutions should be disclosed.

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- g) The media shall refrain from sexism and racism in the reporting of news as well as in comment.
 - h) The media shall strive to represent social reality in all its diversity, complexity and plurality, and shall strive to be sensitive to the aspirations of women, minorities and disadvantaged groups.
 - i) The media should exercise due care and responsibility in the presentation of programmes where children are likely to be a part of the audience.
 - j) The media should not without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocity, drug abuse and obscenity.
 - k) The multiple sectors of the media should endeavour to work together with mutual respect as equal partners.
 - l) The profit motive should not override media freedom, social responsibility and editorial freedom.
2. **Privacy** — Insofar as both news and comment are concerned, the media shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.
3. **Right to reply** — Provisions should be made for a right of reply, to protect individuals against factually incorrect statements that endanger respect for their reputation, dignity, honour, feelings and privacy, and to encourage a greater sense of responsibility in the exercise of the freedoms of expression, information and publication. The reply should be confined to the aggrieved person's version of the facts and should not be longer than is necessary to correct the alleged inaccuracy or distortion.

This consensus does not preclude individual organisations from campaigning for reform over and above the provisions contained herein.

CONCLUSION

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We welcome the fact that the symposium on Media Freedom and Social Responsibility was jointly organised by the Sri Lanka Working Journalists' Association, the Free Media Movement, the Editors Guild of Sri Lanka and the Newspaper Association of Sri Lanka together with the World Association of Newspapers and the Centre for Policy Alternatives, thereby demonstrating the highest spirit of co-operation and collaboration among the various sectors of the media.

We reiterate our commitment to further co-operation and unity in our efforts to promote the freedom of expression in general and media freedom in particular. We, therefore, call upon media organisations to overcome difference of opinion and divergences in style in order to work together to actualize this common vision.

Sri Lanka Working Journalists'
Association

Free Media Movement

Newspaper Society of Sri Lanka

Editors Guild of Sri Lanka

The Sri Lanka Working Journalists Association has given approval in principal for the above declaration but has withheld signing the document pending the approval of the executive committee of the organisation.

APPENDIX 1

IMPLEMENTATION BY THE SRI LANKAN GOVERNMENT OF ARTICLE 19'S RECOMMENDATIONS ON FREEDOM OF EXPRESSION

ARTICLE 19 published 25 recommendations on freedom of expression in its report, *An Agenda for Change: The Right to Freedom of Expression in Sri Lanka* (October 1994). Of these, 19 recommendations are directly concerned with, or affect, freedom of the media. These 19 recommendations are reproduced below with comment on their implementation to date. (Also included are ARTICLE 19's comments on implementation of March 1995, published in *Words into Action: Censorship and Media Reform in Sri Lanka*; February 1996, published in *Silent War: Censorship and the Conflict in Sri Lanka*; and March 1997, published in *Reform at Risk? Continuing Censorship in Sri Lanka*). Two further recommendations relating to public service broadcasting, which ARTICLE 19 made in *Words into Action*, are also included below, as are the main recommendations from *Silent War: Censorship and the Conflict in Sri Lanka*.

Recommendation 1: The Constitution should be amended to provide full protection of all the rights guaranteed under the ICCPR, and especially of those rights guaranteed under Articles 19, 21 and 22 of the ICCPR. There should be no restrictions on these rights on any grounds other than those permitted by the ICCPR.

November 1998: The government placed the last version of its proposals for constitutional reform before Parliament in October 1997. While the proposals would, if adopted, expand the protection of the rights to freedom of expression, association and assembly, and would bring Sri Lanka's constitution closer to the requirements of the ICCPR, they would still not conform to these requirements entirely.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been

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published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 2: Article 16 of the Constitution should be repealed or amended to ensure that all laws in force are in keeping with constitutional provisions protecting human rights. All existing law should be reviewed and amended as necessary to ensure that it is fully consistent with international human rights law.

November 1998: The government's October 1997 proposals for constitutional reform retain the provision that all laws — both 'written and unwritten' — in force at the time the proposed constitution comes into force will remain valid, regardless of whether or not they are consistent with the provisions of the constitution. The draft also provides for the President to establish a Commission, within three months of the commencement of the constitution, to examine all existing written or unwritten law and report to the President on whether any such law is inconsistent with the provisions of the fundamental rights chapter.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 3: The Constitution should be amended to ensure that it protects the fundamental rights of all persons under the jurisdiction of the state, including non-citizens.

November 1998: The government's October 1997 proposals for constitutional reform would, if adopted, expand the protection of freedom of expression, association and assembly from the present 'citizens' to 'all persons'.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 4: The Sixth Amendment to the Constitution, which prohibits advocacy of a separate state, should be revoked in order to protect the right to freedom of expression.

November 1998: The government's October 1997 proposals for constitutional reform, if adopted, would require a Member of Parliament to swear to uphold and defend the Constitution of the Republic of Sri Lanka, but drops the requirement under the Sixth Amendment that an MP must also swear not to 'support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka'.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 5: The right to freedom of information should receive explicit protection under the Constitution and any restrictions on this right should be limited to those set out under the ICCPR. A Freedom of Information Act should be introduced to give effect to this right, and existing laws containing provisions

which hamper the free flow of information in the public interest should be reviewed and amended accordingly.

November 1998: The government's October 1997 proposals for constitutional reform include, as an aspect of freedom of speech and expression, 'the freedom to hold and express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium'. The permissible restrictions on this right, if the proposals are adopted, would considerably exceed those permitted under the ICCPR, however. There have been no developments on freedom of information legislation; legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended in its final report that 'a Freedom of Information Act should be enacted which makes a clear commitment to the general principle of open government,' including the principles that: disclosure should be the rule rather than the exception; all individuals should have an equal right to information; the government should bear the burden of justification for withholding information; individuals improperly denied access to documents or other information should have the right to seek redress in the courts; the law should list the types of information that may be withheld and indicate the duration of secrecy, and there should be legal provision for enforcement of access; the law should make provision for exempt categories such as those required to protect individual privacy, confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality and national security; the law should provide for administrative penalties, including loss of salary, for government employees who arbitrarily deny access to information; secrecy provisions in other laws should be subordinate to the freedom of information law, or should be amended to accord with it in practice and in spirit.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its first report, and said it would elaborate on its recommendation for a Freedom of Information Act in its second report, which had not been completed by late February 1996.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The government has expressed its support for providing a constitutional guarantee for freedom of information, but has not undertaken to introduce a Freedom of Information Act, to ARTICLE 19's knowledge. A committee has been established to review laws which affect media freedom and freedom of expression.

Recommendation 6: The remedies — both national and international — available against violation of fundamental rights should be reviewed and strengthened. The government should extend the jurisdiction of the Supreme Court in fundamental rights cases and allow the right of individual petition to the international tribunals established under the ICCPR and the Torture Convention.

November 1998: Legislation to create a new Human Rights Commission was passed in July 1996 and the members were appointed in March 1997. The Commission began to function around June 1997 and — among its broad range of other responsibilities — has taken over the role of the former Human Rights Task Force (HRTF). The government's October 1997 proposals for constitutional reform would, if adopted, extend the jurisdiction of the Supreme Court in fundamental rights cases. Sri Lanka ratified the (first) Optional Protocol to the ICCPR in October 1997, thereby allowing the right of individual petition to the Human Rights Committee.

March 1997: The government decided in September 1996 to ratify the Optional Protocol to the ICCPR, allowing the right of individual petition to the Human Rights Committee. Otherwise, there is no change since March 1995.

February 1996: No change since March 1995.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The government has not undertaken to allow the right of individual petition to the tribunals established under the ICCPR and the Torture Convention, to ARTICLE 19's knowledge.

Recommendation 7: The Constitution should specify that emergency powers may only be used in exceptional circumstances as defined under international human rights law. They must never be used as a matter of expediency to circumvent the normal legislative process. The necessity for a state of emergency should be stated fully at the time of declaration, and whenever it is renewed, together with a statement of the conditions which must be achieved for the state of emergency to be lifted. Provision should be made for the courts to assess whether the declaration of a state of emergency and its prolongation are indeed justified.

November 1998: No change. The government's October 1997 proposals for constitutional reform do not contain these safeguards.

March 1997: No change since March 1995. The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. In April 1996 the state of emergency was extended island-wide.

February 1996: No change since March 1995. In its scrutiny of Sri Lanka's compliance with the requirements of the ICCPR, the Human Rights Committee made a similar recommendation. In February 1996 the state of emergency remained in force in specified areas of the country. The state of emergency must be renewed monthly by parliament. However, parliament does not vote on the content of the emergency regulations. These can be introduced or amended at any time by the President.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform.

Recommendation 8: The Constitution should specify that no restrictions on fundamental rights - including on the right to freedom of expression and

information - are permissible save in the exceptional circumstances specified in Article 19(3) of the ICCPR. All emergency regulations in force must be reviewed and amended to ensure that they comply fully with international human rights law and cannot be used to violate the right to freedom of expression and information. In particular, provision should be made for prompt and substantial judicial review of all detentions under emergency regulations.

November 1998: The government's October 1997 proposals for constitutional reform do not contain these safeguards, and would permit restrictions on fundamental rights — including on freedom of expression and information — to be imposed on broader grounds than are contained in the ICCPR. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: The recommendations for reform by the Parliamentary Select Committee on Constitutional Reform have not yet been published. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made a similar recommendation in its final report.

February 1996: Still under consideration by the Parliamentary Select Committee on Constitutional Reform. The committee established by the Media Minister to advise on legal reform affecting freedom of expression made similar recommendations relating to restrictions on fundamental rights in its first report.

March 1995: Under consideration by the Parliamentary Select Committee on Constitutional Reform. The emergency regulations have yet to be thoroughly reviewed for their compliance with international human rights law. They still do not provide for judicial review of detentions under emergency regulations.

Recommendation 11: The Prevention of Terrorism Act should be reviewed and amended to ensure that it is consistent with international human rights law and that it cannot be used to violate the right to freedom of expression and information.

November 1997: No change since March 1995. Legislation which limits free expression and the independence of the media is now under

the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change since March 1995.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that all existing law be reviewed to ensure its compliance with the requirements of the ICCPR.

March 1995: The government's media policy does not mention the PTA as being among those laws which will be reviewed.

Recommendation 12: The 1978 amendment to the Parliament (Power and Privileges) Act of 1953 should be repealed. If the offence of contempt of parliament is retained, it should be subject to the freedom of expression safeguards set down under international law, and any contempt proceedings should be tried fairly before the courts, and not by parliamentarians themselves. The right to disclose information in the public interest, including about the activities of Parliament and its members, should be fully protected in law.

November 1998: This amendment was repealed in September 1997, returning to the Supreme Court powers to try persons violating the Act and to fine or imprison them. No further change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that all four amendments to the 1953 Act should be repealed, restricting to the courts the power to try such offences. The Media

Minister said in December 1995 that this Act would be amended, but gave no details.

March 1995: The government media policy promises that ‘Priority will be given to rescinding the existing Parliamentary Privileges Act and replacing it with a new Act. The provisions of the new Act will not be an obstacle to free and fair reportage of the proceedings of Parliament; it will also transfer to the higher judiciary the responsibility of inquiry and punishment for any breaches of parliamentary privilege.’ These matters are under consideration by a committee reviewing legislation which affects freedom of expression.

Recommendation 13: Repeal the Press Council Law in order to safeguard press freedom and the principle of editorial independence.

November 1998: This matter, together with the creation of a new Media Council, is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier. It specified that the Media Council Act, which should replace the Press Council Law, should cover both print and electronic media, and that it should articulate the freedom of the media in terms of the requirements of the ICCPR, and seek to uphold and promote freedom of the media in these terms. The committee recommended that the objectives of the act should include: promotion of freedom and responsibility of the mass media of social communication; ensuring the right of citizens to be informed freely, factually and responsibly on matters of public interest; ensuring the maintenance of high standards of communication ethics; keeping under review developments likely to restrict the supply of information of public interest and importance, and developments within the media which may tend towards monopoly, and taking appropriate remedial action. The committee recommended certain criteria to ensure the full independence of the members of this body, and specified that its powers should include the power to order a correction or apology, or to censure the particular medium of communication, depending on circumstances. There should be no

provision in the Act prohibiting publication of cabinet decisions or other matters, and there should be no possibility of political interference in its functioning.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 16 of the Press Council Law, which prohibits the unauthorized publication by the press of the proceedings of Cabinet meetings and decisions among other things, should be repealed. It said that it would address in its second report the replacement of the Press Council Law by a Media Council Act. The second report had not been submitted by late February 1996. It was unclear from the reporting of the Media Minister's December 1995 speech — in which he said laws relating to parliamentary privilege, defamation and oaths of secrecy were among those to be amended in 1996 — whether the Press Council Law would be included.

March 1995: The government media policy promises 'reform' of the Press Council Law. This is under consideration by a committee reviewing legislation which affects freedom of expression. After it took office, the new government made new appointments to the Press Council.

Recommendation 14: Defamation law should be reviewed and amended to ensure that the media are able to freely perform their twin roles of informing the public and acting as a watchdog of government. In particular, Section 479 of the Penal Code, which makes libel a criminal offence, punishable by imprisonment, should be repealed, and politicians and other public officials should be expected to tolerate a higher level of criticism than private individuals in defamation cases.

November 1998: No change. The government continues to bring cases of criminal defamation against newspaper editors. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of

expression reiterated the recommendations on this issue that it had made earlier. The government has made no changes to this legislation.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended the repeal of Section 479 of the Penal Code, or alternatively that an amendment be introduced to empower a High Court Judge to decide whether to indict for defamation, with specific guidelines. In his December 1995 speech, the Media Minister said the defamation law would be amended in 1996, but he gave no further details.

March 1995: The government media policy does not mention the law on defamation as being among those laws which will be reviewed.

Recommendation 15: Amend Section 120 of the Penal Code on sedition to protect the legitimate expression of dissent.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 120 of the Penal Code should be amended to prevent it from being used to stifle peaceful or legitimate criticism of the government.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that Section 120 of the Penal Code should be amended to provide a narrower definition of sedition. It was unclear from the reporting of the Media Minister's December 1995 speech — in which he said laws relating to parliamentary privilege, defamation and oaths of secrecy were among those to be amended in 1996 — whether Section 120 of the Penal Code would be included.

March 1995: The government media policy does not mention the law on sedition as being among those laws which will be reviewed.

Recommendation 16: Amend the Official Secrets Act to ensure that it does not threaten the right to seek, receive and impart information in the public interest.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression reiterated the recommendations on this issue that it had made earlier. The government has made no changes to this legislation.

February 1996: The committee established by the Media Minister to advise on legal reform affecting freedom of expression recommended that the Official Secrets Act should be repealed, and that instead, a narrowly defined exception could be made in a new Freedom of Information Act. In December 1995, the Media Minister said that laws relating to oaths of secrecy would be among those to be amended in 1996, but he gave no details of the proposed changes.

March 1995: The government media policy promises reform of the Official Secrets Act. This is under consideration by a committee reviewing legislation which affects freedom of expression.

Recommendation 17: End state ownership and control of Associated Newspapers; ensure the independence of the Sri Lanka Broadcasting Corporation, Sri Lanka Rupavahini Corporation and Independent Television Network by creating a governing board and financial structure for these bodies which is independent of government and which allows them to fulfil their public service functions; establish an independent broadcasting authority with sole discretion to grant licences to privately-owned broadcasting stations.

November 1998: No change. The government has said that it will not end state ownership and control of Associated Newspapers, despite its election promise. Issues relating to broadcasting are under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. The government took no known steps towards removing Associated Newspapers from state control. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression made numerous recommendations relating to the electronic media and public service broadcasting, which were consistent with, and elaborated, ARTICLE 19's recommendations. These included: the need for legislation to set out measures to protect and promote broadcasting freedom, and which should state the public's right to receive information and opinion on matters of public interest; the principle of respect for pluralism (which should be reflected in all activities of publicly-funded media); and the policy of developing community radio. The committee said that the legislation should explicitly require that publicly-funded media must maintain a fair balance of alternative viewpoints at all times, and not only during election periods. There should be no disparity in the provision of services in Sinhala and Tamil. The law should also establish an independent public authority to lay down and oversee the implementation of broadcasting policy, and to have responsibility for licensing community radio and private broadcasting. Its membership should not be dominated by any political group, and should be sensitive to the basic principles of the policy.

The committee further recommended that the framework for state broadcasting should recognize the difference between the state and the public interest, and between the government *per se* and the interest of those who for the time being exercise governmental power. The law should guarantee the editorial independence of state broadcasting authorities, and the independence from government of their governing bodies. Members of the governing bodies should be appointed with a mandate to act as independent trustees of the public interest in broadcasting and not as representatives of government or any special interest.

With respect to private broadcasting, the committee recommended that licences should be allocated by the independent broadcasting authority described above, in a fair and non-discriminatory manner according to specified criteria. The granting of licences to a variety of private broadcasters should not be seen as a substitute for ensuring the pluralism and independence of publicly-funded broadcasting.

The committee also made several recommendations relating to the development of community radio, including that it should not be precluded from broadcasting news.

Complaints about violations of broadcasting freedom should be made to the proposed Media Council.

February 1996: The committee established by the Media Minister to advise on 'broadbasing' ownership of Associated Newspapers (ANCL) had submitted its report by April 1995. The government has not yet made known when, or how, it intends to proceed with ending state ownership and control of Associated Newspapers. The committee established by the Media Minister to advise on legal reform expressed its intention to address issues relating to the electronic media in its second report, which had not been submitted by late February 1996. The government has not made known any intention to create independent structures for Sri Lanka Broadcasting Corporation or Sri Lanka Rupavahini Corporation and Independent Television Network, nor to establish an independent broadcasting authority to grant licences to privately owned broadcasting stations.

March 1995: The government has promised to 'broadbase' ownership of Associated Newspapers and to free all existing media from government or political control. However, its media policy does not include any reference to the manner in which government control of the state-owned broadcasting organizations might be achieved, and no steps have been taken to develop this area of media policy, to ARTICLE 19's knowledge.

Recommendation 18: Permit the gathering of information and broadcasting of local news by private radio and television stations.

November 1997: News broadcasts relating to the conflict are subject to censorship under emergency regulations.

March 1997: This remains permitted, but some private stations have been barred from broadcasting news at times, apparently as 'punishment' for incorrect broadcasts.

February 1996: This is now permitted.

March 1995: The government media policy promises that: ‘All electronic media will be granted the right of gathering and disseminating news.’

Recommendation 20: Provide protections in law against the use of government advertising and other state resources to influence, threaten or reward newspapers or other media.

November 1998: No change.

March 1997: No protections against the misuse of government advertising have been introduced. Some newspapers have recently complained of bias in the allocation of advertising.

February 1996: ARTICLE 19 has not learned of any recent complaints about the misuse of government advertising to influence, threaten or reward newspapers or other media.

March 1995: The government media policy promises that: ‘Fiscal policies of the government shall not be used as an instrument of suppressing or controlling the media,’ and that ‘Government advertisements will be distributed among all media organizations without any favour or discrimination. The official responsible for the placement of advertisements will be expected to do so in keeping with the standard norms of judging the media for the purpose of advertising — namely circulation or reach, target segments of the population, quality and/or image of the publication or station.’ Some state advertising is now given to certain independent publications which received no advertising at all from the previous government.

Recommendation 21: Permit full reporting of the conflict in the north and east, including of any human rights abuses that have been committed. Provide ready access to the north and east for journalists who wish to cover the conflict, and issue full information to the public.

November 1998: Formal censorship under emergency regulations on reporting the conflict resumed on 5 June 1998 and remained in force in November. Again, this censorship has gone beyond legitimate national

security concerns. Journalists still do not have ready access to the conflict areas and the government attempts to restrict public information on the conflict.

March 1997: Journalistic access to the north has remained barred by the military, except for very few occasions when journalists were taken on visits to the north under military escort. Formal censorship under emergency regulations was in force from April to October 1996, with no difference from the censorship that had been in force in late 1995.

February 1996: Since September 1995, the military has denied journalists access to the main conflict zones in the north, as well as other areas under LTTE control and in which the majority of those recently displaced by the conflict are residing. In addition, formal censorship was introduced between September and December 1995 under emergency regulations for reporting on military matters. In practice, this censorship went well beyond legitimate national security concerns. Humanitarian organizations which have spoken out about suspected violations of humanitarian and human rights law have been subjected to intimidation by verbal attacks from government, as well as threats from other sources. Reporting on the north and east continues to rely primarily on information issued by official sources. There is very little media coverage of possible violations of human rights or humanitarian law by government forces.

March 1995: Reporting on the north and east continues to depend primarily on information issued by official sources. Journalists have visited the northern areas controlled by the LTTE intermittently, with the government enabling access.

Recommendation 25: Ensure that the publication of information in the public interest is fully protected in law; charges such as defamation or sedition should not be used to render issues sub-judice, thereby obstructing debate on important issues of public interest.

November 1998: No change. Legislation which limits free expression and the independence of the media is now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: No change. In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression elaborated on the principles to be contained in the proposed Freedom of Information Act (see above, under Recommendation 5). Criminal defamation charges continue to be used against newspaper editors.

February 1996: The committee established by the Media Minister to advise on legal reform has recommended that a Freedom of Information Act be introduced, and expressed its intention to elaborate on the principles of such an Act in its second report, which had not been submitted by late February 1996. Criminal defamation charges continue to be brought against newspaper editors for criticizing public officials.

March 1995: The government has expressed its support for providing a constitutional guarantee for freedom of information, but has not undertaken to introduce a Freedom of Information Act, to ARTICLE 19's knowledge. The government media policy does not mention the law on defamation or on sedition as being among those laws which will be reviewed.

Recommendations from *Words into Action: Censorship and Media Reform in Sri Lanka* (March 1995)

- 1) The independence of the public service media should be guaranteed in law.***
- 2) Public Service broadcasting should be governed by a board that is independent of government.***

November 1998: These matters are now under the consideration of the Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media, which was established in late 1997.

March 1997: In its final report, the committee established by the Media Minister to advise on legal reform affecting freedom of expression made detailed recommendations relating to the electronic media, which are summarized above (under Recommendation 17).

February 1996: The committee established by the Media Minister to advise on legal reform has expressed its intention to advise on issues relating to the electronic media in its second report, which had not been submitted by late February 1996.

Recommendations from *Silent War: Censorship and the Conflict in Sri Lanka* (March 1996)

Immediately lift the restrictions on investigating and reporting on human rights and humanitarian issues in the north and east.

November 1998: No change. Formal censorship under emergency regulations on reporting the conflict resumed on 5 June 1998 and remained in force in November, and journalists were still denied ready access to the conflict areas.

March 1997: Restrictions have not been lifted; access to journalists remains barred by the military and emergency regulations on censorship were in force from April to October 1996. There has been some reporting in the Colombo press of ‘disappearances’ in Jaffna, however. There are signs that the government may grant more ready access to certain international human rights organizations; the United States Committee for Refugees was recently permitted access to Jaffna and the areas of the north under LTTE control, for example.

Institute full and impartial investigations into all allegations of violations of humanitarian and human rights law in the conflict and ensure that those responsible are brought to justice. The findings of any investigations into such reported incidents to date should be made public.

November 1998: The interim and final reports of the three commissions of inquiry into ‘disappearances’ appointed in 1994 have been published. Trials in human rights cases generally continue to drag on for years. However, in a landmark case in July 1998, six soldiers and a policeman were convicted of the rape and murder of a schoolgirl and the murder of three other people who had gone to search for her in Jaffna in September 1996. This was the first time that such a conviction had been reached in a criminal trial. One of the convicted

soldiers gave evidence concerning mass graves of victims of the security forces at Chemmani, Jaffna. While the government said these graves would be fully investigated, there is considerable concern that these inquiries have not been expedited.

March 1997: Investigations have been instituted into some reported violations in the north, and some criminal proceedings have begun. However, several trials in human rights cases have proceeded for years without conclusion, including some which began under the previous government. The final report of the commission of inquiry into 'disappearances' which had been appointed in 1991 by the then President Premadasa has not been made public. The interim reports of the three commissions of inquiry into 'disappearances' appointed in 1994 by President Kumaratunga have also not been made public.

Withdraw criminal charges of defamation of government officials against newspaper editors.

November 1998: No change; cases continue to be filed.

March 1997: Such cases continue to be filed against newspaper editors.

Cease the harassment of journalists and the newspapers on account of their critical reporting of government officials and policies.

November 1998: No change; reports of harassment continue.

March 1997: Reports of harassment continue.

Colombo Declaration on Media Freedom and Social Responsibility

Preamble

We, the undersigned,

Convinced that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Bearing in mind that it is imperative if people are to be able to monitor the conduct of their government, be politically informed and to participate fully in a democratic society, that they have access to information;

Recognising that the journalist performs a critical role in society in facilitating the above;

Considering that public officials by nature of their office should tolerate more intense levels of criticism than private individuals;

Convinced that debate on public issues should be uninhibited and robust and that some erroneous statements are inevitable in a free debate, recognise the necessity for legal protection of critics of official conduct, who given the current law of criminal defamation would be deterred from voicing their criticism even if it is believed to be true and even though it is in fact untrue, thus dampening the vigour and limiting the scope of public debate;

Recognizing that the application of censorship has often been arbitrary and erratic, and in violation of the public's right to know, and also in violation of international standards of freedom of expression;

Noting with concern the acts of intimidation and threat to media personnel which have adversely affected the conduct of their duty;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage the government from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Agree upon the following proposals and recommend that the appropriate bodies undertake steps to promote their widespread dissemination, acceptance and implementation.

1 Constitutional Provisions

1.1 Constitutional Guarantees of Freedom of Expression

- 1.1.1 Sri Lanka's Constitutional guarantees of freedom of expression need to be brought in line with the Country's international legal obligations, specially the ICCPR that was ratified by Sri Lanka in 1980.
- 1.1.2 A better formulation of the words defining the freedom of expression, opinion and information in the Constitution, more in keeping with the words of Articles 19 (1), 19 (2) of the ICCPR is needed. i.e. -

Article 19 of the ICCPR -

1. Every one shall have the right to hold opinions without interference.
2. Every one shall have the right to freedom of expression; this shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The October 1997 Draft of the Government Proposals for Constitutional Reform Article 16(1) has been formulated to an extent, in line with Article 19(1,2) of the ICCPR. However the underlined requirements (above) have been left out of this draft and is proposed that they be included as additional safeguard to freedom of expression, opinion and information.

- 1.1.3 The corresponding section in the draft Constitution (22nd November 1995) of the Minister of Justice and Constitutional Affairs which spells out this right in detail should be incorporated in the Constitution.

"This includes the freedom to seek, receive and impart information and ideas, either orally, in print, in the form of art or through any other medium of ones choice. The right of expression may not be restricted by indirect methods or means, such as, by the abuse of government or private controls over news print, radio broadcasting frequencies or implements or equipment used in the disseminating of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

1.2 Constitutional Restrictions on Fundamental Rights.

As a broad liberal Constitutional provision on freedom of expression will be rendered ineffective if the executive is permitted to restrict such a right easily, it is proposed that

(I) Government adopt a section similar to Section 36(1) of the 1996 South African Constitution, where such restriction should be reasonable, justifiable and necessary in an open and democratic society based on human dignity, equality, and freedom.

(South African constitution) Article 36(1) The Rights in the Bill of Rights may be limited only in terms of law of general

application to the extent to the limit is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including a) the nature of the right, b) the importance of the purpose of the limitation, c) the nature and extend of the limitation, d) the duration between the limitation and its purpose and e) less restrictive means to achieve the purpose.

OR

(II) That the Government confines restrictions on fundamental rights to only such restrictions as permitted under the ICCPR Article 19(3)

Article 19(3) of the ICCPR -

- (a) for the respect of the rights or reputation of others, and
- (b) for the protection of national security or of public order or of public health or morals.

1.3 **Parliamentary Privileges** – The provisions in the constitution and of the October 1997 draft setting out restrictions relating to parliamentary privileges should be removed as this is in violation of Article 19 of the ICCPR.

1.4 **Derogation of Fundamental Rights in times of Emergency** - Restriction to fundamental rights in times of emergency should be limited only to the restriction of the right of citizens to approach the Court for redress to the extent set out in Article 4 of the ICCPR, as modified where necessary to suit the Lankan context. These are

- i. They must be made only ‘in time of public emergency which threatens the life of the nation, the existence of which is officially proclaimed’.
- ii. They may only be ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law’
- iii. They must not involve discrimination solely on the race, caste, colour, sex, sexual orientation, language, religion or social origin.
- iv. Certain specified rights that is Articles 6,7,8 (paragraphs 1 and 2), 11,15,16 and 18 of the ICCPR can never be derogated from what ever the circumstances.

Article 6 - protects the inherent right to life of every human being and contains provisions with regard to capital punishment.

Article 7 - states “ no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment, in particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8 - states “ no one shall be held in slavery, slavery and slave-trade in all their forms shall be prohibited.”

Article 11 - states “no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

Article 15 - states that ”no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the offence was committed... “

Article 16 - states “Every one shall have the right to recognition everywhere as a person before the law.”

Article 18 - states “every one shall have the right to freedom of thought, conscience and religion...”

The October 1997 draft constitution in Article 27(1) has made provisions in keeping with requirements Articles 2-4 of the ICCPR. However it remains deficient in that it does not specify that the emergency must be limited to one that **threatens the life of the nation**.

1.5 Judicial Review of the Constitutionality of Legislation - The Constitution should be amended to permit **judicial review of legislation at any time, of both existing and future law**, on grounds of inconsistency with the Constitution and there should be no time limit on judicial review of enacted legislation. Article 16(1) of the constitution should be removed in order to make this possible.

Article 16(1) of the Constitution is as follows - “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the proceeding provisions of this chapter.”

This section and its reproduction in the October 1997 draft should be repealed as it violates a fundamental principle of constitutional law. This particular provision is unparalleled in constitutional democracies.

2 Newspaper and Press Laws

2.1 **The Official Secrets Act** which defines official secrets vaguely and broadly should be repealed and a **Freedom of Information Act** be enacted where disclosure of information will be the norm and secrecy the exception.

2.2 **The Freedom of Information Act** should reflect principles of transparency and open Government. Such Law should specifically list the types of information that maybe withheld indicating the duration of secrecy. Legal provision should be made for enforcement of access with provision for appeal to an independent body. Such Law should, therefore, make provision for exempt categories such as protection of individual privacy including medical records, trade secrets, and confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality, and national security. Provision should be made to appoint an Independent Authority empowered to investigate complaints of arbitrary denial of information. Secrecy provisions of other Laws should be subordinate to the freedom of information law.

2.3 **Press Council Law of 1973**, section 16 thereof which prohibits newspapers from publishing proceedings of Cabinet meetings, decisions or Cabinet documents, which is arbitrary and restrictive and cannot be justified should be changed to permit the publication of matters before Cabinet as well Cabinet decisions.

(insofar as it deals with official secrets and security related matters, the above observations on the **Official Secrets Act** would apply, Insofar as it deals with profane, obscene or indecent matter, this is already covered by the **Profane Publications Ordinance**.) Section 16 should be repealed in toto.

The Provisions dealing with criminal defamation - Sections 14 and 15 of the Press Council Law of 1973 should be repealed. The mechanisms by which citizens can seek redress for defamation should be strengthened.

2.4 Press Council Act

The Press Councils law of 1973 should be replaced with a new Press Council Act. This Act should articulate the freedom and responsibilities of the print media in terms of the requirements of the ICCPR.

2.5 Broad basing the ownership of the Associated Newspapers of Ceylon (ANCL)

The ANCL (Special Provisions) Law read as a whole unequivocally indicates the principle of broad basing and not nationalisation. The PA government pledged in its manifesto to broad base the ownership of the Lake House in keeping with the intention of the legislation. A committee appointed for the purpose chaired by Mr Sidat Sri Nandalochana proposed a mechanism by which the company should be broad based.

It is therefore recommended that

The recommendations of the Nandalochana Committee be followed, or
A modified version of these recommendations be implemented, Broad-basing the ownership of the Associated Newspapers of Ceylon (ANCL)

3 Offences under the Penal Code

3.1 Section 118 which makes it an offence to bring the President of the Republic into contempt by, “contumacious insulting or disparaging words (spoken or written)” should be repealed as it is sufficiently covered under the civil Law of Defamation.

3.2 Section 120 dealing with sedition, which is a 19th century formulation being too wide in scope, should be repealed or modified in keeping with International Human Right Laws.

3.3 It has been the practice of successive governments to use Section 479 dealing with Criminal Defamation against the media. This section should be repealed as it discourages criticism of Government Ministers and expression of political dissent. In its stead, provisions both in the Broadcasting Act and the Press Councils Act providing citizens with redress in the case of defamation should be strengthened, providing an adequate deterrent. It should also provide the right of reply according to internationally accepted norms.

4 Contempt of Court

There should be a Contempt of Court Act in order to clarify the substantive and procedural Law concerned, which would define precisely the scope of Contempt of Court and the Sub-Judice Rule, broadly structured on the lines of the UK Contempt of Court Act of 1981, which specifies, *inter alia*, the conditions under which non-divulgence of a source is permissible.

5 Banning of Publications

The Law should be clarified with regard to the banning of publications and the Customs embargo on importation of publications, in order to prevent interference, except on grounds that are constitutionally permissible and are compatible with the freedom of expression and information.

6 The 6th Amendment to the Constitution.

The provisions of the 6th Amendment to the Constitution which impinge on the freedom of expression and prohibit and impose drastic penalties for the peaceful advocacy of secession, should be repealed.

7. Emergency Rule

7.1 Censorship and other restrictions under Emergency Rule

7.1.1 Expression shall not be subject to prior censorship except within the framework prescribed by the ICCPR and such regulations which restrict expression should be notified by Gazette, publicized in all sections of the media in all three languages immediately and should lapse if not approved by a resolution of Parliament within two weeks.

7.1.2 That the policy of censorship be guided by the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1st October 1995.

8 The High Cost of Newsprint

The exorbitant duties presently imposed on newsprint make the price of education and information through newspapers costly to the economically deprived. The import duty acts as a deterrent for better distribution and dissemination of knowledge. It is proposed that a zero rate of duty be levied on imports.

9 Public Broadcasting Service

9.1 All State funded and managed broadcasting services in Sri Lanka should be converted to publicly-owned bodies and not subject to any form of State control.

9.2 Values of Public Broadcasting should be safeguarded by ensuring that the governing bodies of the Broadcasting Authority should have a balanced and independent composition.

10 Electronic Media

10.1 An Independent Broadcasting Authority

There should be an independent broadcasting authority which is genuinely independent of any form of governmental or non-governmental pressure to oversee the implementation of the broadcasting policy, and be responsible for the licensing of community radio, public and private broadcasting including technical aspects, the legislation should specifically state the public's right to receive information and opinion on matters of public interest, and specifically state the principle of maintaining a fair balance of alternative points of view. The selection process for the members of this body must be such as to ensure it is not dominated by any political group.

10.2 Community Radio and Television –

A policy for the development of community radio and television should be set out in Law. A regulatory authority should ensure that at least 50% of the programming should be within the declared aims of the community service.

11 Protection of Sources

Legislation to protect the confidentiality of media sources should be introduced.

12 Review of Legislation

Laws should be reviewed and amended in keeping with contemporary internationally accepted norms. In particular, The Obscene Publication Laws of 1927, The Public

Performances Ordinance of 1912, The Public Performance Board Act and the Profane Publications Act of 1958 should be reviewed.

13 Responsibilities of Media Institutions and Personnel - Voluntary Code of Ethics

1. All media institutions/personnel shall adhere to a code of conduct which should include -
 - (a) The media shall be obliged to report news accurately and objectively
 - (b) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts.
 - (c) Only that which may reasonably be true having due regard to the source of the news, may be presented as a fact. Where a report is not based on fact or is founded on opinion, supposition, or allegations, it shall be presented in such manner as to indicate clearly that such is the case.
 - (d) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. When such verification is not practicable, that fact shall be mentioned in the report.
 - (e) Where it is subsequently appears that a report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.
 - (f) All current and potential situations of Conflict of Interest faced by individuals and/or media institutions should be disclosed.
 - (g) The media shall refrain from sexism and racism in the reporting of news as well as in comment.
 - (h) The media shall strive to represent social reality in all its diversity, complexity and plurality, and shall strive to be sensitive to the aspirations of women, minorities and disadvantaged groups.
 - (i) The media should exercise due care and responsibility in the presentation of programmes where children are likely to be a part of the audience.
 - (j) the media should not without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocity, drug abuse and obscenity.
 - (k) The multiple sectors of the media should endeavour to work together with mutual respect as equal partners.
 - (l) The profit motive should not override media freedom, social responsibility and editorial freedom.
- 2) **Privacy** - Insofar as both news and comment are concerned, the media shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.
- 3) **Right to reply** - Provisions should be made for a right of reply, to protect individuals against factually incorrect statements that endanger respect for their reputation, dignity, honour, feelings and privacy, and to encourage a greater sense of responsibility in the exercise of the freedoms of expression, information and publication. The reply should be confined to the aggrieved person's version of the facts and should not be longer than is necessary to correct the alleged inaccuracy or distortion.

This consensus does not preclude individual organisations from campaigning for

reform over and above the provisions contained herein.

CONCLUSION

We welcome the fact that the symposium on Media Freedom and Social Responsibility was jointly organised by the Sri Lanka Working Journalists' Association, the Free Media Movement, the Editors Guild of Sri Lanka and the Newspaper Association of Sri Lanka together with the World Association of Newspapers and the Centre for Policy Alternatives, thereby demonstrating the highest spirit of co-operation and collaboration among the various sectors of the media.

We reiterate our commitment to further co-operation and unity in our efforts to promote the freedom of expression in general and media freedom in particular. We, therefore, call upon media organisations to overcome difference of opinion and divergences in style in order to work together to actualize this common vision.

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Sri Lanka Working Journalists
Association

Free Media Movement

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Newspaper Society of Sri Lanka

Editors Guild of Sri Lanka

The Sri Lanka Working Journalists Association has given approval in principal for the above declaration but has withheld signing the document pending the approval of the executive committee of the organisation.