

The following are extracts from a document prepared by Article 19 - the International Center against Censorship - entitled Silent War - Censorship and the Conflict in Sri Lanka and published in March 1996.

It should be noted that censorship on the same lines as earlier has been reimposed and is now in force.

CENSORSHIP UNDER EMERGENCY REGULATIONS

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.¹ Formal censorship remained in force until 20 December, by which time a major military offensive to take Jaffna city from 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.² The government cited no example of any specific report which threatened national security in this manner.³ 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.⁴ Yet prevention of communal violence was not reflected in any way in the emergency regulations governing the censorship.⁵

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".⁶

The regulations, read literally, imposed a complete ban on publishing news relating to the subjects listed. They made no reference to the appointment of 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".

International Standards Applicable to the Situation in Sri Lanka

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).⁷ 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".⁸ 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.⁹

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...".¹⁰ 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.

The Operation of Censorship

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.

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 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 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 in 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.¹¹ 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 from 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 already been published in other Sri Lankan newspapers.

Foreign Media

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 on events and developments in this country and developments abroad of relevance to this country.¹²

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 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 as 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.¹³

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 defence 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, 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.¹⁴ 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.¹⁵

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".¹⁶

Sri Lankan Media

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 report the event in very similar terms: "Last week, the Sri Lankan government closed all primary and secondary schools, fearing terrorist threats;"¹⁷ Schools across the country were closed on Thursday for up to a month for fear of reprisal attacks by the guerrillas".¹⁸ 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.¹⁹

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 censorship 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).

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 relation 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] 300²⁰ 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 publicizing 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:

The latest casualty figures for "Operation Riviresa", since it was launched on October 17, is now ever 250 troops killed in action and over 600 wounded in action.

In these columns last week a serious error had crept in due to the ongoing censorship. I had given the death and injured toll of the

security forces during "Operation Riviresa" as it stood on November 4. But the censor exercising his own judgement, had deleted the figure I have and introduced another figure.

Needless to say they were much lower and did not reflect the official statistics available at the Joint Operations Headquarters (JOH) and the Ministry of Defence.

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.²¹ 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.

Notes

1. Emergency (Restriction on Publication and Transmission of Sensitive Military Information) Regulations, No. 1 of 1995 came into force at midnight, 21 September 1995. It was amended on 28 September 1995, and remained in force until 20 December 1995.
2. Reuters, 23 Sept. 1995.
3. *Sunday Times*, Colombo, 24 Sept. 1995.
4. *Sunday Observer*, Colombo, 1 Oct. 1995.
5. Fears of communal violence in Sri Lanka generally run highest following massacres of Sinhalese civilians by the LTTE, major offensives by the LTTE, or attacks on targets in the south by the LTTE. Yet the activities of the LTTE did not come within the remit of the regulations, and nor did the regulations contain any reference to statements inciting communal hatred or violence.
6. Civil Rights Movement of Sri Lanka, *The Lifting of the Censorship*, E01/1/96, 22 Jan. 1996.
7. The government of Sri Lanka acceded to the ICCPRC in 1980, and is thus bound by its provisions.
8. *Dr Wimal Wickremasinghe V. Edmund Jayasinge et. al.*, SC Application No. 592/95.
9. This is elaborated more fully in Chapter 3 of *An Agenda for Change: The Right to Freedom of Expression in Sri Lanka* (ARTICLE 19, Oct. 1994).
10. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information.
11. *Daily News*, Colombo, 29 Sept. 1995.
12. Free Media Movement, *Statement for publication/broadcast*, Colombo, 27 Sept. 1995.
13. *Toronto Star*, 4 Dec. 1995.
14. *Independent*, London, 22 Nov. 1995.
15. *Island*, Colombo, 30 Nov. 1995.
16. Note 25 above.
17. UPI, Colombo, 4 Nov. 1995.
18. Reuters, Colombo, 2 Nov. 1995.
19. *Independent*, London, 22 Nov. 1995.
20. Numbers in square brackets are those written in the original copy; those in bold show the changes made by the censor.
21. See judgements of the European Court in the Spycatcher cases and *Vereniging Weekblad Bluf! v. the Netherlands* and Principle 17 of the Johannesburg Principles in Appendix 2.