



# SILENT WAR:

## CENSORSHIP AND THE CONFLICT IN SRI LANKA

March 1996

© ARTICLE 19

ISBN 1 870798 08 2

---

### CONTENTS

#### [Acknowledgements](#)

#### [Acronyms](#)

1. [INTRODUCTION](#)
2. [GOVERNMENT HARASSMENT OF THE MEDIA](#)
3. [CENSORSHIP UNDER EMERGENCY REGULATIONS](#)
  - 3.1 [International Standards Applicable to the Situation in Sri Lanka](#)
4. [THE OPERATION OF THE CENSORSHIP](#)
  - 4.1 [Foreign Media](#)

4.2 [Sri Lankan Media](#)

## 5. [\*\*HUMANITARIAN ISSUES AND CENSORSHIP\*\*](#)

5.1 [Attacks on the Work of Humanitarian Agencies and Other NGOs](#)

## 6. [\*\*IMPLEMENTATION OF THE GOVERNMENT'S MEDIA POLICY\*\*](#)

6.1 [The Recommendations of the Media Committees](#)

6.2 [Recommendations on Legal Reform](#)

6.3 [Committee on "Broadbasing" Ownership of ANCL](#)

6.4 [Establishment of a National Media Institute](#)

6.5 [Committee on the Working Conditions of Journalists](#)

## 7. [\*\*CONCLUSIONS AND RECOMMENDATIONS\*\*](#)

### [\*\*APPENDIX 1\*\*](#)

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

### [\*\*APPENDIX 2\*\*](#)

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Please note that this version does not contain footnotes. For a full copy see the pdf version or contact [info@article19.org](mailto:info@article19.org) for a hard copy by post.

---

## **ACKNOWLEDGEMENTS**

[Return to contents](#)

This report was written by Elizabeth Nissan, author and researcher on human rights in South Asia.

---

## ACRONYMS

[Return to contents](#)

ANCL Associated Newspapers of Ceylon Ltd

CID Criminal Investigation Department

CRM Civil Rights Movement of Sri Lanka

GA Government Agent

ICCPR International Covenant on Civil and Political Rights

ICRC International Committee of the Red Cross

LTTE Liberation Tigers of Tamil Eelam

MIRJE Movement for Inter Racial Justice and Equality

NGO Non-governmental Organization

NMI National Media Institute

PA People's Alliance

UTHR(J) University Teachers for Human Rights (Jaffna)

---

## INTRODUCTION

[Return to contents](#)

The past year in Sri Lanka has seen the dashing of many hopes: hopes that a resolution to over 15 years of violent conflict might be reached without a return to warfare; hopes that new foundations might be laid for a democratic order based on full respect for human rights and freedoms; hopes for the strengthening of civil society and an end to the fear that has for so long undermined it. When the People's Alliance (PA) was elected to power in August 1994, ending some 17 years of rule by the United National Party (UNP), it inherited a heavy legacy from the past. The systematic censorship which permeated government institutions had led to a pervasive culture of self-censorship within the wider society which affected many aspects of public life and helped perpetuate gross and systematic human rights abuses. As ARTICLE 19 said in October 1994,

The government will need to demonstrate real strength of purpose and determination if it is to carry through successfully its programme to bring Sri Lanka to the position where it can be counted a full, open and flourishing democracy, one which pays due respect to the rights of all Sri Lankans.

Strength of purpose and determination have been severely tested in the past year. There can be no doubt that the sudden and violent withdrawal of the secessionist Liberation Tigers of Tamil Eelam (LTTE) from negotiations with the government in April 1995 has had a profound impact on both government and public opinion. As military means of addressing the conflict have again become dominant, political positions have polarized and the space for open debate on political and humanitarian issues relating to the conflict has diminished dramatically. This is despite the continuation of a political strategy evidenced in the government's publication of proposals for substantial devolution of powers to eight regions in May 1995, an amended version of which was due to be put before the all-party Parliamentary Select Committee on Constitutional Reform in February 1996.

Freedom of expression and information constitute a cornerstone of any just and democratic society. Although the Minister of Media has continued to assert the government's commitment to these values and to the creation of a free and independent media, actual government practice has told a different story. In the 18 months since the PA was elected to office, none of the promised legal and institutional reforms to strengthen freedom of expression have been implemented. The steps taken so far with regard to media reform are reviewed below. Harassment of the press has again increased, with police raids on newspaper offices and criminal charges against editors on account of their reporting of the President. Very recently, the Deputy Defence Minister reportedly asserted that some newspapers or journalists are "traitors", without naming those concerned. These are strong accusations, indeed, in a country that only a few years ago saw tens of thousands of its people ruthlessly killed on just such alleged grounds. In such a climate, it is hardly surprising that self-censorship continues to prevail.

Undoubtedly the greatest threat to freedom of expression was the censorship imposed under emergency regulations in September 1995 to restrict reporting of the major military offensive to seize back control of the LTTE stronghold of Jaffna, together with the military's refusal to allow journalists to travel both to the zones of actual conflict, and to the areas of the north remaining under LTTE control, where many of the hundreds of thousands of people displaced by the offensive now reside. Humanitarian organizations which sought to report suspected violations of humanitarian and human rights law by the military came under strong public attack from the government. This was sometimes followed by direct physical attacks and threats by other parties against these organizations. The effect of both formal and informal censorship of the conflict was to ensure that the wider public received only the official version of events in the north. The broad scope of the censorship, as demonstrated in this report, went far beyond any legitimate interest in protecting national security or public order. Government censorship and restrictions on access to the north not only kept the public uninformed, but also made the process of providing humanitarian assistance to the victims of war more difficult and may have concealed violations of humanitarian and human rights law.

The continuation of the conflict in Sri Lanka cannot justify the failure to address Sri Lanka's pressing human rights issues, including those relating to freedom of expression. Any restriction on the fundamental right to freedom of expression may only be permitted when absolutely necessary to protect, amongst other things, national security, public order or the rights of others, as specified in international human rights instruments. These principles were underlined in the recommendations of the UN Human Rights Committee, the body created under the International Covenant on Civil and Political Rights to monitor adherence by states parties to the Covenant's provisions. In July 1995, following its scrutiny of the extent to which Sri Lanka fulfils its obligations under the Covenant, the Committee made the following observations (among others):

[T]he domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant.

The Committee is concerned that the derogation of rights under the various emergency laws and regulations may not be in full compliance with the ... provisions ... of the Covenant.

The Committee recommends that the provisions of the Covenant should be fully respected in the areas where a State of Emergency has been proclaimed.

If the government fails to implement the reforms it has promised on human rights for the benefit of all Sri Lankans, in all areas of the country where it can do so, the prospects of ever reaching an enduring peace settlement risk becoming even more remote.

This report reviews freedom of expression issues in Sri Lanka since March 1995. Events since then strongly reaffirm the need for the government to move rapidly to implement its stated policy on freedom of expression. This, in its broad objectives, is consistent with the 25 recommendations made by ARTICLE 19 in *An Agenda for Change* in October 1994, which covered constitutional and legal reform, media freedom and the problem of impunity. In March 1995, ARTICLE 19 made two further recommendations relating to the creation of independent public service media, which stressed the need for an independent governing body and legal guarantees of editorial independence. These recommendations are consistent with those that have since been put forward within the country by the committee appointed by the Media Minister to review legal reform relating to freedom of expression, and with those made by the UN Human Rights Committee in its 1995 review of Sri Lanka. Should they be implemented, these recommendations would help prevent the recurrence of the kinds of violations of the right to freedom of expression and information that are covered in this report. In addition, this report concludes with several recommendations which address some of the immediate human rights and humanitarian concerns that have arisen in the course of the war.

The report is intended to assist in the campaign for media reform in Sri Lanka, building upon the work done since the PA government came to power in August 1994. It concentrates on freedom of expression issues in areas of the island under the government's control. It does not cover freedom of expression issues in those areas of the north and east which are under LTTE control. However, ARTICLE 19 remains gravely concerned about the denial of free expression in these areas too. It has previously described the very tight control on expression and information which the LTTE exerts on those living within these areas. These concerns remain unchanged but have been further deepened by the recent large-scale attacks on civilian targets by the LTTE, which have resulted in hundreds of deaths and injuries in both the capital, Colombo, and areas bordering the north and east.

---

## 2. GOVERNMENT HARASSMENT OF THE MEDIA

[Return to contents](#)

Since ARTICLE 19 last reported on censorship in Sri Lanka in March 1995, cases of government interference in, and harassment of, the press have continued to be reported. These cases show that the media are still vulnerable to the whim of government ministers, who are continuing to use the possibility of criminal defamation cases in a manner likely to discourage the legitimate expression of political dissent. ARTICLE 19 had recommended that Section 479 of the Penal Code, which makes libel a criminal offence, should be repealed and that politicians and other public officials should be expected to tolerate a higher level of criticism than private individuals in defamation cases.

Newspapers have been raided by police after publishing items critical of the government and several cases of criminal defamation have been brought against newspaper editors for reports concerning the President.

Other media personnel have faced long questioning by police after a Minister made a complaint alleging defamation.

Such incidents reached their peak in September 1995. Later that month, formal censorship of military news was imposed under emergency regulations.

Examples of cases brought against the press in this period illustrate the nature of the harassment. The editor of a Sinhala-language paper, *Lakbima*, was charged with criminal defamation for allegedly defaming President Kumaratunga following publication of a report concerning the expenses of an official opening ceremony. Editors and journalists from the Upali group of newspapers were questioned by the police Criminal Investigation Department (CID) about their sources for a report on the proceedings of the Government Parliamentary Group, which was headlined "Govt Group meeting ends in uproar". The CID had obtained a search warrant from the Chief Magistrates' Court, Colombo, before making their visit, following a complaint made by the Minister of Education that the report had "brought the government into disrepute and disgrace". The CID also visited the premises of a Sinhala-language weekly, *Hiru*, three times to ask about journalists' sources after it published a news item in which a source was quoted as saying that the Inspector General of Police should resign following the exposure of recent 'death squad' activity in the Special Task Force (STF), a police commando unit.

When questioned about this spate of activity, the Media Minister, Dharmasiri Senanayake, was reported as saying, "The skirmishes such as the CID visiting newspaper editors do not lay bare the government's policy on the media." His interviewer pointed out that most of the reports the government had found objectionable actually derived from certain sources within the government, which the Minister acknowledged: "We are aware that among us there are 'little birds' and 'whistle blowers'. It is our duty therefore to ... put our house in order."

Apart from issues of harassment of the press, concerns about book censorship also resurfaced in January 1996 when further imports of a book written by a Professor of Anthropology at Harvard University, S J Tambiah, were banned on the instructions of the Ministry of Buddhism. The book — *Buddhism Betrayed? Religion, Politics and Violence in Sri Lanka* — had become the focus of controversy in the country when it was published in 1992. No action had been taken against it at the time, and several hundred copies had already been imported and sold. The Ministry said it had banned the book because of complaints by Buddhist monks.

---

### 3. CENSORSHIP UNDER EMERGENCY REGULATIONS

[Return to contents](#)

On 21 September 1995, just as military activity in northern Sri Lanka began to intensify, the President issued new emergency regulations imposing censorship of news on military matters. Formal censorship remained in force until 20 December, by which time a major military offensive to take Jaffna city from the LTTE had been completed. The imposition of censorship provoked considerable fears that the government intended to prevent the public both at home and abroad from receiving any independent account of the conduct and progress of the war in the north, which was reaching a critical stage as government troops moved to take control of Jaffna city. Indeed, if such was the government's intention, it was successfully achieved, both through the imposition of formal censorship under emergency regulations and by the military barring journalists from travelling to the north. Although the formal censorship was lifted in December, restrictions on access to the north remained in force at the end of February 1996, making independent coverage of the situation in the area impossible.

According to government statements made when these regulations were introduced, the censorship would remain in force for a limited, but undefined, period because some sections of the media were reporting military news in an irresponsible manner which threatened the security of the state and the people. "Distribution of military news will not only retard a settlement of the national crisis but also break the morale of the security forces," according to an official statement. The government cited no example of any specific report which threatened national security in this manner. A second intention of the censorship, according to some reports, was to prevent publication of material that might inflame communal passions and violence. The chief censor himself gave the protection of military operations and the prevention of communal disharmony as "the two basic objectives" of the censorship in a press interview. Yet prevention of communal violence was not reflected in any way in the emergency regulations governing the censorship.

The censorship regulations of 21 September 1995 applied to any material pertaining 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 procurement or proposed procurement of arms or supplies by any such Forces, the deployment of troops or personnel, or the deployment or use of equipment including aircraft or naval vessels, by any such Forces.

An amendment of 28 September added the following item to this list:

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.

The regulations as drafted thus forbade publication of *any* material on police or armed forces operations, supplies or deployment, including even statements made in parliament or by government representatives. The amendment of 28 September would appear to have banned, say, even statements commending the performance of traffic police in southern Sri Lanka. No distinction was made between material threatening national security, and matters which should legitimately be placed in the public domain. As the Civil Rights Movement of Sri Lanka (CRM) said,

This formulation would, for instance, shut out any exposure of corruption in the procurement of arms and supplies even if such exposure were wholly in the public interest and could in no way endanger national security ... . More disturbing is the fact that such constraints on freedom of expression are a serious interference with the watchdog role of the press and of independent human rights organisations, an essential element of which is highlighting matters such as any corruption, human rights violations, or other misconduct by the authorities.

The regulations, read literally, imposed a complete ban on publishing news relating to the subjects listed. They made no reference to the appointment of the Competent Authority on Censorship, to whom all such material had to be submitted for approval prior to publication, yet in practice this was how the regulations were implemented. All such news and commentary had to be subjected to scrutiny by the censors, who often insisted on cuts or refused to permit certain items to be published. With the censor's approval, items on the subject listed could in practice be published. Many editors and journalists complained that the censorship was operated in an arbitrary manner, and that items on subjects outside the censor's remit were frequently cut, including on subjects which had no relationship to national security interests. Beyond this, the CRM has pointed out that strictly speaking, even *with* the censors' approval, the publication of news — including the government's own statements — remained illegal as the regulations made no provision for an 'approval' procedure of any kind. "Such absurdities," the CRM said, "... tend to bring the law itself as an institution into disrepute."

### 3.1 International Standards Applicable to the Situation in Sri Lanka

[Return to contents](#)

International standards on freedom of expression do envisage situations in which restrictions on freedom of expression can legitimately be imposed. Of relevance to the current situation in Sri Lanka is Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR). This article requires any restrictions on freedom of expression to be "necessary" to protect national security, among other things. Under Article 4 of the ICCPR, restrictions on basic rights in times of national emergency may be imposed only "to the extent strictly required by the exigencies of the situation." The recent Sri Lankan censorship regulations did not fulfil these requirements. They contained broadly defined categories of issues to be subjected to censorship with no requirement that these even relate to the protection of national security, let alone that they be "necessary" to achieve this end. The title of the regulations refers to "sensitive military information", a formulation of far broader scope than information which threatens national security.

Emergency regulations are issued by the President under the Public Security Ordinance. The President is empowered by this Ordinance to issue regulations which appear to her to be necessary or expedient in the interest of public security, among other things. As recently noted by a Supreme Court Judge, "This power is couched in subjective language ... . The power is thus very wide". The President's power to restrict basic rights, based upon her subjective judgement, thus falls far short of the protections provided in the ICCPR, which requires that such restrictions be based upon objective and testable criteria. Indeed, the Sri Lankan Constitution and the Public Security Ordinance enable a far wider range of restrictions to be imposed on the exercise of basic human rights than are permitted under the ICCPR.

Restrictions on freedom of expression based on national security interests are not legitimate if their "genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology ...". As the following analysis of the operation of the censorship shows, the Sri Lankan censors cut text on subjects which fell well outside the range of subjects specified in the already broadly-phrased regulations. Some of the cuts appeared trivial, but some had very serious human rights or humanitarian implications; some contained no obvious threat to national security; some were of material already published locally or abroad; some were of information already well-known to the general public; some appeared to be intended to restrict information reaching the Sri Lankan public about important public issues or criticism of government policy. The cuts included a considerable amount of discussion of censorship itself (although not all material on censorship was cut), and there were also instances where factual information contained in reports was altered by the censors.

Apart from the formal censorship, access by journalists to the main conflict areas has been prevented by the military, a situation which still continued in February 1996, thereby restricting the flow of information on important human rights and humanitarian issues. This, too, contravenes important principles of international law, and is discussed in a separate section below.

---

## 4. THE OPERATION OF THE CENSORSHIP

[Return to contents](#)

ARTICLE 19's analysis of the operation of the censorship is based primarily upon examination of text which had been submitted to the censors by various daily and weekly newspapers and then returned to them

marked with the censor's deletions, changes and, occasionally, other comments. Several newspapers made samples of censored text available to ARTICLE 19 for this analysis. Where direct quotations are given from this material, the parts which were cut by the censors are shown in italics.

The Secretary to the Media Ministry, Edmond Jayasinghe, was appointed as the Competent Authority for Censorship, responsible for approving or censoring news and comment prior to publication. He delegated to the heads of the state-owned press, television and radio institutions the responsibility for censoring the news and comment they broadcast or published — the heads being government appointees. Other media institutions had to submit their text for approval to the censor's office. However, the then Chairman of the state-owned Associated Newspapers of Ceylon Ltd. (ANCL, also known as 'Lake House') — the island's largest newspaper publishing group — was unwilling to take on the role of censor. So, in practice, Lake House newspapers did submit text for approval by the censor. ARTICLE 19 understands, however, that Lake House journalists tended to censor themselves on the basis of their understanding of what the censors permitted and what they did not (as did many other journalists), and tended to use the official statements released by the Defence Ministry.

ARTICLE 19 knows of no written guidelines that were issued to newspapers or broadcasting institutions setting out how the regulations would be applied by the censors. However, the Competent Authority on Censorship held regular meetings with senior personnel from both state- and privately-owned media in which these matters were discussed, and where problems the media personnel confronted with the operation of the censorship could be raised.

Soon after the censorship was imposed, newspapers began to complain that censorship was being applied in an arbitrary manner and that text was being cut on issues which clearly fell outside the scope of the regulations. On 24 September 1995, for example, the privately-owned *Sunday Island* drew attention to the fact that although the regulations did not apply to activities of the LTTE, reports regarding LTTE activities had been completely censored the previous day. Similarly, the column by the paper's defence correspondent had also been completely cut, despite the view of the paper's editor that, as defined by the regulations, it did not properly come under the purview of the censor. Several newspapers found that text discussing the operation of the censorship itself was sometimes cut — despite the fact that this subject was not contained within the regulations. The privately-owned *Sunday Times* of 24 September 1995 graphically demonstrated the arbitrary manner in which the censorship was being applied. Text which had been submitted to the censor one day was not granted approval, despite the fact that one quarter of it contained an analysis of the operation of the press censorship. When the same text was again submitted the next day on appeal, the analysis of the censorship was approved for publication.

At a press briefing on 28 September 1995, the Competent Authority reportedly apologized for the "errors of judgements of his staff" when complaints about the operation of the censorship were brought to his attention, and said these matters were being corrected. However, arbitrary censorship and the deletion of text which contained no clear threat to national security or which fell outside the remit of the regulations, continued well after that date, as several examples contained in this report demonstrate.

Complaining of arbitrary censorship, one newspaper protested to the censor that a news item which had not been approved for publication by the censor on 1 December 1995 was broadcast that night by a private radio station. The broadcast concerned conflicting reports on the release of eight prisoners from military custody in northern Sri Lanka. In another case of arbitrary censorship, a quotation by Ronald Dworkin on freedom of expression as a fundamental human right was excised from a political comment published in a Tamil weekly in early October 1995. Indeed, a considerable amount of other commentary about the application of the censorship was also cut from this article, as were quotations critical of the censorship which had already been published in other Sri Lankan newspapers.

#### 4.1 Foreign Media

[Return to contents](#)

The imposition of censorship had a drastic impact on the broadcasting within the country of television news bulletins on Sri Lanka which originated from other countries. Some local broadcasters re-transmit foreign news programmes locally, and when news items on Sri Lanka appeared in these programmes, they were taken off-air as soon as they began. Not knowing the content of each item, and unable to submit it for prior scrutiny, the television stations concerned simply operated a policy of blanket censorship of news on Sri Lanka for fear of unwittingly falling foul of the censors. Satellite broadcasts of foreign news stations were not affected, but these reach a far smaller audience than the foreign news which is re-transmitted locally. The practice of the stations which re-transmit foreign news, as the Free Media Movement point out,

Thus ... deprived [Sri Lankans] of valuable information regarding foreign perspectives of events and developments in this country and developments abroad of relevance to this country.

When first imposed, the censorship regulations applied to both local and international news reporting on Sri Lanka. However, it soon became clear that subjecting the international media to the censorship regulations was impractical for two main reasons: not all news on military matters originated within the country; and foreign correspondents could, in any case, have their copy filed from another country. Within days, the government lifted the prior censorship of foreign media reports. In practice, this proved a relatively modest concession: all journalists — both local and foreign — remained barred by the military from travelling north into the main conflict zones. It thus remained impossible for even the international press — who were freed from formal censorship — to report openly and fully about events in the north.

Nevertheless, foreign journalists were able to report more fully than their local counterparts on the limited material that was available about the conflict, as well as on the constrained conditions in which they had to work. Most news reporting depended upon statements put out by government or military spokespersons on the one hand, and — in the case of the international media — statements by the LTTE on the other. Some foreign journalists also were able to publish interviews with displaced people from the north who made their way to Vavuniya, the northernmost point to which journalists were permitted to travel. Overall, the government and the military successfully denied reporters access to the fighting, and to many of those who had witnessed it and suffered its repercussions, to a degree which seasoned journalists have told ARTICLE 19 they have not experienced in other countries at war.

Foreign journalists complained of major obstacles placed in their way by the armed forces. The military only permits access to 'cleared' areas — that is, areas cleared of the LTTE and under military control; no access at all is permitted to 'uncleared' areas. This is purportedly on 'security' grounds. The ban on access to 'uncleared' areas was not based on any known regulation. Furthermore, as there is no formal list of 'cleared' and 'uncleared' areas, in practice the prohibition on access could be applied in a wholly arbitrary manner, and there was no possibility of appeal. Paul Watson of the *Toronto Star* described the situation as follows:

There's no end to what Sri Lanka's military will do to stop the outside world from knowing what's really going on here. It's a lesson in what happens to a fragile democracy when war breaks out — the generals feel their power and civil rights are the first to die. Lying to journalists is just par for the course.

He described a journalist's attempt to visit Mannar Island on the north-west coast, an area under the control of the military:

On an average day, 125 people take the eight-hour boat ride [to Mannar]. So it ought to be easy to call on the bishop [who had invited the journalist to visit] — except that the Sri Lankan navy decides who gets on the only boat to Mannar. Journalists are not welcome aboard. When a reporter suggested that a call to defense command would quickly clear

up the misunderstanding, a naval officer said the base doesn't have a phone link with headquarters in Colombo. Even the officer had to laugh at the silliness of that lie. ... It took two days of haggling with colonels, captains and brigadiers who all began by saying that Mannar is a cleared area and then insisted, with equal certainty, that it isn't. ... It was only after President Chandrika Kumaratunga's press secretary, Victor Fernando, intervened that anyone felt any obligation to explain why reporters are barred from a cleared area. Fernando relayed the prohibition order from Brigadier Sarath Munasinge, the military's spokesperson, who prefers to communicate with journalists by fax. "It is not a ban," Fernando insisted. "Rather, they [the military] won't permit it because of the situation. Once the situation has come to normal, and it is safe, they will allow journalists to go."

Some foreign journalists experienced other impediments to their work: an Indian television crew was reported to have been detained for five hours when it reached an army checkpoint at Vavuniya; a British television news crew was arrested and forced to leave the country when they were found waiting to meet an LTTE contact in the east. A journalist working for Associated Press was detained in Colombo by Crime Detective Bureau officers, was questioned for about three hours, and had 16 video cassettes withheld after he had interviewed an LTTE leader in the east.

The Free Media Movement pointed out that the lifting of censorship on the foreign media alone undermined the original justifications for imposing censorship. It also discriminated against Sri Lankans, who were "deprived of information ... while the rest of the world is kept informed. This is a serious violation of the basic right to information."

## 4.2 Sri Lankan Media

[Return to contents](#)

Local media suffered from both denial of access to the north and formal censorship. The censors frequently cut items and phrases which were commonly used in the international press from text written for Sri Lankan media. For example, they cut references to unnamed military personnel who had provided information or opinions contained in the item. Phrases such as "a senior officer said", "military analysts believe" or "defence sources said", which remained common in international reporting on the same event or opinion, were cut from Sri Lankan reports, even when the information quoted was approved for publication. Often, reference to an imputed intention or cause of an event was cut, although exactly the same explanation was given in the international press. For example, when schools were closed by the government in late October 1995, one English-language newspaper had its text altered as follows: "On Thursday, schools across the country were closed for up to one month, [*fearing reprisal terrorist attacks*]." International news agencies reported the event in very similar terms: "Last week, the Sri Lankan government closed all primary and secondary schools, fearing terrorist threats;" "Schools across the country were closed on Thursday for up to a month for fear of reprisal attacks by the guerrillas." Also censored were some commonly-known items of information, such as the distance by road between Colombo and Jaffna, and the army commander's name.

Sri Lankan newspapers which sought permission to republish international news agency reports found that these reports were cut entirely, or in part, by the censor. One newspaper submitted for approval a brief Reuters report of 6 December 1995 on an attack by the LTTE on an STF base near Kalmunai in eastern Sri Lanka and the subsequent battle, in which 12 civilians were among those killed. According to the Reuters report, which relied solely on information given by "defence officials", the civilians had been killed by LTTE gunfire. Not one word of the report was allowed to be published. There were only very brief references to this particular attack and its aftermath in the local press, although it would probably have been possible for journalists to visit the area and conduct their own investigations. A month later, after the

editorship was lifted, a fuller account of what happened at Kalmunai — including eye-witness accounts of the use by the STF of civilians as 'human shields' — was published by University Teachers for Human Rights (Jaffna) (see below).

Another Reuters report, which concerned the flight of the LTTE and civilians from Jaffna, was returned to the newspaper which had sought to republish it with the following comment written on it by the censor: "Please submit your own report." The report — already widely disseminated abroad — had been completely censored.

Particularly disturbing was the censors' interference with factual information relating to the numbers of combatants killed or injured in the conflict. In some cases, the censors imposed their own figures even when the source of the information was given as the Ministry of Defence. The following examples illustrate the extent of the censorship. In late November, the numbers given in one news report were altered as follows: "To achieve this, more than [600] **300** men have laid down their lives and over [2,500] **1,000** have sustained injuries." In the second week of December, the censor altered the numbers as follows:

Seventeen officers and [463] **371** soldiers sacrificed their lives during the 49 day long "Operation Riviresa". ... LTTE's casualty figures are not available. Unlike in the past years, the Tigers have refrained from publicising their casualties. The Operational Headquarters of the Ministry of Defence estimates that around [1,800] **1249** Tiger guerrillas were killed and a further [3,000] **2590** were wounded. In view of restrictions on travel by media personnel to the north, it is not possible to verify the accuracy of these figures.

In late December, a report on a battle was also altered: "The intensity of the pitched battle is revealed by the casualties — 26 soldiers killed and over [150] **70** wounded."

Ironically, a report by a *Sunday Times* journalist, which complained that the censors had introduced inaccuracies into a previous report by reducing the numbers of casualties and which attempted to give official Ministry of Defence statistics, was again censored to reduce the figures. The following extract from the copy submitted to the censor shows the changes:

Some material was censored which had only recently been published within Sri Lanka itself. For example, in early October, a Tamil-language newspaper attempted to publish translations of brief news items which had been published in the Sinhala-language press about 10 days before censorship was imposed. The translations, which gave the sources and dates of the original publications, were all completely censored. They included items on the National Auxiliary Force, the purchase of military equipment from Israel, attempts by the military to prevent LTTE movement in certain areas of the east, and divergent opinions within the military about war tactics in Jaffna. While these topics fell within the remit of censors as defined in the emergency regulations, none of them could have posed a real threat to national security, especially as they had already been published.

There can be no reasonable justification for censorship of material which is already in the public domain. Once information has been made public, any justification for trying to stop further publication will be overridden by the public's right to know, except where it is convincingly established that the circulation of information was very limited and further dissemination poses a serious threat to a legitimate security interest. Even aside from this general principle, within the Sri Lankan context a considerable amount of international news is readily available to at least some Sri Lankans. International radio stations, such as the British Broadcasting Corporation's World Service, which broadcasts in English, Sinhala and Tamil, are widely listened to within the country. Furthermore, a considerable amount of international news reporting is available to at least some Sri Lankans through the large network of Sri Lankans abroad and from foreign news publications.

If one intention of the censorship was to prevent the LTTE from reading the items or phrases removed by the censors, this could hardly have been achieved by the means employed. The LTTE has offices in various countries, where news which might have been censored in Sri Lanka was reported by the international press. The regularity and speed with which overseas offices of the LTTE are able to issue press releases which originate from within Sri Lanka, and which give the LTTE version of the progress and conduct of the war and related issues, indicates that good channels of communication exist between the LTTE leadership within Sri Lanka and their offices overseas. As the LTTE anyway has access to international news sources, it is highly unlikely that formal censorship imposed within the country could have isolated the LTTE from information of this kind. Instead, the censorship isolated the wider Sri Lankan public, those with little access to international news resources, and acted to severely restrict the flow of information on issues of vital public interest.

---

## 5. HUMANITARIAN ISSUES AND CENSORSHIP

[Return to contents](#)

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.

One particularly alarming aspect of the censorship was that references to the impact of war on civilians were cut, and access to the vast majority of the displaced who had suffered the effects of the conflict was denied. Even where there was access, such as in Vavuniya town, reporters were not always free to conduct their interviews without impediment. For example, one foreign journalist told ARTICLE 19 that as soon as he started interviewing some Roman Catholic nuns who had recently arrived in Vavuniya from the north, police ordered him off the premises. At the same place, interviewers from the state-owned radio, Sri Lanka Broadcasting, were heard asking the displaced people they interviewed to give particular kinds of answers to their questions in an obvious effort to boost the government's propaganda campaign.

With respect to the formal censorship applied under the emergency regulations, deleted material included references to civilian casualties, as well as estimates of the number of civilians displaced from their homes by the fighting and in urgent need of food, shelter and sanitation. Indeed, references to reports of food shortages or possible disease among those so displaced were also cut. Incidents which may have involved serious violations of international humanitarian and human rights law were also censored, and received scant coverage in the media.

Even now that the formal censorship is over, access by journalists to the north remains barred by the military, so there is little publicly-available information from independent sources about conditions in the area. Representatives from certain international organizations with a humanitarian mandate have a small presence in, or make visits to, the area. They make their own assessments of relief and rehabilitation needs, but they do not disseminate their findings widely nor report publicly on them, so this material is not available to the general public. In general, international humanitarian and relief organizations working in these areas fear adverse repercussions for their work if they publicise material of this kind. The sharp

verbal attacks made by the Sri Lankan government in recent months upon specific international organizations which made rare public statements on civilian casualties resulting from possible violations of humanitarian law in the war appear calculated to reduce further the likelihood of such organizations speaking out. These attacks and their implications for freedom of association, expression and information are discussed below.

It is of crucial importance that any restrictions on the free flow of information — be they imposed through formal censorship or by restricting access to certain areas — should not be of such a nature as to thwart the purposes of humanitarian law. Governments may not prevent journalists from entering into conflict zones, except where their presence would pose a clear risk of jeopardizing the safety of others.

As a party to the Geneva Conventions, the Sri Lankan government is bound by their provisions. Article 1 of the four Geneva Conventions requires all states parties not only to respect the Conventions themselves, but also to ensure that all other parties respect them in all circumstances. Among the obligations involved are various measures to protect the civilian population during conflict. Clearly, information is needed to satisfy each party to the Conventions that other parties are indeed respecting the Conventions. Moreover, informed public opinion is a highly effective instrument for preventing various violations of international standards. For these reasons, any restrictions or derogations that affect the free flow of information during war-time cannot be such as to block efforts to monitor compliance with, and publicize violations of, humanitarian law obligations by the parties to the Conventions.

Once a military operation is over, restrictions on freedom of expression and information about the operation may be maintained only if necessary to protect the security of troops and civilians. Concern not to disclose strategic information to the enemy is justifiable, but can only be temporary. There can be no justification for a government authority to deny journalists access to refugee camps or hospitals, for example, when there is no longer any risk to the lives of the victims.

Although formal censorship did not apply to journalists working for the international press, they were barred from travelling into the main areas of conflict or displacement. A British television news crew which sought access to the north by clandestine means was expelled from the country.

The Sri Lankan emergency regulations on censorship did not mention civilian casualties or other humanitarian issues as subjects coming under censorship. However, when asked if the effect of the war on the civilian population in the north would be subject to censorship, the Competent Authority on Censorship replied:

Yes. If it is the result of military operations, then it is related to the military and must be examined by the censor.

Samples of censored text collected by ARTICLE 19 demonstrate that references to the impact of war on civilians were indeed cut.

The question of just how many people were displaced in the run-up to the battle for Jaffna was hotly contested by the government, and remains contentious. References to the estimated number of people displaced were treated as "sensitive information" and cut. The evacuation of Jaffna by civilians was a sudden and unexpected event. Some may have fled in fear of the town being taken over by government troops; but the majority appear to have left on the orders of the LTTE. By the time that the military finally arrived in the city in early December 1995, it was virtually deserted. Many of those displaced have remained in areas controlled by the LTTE; others, however, have travelled to places under government control. Wherever they are, however, the government remains responsible for ensuring that adequate food and other supplies reach them. Throughout the war, the government has sent food shipments to the north, although at times there have been allegations that the supplies sent were inadequate for the needs of the population and that there were serious food shortages.

Well before the evacuation of Jaffna city, the Government Agent (GA) of Jaffna had complained to the government about grave food shortages, as well as shortages of fuel, medicines and fertilizers. Food shipments, which travel under International Committee of the Red Cross (ICRC) escort, had been suspended in July 1995 pending assurances of security from both sides after a ship had hit a mine in northern waters. They were resumed in late August 1995. By October 1995, the LTTE was alleging that the government was using food as a weapon against the people of Jaffna. When in November hundreds of thousands of people fled Jaffna prior to the anticipated military attack, the United Nations Secretary-General Boutros Boutros-Ghali made a public appeal for "humanitarian assistance on a significant scale ... to minimise suffering." The Sri Lankan government expressed "dismay" at this call, saying that it appeared "to derive from conclusions arrived at without ascertaining the full facts". The government appeared sensitive to implied international criticism that it was failing to provide for a significant number of its citizens, and to the possibility that the UN might attempt to intervene directly in the conflict. It announced that it was establishing a central body to coordinate all relief efforts to the north, through which any international assistance could be channelled, but that independent relief efforts would not be permitted.

Arguments over numbers continued. While the LTTE were claiming that some 500,000 people had been displaced from their homes, and independent relief agencies in the field were making estimates of up to 400,000 people displaced, the government insisted that the true figure was no more than 100,000, perhaps in an effort to play down the scale of the crisis to the international community. Indeed, on 7 November 1995 the government suspended the Jaffna GA "for giving the government false reports on the refugees and food shortages in the northern Jaffna peninsula". The GA had said that 65 per cent of the peninsula's 800,000 people, or about 520,000 people, had fled their homes. He had appealed to the government to create new safe areas for civilians fleeing shelling and bombing, and for provision of food, chlorine to purify water, and tents for the growing refugee population. His statement had been carried on international news wires. Such action by the government sent a clear message that the subject of the numbers of the displaced was not open for discussion; that it was "treachery to talk about such matters".

However, far from ensuring access to journalists in order that "the full facts" of the situation (as the government had demanded in its response to the UN Secretary-General's statement) could be readily and openly ascertained, the government continued to deny access to the north. Furthermore, although news of the flight of civilians from Jaffna was not censored, any references to the *numbers* of people who had fled were cut from local news reports. For example,

Jaffna town has now become a virtual ghost town, with the exodus of *[nearly 100,000]* civilians within the last few days to Kilinochchi.

Another report, which had cited statements by the GA of Kilinochchi saying that 100,000 people had arrived there from Jaffna, many of whom had not eaten for days, and that there was a shortage of food in his area, was similarly cut. This report had gone on to note that other government officials and certain members of the PA government had said they believed the numbers involved to be considerably higher than the 100,000 claimed by the government, and that if the GA of Jaffna had exaggerated the numbers involved, it would not have been by many. All of this comment, too, was deleted by the censors.

Information about the conditions of the displaced was also cut. One Sri Lankan newspaper had paragraphs deleted which summarized the findings of foreign journalists who had interviewed refugees at Vavuniya. These included accounts of hundreds of thousands of people walking for days to their destination, having waited for long periods of time for boats to cross the lagoon from the Jaffna peninsula to the mainland; of some elderly people dying from exhaustion and of fears of disease from contaminated water.

It is not ARTICLE 19's role or purpose to assess the accuracy of the conflicting accounts of the scale of the displacement. The point is that it was impossible for any informed assessment to be made of the true situation on the ground because it became a 'taboo' subject, suppressed by both formal censorship (despite not being covered by the regulations), by the denial of access to the north, by the signals conveyed by the government when it suspended the Jaffna GA and in its response to the UN Secretary-General's statement.

Another significant barrier to the free flow of information from the north on human rights and humanitarian issues is the strict constraints placed on the freedom of movement of most of the displaced. On the one hand, the LTTE places severe restrictions on the ability of people — and especially young people of recruitment age — to travel out of areas under their control (and taxes those who are permitted to go); on the other, the Sri Lankan military screens those who arrive in areas under its control, and only permits some to travel further south. The LTTE also imposes considerable restrictions on the flow of information within the areas it controls. Lack of access by journalists to the areas most affected, together with restrictions on the movement of the displaced to areas where they might be able to speak out, combine to create a continuing vacuum of publicly-available, independently attested information on their situation.

Another aspect of the conflict which was subject to censorship was the question of civilian casualties resulting from the fighting. ARTICLE 19 has seen several examples of text where the censors took particular care to ensure that the numbers of civilian casualties in specific battles were excised. This insidious censorship, which clearly had nothing to do with protecting national security, again exemplified the government's intention of ensuring that only its own version of the conflict was available. The government appears to have been intent on conveying an image of a "clean" war, in which the LTTE were targeted but civilians protected, to maintain support for its offensive. The government has said that civilian casualties were deliberately kept low during the offensive and, given the scale of the military operation, relatively few civilian casualties were reported, even in LTTE press releases. However, even when newspapers sought to publish reports of civilian casualties from generally reliable sources, these were censored. For example, one newspaper tried to publish a report saying that the international medical relief agency, Médecins sans Frontières, had reported that 34 school children had died and others were injured when a bomb hit their school in the north, while Reuters had reported some 50 civilian deaths in a bomb attack on a public rally commemorating the death of LTTE hero, Thileepan. The report also referred to the government denial that these incidents had taken place. It was censored. Another newspaper sought to publish a paragraph summarizing the numbers killed on all sides in the seven months since war had resumed in April 1995. It gave the total as 4,000, of whom 2,000 were LTTE cadres and 1,200 were from the army, navy, air force, police and STF. In addition, it said 800 civilians had died. Of this paragraph, only the reference to 800 civilian deaths was cut.

Reported violations of international humanitarian law by the STF were also censored. Eyewitness accounts of the STF's use of civilians as human shields in one incident were not gathered until well after the incident. However, reports of the deaths of civilians in that operation were available, but these were censored by the authorities. This was the attack in December by the LTTE on an STF camp near Kalmunai in which, according to a recent report, some 90 combatants and 30 civilians were killed. A Reuters report of 6 December 1995 which reported civilian deaths was censored by the authorities (see above). This attack received scant coverage in the Sri Lankan press; indeed, the local press reports which ARTICLE 19 has seen mentioned only the deaths of combatants. According to UTHR(J), however, accounts given by witnesses and survivors show that in attempting to move reinforcements to the STF camp which was under attack, the STF commandeered civilian buses and other vehicles that were travelling on the roads at the time and used them to transport their own personnel. In the case of at least two buses, a van and a private car, the civilian passengers were forced to remain in the vehicles to act as shields against possible LTTE attack. In the ensuing gunfire, several civilians were killed on these vehicles or as they attempted to flee after they had stopped; a few others were killed in crossfire. While most of the fatal shots were fired by the LTTE, most of the civilian casualties were people being used as human shields by the STF. The *Island* of 8 December did report a STF spokesman as saying that reinforcements travelling on buses with civilians had been ambushed; but there was no reference to civilians being injured or killed.

## **5.1 Attacks on the Work of Humanitarian Agencies and Other NGOs**

[Return to contents](#)

A most worrying trend since mid-1995 has been the repeated public attacks made by the government on the work of certain international humanitarian agencies working in the north, and on local non-governmental organizations with humanitarian concerns. These attacks have followed a consistent pattern — generally being made after the organization concerned has issued a public statement on a subject or in a manner that the government objects to — and have raised concerns that the freedom of association and expression which such organizations need in order to carry out their important functions is being increasingly threatened.

In some instances, well-publicized verbal attacks by the government have soon been followed by physical attacks on the organizations concerned by other parties. Two examples are given below. There is no indication that these attacks were directly orchestrated by the government. However, it does appear that some elements in society may interpret the government's statements as signalling official encouragement or licence for other forms of attack. In the sometimes highly-charged atmosphere of politics in Sri Lanka, where a considerable amount of emotive misinformation is purveyed about the role and alleged hidden agenda of such organizations, it is imperative that the government take the lead in clarifying any misunderstandings that might exist on this subject in order to allay unwarranted fears, and that it takes particular care to ensure that its own statements cannot be misinterpreted as encouraging violence or other forms of harassment. The government should make quite clear that it will not tolerate attacks and threats upon such organizations.

Several of the attacks on international agencies have been made following public statements by them on issues of humanitarian concern. The ICRC, which seeks to ensure that all parties to the conflict observe at least the basic humanitarian standards contained in Common Article 3 of the Geneva Conventions, issued a statement in July 1995 expressing concern about an air raid by government planes on the Church of St Peter and St Paul at Navali in northern Sri Lanka, which killed at least 65 people and injured 150 others who had sought refuge there from the fighting. The ICRC had visited the site within 24 hours of the attack and interviewed witnesses. It had called upon all parties to the conflict to respect civilian lives, property and places of refuge. The President responded by ordering the military to investigate the reports and expressing regret at the casualties; the military acknowledged the attack, but said it was not clear who was responsible. The findings of the investigation have not been made known; indeed, it is not clear whether a proper investigation has yet been held. Earlier, in May, the ICRC had issued a statement concerning the killing of 42 Sinhalese civilians by the LTTE at Kallarawa, and made a similar call for the observance of basic humanitarian norms.

The ICRC statement directed against the LTTE attack attracted no public criticism. The statement concerning the effects of the air raid, however, was met with a barrage of condemnation. The government objected to the statement having been issued without giving the government the opportunity first to respond to the allegations. The ICRC apologized, but stood by the contents of its statement. The Foreign Ministry was reported as saying that the ICRC statement was "very damaging to the government's efforts to impress upon the people that its operations were directed against the LTTE and to save the people of the north from LTTE terrorism" and that the ICRC "were acting in a pro LTTE manner". Further, the Foreign Minister reportedly asserted that "The ICRC had a tendency to bully small countries and act against the wishes of sovereign states". This was followed by further attacks on the ICRC in the press (originating from people not associated with the government) and calls for their expulsion from Sri Lanka. The ICRC delegation received threatening calls, and its office in Anuradhapura was stoned in this period.

A local non-governmental organization, the Movement for Inter Racial Justice and Equality (MIRJE), came under fire from the Presidential Secretariat after it issued a press statement at the end of October 1995 which drew attention to the impact on civilians of the military offensive and the LTTE's response of attacking 'border' villages and targets in Colombo. "Neither party to the conflict appears to be observing basic humanitarian norms with regard to non-combatant civilians," it argued. It concluded that "the war is futile in that it cannot resolve the political conflict which gave it birth" and called upon "both parties to the conflict ... to begin a process that will eventually lead to a cessation of hostilities." This statement was rebuffed in a press release issued by the Presidential Secretariat which described it as "tendentious" and containing "two particularly mischievous and misleading comments". The statements at issue were that the

government was not supplying the displaced in the Jaffna peninsula with adequate dry rations, and that neither party was observing basic humanitarian norms, both of which the government disputed. The Presidential Secretariat's press release concluded with,

The Government also notes that the MIRJE statement resorts to the equally tendentious device of an appeal with equal force to the Government and the LTTE to return to a political negotiating process. The public here and abroad hardly needs reminding that it was the LTTE which abrogated a peace process launched by this Government immediately after election.

Later in November, an article appeared in the state-owned *Daily News* alleging that an un-named NGO which was "angered by the government's policy of channelling aid [to the displaced in the north] through state machinery" was convening a meeting of over 80 leaders of international and local NGOs in "an attempt to tarnish the international image of Sri Lanka by showing that food and other aid items are not reaching the affected refugees." Other newspapers also carried similar items, as did the state television and radio news and other broadcasters. The meeting at issue was the annual consultation of the NGO Forum on Sri Lanka, which had in fact been planned in March 1995, well before hostilities resumed between the government and the LTTE. The *Daily News* the next day (15 November 1995) published a press release issued by the NGO Forum which explained the nature of the Forum and of the meeting, which was "to discuss cooperation between voluntary organizations [and] discuss ways to promote development, human rights and peace in Sri Lanka." Yet the damage had already been done. The meeting was cancelled after agitated protestors gathered outside the hotel where it was to be held. The Foreign Ministry had given assurances that the meeting could proceed, and security was provided. However, the hotel management cancelled the meeting, after the police said they could no longer control the situation. Four journalists who were travelling to the meeting were attacked by a mob and injured. Both state-owned and private press the next day carried news of the cancellation, and also carried allegations that the meeting was pro-LTTE.

On 15 and 16 November, the offices of the local organizer of the meeting — who is also the Chairman of MIRJE — received several threatening telephone calls. The Forum found another venue for its meeting in Colombo, but this too attracted protestors and had to be cancelled on the instructions of the local police. The Foreign Ministry issued a statement saying that the Forum had not followed "the procedure of informing the Foreign Ministry about their visit". In fact, the Forum had written to the Foreign Ministry on 19 October 1995 about the meeting, had not been informed of any further procedure to follow, and had kept the Ministry informed of its plans during this series of events. Meanwhile, a private radio station reported the second disruption of the meeting and gave the address of one of the hotels where participants were staying. This was then besieged. The address of a local human rights organization, INFORM, which was connected with the meeting, was also broadcast; the landlord of the premises received threats. Finally, two government ministers, a deputy minister and a member of parliament visited the INFORM office to apologize about the whole series of events, and the government issued a statement of regret. This included the welcome statement that

The government deplors any forms or manifestations of violence against freedom of expression and reiterates its commitment to upholding the rights not only of organisations but also of individuals to express their views on matters of public interest.

However, it went on to say that

the organisations concerned had not obtained the clearance of the Ministry of Foreign Affairs for holding the meeting in question in accordance with the procedure relevant to such meetings involving foreign participants.

It should be noted that no such procedure on the holding of meetings has been made known, and that the Ministry was in fact informed of this particular meeting well in advance. ARTICLE 19 understands that normally there is no need for special permission to be obtained from the Foreign Ministry to hold

conferences, and that foreign delegates are able to attend conferences on visit visas, provided that they tick the box marked 'conference' as the 'purpose of visit' on the disembarkation card that they fill in on entering the country. In addition, ARTICLE 19 knows of at least two other conferences involving both local and foreign participants that were held in Colombo at the same time, and in neither of these cases was there any special procedure that had to be followed for the meeting to go ahead. One meeting was on the subject of human rights reporting, and mainly involved members of Asian human rights NGOs; the other was concerned with concepts of 'participation' in development. The latter meeting suffered serious repercussions from the disturbances surrounding the NGO Forum meeting. It was to be held at a hotel some miles from the original venue of the NGO Forum meeting. However, the hotel management cancelled it on the grounds that it feared attracting a similar security risk.

Since the time of the NGO Forum meeting, there has been a spate of articles and correspondence published in both the state- and privately-owned press attacking NGOs which receive foreign funding, some of which have singled out for attack certain local NGOs which were connected with the Forum meeting, as well as other organizations and individuals known for promoting pluralist values.

It is imperative that the government does all it can to safeguard the freedom of association and expression of members of organizations undertaking humanitarian and human rights work. ARTICLE 19 is well aware that not all constraints on these freedoms emanate from governmental sources, although some certainly do. It believes that for these rights to be safeguarded, and for an atmosphere of greater tolerance to be created for the benefit of all Sri Lankans, the government must remove impediments on the freedom of expression, association and movement that it has imposed, and ensure that its public statements cannot be misinterpreted by those who may seek opportunities to launch direct attacks on such organizations. Such attacks should not be tolerated. The government should also take positive action to help allay the fears of those sections of society which apparently believe, erroneously, that the interests of the majority community are directly threatened by the activities of genuine humanitarian and human rights organizations.

---

## 6. IMPLEMENTATION OF THE GOVERNMENT'S MEDIA POLICY

[Return to contents](#)

In its March 1995 report, ARTICLE 19 noted that

The government considers media freedom to have been a key issue in its general election campaign, and "an integral component of [its] policy towards renewal of democracy in Sri Lanka". Yet, by the end of 1994, large parts of the policy had yet to be developed and no changes had been made to the legal or institutional framework within which the media operate.

In early 1996, exactly the same can still be said. In November and December 1994, the Media Minister appointed four committees to make recommendations on specific areas of media policy. These were:

- reform of the law affecting media freedom and freedom of expression
- "broadbasing" ownership of the state-owned ANCL to make it an independent publishing organization

- establishment of a Media Institute
- conditions of employment of media personnel

The government's media policy made no mention of any intention by the government to relinquish its control of the state broadcast media, although it did say that it would ensure editorial independence. However, as the creation of independent public service broadcasting institutions would have to be addressed in law, there is no reason why this could not fall within the remit of the committee working on legal reform. Indeed, that committee has already expressed its intention to review "issues relating to the electronic media", which ARTICLE 19 hopes will include the means by which its independence can be secured (see below). ARTICLE 19 recommended that the independence of the public service media should be guaranteed in law, and that public service broadcasting should be governed by a board that is independent of the government.

All of the committees have submitted reports to the Media Minister. The committee on legal reform, however, has said that it also intends to submit a second report. The government has not yet stated how or whether it intends to act upon these recommendations (except for those relating to the establishment of a media institute), and has given no indication that it has developed any detailed plans for implementation of its policy. In December 1995 the Media Minister stated that media reforms would be implemented during 1996, but gave no indication of how this would be done. He was reported as saying that "the recommendations of these committees would be with him before the end of the year", whereas in fact many of the recommendations had already been submitted a considerable time earlier. ARTICLE 19 wrote to the Media Minister in mid-January 1996 asking him for details of his plans for implementation, but no reply had been received by the end of February.

In addition to the work of the media committees, an all-party Parliamentary Select Committee on Constitutional Reform was appointed in September 1994 to recommend reforms to the Constitution, including reforms which would enhance the protection of freedom of expression in Sri Lanka. The Select Committee had not finished its work by late February 1996. Although improved provisions on freedom of information and explicit safeguards against indirect means of restricting freedom of expression were proposed by the government in November 1994, these were not included in a later proposed draft of the relevant chapter of the Constitution issued by the government. There can be no certainty about the proposed changes to the fundamental rights chapter of the Constitution until they are finally placed before parliament, and it is not yet clear when that will be. ARTICLE 19 reiterates its recommendation that the right to freedom of expression and information should conform fully with the requirements of the ICCPR, and that any restrictions on the exercise of this right should be within the range of restrictions permitted under the ICCPR.

## **6.1 The Recommendations of the Media Committees**

[Return to contents](#)

The recommendations of the media committees have not been made public in their entirety. However, a considerable amount is known about their content, which is summarized here. It must be stressed, however, that these are simply sets of recommendations; they do not represent the government's intended plans for action, most of which remain unknown. The government has made no known response to the recommendations of either the committee on legal reform (except to say that three laws will be among those reformed) or the committee on "broadbasing" ownership of ANCL, even though it has had more than nine months in which to do so. It has expressed its intention to establish a media institute, and to improve journalists' working conditions. The reports of the two committees making recommendations on these issues were submitted in November and December 1995.

The creation of a media institute to improve professional skills would certainly be welcome, as would improvement of journalists' professional status and working conditions. However, it is most important to note that neither of these measures in themselves would have much impact on the creation of the new, democratic media that the government claims is its goal. Without reform of the constitutional, legal and institutional frameworks within which the media operate, even better-trained and better-paid journalists will continue to find themselves subject to political interference and control. It is, therefore, of crucial importance that the government gives proper attention to these vital reforms and does not concentrate all of its energies on less fundamental aspects of its policy.

## 6.2 Recommendations on Legal Reform

[Return to contents](#)

ARTICLE 19 understands that the committee to advise on legal reform affecting freedom of expression submitted an interim report around March 1995. This was partly published in the *Sunday Times* of 13 November 1995. The recommendations urge the government to strengthen constitutional guarantees of freedom of expression and information, bringing them fully into line with Sri Lanka's international legal obligations, particularly with the ICCPR. Restrictions on freedom of expression should not go beyond those permitted under the ICCPR. They note that freedom of expression should be guaranteed to both citizens and non-citizens, as well as to members of the armed forces and police, and that both existing and future law should be subject to judicial review so that a law which infringes any fundamental right can be declared invalid. The committee recommended the repeal or amendment of several laws affecting freedom of expression, including the Official Secrets Act; the Press Council Law; provisions of the Penal Code relating to contempt of the Queen/President, sedition and defamation; and the Parliament (Powers and Privileges) Act. It also recommended that a Freedom of Information Act should be introduced, as well as a Contempt of Court Act, which would clearly specify the scope of contempt of court and *sub judice* rules in Sri Lanka. The Committee expressed its intention to submit a second report which would include the following issues:

- the electronic media
- replacement of the Press Council Law with a Media Council Act
- a Freedom of Information Act
- a statutory right of reply

To ARTICLE 19's knowledge, the second report has not yet been submitted.

The government has made no known formal response to the committee's recommendations. However, at a speech given in December 1995, the Media Minister was reported as saying that "laws concerning parliamentary privilege, defamation and oaths of secrecy" would be among those to be amended in 1996. He gave no details of the amendments envisaged; until draft legislation is made available, it will be impossible to assess the nature of the reforms.

ARTICLE 19 urges the government to implement the recommendations on legal reform in their entirety. They are fully consistent with the recommendations which ARTICLE 19 made to the government in October 1994 in *An Agenda for Change*. They have more recently been further reinforced by the recommendations made to the government by the United Nations Human Rights Committee following its scrutiny of Sri Lanka's compliance with the ICCPR.

### 6.3 Committee on "Broadbasing" Ownership of ANCL

[Return to contents](#)

The report of this committee was published in the *Daily News* of 27 April 1995. The terms of reference of the committee required it to make recommendations on the ownership and functioning of the state-owned ANCL publishing group "with a view to transforming the said ANCL into a free and independent media institution of professional and journalistic excellence ... with the objective of strengthening media freedom and media democracy". In practice, the committee concentrated on the issue of "broadbasing" ownership and did not address its functioning, as it considered ownership to be the fundamental issue.

The committee noted that the need to reform ANCL had been recognized in the election manifestos of both major political parties, as ANCL had

"lost credibility and journalistic integrity due to state control. This is perhaps the inevitable consequence of state monopoly of a media institution in Sri Lanka's political culture.... [D]ifferent governments ... have used the newspaper group as a propaganda tool for their own partisan purposes."

The committee's proposals were intended to "ensure that [ANCL] ceases to be controlled by the State," and "to avoid the creation of another monopoly controlled by a family, clique or small elite" so that it could "perform a vital role in safeguarding democracy and pluralism in Sri Lanka". ARTICLE 19 fully supports these objectives.

The committee recommended that the existing legislation be repealed, and that a new law be introduced containing provisions for distribution of shares according to the following proportions: 20 per cent reserved for ANCL employees; 15 per cent (including those currently held by public corporations) to be vested in a trust; shares currently held by individuals to remain intact; remaining shares to be sold through a public share issue. The share issue would include limits on the size of any individual's holding; specify that shares could only be held by Sri Lankan individuals or companies; should adopt "a 'bottom up' approach" to ensure broad participation; be priced as far as possible to ensure wide public participation. A Directorate of 11 members was proposed, six of whom would be elected by shareholders, one nominated by the company's editors and journalists, one nominated by the company's other employees, one nominated by the Trust, one nominated by the Media Minister, one nominated by the Leader of the Opposition.

In addition to these specific proposals, the committee also made the important observation that while removing ANCL from state ownership and control would be an important step towards strengthening media freedom and democracy, it would need to be supplemented with

the consolidation of an overall democratic political culture in our country, where the Government, the public, media professionals and media institutions recognize and sustain the noble ideals of media freedom and democracy.

ARTICLE 19 is not convinced that the organizational structure proposed by the committee would ensure that the objectives stated by the committee — particularly those of pluralism and independence — would be achieved. There is a clear need for more media outlets that provide inclusive debate and serve a better-informed citizenry. Sri Lanka has a wide newspaper readership. Yet there are only a few newspapers which at present strive to include a diversity of viewpoints. At present, as expressed in a recent editorial in the state-owned *Observer*:

the Sri Lankan mass media is more like a set of different 'closed circuits' helping sustain and perhaps enhance ethno-centrism and xenophobia rather than building self-aware communities and inter-ethnic solidarity.

The restructuring of ANCL offers an important opportunity to elaborate the guiding principles of the group. Chief among these should be respect for editorial independence, a commitment to accurate and balanced news reporting, and inclusion of opinions from a diversity of viewpoints.

#### **6.4 Establishment of a National Media Institute**

[Return to contents](#)

The committee making recommendations on the establishment of a National Media Institute (NMI) submitted its report on 14 December 1995. Its terms of reference covered the needs of media personnel for improvement of their skills, training facilities and professional education; the role to be played by the proposed NMI in fulfilling these needs; the goals, objectives, functions and activities of the Institute; and the structure, organization, administration and financing of the Institute as an autonomous body. The recommendations cover the range of media personnel whom the NMI would serve, including both new recruits, part-time journalists and experienced personnel; the need for it to coordinate with other institutions already providing journalism-related courses and concentrate on the provision of training where none already exists; the nature of the NMI as both an educational and research institute. They say that the NMI should be established by law as a national body with specific goals, objectives and functions, and that it should be empowered to act as an autonomous body. It would be funded by government, as well as by foreign funding agencies and other relevant overseas organizations.

Even before the report of the committee had been formally submitted, the Media Minister stated that:

Measures have been initiated to set up a national media centre with foreign aid. Steps are also under way to start a national fund for the benefit of the media personnel.

#### **6.5 Committee on the Working Conditions of Journalists**

[Return to contents](#)

This committee submitted its report in late November 1995. It had been established to make recommendations on the salaries, pensions, professional benefits and service conditions of journalists working in both the print and electronic sectors. Its recommendations were summarized in the *Sunday Observer* of 3 December 1995.

The committee recommended an immediate 15 per cent salary increase and a new salary structure for journalists as well as other benefits. These included bonuses, insurance, loan facilities, travel allowances, scholarships, medical facilities and telephone facilities. It recommended that a pension scheme should be established for journalists, and that there should be import duty concessions on equipment used by journalists. The committee also recommended that a Journalism Council be established.

According to an editorial in the state-owned *Daily News* of 15 December 1995, the Media Minister is planning to revise journalists' salary structure. It is not known which other aspects of the recommendations the government plans to implement.

---

## 7. CONCLUSIONS AND RECOMMENDATIONS

The issues covered by this report — the imposition of censorship under emergency regulations, the denial to journalists of access to the conflict zones and the areas to which most displaced people had fled, the threats to the work of humanitarian organizations, and the lack of progress in implementing the government's media policy — all reinforce the continuing need for scrutiny of freedom of expression issues in Sri Lanka. They demonstrate the urgent need for the government to show a concrete commitment to the values it has proclaimed by proceeding with its promised reforms without delay.

The return to war in the north and east has had many regrettable repercussions, both on the lives of those living within the conflict zones — who are vulnerable daily to the consequences of warfare and displacement — and on those living in the south, who are vulnerable to bombings and other attacks on civilian targets by the LTTE. While the government undoubtedly has an obligation to safeguard national security, it must resist the temptation to define national security interests so widely that they can be used as a pretext to suppress fundamental freedoms, as occurred between September and December 1995. The broad way in which the censorship regulations were drafted, and the manner in which they were applied, demonstrate clearly that at a time of major national crisis the public's right to know was crudely and illegitimately subordinated to the demands of government policy on specious grounds of national security. Moreover, this occurred against a background of increased harassment of the press, particularly on account of its critical reporting of government officials or policies.

The continuing denial of journalistic access to the majority of those recently displaced by the war and to the conflict areas, is also a matter of grave concern. It is imperative that the government ensures that all impediments to the free flow of information on humanitarian and human rights issues in the country are lifted without delay. It is also important that all alleged violations of humanitarian and human rights law are promptly and independently investigated, that the results of such investigations are made public and that appropriate action is taken against those responsible for any such violations. Local and international organizations which raise concern about such violations should not be subjected to vilification or worse. The suppression of independent information-gathering on these subjects denies Sri Lankans the possibility of properly informed debate on issues of crucial public concern, and will do little to establish the basis of trust necessary for any lasting settlement of the conflict to be reached.

Since the PA government took office in August 1994, ARTICLE 19 has made a series of recommendations on freedom of expression to the government. It again reiterates the need for such reforms — which are consistent with the government's own stated policies and international obligations — to be implemented. If implemented, they would protect against any recurrence of violations of the right to freedom of expression and information of the kind described in this report. These are reviewed in Appendix 1. In addition, ARTICLE 19 urges that the following steps be taken to address some of the most pressing issues which have arisen in the past year:

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

- withdraw criminal charges of defamation of government officials against newspaper editors;
  - cease the harassment of journalists and their newspapers on account of their critical reporting of government officials and policies;
  - unban the book *Buddhism Betrayed?* by S J Tambiah.
- 

## APPENDIX 1

[Return to contents](#)

# 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: 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*.) Two further recommendations relating to public service broadcasting, which ARTICLE 19 made in *Words into Action*, are also included below.

**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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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 replace 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.**

*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 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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.**

*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.*

*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.

---

## APPENDIX 2

[Return to contents](#)

# THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

## INTRODUCTION

These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg.

The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of national courts), and the general principles of law recognized by the community of nations.

These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

## PREAMBLE

The participants involved in drafting the present Principles:

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

*Convinced* that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

*Reaffirming* their belief 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;

*Taking into account* relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights;

*Keenly aware* that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

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

*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 governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

*Recognizing* the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and

*Reiterating* the need for judicial protection of these freedoms by independent courts;

*Agree* upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

## **I GENERAL PRINCIPLES**

### **Principle 1: Freedom of Opinion, Expression and Information**

(a) Everyone has the right to hold opinions without interference.

(b) Everyone has the right to freedom of expression, which includes the 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 or her choice.

(c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.

(d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

#### **Principle 1.1: Prescribed by Law**

(a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

#### **Principle 1.2: Protection of a Legitimate National Security Interest**

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

#### **Principle 1.3: Necessary in a Democratic Society**

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and
- (c) the restriction is compatible with democratic principles.

## **Principle 2: Legitimate National Security Interest**

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

## **Principle 3: States of Emergency**

In time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

## **Principle 4: Prohibition of Discrimination**

In no case may a restriction on freedom of expression or information, including on the ground of national security, involve discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

## **II RESTRICTIONS ON FREEDOM OF EXPRESSION**

### **Principle 5: Protection of Opinion**

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

### **Principle 6: Expression That May Threaten National Security**

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

### **Principle 7: Protected Expression**

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

- (i) advocates non-violent change of government policy or the government itself;
- (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;
- (iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;
- (iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

## **Principle 8: Mere Publicity of Activities That May Threaten National Security**

Expression may not be prevented or punished merely because it transmits information issued by or about an organization that a government has declared threatens national security or a related interest.

## **Principle 9: Use of a Minority or Other Language**

Expression, whether written or oral, can never be prohibited on the ground that it is in a particular language, especially the language of a national minority.

## **Principle 10: Unlawful Interference With Expression by Third Parties**

Governments are obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of freedom of expression, even where the expression is critical of the government or its policies. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of expression, and to investigate and bring to justice those responsible.

# **III RESTRICTIONS ON FREEDOM OF INFORMATION**

## **Principle 11: General Rule on Access to Information**

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

## **Principle 12: Narrow Designation of Security Exemption**

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

## **Principle 13: Public Interest in Disclosure**

In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

## **Principle 14: Right to Independent Review of Denial of Information**

The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.

## **Principle 15: General Rule on Disclosure of Secret Information**

No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

## **Principle 16: Information Obtained Through Public Service**

No person may be subjected to any detriment on national security grounds for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

## **Principle 17: Information in the Public Domain**

Once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know.

## **Principle 18: Protection of Journalists' Sources**

Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source.

## **Principle 19: Access to Restricted Areas**

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.

## IV. RULE OF LAW AND OTHER MATTERS

### Principle 20: General Rule of Law Protections

Any person accused of a security-related crime involving expression or information is entitled to all of the rule of law protections that are part of international law. These include, but are not limited to, the following rights:

- (a) the right to be presumed innocent;
- (b) the right not to be arbitrarily detained;
- (c) the right to be informed promptly in a language the person can understand of the charges and the supporting evidence against him or her;
- (d) the right to prompt access to counsel of choice;
- (e) the right to a trial within a reasonable time;
- (f) the right to have adequate time to prepare his or her defence;
- (g) the right to a fair and public trial by an independent and impartial court or tribunal;
- (h) the right to examine prosecution witnesses;
- (i) the right not to have evidence introduced at trial unless it has been disclosed to the accused and he or she has had an opportunity to rebut it; and
- (j) the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

### Principle 21: Remedies

All remedies, including special ones, such as habeas corpus or amparo, shall be available to persons charged with security-related crimes, including during public emergencies which threaten the life of the country, as defined in Principle 3.

### Principle 22: Right to Trial by an Independent Tribunal

- (a) At the option of the accused, a criminal prosecution of a security-related crime should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a *prima facie* violation of the right to be tried by an independent tribunal.
- (b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.
- (c) In no case may a civilian or member of the military be tried by an *ad hoc* or specially constituted national court or tribunal.

## **Principle 23: Prior Censorship**

Expression shall not be subject to prior censorship in the interest of protecting national security, except in time of public emergency which threatens the life of the country under the conditions stated in Principle 3.

## **Principle 24: Disproportionate Punishments**

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

## **Principle 25: Relation of These Principles to Other Standards**

Nothing in these Principles may be interpreted as restricting or limiting any human rights or freedoms recognized in international, regional or national law or standards.

[Return to contents](#)

---