

ARTICLE 19 is an international non-governmental human rights organisation defending the right to freedom of expression and information worldwide. ARTICLE 19 was established in 1986 and has observer status with ECOSOC.

### **Executive summary**

1. The Sri Lankan Government received and accepted a number of recommendations related to the right of freedom of expression during the first UPR cycle:
  - i. To take measures to safeguard freedom of expression and protect human rights defenders, and effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible
  - ii. To take measures to improve safeguards for freedom of the press
  - iii. To adopt effective measures to ensure the full realisation of the right to freedom of expression for all persons.
2. None of these accepted recommendations have been realised. This submission provides information on developments since, specifically:
  - i. On-going violence against journalists and human rights defenders (HRDs)
  - ii. Continued media censorship and other interferences to media freedom
  - iii. An insufficient and inadequate legal framework for freedom of expression and information.

### **Violence against journalists and HRDs**

3. The level of violence against journalists and HRDs remains high despite the government's commitment to recommendations from the first UPR in May 2008. No proper attempt has been made to realise the first UPRs recommendation to protect and effectively investigate violence against journalists.
4. Four journalists have been killed since the first UPR and violence continues unabated. Most violence is directed at those that criticise the government, and government supporters allegedly carry out many of the acts. Senior government ministers have publicly condoned the violence. On 23 March 2012 for example Public Relations Minister, Mervyn Silva threatened in a television interview to "break the limbs" of some named journalists and HRDs who he labelled as "traitors", and confessed "I'm the one who chased [journalist] Poddala Jayantha out of this country". Journalists also face detention and lengthy prison sentences for reporting on sensitive issues. None of the actions listed below have resulted in conviction:

- i. On 7 March 2008, the police's Terrorism Investigation Division arrested *Sunday Times* columnist, J.S. Tissainayagam. He was held without charge in detention for five months until being indicted under the Prevention of Terrorism Act for 'receiving funds from terrorists' and for 'inciting racial and ethnic animosities through published material'. Tissainayagam was forced to sign a confession document which was used to find guilty him by the High Court on 31 August 2009 and sentenced to 20 years imprisonment with hard labour. After extensive pressure by international actors, Tissainayagam was released pending his appeal, and then later pardoned by the president. He now lives in exile in the US.
  - ii. On 6 January 2009, an armed group destroyed equipment and set fire to the MTV-MBC station. Although police were informed as soon as the group arrived, the police visited the scene only after the group had left. Opposition political parties and media organisations alleged that the group was linked to the government and possessed weaponry that only the security forces possessed. The government however claimed that the owners carried out the attack, motivated by an insurance claim. Police chiefs stated shortly after the ministerial intervention that they were still gathering evidence and no conclusion had been made.
  - iii. On 8 January 2009, unidentified gunmen attacked *Sunday Leader* editor and journalist, Lasantha Wickramatunga on his way to work. He suffered severe head injuries and died in hospital hours later. Lasantha was critical of the government and had received threats in the past. National newspapers reported in July 2009 that Minister Mervyn Silva had publicly admitted being involved in the killing, although he has since denied the assertion.
  - iv. On 1 June 2009, Poddala Jayantha, senior journalist at *Mihira* newspaper and president of Sri Lanka Working Journalists Association, was abducted from a busy road in Colombo during rush hour. He was blindfolded and severely beaten with iron rods. In order to degrade him, the attackers shaved off half of his beard and hair. He was later dumped by the roadside with a broken leg and ankle. He has difficulties walking and now lives in exile.
  - v. In January 2011, the *Lankaenews* offices – a news website renowned for criticising the government - were subject to an arson attack, which resulted in the destruction of all documents and equipment.
  - vi. In July 2011, Gnanasundaram Kuhanathan, editor of the Tamil-language newspaper *Uthayan*, was attacked by two unidentified people in the northern city of Jaffna. The attackers beat Gnanasundaram with iron rods and cables, and he suffered serious head injuries.
5. In addition to senior ministers publicly threatening violence against journalists, the government and its organs have failed to fully investigate

and prosecute such crimes. The government has failed to secure convictions in any of the 19 killings of journalists over the past 10 years.

6. The UN Secretary General's Panel of Experts on Accountability Report (SGPEA) recommends that the government: 'end state violence...that limit freedom of...expression' after finding 'ongoing violations by the government...nearly two years after the end of the fighting' including that the 'government sought to intimidate and silence the media' and have found 'credible allegations' of violence against those 'seeking to present views divergent from those of the government'. Although far from independent or impartial, the government's Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) acknowledges such violence in paragraph 5.156, and the need for investigation and prosecution.

### **Media censorship and other interference**

7. Media censorship and other forms of interference in the right to freedom of expression remain high despite the government's commitment to recommendations from the first UPR. Diversity and plurality of voices remain low, the government directly controls a large proportion of print and broadcasters, the private media is increasingly concentrated in the hands of those affiliated to the government and freedom of expression on the internet is being heavily curtailed. ARTICLE 19 believes that no proper attempt has been made to realise the first UPRs recommendations, and the situation for the right to freedom of expression has deteriorated as a result.
8. Diversity and pluralism of media ownership remain poor. 75% of the shares in the largest media house *Associated Newspapers of Ceylon Limited* – which owns 13 printed publications – were expropriated by the government in 1973. Despite the calls made by all leading media and journalists' organisations in the *1998 Colombo Declaration on Media Freedom and Social Responsibility*, and in its 2008 reaffirmation, to broaden the ownership of the company to ensure a plurality of voices, no change has been made. The government also runs the television conglomerate *Sri Lanka Rupavahini Corporation* under the aegis of the Ministry of Mass Media and Information. At the same time, the *Sri Lanka Broadcasting Corporation* which is responsible for the public broadcasting and also intervenes in the process of awarding licences to private broadcasters, is not an independent body because its members are directly appointed, and can be dismissed, by the Minister of Mass Media and Information. The *Colombo Declaration* also asked the government to create a truly independent broadcasting authority which was not subjected to any kind of political influence, but this has also failed to materialise.
9. The private sector fails to provide a truly independent media because there is a lack of transparency about its ownership and it is not clear who controls the various media outlets. There is no competition commission to safeguard media pluralism and there are allegations that ownership of the

- private media has become significantly more concentrated, and that once newspapers or weeklies become established, people affiliated with the government routinely buy majority shares, sometimes under threat of force. In those media houses where editors or owners are not close to the government, it has been alleged that official advertisement and harassment are being used to prevent criticism of the government.
10. The internet fails to provide an altogether open platform for freedom of expression. In November 2011, the government introduced a completely unjustifiable system of licensing for news websites operating in Sri Lanka, subjecting them to clear state influence and control. Applications for licencing can be rejected and of 80 news websites which undertook the registration process, only 27 were successful. The government also systematically blocks critical websites. Several independent news websites were blocked just before the announcement of the results of the presidential election of January 2010, and at least six news websites were blocked by the Ministry of Mass Media and Information in November 2011 without any previous warning or a court order. The ministry's secretary reportedly claimed that the websites were blocked simply for criticising the president.

#### **Inadequate legal framework**

11. Following the decriminalisation of defamation in 2002, the legal framework for freedom of expression has remained inadequate despite the government's commitment to recommendations from the first UPR. The laws that should be amended or repealed include:
12. The **Constitution (1978)** is defective both in its substantive content and in regards to the class of person to whom it applies. It omits the provisions 'without interference', 'ideas of all kinds' and 'regardless of frontiers' in Article 19 of the International Covenant on Civil and Political Rights. The 6<sup>th</sup> Amendment (1983) further undermines freedom of expression by prohibiting and imposing harsh penalties for peaceful advocacy of secession.
13. The **Public Security Ordinance (1947)** allows the president to declare a state of emergency and to make emergency regulations to ensure public guarantee and to maintain public order. Under these powers, the government has issued several sets of emergency norms including *inter alia* a very broad definition of "terrorism" which undermines the principle of legality and prior censorship powers in contravention of international law.
14. The **Prevention of Terrorism Act (1979)** has attracted widespread criticism for its human rights violations. Sri Lanka is obligated under the ICCPR to prohibit hate speech and can legitimately curtail expression during a state of emergency to avert a threat to national security. However, in a legitimate state of emergency, expression can be punished *only* if the expression was *intended* to incite imminent violence, it was *likely* to incite such violence, and there was a direct and immediate

connection between the expression and the likelihood or occurrence of such violence.□ The vague wording of the provisions of the Act, especially when it refers to “communal disharmony”, can be easily interpreted to include valid - and salutary in a democracy - criticism of the government. In addition to its vagueness, the penalty imposed of up to twenty years imprisonment is disproportionate to this offence.

15. The **Press Council Act (1973)** has created a largely inadequate and overly biased Press Council to regulate the press and to investigate “offences”. The Act requires government to directly appoint all seven members of the Council, preventing it from becoming independent. It provides the non-independent Court with quasi-judicial disciplinary powers, such as the ability to declare a person in contempt, which could lead to that person being deferred to the Court of Appeal for sanctioning. It also undermines the right to freedom of information by forbidding the publication of certain ministerial proceedings and documents. The 1998 Colombo Declaration called for the replacement of the Council with an independent body, which led in 2003 to the formation of the Press Complaints Commission, an industry self-regulatory organ that suspended the Press Council. However, in 2009 the government re-established the Press Council which has since started working again.
16. A draft **Freedom of Information Bill** was approved by the cabinet in 2004, but was not tabled. Although the Bill was a positive development towards openness and transparency, it had its weaknesses.□ The Bill should be amended to allow everybody - not just citizens - to request information; all public bodies should be obliged to disclose information, the Bill excludes the parliament and the cabinet; the applicable fee should be restricted to the expense of reproducing the information; there should be less exceptions to disclosure and whistleblowers should be protected even when disclosing exempt information. An opposition MP attempted to introduce a second Bill in June 2011, which was defeated by the government. The LLRC report also calls for enactment of a right to information law
17. Other examples of the inadequate legal framework include:
  - i. Customary law on the banning of publications and the Customs embargo on the importation of publications are open to interference and abuse
  - ii. There exists no policy or law setting out the development of community broadcasters
  - iii. There exists no law protecting the confidentiality of media sources
  - iv. There exists no law on contempt of court and custom is extremely restrictive in its application resulting in a chilling effect on freedom of expression in regards to reporting on judgements or pending adjudications. In 2002, a Parliamentary All Party Select Committee

was appointed to draft a new law but the Committee has since disappeared.

### **Recommendations**

18. Given the violations of the right to freedom of expression outlined above – the majority of them the same or worse since the first UPR - ARTICLE 19 calls on the Human Rights Council to urge the Sri Lankan government to:
19. Address on-going violence against journalists and HRDs
  - i. End impunity by fully, effectively and speedily investigating all acts of killing, violence, harassment, threats and intimidation perpetrated against journalists and HRDs, as recommended by the LLRC
  - ii. Withdraw all political support and hold accountable all perpetrators and those politicians who incite violence and harassment perpetrated against journalists and HRDs
18. Address continued media censorship and other interferences to media freedom.
  - i. Create an autonomous and independent public service broadcaster
  - ii. Ensure that the state-owned media are independent and impartial
  - iii. Improve the transparency of media ownership and refrain from using advertising contracts to influence media content
  - iv. Introduce a competition commission to safeguard media pluralism
  - v. Ensure that media regulation is kept free from political interference
  - vi. Cease requiring licenses for news websites
  - vii. Abstain from blocking and filtering internet-based media and ensure that any interference with the internet meets the three-part test.
19. Address the insufficient and inadequate legal framework for freedom of expression and information
  - i. Repeal the Prevention of Terrorism Act or, at least, amend it to narrow the definition of expression-related offenses
  - ii. Do not reactivate the state of emergency or re-enact emergency regulations which violate freedom of expression
  - iii. Derogate the Press Council Act and support the Press Complaints Commission
  - iv. Amend or repeal the Obscene Publication Laws (1927), Public Performances Ordinance (1912), Public Performance Board Act (1912), and Profane Publications Act (1958)
  - v. Adopt laws on community broadcasting, protection of sources, and contempt of court in line with international standards
  - vi. Adopt a Right of Information Act which meets international standards and fosters transparency and openness.

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□ ARTICLE 19, *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, available at: □ HYPERLINK

"<http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>"

□ <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> □

□ ARTICLE 19, *Comments on Draft Sri Lankan freedom of information law*, available at:

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□ HYPERLINK "http://www.article19.org/data/files/pdfs/analysis/sri-lanka.foi.03.pdf"

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