

Memorandum to H.E. Navaneetham Pillay, UN High Commissioner for Human Rights

Alliance of Media Organizations in Sri Lanka¹

29th August 2013

Freedom of Expression is a constitutionally guaranteed fundamental right in Sri Lanka, while it's also guaranteed by virtue of Sri Lanka being a party to the International Covenant on Civil and Political Rights. However, the last few years had seen this right under severe threat, and below is a summary of some of our key concerns and appeals to Your Excellency.

1. Killing, abduction, assaults and threats to journalists and media workers

Since 1981, 114 persons have been killed due to the exercise of freedom of expression, including journalists and media workers. 34 Journalists have been documented as killed between 2005 till todate, and several more have disappeared, such as Prageeth Ekneligoda. On 24th August 2013, two days before Your Excellency's arrival, Ms. Mandana Ismail (Associate Editor of the Sunday Leader)'s house was broken into and she was almost abducted. The perusal of documents, statements made by the intruders and prior threatening incidents indicate that this may not be a simple robbery. Last year, investigative journalist Shantha Wijesooriya narrowly escaped being abducted. Number of journalists were assaulted, threatened and had their equipment damaged by the military in Weliveriya, earlier this month, as they attempted to cover a protest by local residents demanding clean water. Amongst the journalists who have been assaulted since 2005 are Upali Tennakoon, Poddala Jayantha and Namal Perera. Several journalists and media workers of the Uthayan newspaper in Jaffna have been subjected to assault.

2. Arrest, detention, questioning and torture of journalists and media workers

Amongst journalists who have been arrested are Chandana Sirimalwatte, N. Vidyatharan, J. S. Tissainayagam, V. Jasikaran, Valarmathy, Parameshwari, Kithsiri Wijesinghe, Bennet Rupasinghe, Shantha Wijesooriya and group of journalists and media workers associated with the Sri Lanka Mirror news website.

3. Attacks and raids on media institutions

Arson attacks have been committed against "Sirasa / MTV TV", "Siyatha TV", "Leader Publications" and "Lanka E-News" office, while the "Lanka" newspaper was confiscated and raid was conducted on the "Janarala" newspaper. The "Uthayan" newspaper in Jaffna has been subjected to several attacks. Mr. Mervin Silva, a Minister in the government, has on several occasions broken into media institutions such as "Diviana" newspaper and "Rupavahini" and "Swarnavahni" TV stations, assaulting and abusing staff.

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4. Removing journalists, particularly press freedom activists, from their jobs, suspending them from work and sending them on compulsory leave

A staffer of "Derana" TV station was suspended from service earlier this month, due to him talking about the shooting to death of three persons during protests in Weliveriya earlier this month. In 2010, several journalists and journalist union leaders attached to state media had their work contracts terminated, suspended from service and sent on compulsory leave, due to their strong position to promote a decision of the Supreme Court and Guidelines of the Elections Commissioner in relation to abuse of media during the lead upto the Presidential elections in 2010. No compensation was paid even when some were reinstated. Senior journalists who are critical of the government and have been at the forefront of media freedom activism locally and internationally have found it hard to get jobs.

5. Use of state media (owned and controlled by the government) to discredit and hurl false allegations against journalists and media organizations critical of the government in a provocative way that endangers their lives

This has been a regular occurrence, with the Independent Television Network (ITN) and Sri Lanka Broadcasting Corporation (SLBC) being largely responsible. Some of the worst such instances were in relation to sessions of the UN Human Rights Council.

6. Attempts by the government to control private media institutions by threats, conferring of special privileges or buying them over through government allies

The owners of "Lakbima" newspaper, "Randiva" newspaper and "Lak FM" radio station are all government Members of Parliament, while the brother of an another government Member of Parliament owns the "Hiru" media chain. The "Siyatha" media chain is owned by a government ally, while the Leader Publications and "Rivira" newspapers have been bought over by allies of the government. The owner of "Upali Newspapers" has been appointed as Chairman of Sri Lanka Telecom. Members of the Parliament of the Government are columnists in the newspapers published by "Vijaya publications". The Editor of the "Irida Lankadeepa" has been appointed as the government's representative to the controversial Press Council, while the "Lankadeepa" newspaper publishers have been provided the contract to print government cheques. "Derana" TV's major owner is the daughter of a senior Government Minister and her advertising firm is a regular contractor for government advertising. The newspaper "Ceylon Today" is a member of opposition Member of Parliament. The "Uthayan" newspaper in Jaffna is owned by an opposition Member of Parliament. "CSN" is indirectly owned by a President's family member.

7. Attempts to control web based freedom of expression

A number of websites publishing material critical of the government, such as "Sri Lanka Guardian", "Lanka E News", "Lanka newsweb", "Jaffna Muslims" and "Tamilnet" have been blocked at various times.

8. Impunity

A key feature is that almost all the victims are journalists and media institutions that have been critical of the government. A second feature is the impunity – to the best of our knowledge, no one has been held accountable for any of above. Authorities have failed to take action even when Government Ministers, Members of Parliament and senior officials make public statements about their knowledge of journalists who have been attacked and disappeared or on one occasion, when a Minister publicly threatened to break the limbs of some journalists and human rights defenders for their engagement with the UN Human Rights Council. Police and the National Human Rights Commission have refused to entertain complaints about serious abuses against journalists, while the National Human Rights Commission had also closed inquiries based on submissions by alleged perpetrators. Court cases related to freedom of expression and abuses against journalists are subjected to long delays.

9. LLRC's observations & recommendations related to Freedom of Expression

As we believe Your Excellency's visit to Sri Lanka is linked to the UN Human Rights Council resolution A/HRC/19/2 which calls on the Government of Sri Lanka to implement the recommendations of the Lessons Learned and reconciliation Commission (LLRC), we would also like to call your attention to the following section of the LLRC report:

“The Commission was deeply disturbed by persistent reports concerning attacks and obstacles placed on journalists and media institutions including news websites and killing of journalists and the fact that these incidents remain to be conclusively investigated and perpetrators brought to justice. ... Any failure to investigate and prosecute offenders would undermine the process of reconciliation and the Rule of Law.” (section 5. 155, Pg. 197). The LLRC report especially mentioned the *“deplorable attack on the Editor of the Uthayan newspaper in Jaffna, which occurred while the Commission’s sittings were still in progress”* (section 9.114). The report requested the government to investigate the assault and punish the perpetrators, but to date no action has been taken to bring the culprits to justice.

The LLRC report also stated that the *“freedom of expression and right to information, which are universally regarded as basic human rights, play a pivotal role in any reconciliation process”* and recommended that *“Legislation should be enacted to ensure the right to information.”* (section 9.115), but this has so far been neglected and the governing party defeated a private members motion to enact a Right to Information Bill in June 2011. A month after the defeat of this Bill, it was reported in the media that the President had told newspaper editors that a Right to Information legislation was unnecessary.

10. Self censorship and exile

Many Sri Lankan journalists have subjected themselves to self censorship due to fear. Journalists have been approached by government supporters with offers of money, jobs and guarantees of safety if they were ready to toe the government line. Reporters often complain that Editors will delete references critical of the government. Even family members of journalists appeal to them to refrain from writing and broadcasting anything critical of the government due to fears about safety. Over 50 journalists, including prominent and well known press freedom activists, have

gone into exile since 2009. Most of them struggle to obtain refugee status, are unable to continue their journalistic careers and worry about physical and financial security of dependants who are still living in Sri Lanka.

11. Recommendations

- i. Make explicit reference to above concerns during the final press conference in Colombo, and Your Excellency's oral and written updates to the UN Human Rights Council and all other forums.
- ii. Call on the UN Country Office in Sri Lanka to pay more attention to violation of Freedom of Expression in Sri Lanka, hold consultations with media organizations, and develop mechanisms to protect and support journalists and media institutions who face attacks and are at risk.
- iii. Demand a comprehensive written update from the Sri Lankan government about status of investigations into all reported attacks on freedom of expression since 2005, including relevant documentation such as police and court records.
- iv. Provide a written and oral update about the state of media freedom in Sri Lanka (along with other human rights issues) to Commonwealth Heads of Governments directly or through the Commonwealth Ministerial Action Group and the Commonwealth Secretary General.
- v. Make representations and recommendations to relevant UN, governmental and nongovernmental organizations to provide support to the large number of Sri Lankan journalists in exile, including the prompt obtainment of legal status, opportunities to continue their journalistic careers, capacity building etc.
- vi. Call on the Sri Lankan government to:
 - a. Stop all attacks, threats and restrictions against journalists, media institutions and ensure their full protection
 - b. Stop the use of state media to vilify journalists and media organizations critical of the government (and other human rights defenders, opposition politicians, lawyers etc.) and make false allegations against them, particularly in relation to engagement with UN mechanisms
 - c. Ensure accountability for all past violations and to ensure that victims, their families and media organizations are updated about progress of investigations
 - d. Repeal the Prevention of Terrorism Act (PTA) or bring it in line with international human rights standards
 - e. Enact Right to Information and Victim and Witness protection legislation, in line with international standards and in consultation with media organizations and all other relevant stake holders
 - f. Give a public commitment not to impose any form of "Media Ethics" and to deactivate the government controlled Press Council

- g. Extend an invitation for the UN Special Rapportur on Freedom of Expression to visit Sri Lanka in 2014, along with a team of other Special Procedures mandate holders
- h. Stop the practice of trying to control private media through purchase of shares by it's parliamentarians and supporters
- i. Have transparent and balanced procedure for granting of licenses to electronic media without consideration of political affiliations
- vii. Call on the National Human Rights Commission to take serious note of the letter dated 27th August 2013 by the Free Media Movement and use it's wide ranging powers to:
 - a. Investigate all past and imminent violations of freedom of expression
 - b. Intervene promptly during emergencies – such as when journalists and media institutions are attacked, journalists are restricted and obstructed from carrying out their duties
 - c. Advice the government on the enactment of legislation related to Right to Information, Victim & Witness protection and repealing of the PTA or brining it in line with international standards
 - d. Support media organizations in their efforts to stop the government from imposing it's own "Media Ethics" and from activating the Press Council.
 - e. Call on the government to extend an invitation for the UN Special Rapportur on Freedom of Expression to visit Sri Lanka in 2014, along with a team of other Special Procedures mandate holders
 - f. Hold regular consultations with media organizations with prompt follow ups