

Key Challenges for Media after War's End



Report of the International Press Freedom Mission to Sri Lanka
January 2010

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The International Press Freedom Mission to Sri Lanka carried out a fourth visit to the country in November 2009. This mission included:

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ARTICLE XIX

Committee to Protect Journalists (CPJ)

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International Freedom of Expression Exchange (IFEX)

International Media Support (IMS)

International Press Institute (IPI)

International News Safety Institute (INSI)

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South Asia Media Commission (SAMC)

United Nations Educational, Scientific and Cultural Organisation (UNESCO)

World Association of Community Radio Broadcasters (AMARC)

World Association of Newspapers (WAN)

World Press Freedom Committee (WPFC)

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Cover photo: Senior journalist J.S. Tissainayagam being led away from a Colombo court-room after his conviction to 20 years rigorous imprisonment on charges of terrorism. (Photo: Courtesy *Daily Mirror*, Colombo)

As this report is sent to press, the mission learns that J. S. Tissainayagam has been granted bail.



PREFACE

In October 2006, June 2007 and again in October 2008, the International Press Freedom and Freedom of Expression Mission to Sri Lanka sent delegations drawn from its broad membership to assess the situation and join the campaign and advocacy efforts of counterpart organisations within the country.

The most recent such effort was undertaken in November 2009, at the initiative of the International Federation of Journalists, a partner organisation of the International Press Freedom Mission to Sri Lanka. The delegation also included the International Press Institute (IPI) and International Media Support (IMS).

The report that follows outlines the key findings of the mission. It identifies key challenges facing the media in Sri Lanka at the end of a quarter century of internal conflict and the inauguration of a new phase of political contests.

Media stakeholders who met with the mission during its visit to Sri Lanka during the month of November 2009, have identified the current political circumstances as embodying numerous threats and opportunities. The entry of a former army commander into the race for the presidency has thrown the contest open and provided an opportunity for the media to create more space for itself. At the same time, the heightened intensity of the political contest is likely to engender certain threats.

Certain new flashpoints have emerged in the always fraught relationship between the media and political power-holders. Any form of reckoning with the tactical decisions made during the final stages of the war and the humanitarian consequences, is actively discouraged. Despite this element of coercion on the media, this issue has been coming up in the campaign debates between the rival candidates for the presidency.

The common candidate of the opposition for the presidency has made a special mention about the abuses suffered by the media during the years of war, especially in its final stages. If elected, he has committed himself to addressing these abuses in a spirit of candour and reconciliation. The media community

is encouraged by these commitments, though certain among them recall his own far from spotless record, especially when it involved media criticism of his war-time role as Sri Lanka's army commander.

The actual record of addressing past abuses has been dismal, with little progress recorded in the investigation of the most conspicuous cases, such as the murder of Lasantha Wickramatunge in January 2009.

The report documents the current stage of the investigations into this and other cases. It inquires into the conviction of J.S. Tissainayagam on terrorism charges and examines the credibility of the prosecution

case, especially in view of the unconditional discharge of two of his co-accused.

In a climate of intolerance, several journalists are being induced to give up efforts to obtain redress for the violation of their rights. The mission observed that journalists are being required to withdraw applications under the fundamental rights provisions of the constitution merely to be set at liberty after prolonged periods in wrongful detention. This is in the judgment of the mission, a grossly unequal exchange.

Recent moves by the government to revive a coercive form of media regulation, embodied in a 1973 legislation, have been opposed by journalists and publishers, who have renewed their commitment to a code of self-regulation.

The mission report concludes with a number of recommendations that would set the relationship between media and the Sri Lankan state on a different course. These include the return of all exiled Sri Lankan journalists, the unfettering of state media institutions so that they are able freely and fairly to report on the ongoing election campaign, the conversion of these institutions into a public service trust, the enactment of a right to information legislation, and the addressing of all past abuses in a spirit of truth and reconciliation.

The mission report will soon be released in Sinhala and Tamil, the two official languages of Sri Lanka.

The financial support of the European Commission and the IMS is acknowledged in funding the mission's travel and the publication of this report.

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I. INTRODUCTION

All through a quarter-century-long civil war, Sri Lanka witnessed a deeply polarised political environment in which media tended to become a target of systematic abuse and attack. With the government and the principal armed groups involved in the conflict giving little latitude to the possibility of a negotiated solution, media were actively dissuaded from pursuing a process of social dialogue that could potentially explore alternatives to the strategy of war. At the same time, there was an active denial of space for exploring critical stories about the individuals and institutions involved in the war effort.

The *de facto* separation of the north and the east from the central administration created two distinct political entities and cultural spheres, both equally hazardous to media. In an unrelentingly hostile and threatening environment, media professionals in all parts of the country were obliged to adopt self-censorship and other strategies to merely protect themselves from bodily harm and verbal abuse. Many of those who refused to follow these rules of self-preservation invariably came under threat. Violence, intimidation and murder of journalists was common throughout the war.

The war was officially declared over in May 2009. However, the environment for the media turned markedly worse in the war's last phase. The International Federation of Journalists (IFJ), with the support of the European Commission (EC) and International Media Support (IMS), subsequently organised a press freedom mission to Sri Lanka in November 2009 to investigate the prevailing situation for media, journalists and journalists' organisations, looking ahead to identify opportunities for positive change. This exercise was the fourth in a sequence of international press freedom missions to Sri Lanka, each involving a broad range of concerned organisations. The three earlier missions took place in October 2006, June 2007 and October 2008. Their entire record is available at the website of IMS which was principal organiser of all three missions.¹

The November 2009 mission involved extended interactions with various stakeholders, all keen to restore autonomy and freedom to media practice in Sri Lanka. The political contests that are coming up in Sri Lanka in the next six to 12 months are seen

as both an opportunity and a potential threat. Media practitioners believe that they have a chance to create additional space for themselves. But at the same time, there is a potential for greater violence as the politics of confrontation sharpen through the upcoming election campaign. This report outlines the findings of the mission investigations and the key challenges facing the media in Sri Lanka after the end of the civil war.

2. THE POLITICAL CONTEXT

Six months after the war with the separatist Tamil insurgency in the north was declared over, Sri Lanka took certain measures toward restoring peacetime rules for the daily life of its citizens. Half the internally displaced persons (IDPs) who had been corralled into detention camps in the country's north, were released within the six-month deadline that – as the war drew to a final bloody climax in April 2009 – was agreed between the governments of Sri Lanka and India. A similar time schedule for resettlement and rehabilitation of IDPs was also agreed during a meeting between President Mahinda Rajapakse of Sri Lanka and U.N. Secretary-General Ban Ki Moon in May 2009.

On November 18, the Government of Sri Lanka (GoSL) waived the requirement of prior permission for residents of the north seeking to travel to the capital, Colombo, or other parts of the country. Freedom of movement has been restored, though many security checks remain on the A9 highway between Colombo and the northern city of Jaffna. Those who have sought to test the stated intent of the GoSL against its actual practice have reported numerous impediments to free movement.

The changes in policy in relation to internal movement, though not specifically directed toward the media, are of obvious consequence to journalists and allow them considerably greater latitude in accessing news sites and reporting on ongoing events. However, the ban on reporting on the situation of war-displaced civilians who have been allowed out of their internment camps still remains in force and journalists are not permitted to independently visit Vavuniya where an IDP camps complex is maintained. On December 4, Sri Lanka's Human Rights Minister Mahinda Samarasinghe said

that it would take time to lift the ban on media access

Politics in Sri Lanka was launched into a state of flux when the commander of the Sri Lankan Army through the last phase of the campaign against the Liberation Tigers of Tamil Eelam (LTTE) resigned from the largely ceremonial post of Chief of Defence Staff to which he was promoted immediately after the war was declared over.

General Sarath Fonseka's expressions of disquiet at the course the GoSL was taking after the war were grist for several media reports. The first report indicating a rift between the general who had led his troops to victory and his commander-in-chief, the President of Sri Lanka, Mahinda Rajapaksa, appeared in the *Sunday Times* on October 11.

This particular report passed without comment. However, when a similar report appeared in *Irida Lanka*, a Sinhala language newspaper associated with an opposition political party – the Janata Vimukti Peramuna (JVP) – the consequences were immediately apparent.

With President Rajapaksa formally declaring his intention to advance the presidential elections by a full two years and Sri Lanka's Commissioner for Elections setting January 26, 2010 as the date, political activity is expected to intensify. No date has been set though for parliamentary elections, which would be due before April 2010.

Media observers with whom the international mission team met admitted that talk about political reform that secures a fair deal for minority communities – the Tamils and Muslims notably – has been conspicuously absent since the war was officially declared over on May 19. Most journalists and observers of the media believe that the issue has not figured with anything like the importance it deserves in the public dialogue that has followed the war.



Sarath Fonseka, opposition presidential candidate and former army commander, pays homage to a garlanded portrait of the slain journalist, Lasantha Wickramatunge (Photo: Courtesy Lakkima News)

Politicians have preferred to banish the item from the agenda. Indeed, in the pre-electoral context, the political agenda is dominated by different perspectives on undoing the powerful executive presidency under which the country has been ruled since 1977.

Political figures with whom the international mission met were little inclined to discuss the issues of immediate concern to the minorities, seeing these essentially as a lesser priority than ending the executive presidency. This legislative objective is one that, nominally, every political formation accedes to, except for the ruling party and its closest allies, though it is an agenda item where discord is likely to be most acute when the actual legislative initiatives begin. No president who assumes office with the promise of unfettered power is likely to relinquish it willingly. And because Sri Lanka's existing constitutional scheme vests enormous powers in the presidency, the executive president, once elected, has the authority to block all legislation that may diminish his or her powers. A further constraint could be the requirement of a two-thirds majority in parliament for a constitutional amendment, which no alliance is likely to secure, given the current electoral system and the political rivalries between the various parties.

3. NEW FLASHPOINTS

Sri Lanka's media has engaged with recent political developments with characteristic vigour. The *Sunday Times*, one of the country's most widely read weekend papers in the English language, carried the first reports on a possible rift between General Fonseka and President Rajapaksa in its "Political Column" of October 11. After an elaborate description of the many politically significant events that had occurred in the preceding weeks, the column, which is authored by some of Sri Lanka's most seasoned commentators, concluded:

The highest levels of Government believe that the Opposition is in touch with a somewhat embittered (General) Fonseka, who feels he has been shabbily treated by the Government after he had delivered the goods for it. Many say that his utterances and behaviour were the cause for his own downfall. Equally, the Government is uneasy. One top rung in the Rajapaksa administration put the Government's predicament aptly saying... "one can't be with him - or without him". At these highest levels of Government it is believed that the Opposition is not so much interested in making Fonseka the Common Opposition Presidential candidate but to make him a source of nuisance and embarrassment to the Rajapaksa Presidency in the run up for a second-term Presidential election.²

This item passed without serious consequence, but action was swift when the Sinhala language weekly *Irida Lanka* carried a report of very similar import. Chandana Sirimalwatta, editor of the weekly, had a visit from personnel of the Criminal Investigation Division (CID) on October 16. He was summoned to the CID headquarters for questioning on the sources used in his reports. He declined the summons but had another visit from the CID the following day. This time he seemingly had no option but to comply with the summons to the CID office, where he was interrogated for close to three hours.³

Shortly afterwards, Brigadier Udaya Nanayakkara, spokesman for the Sri Lankan armed forces, issued a press statement warning against using the names of serving officers for personal or political gain. Observing that "certain individuals" engaged in "political work" had been using such names for "baseless reports in some print media and websites", the statement warned that provisions of the penal code, the emergency regulations

in force and the Army Act, provide for prosecution in such instances. Military personnel in uniform were not permitted to engage in political work and the use of their names in "wrong reports" that have overt political motives would be "liable for prosecution". The Defence Secretary, the statement said, had instructed the enforcement authorities to "take action with immediate effect".⁴

This was quickly followed by a warning from the Media Minister, Lakshman Yapa Abeywardena, that the public should be "watchful of false stories published by irresponsible websites to destabilise society". Measures to "blacklist" such websites would shortly be announced, he said. These websites, as he put it, were intended to create a "rift between the Government and 'other' parties". The Government, he declared, would carry out an awareness program naming these sites. Far from being an effort to "suppress the media", this was "an attempt to save society from false campaigns".⁵

Provoked obviously by the same political development, Defence Secretary Gotabaya Rajapaksa – a brother of the President – said in an interview with a Colombo-based newspaper: "Although the media (had) a right to criticise the Government and support any political party, attempts to propagate lies cannot be allowed".⁶

By all accounts, the relationship between Fonseka and President Rajapaksa, once based on mutual trust, had abruptly turned thorny and suspicious after the war. Any media reporting on the issue was rapidly becoming a flashpoint for tensions between the media and the GoSL. Yet the Rajapaksa regime was unable to dispel the impression that it was using the media as a scapegoat, for merely reporting what was true. On November 13, when Fonseka addressed a letter of resignation from his post as Chief of Defence Staff to the President, matters that had been put down to media misfeasance became official.

Fonseka's resignation was accepted with immediate effect and a ceremonial farewell planned at the Army's headquarters for November 16. The event was conspicuously lacking in the participation of the commanders of the other three wings of the armed forces. Media personnel who turned up to cover the event were kept out for a considerable time and only let in very late, when they could not witness more than the tail-end of the ceremonial farewell.

On December 14, Fonseka filed three petitions in the Supreme Court under fundamental rights clauses of

the Constitution, claiming that state media institutions were severely abusing his rights through their biased coverage of the presidential election campaign. The broadcast organisations — Sri Lanka Rupavahini Corporation and Independent Television Network — were named in the petitions, as also the print media group Associated Newspapers of Ceylon Ltd (ANCL, otherwise known as the Lake House group). Fonseka claimed that the three institutions were disseminating information aimed at defaming him. Apart from top officials of the three institutions, the petitions also name the country's Commissioner for Elections and the head of the ruling coalition as respondents.⁷

Since the end of the war, the President has zealously sought to safeguard the political advantage that could be gained from being seen as the principal architect of military triumph. A harsh response awaited any media report that might potentially tarnish that political halo.

On September 2, three journalists from the Sinhala-language weekend paper, *Irida Lanka*, were arrested in the southern Deniyaya region. No reasons were given for their arrest, though the draconian Prevention of Terrorism Act (PTA) was mentioned as possibly being the basis. Since this came just a few days after a senior journalist and human rights defender, J.S. Tissainayagam, was sentenced to 20 years' rigorous imprisonment under the same law, there was much concern for the three detained journalists. They were however released without charge after six days. Their detention, it emerged, was effected on premises belonging to the President's family. The newspaper for which they worked evidently was planning an investigative story on the acquisition of assets by the President's family, quite disproportionate to its known sources of income.

Any form of honest reckoning with the legacy of the war and especially its last days is actively discouraged. The GoSL has been subject to serious criticism at various international forums for seemingly indiscriminate targeting of civilians in the last months of the war. These have been refuted by the GoSL with a considerable sense of hauteur. With the active support of the governments of India and China, moreover, the GoSL has managed to deflect any possibility of an international war crimes inquiry.

However, international civil society groups are campaigning for a credible process of accountability, with the support of multilateral bodies. The United Nations High Commissioner for Human Rights (UNHCHR)



Sunday Leader front page of October 25, depicting the red-spattered threat received for publishing a story on alleged summary executions by the Sri Lankan army (Photo: by special arrangement)

has called for a full-fledged international investigation into possible war crimes by both sides during the closing stages of the conflict. The European Union (EU) has meanwhile insisted on swift rehabilitation of displaced Tamil civilians and set down minimal human rights standards that Sri Lanka must fulfil if it is to continue enjoying the concessions available under the EU's enhanced Generalised System of Preferences (GSP+). A preliminary inquiry by the EU has held Sri Lanka ineligible for an extension of the GSP+ facility and the GoSL put on notice to furnish its reply. The EU will reportedly arrive at its final findings within two months of the GoSL response being available.⁸

A group of Sri Lankan journalists in exile has called for ironclad guarantees of media freedom as a necessary condition that the GoSL must meet before the GSP+ facility is extended.⁹

Unpleasant Truths or Fabrications?

In the circumstances, there was considerable anxiety in official circles in Sri Lanka when video footage surfaced late in August, purporting to show summary executions by army troops of a group of men described as Tamil civilians in Sri Lanka's north. The footage

was broadcast on Britain's Channel 4 and viewed widely in diplomatic circles. No official demands for an independent inquiry have been made yet in the context of this video footage. The international diplomatic community is well aware that any such demand would likely be rejected outright by the GoSL. There have, however, been polite suggestions that a full accounting of the army's actions in the last phase of the war will do Sri Lanka's image no harm.

The GoSL meanwhile has responded by ordering its mission in Germany to seek the help of local police in identifying the group of journalists in exile that reportedly "fabricated" the video footage.

Evidently reflecting some degree of official anxiety, the state-owned *Sunday Observer* ran a lengthy report on September 20 saying experts deemed the footage "an absolute fake".¹⁰ The circulation of allegedly fabricated footage was put down to a "conspiracy", perhaps instigated by journalists in exile. The GoSL, the article reported, had begun an investigation to identify the origins of the footage and check the credentials of the group that had put it into circulation.

On October 18, the *Sunday Leader* carried a front-page report headlined "True or False?" It reported:

An explosive report on the much disputed video showing footage of ethnic Tamils allegedly being murdered by men attired in Sri Lankan military uniform has been handed over to the US State Department... a (US) company specialising in forensic services has in a preliminary report maintained that no tampering or editing was carried out in either the video or audio portions of the controversial Channel 4 video clip ...¹¹

On October 22, senior *Sunday Leader* staff - news editor Munza Mushtaq, under whose byline the report was published, and editor Frederica Jansz - received identical letters threatening to kill them and slice them into pieces if they continued to publish.¹² The *Sunday Leader* management submitted the letters to a handwriting expert, whose analysis revealed a close resemblance with the hand that composed the last letter of threat received by Lasantha Wickrematunge, founding editor of the newspaper, before he was murdered on January 8.

The *Sunday Leader* published an article on October 25, stating this and recalling the numerous other threats that it faced in living up to the basic editorial credo of its slain founder. This catalogue included legal action initiated by Defence Secretary Rajapaksa in connection with articles published in 2006 on combat

aircraft purchases for which he had been responsible. The Defence Secretary's numerous overlapping suits against the *Sunday Leader* will be dealt with later in this report. But in this instance, it is sufficient to note that the mere mention of the Defence Secretary in a news report, earned the *Sunday Leader* a legal notice demanding SLR (Sri Lankan Rupees) one billion for defamation.¹³

Reporting on the IDPs situation: an area of silence

Media professionals that this mission met conceded that fair and objective reporting on the situation of the IDPs corralled into detention camps in the north had been lacking, with a few notable instances. In general, the attention devoted to this issue varied along a continuum, with the Tamil press being the most concerned, the English press a little less and the Sinhala press least of all. Among the Tamil press, the twin newspapers, *Uthayan* and *Sudar Oli*, belonging to the New Uthayan group and published respectively from Jaffna and Colombo, are known to have done the most diligent reporting on the IDPs situation, often using sources within the camps as correspondents, under the protection of anonymity.

The *Sunday Times*, in two remarkable reports published in its edition of September 6, highlighted that the IDP camps had become a fertile ground for human trafficking and for racketeering by public servants who had few scruples about exploiting human misery for monetary gain.¹⁴ Yet the journalists who were involved in the ground-breaking report concede that the public impact was minimal, partly because the Sinhala language press remained indifferent. Tellingly, two special correspondents for the newspaper, based in Vavuniya and Mannar, chose not to be credited despite having contributed significantly to the reporting.

The citizen journalism website Groundviews (www.groundviews.org), did some of the most telling early reporting on the conditions within the IDP camps, alerting national and international opinion to the growing conditions of squalor and distress following heavy rains in August and then October. The website's reporting was accompanied by a poignant commentary on the level of concern of the mainstream media on the situation in the camps:

And does the traditional media feature in this debate? Who in traditional media has questioned the plans of raving megalomaniacs in the Ministry

of Defence who have a muscular grip over the fate of these IDPs? All SMS news services, that never fail to deliver cricket scores minutes after events on the pitch, were silent for over 3 days after the devastating floods in Menik Farm. Only Tamil media featured news of the flooding the day after the floods. The plight of IDPs was, shamefully, a non-issue for Sinhala newspapers last Sunday, with no front-page coverage whatsoever. This was despite a number of reports which suggested that toilet pits were overflowing, floors of tents were soggy and wet, IDPs had no change from wet clothes, a lack of dry firewood for cooking, that roofs of some tents blown away are increasing concerns over health and sanitation conditions with the impending monsoon. Erased by a supine traditional media, many in the South do not know the real ground conditions faced by IDPs. Worse, in a damning display of indifference, the South does not care enough to find out and demand this information.¹⁵

Reporting on the IDPs issue was clearly an area of silence for much of the mainstream media. Following the opening of the camps in November and the return of several of the inmates to their home villages, the indifference of the mainstream media persisted. As the silence grew, Groundviews did another report, tracking certain of the individuals who had been released from the IDP camps as they went back to their home villages to begin the arduous process of reconstructing their lives. Again deprecating the mainstream media for its silence on issues of concern to these victims of war, the citizen journalism website reported:

With many families not having their able men and women who have being (sic, *been*) either killed during the war (or before), or being forcibly taken and detained, return for these IDPs is not as pleasant as one would want to see, or usually believe. We also witnessed many families reduced to women, very



Lasantha Wickramatunge speaks to a delegation of the international press freedom mission that visited Sri Lanka in October 2008 (Photo: by special arrangement)

young children and old people. Without any basic facilities (proper shelter, hospitals, transport, schools, drinking water, electricity and access to any form of livelihood activities) and basic right to freedom of movement, one has to wonder what it means to these IDPs to come back home.¹⁶

4. ADDRESSING PAST ABUSES

Murder of Lasantha Wickramatunge

A year that began with the daylight murder of Lasantha Wickramatunge, whose characteristic campaigning style made him one of the most widely recognised journalists in Sri Lanka, ends with the crime far from being solved. Lasantha Wickramatunge's brother, Lal Wickramatunge, chairman of the Leader group of publications, recounts a story of apathy and indifference. "There have been hearings of the case every two weeks," he says, "but no evidence of any progress in identifying the guilty."

Most procedural flaws identified in the initial investigations still persist. The autopsy report on the murder has not been placed before the Mount Lavinia Magistrate's Court, where the case is being heard. The hearings are proceeding on the basis of a magistrate's inquiry conducted immediately after the murder, which

established a gunshot wound as the cause of death. This, according to reliable witnesses, is contrary to the conclusions of doctors in Colombo's Kalubowila hospital, who first examined Lasantha Wickramatunge on January 8 when he was brought in, grievously injured. The discrepancies are not being reported here in deference to the Wickramatunge family's sensitivities. But the mission believes from its inquiries that the Sri Lankan police and security authorities have information on the murder that they are yet to place before the public.

On January 29, two days after the President announced that a breakthrough in the murder investigation was imminent, police arrested two trishaw¹⁷ drivers in Colombo. One, found to be in possession of the mobile phone that Wickramatunge had with him the day he was killed, was soon released, as he was found to have bought the phone from the second man.

The sole detainee, identified as B. Sugatha Perera, reportedly stole the phone from Wickramatunge, perhaps as he was being transferred to hospital. Perera remains in custody at this writing, though without charge. It is believed that the most serious charge that could be laid against him is theft.

On November 13, at the twenty-fourth hearing of the case, the prosecution conceded that the interrogation of Perera had not yielded any substantive information. The chief magistrate ordered Perera's remand till November 26 and asked for a full report on the state of investigations by that date.

At the next hearing, a lawyer representing the Wickramatunge family expressed dissatisfaction with the investigation and asked for a judicial direction transferring the case to the CID. The prosecution argued that investigations then underway were seeking to identify how Perera obtained the phone. The court directed the prosecution attorney to inquire of Sri Lanka's top police official, the Inspector General of Police (IGP), about the feasibility of the CID taking over the case. On December 10, the investigations were formally handed over to the CID on a directive from the IGP.

In effect, the case remains where it was when the preliminary inquest into the murder was held. Wickramatunge's widow, Sonali Samarasinghe, had at that time asked that the investigation be handed over to the CID, assisted if possible by international forensic experts. Her request, made within a week of the

murder, was reiterated at a February 18 hearing. And on March 15, Sonali Samarasinghe addressed a letter to Sri Lanka's President, reminding him of numerous public assurances he and his ministers had held out, that justice would be done.¹⁸

The murder of Wickramatunge was one of three serious attacks on the media in January. It was by far the most heinous, since the other two – the fire-bombing of the Sirasa TV studios in Colombo and a brutal knife-attack on Upali Tennakoon, editor of a Sinhala daily generally compliant to government *diktat* – did not involve loss of life. Tennakoon left Sri Lanka shortly afterwards and all three attacks have gone unpunished.

In a long history of tension between the media community and authorities in Sri Lanka, January was a turning point. The GoSL was in triumphalist mood, having secured major battlefield gains against the LTTE, the insurgent force that had been by far their most formidable adversary through a 25-year civil war. Space for dissent, already narrowing rapidly, would soon cease to exist.

Since January, many of Sri Lanka's best-known journalists have left the country, often opting for the easiest available way out, unmindful of longer term consequences or their ability to sustain themselves and their families outside the country.

Among those who left were Sunanda Deshapriya, a former convenor of the IFJ-affiliated Free Media Movement (FMM), and Sanath Balasooriya, then the president of the Sri Lanka Working Journalists' Association (SLWJA). Both are well known public figures in Sri Lanka. On May 27, Deshapriya appeared before the U.N. Human Rights Council in June to present a statement on the media freedom situation in his country. Almost at once, the official media and numerous government spokesmen let loose a barrage of vituperation. A recording of Deshapriya's statement before the Council was posted on the video-sharing website Youtube under the headline: "Traitor Sunanda Deshapriya lies at U.N. Human Rights Council and Whitewashes LTTE".

On May 28, the IGP went on the state-owned ITN channel and according to a report in the *Daily Mirror* the following day, "claimed that several journalists, mostly Siinhalese, were on the payroll of the LTTE and were thickly (sic) involved in the insurgency". Though the police knew more details about these individuals, it was not revealing more since that would quite likely

compromise the investigations, he said. “They betrayed their noble profession”, said IGP Jayantha Wickramaratne: they “not only distorted and misreported against Sri Lanka but also worked for cash and other fringe benefits like fully funded foreign trips”.

These were by no means the only instances when Deshapriya was attacked by name by officials in high positions, using state-owned broadcast media and websites.

Attack on Poddala Jayantha

Poddala Jayantha, a well-known journalist and public figure in Sri Lanka, was one among several who left the country in February. He returned after three weeks in India, since as Secretary-General of the SLWJA, he had important organisational responsibilities. The SLWJA was building an office on prime land in Colombo, allotted on condition that it would be utilised within a stipulated time. The time limit was perilously close and the land title would have been revoked if the SLWJA had not completed its construction work before November.

On the evening of June 1, Jayantha got off a public bus at Ambuldeniya junction near the town of Nugeguda, adjoining Colombo, to walk the last mile home. He was snatched and hustled into a white van that was waiting as he turned a corner. Pressed down to the floor, hooded and with his hands tied behind his back, he heard his captors say “smash his legs”. He was then gagged and as the blows started raining down, passed out.

When he regained consciousness, he managed to remove the gag and cry out for help. People gathered but were reluctant to assist. A passing trishaw driver stopped and its occupants identified him. He was taken to the nearby Colombo National Hospital and given prompt medical treatment. The hospital’s director stepped in to ensure that he received the best attention.

Jayantha suffered serious fractures to one leg which will likely leave him with a permanent disability.



Journalists protest the brutal attack on Poddala Jayantha in Colombo (Photo: Courtesy FMM)

The other leg was damaged, though not as seriously. When this mission met him, he seemed on the way to recovery. His spirits were high, despite the bodily damage.

Other journalists who spoke to the mission in Colombo acknowledged Jayantha’s valuable contribution in defending them in hours of dire need. The attack he suffered was perceived by all journalists as a deep affront. And there is an immense sense of regret within Colombo’s media community at its inability to stand up and protect Jayantha when he suffered the dire consequences of his courage.

Jayantha’s clear recollection is that the gang that snatched him from a busy street and brutalised him were not amateurs. They were trained and knew what they were doing.

In late September, Jayantha was elected unopposed as President of the SLWJA. On October 2, he participated in the inaugural function of the organisation’s permanent office in Colombo. The following day he received a call on his mobile phone, from an unidentified number, asking whether he had resumed his activism and reminding him of the consequences. When the editor of *Irida Lanka* was summoned for questioning after his newspaper’s reporting on the rift between the President and General Fonseka, Jayantha spoke informally to acquaintances at the newspaper, expressing his concerns. His

statements were published in the newspaper, without specific authorisation, and again attracted a phone threat.¹⁹

Meanwhile, a report on the news website Lankanewsweb quoted Mervyn Silva, a government minister known for several bruising encounters with the media in recent years, as publicly claiming credit for the murder of Wickramatunge and the assault on Jayantha.²⁰ Silva was reportedly speaking at a public meeting in his constituency and his remarks were intended by all accounts, to give the leadership of the local council, with whom he had a running dispute, an idea of what he could do. Subsequently, he explicitly refuted the report, calling into question the credibility of the website and wondering how any logical person could think he could actually claim credit for a murder.²¹

Silva's reputation within Sri Lanka though, is as someone who does not hesitate to make outrageous statements and then disown them. Indeed, the terms he uses in the interview, the derogatory references to the media and his suggestion that many of the attacks on journalists may have been self-staged, with the objective of securing asylum in the west, leave little room for ambiguity about his attitude towards the profession.

Silva continues to serve as Labour Minister, despite being indicted in November 2008 on charges of illegal assembly, assault and robbery, brought by the staff of a news channel that has repeatedly suffered from his verbal and physical violence.

5. ABUSE AND HARASSMENT

Misuse of state-owned media

Verbal abuse is a hazard that the media has always to deal with. Through the weeks before he was assaulted, Jayantha was constantly targeted by top management of state media organisations. Local media activists believe that this created the climate of opinion in which the attack on him was planned and executed.

As noted above, on May 28, three days before the assault on Jayantha, Sri Lanka's top police official, IGP Jayantha Wickramaratne, was reported as telling the state-owned Independent Television Network (ITN) that several journalists who reported on Sri Lanka's conflict were on the payroll of the LTTE. ITN also reportedly

aired images of Jayantha in another program, while repeating these accusations.

On May 22, an editorial in the state-controlled Sinhala language daily, *Dinamina*, called for stoning and expelling of professional journalists who grow beards. The beard is a common male adornment in Sri Lanka, and Jayantha sports one. Other public statements attributed to senior managers and editors of state-controlled media, referred to "pony-tailed and bearded journalists", leaving little room for doubt about the individuals within the leadership of the country's journalism unions who were the intended targets.

These fulminations by the Government-run newspaper can be deemed to have directly contributed to the brutal assault on Jayantha on June 1. *Dinamina*, the state-owned Sinhala language newspaper, moreover, has a long history of verbal abuse of journalists who take a public stand on issues of free speech. For instance, on March 25, it published an article attacking Sunil Jayasekera, secretary of the Free Media Movement (FMM), an IFJ affiliate, for publicly describing the current period as the "most oppressive time for journalists in Sri Lanka". *Dinamina* denounced Jayasekera's comments at a March 19 conference on the need to safeguard fundamental rights, as an expression of anti-government sentiment.

On February 1, Defence Secretary Gotabaya Rajapaksa warned that foreign media organisations would face "dire consequences" and be "chased out" of the country if they did not behave "responsibly". He accused three international news organisations in particular of partisan reporting on the situation regarding civilian casualties and suffering in areas of conflict between government forces and separatist insurgents. Since then, the residence permit of the bureau chief of an international news agency was prematurely terminated, in evident retaliation for a series of reports he had filed on the humanitarian consequences of the war.

Defence Secretary Rajapaksa's media allergy

Sudar Oli editor N. Vithyatharan was snatched from a family function in a kidnap-style arrest on February 27 and acknowledged to be under arrest only after a lapse of five hours (further details below). Soon after, the Defence Secretary met with an Australian news TV crew. The recording of the meeting was telecast

over the CBC News channel on March 11 and shows the Defence Secretary warning the news reporter that to ask about Vithyatharan is to be seen as an accomplice in terrorism. “You will have blood on your hands” if you ask about Vithyatharan, he said, since he is known to be a “terrorist”. The Government, said the Defence Secretary, had evidence that the man under arrest had played a role in an aerial attack on Colombo on February 20.

Vithyatharan was discharged unconditionally after two months in detention. The police agencies that investigated the charges against him admitted in court that there was no evidence linking him with any wrongdoing.

When the mission met Lakshman Hulugalle, Director-General of the Media Centre for National Security (MCNS) – an inter-ministerial body that supervises the flow of information on all matters involving the defence services, the police and the intelligence agencies – he was unrepentant about the detention of Vithyatharan. Several journalists, he said, manage to get themselves discharged in cases where they are clearly at fault, only through clever and evasive testimony. The judicial system was rife with such loopholes, said Hulugalle, but this did not mean that the GoSL was at fault or would give any ground to irresponsible media reporting. Just as innocent people often tended to get imprisoned for no fault of theirs, he suggested, the mere fact of journalists being cleared of wrongdoing did not necessarily imply their innocence.

Denial of the right to fair defence

Mid-July, an article was posted on the Ministry of Defence website, branding as “traitors” five lawyers appearing in a case of contempt involving the *Sunday Leader*. The article, titled “Traitors in Black Coats Flocked Together”, named the lawyers who had taken the brief for the newspaper in a case being heard at the Mount Lavinia court near Colombo, as having “a history of appearing for and defending” LTTE guerrillas. The article featured photos of three of the lawyers.



Poddala Jayantha and family in November; they are now believed to have left Sri Lanka for an undisclosed destination (Photo: by special arrangement)

The *Sunday Leader*, edited by Wickramatunge until his murder in January, has been locked in a defamation case brought by Defence Secretary Rajapaksa since 2006, when the GoSL contracted with Ukraine to buy four MiG-27 fighter aircraft. The *Sunday Times* and the *Sunday Leader* then carried in-depth analytical reports, suggesting serious irregularities in the manner of ordering and paying for the aircraft. The Defence Secretary soon brought a legal case for damages against the *Sunday Leader*, sparing the *Sunday Times*, though its report was not different in substance.

About the same time, the *Sunday Leader* also ran a report on the public tender floated by the Defence Ministry for issuing identity cards for all Sri Lankan nationals, and pointed out that the enterprise was premised on very poor standards. A photo of the Defence Secretary ran with the report, because the identity cards program was being implemented by his ministry. Although he was not held responsible for the problems described, the Defence Secretary took objection and filed a suit for compensation.

At the last hearing of these cases during his lifetime, Wickramatunge turned down an opportunity to settle the matter by proffering an apology to the Defence Secretary. He informed the court that he had the documentation to prove the veracity of the reports.

After Wickramatunge was murdered, the newspaper agreed not to publish material similar to that which had brought the libel action. However, the Defence Secretary later approached the court for an injunction against the *Sunday Leader* prohibiting any reporting of any sort on him. This was granted, pending a reply from the *Sunday Leader*. It was lifted once the newspaper informed the court that it would refrain from publishing material that could be deemed injurious to the reputation of the Defence Secretary, not to mention anything pertaining to ongoing litigation.

Following the end of the war, the *Sunday Leader* carried a profile of the Defence Secretary, which included a comparison of his military strategic sense with that of the leader of the vanquished Tamil insurgency. This invited a contempt of court petition. When it was heard for the first time, the lawyers who had been retained by the *Sunday Leader* withdrew, according to the Defence Ministry, because they did not want to be involved in defending an effort to stain the reputation of a national hero.

However, the *Sunday Leader* management provides a far less dramatic narrative. The lawyers who had been assigned the case were relatively inexperienced, since the senior lawyers at the law firm engaged by the *Sunday Leader* did not, by custom, appear in the Mount Lavinia courts where the case was called for hearing. On the day of the first hearing, the lawyers arrived at the court and found themselves facing a scenario for which they were unprepared. The security arrangements made for the Defence Secretary's appearance meant that the lawyers had to spend long hours trying to access the court room, and the increased presence of armed personnel contributed to a heightened sense of threat. It was intimidation rather than any sense of deference to the war-time achievements of the Defence Secretary that led the lawyers to withdraw from the case, according to the *Sunday Leader* management.

The junior lawyers were replaced by five senior colleagues who attracted the instant ire of the Defence Ministry and the unenviable – and in the Sri Lankan context, oft-used – sobriquet of “traitors”.

The management of the *Sunday Leader* believes that the Defence Secretary's effort to suppress all reporting on his actions is a knee-jerk reflex, independent of any reasonable notion of the limits of legitimate dissent and rightful criticism of public policy.

Meanwhile, the editor and publisher of the news portal Lankaenews, Sendhuruwan Senadheera, has been summoned for questioning for information he may have on the attack on Poddala Jayantha. Lankaenews obtained the information on Jayantha's abduction from an eyewitness and was the first to put the word out. Senadheera also called up Jayantha's wife to alert her to the need to register a complaint with the nearest police station at the earliest. Following his refusal to reveal his sources for the news story, despite insistent police pressure, he was charged under the law relating to obstruction of justice. The case has since been withdrawn.

This was by no means the first time that the Lankaenews editor has been under pressure from the police and security agencies. In February 2009, he was taken in for questioning by the CID on two occasions. In all, his coverage of security and other issues has earned him eight visits from officials of the security agencies through the year.

6. J.S. TISSAINAYAGAM CONVICTED

On August 31, the High Court in Colombo convicted J.S. Tissainayagam, a print and online journalist and widely-read columnist with the *Sunday Times*, on charges of terrorism and sentenced him to 20 years' rigorous imprisonment.²²

An indictment against Tissainayagam, his publisher V. Jasikaran and the latter's companion V. Valarmathy was filed before the court on August 25, 2008, formally laying charges under Sri Lanka's Prevention of Terrorism Act (PTA). This followed more than five months in detention, since the three were picked up in the first week of March and held without charge well beyond the time allowed even under the “Emergency Regulations” in force in Sri Lanka.

Hearings were held in the High Court, which has original jurisdiction in matters under the PTA. The evidence against Tissainayagam and Jasikaran amounted to little more than two articles published in the *Northeastern Monthly*, edited by the former and printed at a press owned by the latter. Valarmathy was charged with being an accessory to a terrorist offence.

Tissainayagam's case was heard separately from the other two, for reasons yet unclear.

The first of the articles for which Tissainayagam (also known as Tissa) was convicted ran as an editorial in the July 2006 issue of the *Northeastern Monthly*. It commented that “the inability to protect its citizens within the areas it controls has caused Sri Lanka international embarrassment”. After a brief consideration of the security dilemmas faced by Tamils in government-controlled areas in the north and east of Sri Lanka, the editorial argued that they could expect no protection from the Government, since “it is the state security forces that are the main perpetrator of the killings”.

The second article, published under Tissa’s initials in November 2006, drew attention to the deteriorating humanitarian situation in the eastern provincial town of Vaharai, which had been targeted by a sustained campaign of artillery and aerial bombardment as GoSL forces sought its recapture from the LTTE. Tissa commented that the Government was not doing this “without design”. “By trapping the Tamil population in Vaharai”, he argued, the Government hoped to create a “human shield” that would prevent any insurgent offensives further south. “At the same time, starving and bombing Tamil civilians in Vaharai (would) create disaffection between them and the LTTE, leading to friction and ill-will. Such internal quarrels (would) act as insulator for the Government in the highly vulnerable East.”

In his testimony before the High Court, Tissa said that he stood by all he had written.

The specific charge against Tissa relates to causing ill-will among communities. This is a charge under Section 2(1)(h) of the PTA which says that whoever “by words, either spoken or written, or by signs or by visible representations or otherwise”, promotes or attempts to promote enmity between communities on grounds of language, ethnicity, religion (and other such) would be liable to prosecution.

The defence argued, essentially, that criticising the Sri Lankan Army and its war-fighting strategies did



Tissainayagam and Jasikaran (in foreground) being produced in court for a hearing of their case; Valarmathy (in red) is in the background (Photo: Courtesy *Daily Mirror*)

not amount to creating ill-will or promoting violence between communities. The prosecution apparently took the line that (a) Tissainayagam had criticised the Army; (b) he is a Tamil; (c) the Army is largely Sinhala; and (d) hence Tissainayagam’s article caused ill-will between Tamils and Sinhals.

Aside from what he wrote in 2006, the prosecution case rested on a confession that Tissa was purported to have voluntarily signed. But Tissa deposed in open court that the confession was extracted by false pretexts and coercion. The defence argued, with some evidence in its favour, that Tissa had been witness to torture inflicted on Jasikaran and that he may have signed the confession under duress. The defence team also produced evidence that the confession statement, as recorded by police personnel who had held him for five months without charge, was seriously tampered with.

There are 57 alterations made in black ink in the confession statement, where Tissa has signed off on the margins. There is one which is made in blue, where he has not signed. And this is a crucial detail: in place of “I told the LTTE, I do not want your money”, the confession produced in court states: “I told the LTTE I want your money”.

The defence made the case that apart from the discrepancy in the inks used and the absence of

Tissa's initials in the margin, this detail was wrong in terms of the written syntax of the Tamil language and was introduced into the statement by someone well after the statement was recorded.

The prosecution also traced two credit payments into a bank account controlled by Tissa, for a total amount of SLR 100,000 (about USD 9000 at current exchange rates). Although the source of this payment was not traced, the prosecution argued that it was in some way linked to the terrorist underground. Telephone records were produced to show that Tissa occasionally made calls to the northern town of Kilinocchi, which was the headquarters of the Tamil Tiger insurgency till its recapture by GoSL forces in January.

Soon after the account in question was credited with the two payments, the monies were drawn by a cheque signed by both Tissa and Jasikaran. The prosecution argued that the money was being used to publish the *Northeastern Monthly*, which in turn was a journal working toward creating disaffection between communities.

The defence team argued that the receipt of money in itself did not amount to an offence, unless it was proven that the funds were used for a criminal or terrorist purpose. The monies were received after the impugned articles by Tissa were published in the *Northeastern Monthly*. It was also clear that the purpose of the funds was to finance the acquisition of capital equipment for the website OutreachSL.com, run by Tissa.

In deciding the case, the judge disregarded the possibility that Tissa's confession may have been made under duress, solely on the testimony of the two policemen who recorded it. The policemen, quite simply, said that an educated person and experienced journalist would be unlikely to succumb to pressure and to do something he was told to do, irrespective of the circumstances.

The defence contention that the articles were unlikely to create disaffection or hostility between communities was dispensed with by the court, on the grounds that the impact the words were likely to have on an "ordinary man" had to be taken into account. Testimony from numerous public figures and legal experts to say that the articles were within the limits of free speech as guaranteed by the Constitution were dismissed, on the grounds that they all most likely had "identical political views" as the defendant, which could not be "compared with the opinion of the general public".

The judge, Deepali Wijesundara, did not take into account the point made by the defence, that the confessional statement itself may have been tampered with.

Tissa has since lodged an appeal against his conviction. It could well take several months to come up for hearing. Meanwhile, he has applied for bail at the Court of Appeals, which has jurisdiction in this matter. As of early December, three hearings of his application had been posted. All had been adjourned without the matter being taken up.²³

7. TRADING FUNDAMENTAL RIGHTS FOR FREEDOM

Jasikaran and Valarmathy

On October 13, at the parallel hearing of their case under the PTA, Jasikaran and Valarmathy were given the first indication that the prosecution might be willing to withdraw charges. Their discharge, the state attorney informed the court, would be conditional upon them withdrawing a petition filed before the Supreme Court which claimed that their fundamental rights had been grievously violated.

The offer of conditional discharge was made by the state attorney, who informed the court that there was no evidence linking them with any terrorist act or organisation. At an agreed date soon afterwards, counsel for the two accused went before the Supreme Court to formally withdraw the fundamental rights petitions filed in their names. A reciprocal commitment was obtained from the prosecution, to the effect that charges under the PTA against the two defendants would be dropped.

Jasikaran and Valarmathy, who had to put up with systematic and endless mistreatment and frequent torture in prison, were by their own admission completely surprised at the turn of events from October 13. In just two weeks from then, they were unconditionally discharged. And yet, considering the likelihood that they were, despite their unconditional release, not quite immune to further harassment and even possible arrest by elements within the Sri Lankan security agencies, they chose to keep their interview with this mission very brief.

A reasonably clear picture of why the prosecution chose to withdraw the case against them can, however, be constructed from the sequence of events.

Following his arrest, Jasikaran was subject to severe torture, for most of the month of March 2008. Subsequently, his confessional statement was recorded on May 6. His lawyer meanwhile had obtained a court order that Jasikaran should be examined by a Judicial Medical Officer (JMO) for signs of injury arising from torture. Under Sri Lanka's justice system, the opinion of the JMO is authoritative. Eight such visits and examinations took place between March 26 and August 20, 2008. On each occasion, Jasikaran was accompanied by an official of the Terrorism Investigation Division of the Sri Lankan Police (TID), who allegedly warned him not to mention anything about torture. Furthermore, the JMO who examined Jasikaran was invariably a Sinhala speaker, while Jasikaran speaks no Sinhala or English. It was only on May 27 that a JMO who was competent in Tamil, Jasikaran's native language, was assigned the task. The JMO that day arrived at the conclusion that Jasikaran unmistakably bore the scars of torture while in detention.²⁴

After stonewalling by the prosecution, the court ordered another medical examination. The JMO who had initially ruled out torture, came around to the view that Jasikaran had indeed been tortured. This mass of evidence, indicating official malfeasance and possible grounds for disciplinary action against TID officials, was being prepared for submission to the Supreme Court in connection with the fundamental rights petition filed by Jasikaran and Valarmathy.

It was at this point that the prosecution decided that it would not pursue the case. Since the evidence against Jasikaran amounted to little else than the confessional statement, and the judge hearing the case had observed in open court that the evidence of torture made the evidence suspect, there seemed few options available to the prosecution. In the event, the prosecution found a face-saving exit. Since Tissainayagam, as the author of the offending articles, was the principal accused, there was little reason



Sudar Oli top management and editorial team in their Colombo office; N. Vithyatharan is at left, E. Saravanapavan third from left. Also seen, K.K. Ratnasingham (second from left) and N. Pathmaseelan. (Photo: by special arrangement)

to continue with the prosecution of Jasikaran and Valarmathy, they argued. The pair could not, in other words, be held culpable for articles written by Tissa, merely by virtue of being directors of the company that owned the publication in question.²⁵

The case of N. Vithyatharan

Snatched from a family funeral on February 27, *Sudar Oli* editor N. Vithyatharan was blindfolded, bundled into a van and beaten. It was around 9.30 am and a wave of panic swept through the media community in Colombo. Interventions were prompt from journalists' bodies and the diplomatic community. Under pressure, the agency that had snatched him dumped him blindfolded and bundled in a gunny sack near the headquarters of the Colombo Crime Division (CCD). He was picked up from there by the CCD and declared arrested. The time of his arrest was registered as 1.30 pm.

Vithyatharan's arrest, it turned out, had been instigated by police scrutiny of his telephone records, which showed several calls placed on February 20, the day the LTTE carried out an audacious air raid on Colombo – a final and futile gesture of defiance by a doomed guerrilla outfit. Vithyatharan was able to prove under interrogation that none of the calls had a suspicious intent. Subsequently, his bank transactions were examined and certain payments and receipts

identified as suspect. Here too, the explanations were clear and convincing. In this period, the TID made a demand of the CCD that Vithyatharan should be handed over to their custody. This would have potentially posed a serious hazard to his security and physical well-being. But the CCD, using the autonomy and the powers granted under the statute, insisted that any interrogation of the editor should take place while he was in its custody.

Through this time, Vithyatharan's family had filed a petition in the Supreme Court, claiming remedies for a gross violation of his fundamental rights. By end of April, when the police agencies were forced to concede that there was no basis for a case against Vithyatharan, the state attorney made his discharge conditional on the fundamental rights petition in the Supreme Court being withdrawn. The family of the jailed editor agreed. This represented yet another instance of the security agencies evading accountability for their unjust actions by forcing a grossly unequal bargain on an innocent person they had imprisoned.

The case of Arthur Wamanan

Although not quite in the same category in terms of its seriousness, the case of Arthur Wamanan also needs to be recounted in this context. Arthur Wamanan, a reporter at the *Sunday Leader*, was detained by the CID in October 2007 on charges of extortion levelled by Mano Wijeratne, Sri Lanka's Minister for Enterprise Development.

On October 21, 2007, the *Sunday Leader* had run an article by Wamanan reporting that Wijeratne's wife had, while on an overseas tour, incurred roaming charges on her telephone amounting to about SLR 87,000, which his ministry had borne, despite it being an inadmissible perk under government rules. On October 19, well before sending his report to press, Wamanan had called Wijeratne from a phone registered in his mother's name to obtain the minister's account of the story.

On the day the report was published, the minister filed a case of extortion against Wamanan, accusing him of having demanded SLR 5 million as the price of not publishing the report. The minister cited the call records on his cell-phone as evidence. On October 23, Wijeratne attacked Wamanan by name in Parliament. The CID arrested Wamanan the following day, briefly detaining his mother as well.

Wamanan was granted bail after several days in detention, but the case against him continues.

The CID reportedly referred the phone used by Wamanan to its computer analysis section. In June 2009, it submitted its final report to the magistrate's court. Wamanan meanwhile has filed a petition in the Supreme Court demanding due recompense for the serious injuries inflicted on his fundamental rights. The court has already granted leave to proceed with the petition, but counsel for the minister recently indicated that an out-of-court settlement might be possible. If so, this indicates that there could soon be another shabby compromise by which a wrongly accused individual is compelled to barter away his fundamental rights for freedom.

8. THE PROVINCIAL SCENE

On June 24, news agents for Jaffna's three main newspapers – *Uthayan*, *Valampuri* and *Thinakkural* – were attacked as they began distributing the day's editions. In the case of *Uthayan*, which with its Colombo-based sister publication, *Sudar Oli*, been an essential link between dispersed elements of Sri Lanka's Tamil community, the attack was particularly violent, with the delivery agents being physically and verbally assaulted.

According to reliable information, newspaper bundles were slashed with sharp weapons, doused in petrol and set afire. The management of *Uthayan* immediately suspended further deliveries of the paper, only resuming after an hour. A 26-year-old delivery agent of *Thinakkural* was reportedly assaulted at the same place in Jaffna city, and suffered serious injuries.

These latest episodes in the campaign of violence against the media in Sri Lanka were apparently provoked by the refusal of the newspapers to publish a statement titled "Transnational Government of Tamil Eelam", issued by a body of uncertain provenance calling itself the Tamil Front Protecting the Country.

The statement was delivered at the newspaper offices on June 23 with a demand that it be published. But according to *Uthayan's* editor and publisher, it failed to meet minimum standards of authenticity, with no identifiable originating address or claim of authorship. Early on June 25, the editor of *Uthayan* and *Sudar Oli*, Vithyatharan, received an anonymous and abusive call at his Colombo home, warning of serious consequences for his failure to publish the statement.

The publisher of *Uthayan*, E. Saravanapavan, brought the matter to the notice of the local police and the military commander with responsibility for Jaffna city. All relevant information was conveyed to the authorities for appropriate action.

On June 27, all *Uthayan* staff and news agents received letters purporting to be a “final warning”, accusing the newspaper of “pro-terrorist” bias and “confusing” the Tamil people of Sri Lanka. With “harmony and liberty” now purportedly regained in Sri Lanka, *Uthayan* was working toward “destroying the permanent peace and (causing) the public to turn to terrorists again”, the letter said. The newspaper’s reports allegedly “twisted” the truth and promoted “communal feelings among the Tamils”. *Uthayan* was warned to shut down its publication by June 30 or risk “capital punishment”.

Uthayan continued to publish, with heavy security reinforcements. With the announcement of elections and the quickening of the political tempo, a new vigour has entered media functioning in the provinces, particularly in the north. After the defeat of the Tamil Tigers, a ruthless and maniacally focused insurgent outfit that the people of Jaffna are glad to see the end of, the political landscape in the north is dominated by the Eelam Peoples’ Democratic Party (EPDP), a long-time partner of the ruling party in Colombo. However, another Tamil party – the Tamil Makkal Viduthalai Puligal (TMVP) – a breakaway faction of the LTTE, which has contributed significantly toward the recent military triumphs, especially in the east, is seeking a foothold in the north. The rivalry between the two is expected to cast a long shadow over the shape of politics in the north in the months ahead.

Neither party is well established in the north. The people tend to look at both as unproven entities, which have a long way to go before they can be trusted with the mandate to govern. The electorate is looking toward the media in Jaffna for authoritative reporting and commentary on the upcoming elections. The Tamil



Uthayan office in Jaffna as journalists arrive late-evening to file their stories (Photo: by special arrangement)

vote is expected to be a significant “swing factor” in the elections and both major candidates are courting it with great ardour. The role of the provincial media assumes significance in this context.

In the country’s east, however, the media continues to suffer from relative neglect and a lack of resources. The east has few publications and the number of journalists is small. Media development organisation Internews has estimated there are roughly 230 journalists in Eastern Province, of which no more than 20 could be considered active. Of the rest, most are part-time journalists, of whom no more than 60 would be filing an average of one story a week or more.

One of the few publications based in the east, the Tamil weekly *Vara Uraikal* (which literally translates as the “weekly grindstone”), was shut down in May 2009 after its editor, M. I. Rehmatullah, was attacked repeatedly. *Vara Uraikal* was established in early 2007 and specialised in exposing corruption in local bodies and religious trusts. Its offices were attacked three times, most recently in an arson and knife attack in May. Following this incident, the magazine shut down.

Journalism in the east continues to suffer from the disinterest of media owners in the capital. Journalists are poorly paid and their expenses in accessing news sites and filing reports are barely met. Reports

frequently fail to be published, seriously damaging morale and motivation. Most journalists depend on some form of government employment – either as teachers or as officials in local government bodies – for their principal earnings and this compromises their independence. Important news stories are invariably covered by journalists travelling in from Colombo, rather than locally based staff.

Since GoSL forces expelled the last remnants of the LTTE from the east in 2007, the province is yet to settle down to a more peaceful course. Security continues to be an issue, with organised political groups and remnants of the armed opposition to the GoSL continuing to fight sporadic engagements. Levels of crime remain high and there is a suspicion that some criminal gangs may be enjoying political patronage.

The east is Sri Lanka's most ethnically diverse province, with roughly equal numbers of the Sinhala, Tamil and Muslim communities. Coalition-building processes are likely to be at their most complex here, and political contestation the most intense. For this reason, observers believe that the media in the east deserves a new deal, so that it is able to find its own voice in national political affairs and not continue echoing the concerns of the Colombo elite.

The west and the south, which are the main arenas of contest between the mainstream nationalist parties – the ruling Sri Lanka Freedom Party and the opposition United National Party – could, potentially, witness heightened violence in the run-up to the elections. A foretaste is already available in the attack that a news team of the state broadcaster suffered at an opposition rally in Colombo on December 5. A prominent opposition politician was quoted on the occasion saying that the state media could not be trusted to give unbiased coverage and was hence a rightful target of retaliation. Several independent journalists, he said, had been accredited to cover the event and had no cause for complaint.

The mission strongly deprecates the attack on the news crew and does not, by a long way, endorse the sentiments expressed by the opposition politician. But the mission believes that there is a case to be made for putting state media organisations under a form of neutral oversight during the election campaign. Following that, the reform agenda to convert state-owned media to an authentic public service entity must be an urgent priority.

9. REVIVAL OF PRESS COUNCIL THREATENS MEDIA AUTONOMY

In June 2009, the GoSL notified its intent to revive the 1973 Sri Lanka Press Council Act. A chairman of the revived council was appointed, as also a government nominee and two members representing the public. The move has been stalled because the media industry and journalists' organisations have refused to name their nominees.

The media in Sri Lanka was never comfortable with the 1973 Act for reasons that are not hard to comprehend. It provides, for instance, for stringent action against journalists, including prosecution for contempt and imprisonment for extended periods. It contains fairly stringent provisions that enable the prohibition of certain kinds of media content, including:

- Internal communications of the Government and the decisions of the Cabinet.
- Matters relating to the armed services that may be deemed prejudicial to national security.
- Matters of economic policy that could lead to artificial shortages and speculative price rises.

The legislation had lapsed, though the law itself was not repealed. In 1994, the country's media community and the Government agreed to hold the Act's punitive provisions in abeyance.

An extended dialogue between the local press community and international colleagues, meanwhile, led to the establishment of the Sri Lanka Press Institute (SLPI), which in turn hosts the Press Complaints Commission of Sri Lanka (PCCSL) and the Sri Lanka College of Journalism. SLPI's origins go back to 1998 when the Free Media Movement (FMM), the Editors' Guild and the Newspaper Society of Sri Lanka signed what came to be called the Colombo Declaration on Media Freedom. SLPI and the PCCSL were registered in 2003 and won financial support from Scandinavian donors.

The country's principal media organisations – all stakeholders in SLPI – have, however, differed on the norms that should govern its functioning. It is interesting that when faced with the threat of a revived Press Council, the newspaper industry, in a sense, renewed its commitment to PCCSL. Newspapers that had not signed up as members of PCCSL did so when faced with the threat of a government takeover of the media accountability function.

Anura Priyadarshana Yapa, the Minister for Media and Information, believes that the revival of the council will provide a means of redress for anyone who has a legitimate grievance against the media. “Press freedom is a must,” he says. “But we must also look at the people’s freedom. Somebody who is being attacked unfairly by the press must have some remedy he or she can turn to.”

The press community is unimpressed. In August it convened a meeting of all stakeholders, who strongly reaffirmed their commitment to PCCSL and called for keeping the Press Council law in indefinite suspension. PCCSL officials believe the months since then have seen

increasingly visible commitments made by the press, including more frequent advertising to alert readers to the grievance redressal process that they can access. This is seen as an important development in a long-term sense, to prepare the ground for a more sober and settled relationship between the press and readers. To be maximally effective, however, Sri Lanka’s main political parties and individual power-holders need to internalise the ethos of a responsible and respectful attitude toward the media.

10. MAKING MEDIA FREEDOM A CAMPAIGN ISSUE

The big question surrounding the early retirement of General Fonseka and his exchange of correspondence with President Rajapaksa was: Had he really undergone a conversion or was he making an opportunistic play for electoral popularity by espousing a civil rights agenda which included a press freedom component? The first indications were that he had undergone a conversion. When the text of his resignation letter, together with an annex that expanded upon some points, was released to the media, considerable attention was focused on three



President Rajapaksa (left) is yet to deliver on a 2005 campaign undertaking to depoliticise the state media, while opposition leader Wickremasinghe promises this among other measures to uphold media freedom (Photos: courtesy Colombo Page and by special arrangement)

points that he had named as grounds for his alienation from the post-war ruling dispensation:

- The inattention to the situation of the IDPs, which threatened to destroy all the battlefield gains and create further grounds for embitterment of the Tamil minority.
- Corruption in the GoSL which was increasingly at odds with its failure to provide a fair deal to the armed forces.
- Most significantly from the point of view of the mission, the failure of the GoSL to safeguard media freedom.

However, as the *Sunday Times* reported in its “Political Column” on November 15, the letter of resignation that was signed by Fonseka for dispatch to the President omitted these three points and brought in certain others which related to more narrow issues, such as the inadequacy of the security detail he had been assigned at the end of the war.

Prominent leaders of the political opposition with whom the mission met insisted that the former general would be a credible candidate to defeat what they described as the incipient dictatorship of the Rajapaksa family. They admit the letter of resignation, which they had contributed toward drafting, was amended under the purported advice of a former military colleague of

Fonseka's. But their belief, which they claim is borne out by the President's office, is that both variants of the letter were dispatched and received.

This still leaves open the question of the authenticity of the conversion that Fonseka has undergone. Several of the more credible and committed among the opposition leadership believe that Fonseka will be willing to implement a broad-ranging program of political and constitutional reforms that they have in mind for post-war Sri Lanka. Foremost among these would be the abolition of the executive presidency, which concentrates immense powers in the hands of a directly elected chief executive. They seem prepared to believe that Fonseka would be willing to transform himself, once elected, from an all-powerful head of state and government, to a ceremonial figurehead.

Several in the media community are unconvinced. While granting that the entry of the former general into the political fray has quickened the political tempo and enlivened an otherwise dispirited opposition, they do not place much hope on Fonseka. A leading newspaper publisher described him as a thorough military man who would likely be intolerant of dissent and ambiguity and inattentive to the niceties of democratic functioning. More specifically, many in the media hold him directly responsible for at least two of the most serious cases of journalists being abducted and tortured for their reporting on military matters over the last phase of the war.

Fonseka was also known to make intemperate and ill-advised political statements during that time. Among his oft-stated beliefs then was the character of Sri Lanka as the homeland of the Sinhala community, where Tamils and Muslims only lived on sufferance, so long as they refrained from abusing the hospitality they were fortunate enough to obtain.

On November 27, when he formally declared his candidacy for President, Fonseka explicitly disavowed any responsibility for these misdeeds. Specifically mentioning the murder of Wickramatunge, he referred to the dignity of the military post he had held, and declared with seeming conviction that he would not stoop so low as to carry out such rank criminal attacks. Following this, he stood onstage as the leader of the opposition and former Prime Minister, Ranil Wickremasinghe, garlanded a portrait of the slain editor.²⁶

President Mahinda Rajapaksa has undertaken in his election manifesto issued in 2005, which

could still be regarded as valid, that state-controlled media would be held as the highest example of how independent and responsible media should function. Towards this object, he has held out a promise to depoliticise the state-owned media. Needless to say, he has been conspicuously in default on this promise over the last four years. But the end of the war has perhaps created the conditions in which he can be held to his promise.

Ranil Wickremasinghe, who leads the United National Front (UNF) coalition, has specific plans on a range of media-related reforms that a UNF government would implement. These include:

- Right to information legislation.
- Abolition of the Press Council.
- Strengthening the Press Complaints Commission of Sri Lanka.
- Reforming the state-owned media.
- Legislating on media groups' diverse business interests and preventing conflicts of interest.

There are questions about how far this agenda would be implemented if the UNF coalition were to assume power. It has been pointed out, for instance, that abolition of the all-powerful executive presidency has been an explicit election promise made by many past candidates, who have decided once they were elected that it was a promise more conveniently breached. Chandrika Kumaratunga made it for the first time in 1994 when she secured the support of several left-wing parties and conducted a successful campaign for the presidency on a platform of restoring long-denied civil liberties. Wickremasinghe wrote this into his campaign platform for the 2001 parliamentary elections. Although he won a majority and became Prime Minister, he had to function within a diarchic situation – with the President being from the rival party – and could not introduce the necessary legislation. Finally, President Rajapaksa himself made the abolition of the executive presidency a principal component of his electoral plank in 2005.

Wickremasinghe offers no excuses, except to point to his last, brief tenure as Prime Minister, when he removed defamation from the list of criminal offences and introduced a right to information bill for public debate. He also points to his family background in the newspaper industry to underline his credentials as one who knows where the best interests of the media lie.

II. RECOMMENDATIONS

Having met with numerous stakeholders in the media and with political actors and civil society organisations, the mission led by the IFJ in November 2009 recommends that the Sri Lanka press community unite to present a charter of demands to all sides involved in the upcoming elections in 2010. Such a charter should seek to secure the basic demands of the media and address the right of the public to full and fair information.

Such a charter should minimally address the following issues.

- The return to Sri Lanka of all journalists who have been forced into exile.
- A guarantee that all returning journalists will be assured of their security and physical well-being.
- An assurance from the President that state-owned media will be permitted to report freely and without bias on the election campaign.
- A review of the cases of journalists who have been imprisoned or convicted under “emergency regulations” and special security laws within a reasonable time frame.
- A favourable approach toward amnesty for these journalists in a spirit of truth and reconciliation.
- Accountability for all past abuses against media personnel, particularly murders and physical attacks, but also including verbal abuse, threats and intimidation, within a reasonable time frame.
- An assurance that once the elections are concluded, the urgent issue of transforming state-owned media into public service trusts will be actively addressed as a matter of urgent priority.
- An undertaking that right to information legislation will be enacted and implemented as a matter of urgent priority.

Stakeholders in the media should at the same time commit themselves to providing journalists, especially those in the provinces, with a fair deal. Collective agreements between managements and workers in all media organisations should be concluded to provide for stability and security in employment conditions. Structures of self-regulation and accountability toward the media audience should be strengthened. The media should aim to speak for all Sri Lanka’s ethnic communities, rather than cater to their narrow constituencies of advertisers and readers.



Jaffna's main street bears all signs of a city yet to recover from the bitter legacy of a quarter-century long civil war (Photo: by special arrangement)

12. NOTES AND REFERENCES

¹ Two earlier reports of the International Press Freedom Mission to Sri Lanka can be found at: <http://www.i-m-s.dk/publication/media-under-fire-press-freedom-lockdown-sri-lanka>, and <http://www.i-m-s.dk/publication/press-freedom-and-freedom-expression-sri-lanka-struggle-survival-2007>. Other reports from the international press freedom mission process too are available through the same website.

² <http://www.sundaytimes.lk/091011/Columns/political.html>

³ See the Daily Mirror report of October 19, at: http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=65127.

⁴ Full text of the media release is available on the website of the official news agency of Sri Lanka: http://www.lankapuvath.lk/index.php?option=com_content&view=article&id=4388:beware-publication-of-false-reports-using-senior-army-officers-identities&catid=25:general&Itemid=90.

⁵ http://www.colombopage.com/archive_091/Oct1256047600RA.html.

⁶ http://www.defence.lk/new.asp?fname=20091031_01.

⁷ http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=70774.

⁸ On this and related issues, see the analytical essay dated October 22 by P. Saravanamuttu: <http://www.groundviews.org/2009/10/22/gsp-plus-minding-our-business/>

⁹ See the item posted October 25 on the blog of a group of exiled journalists functioning under the title “Journalists for Democracy in Sri Lanka”, <http://jdsrilanka.blogspot.com/2009/10/media-freedom-before-gsp-plus-media.html>.

¹⁰ <http://www.sundayobserver.lk/2009/09/20/fea03.asp>.

¹¹ <http://www.thesundayleader.lk/2009/10/20/true-or-false/>.

¹² Facsimiles of the letters received by the two, along with the postmarked envelopes in which they were delivered, were reproduced in the *Sunday Leader* of October 25, currently available online at: <http://www.thesundayleader.lk/2009/10/24/and-now-they-come-for-us/>.

¹³ See the *Sunday Leader* story at: <http://www.thesundayleader.lk/2009/11/04/leaders-response-to-threats-angers-gotabaya/>. The legal issues between the *Sunday Leader* and the Defence Secretary are dealt with in greater detail later in this report.

¹⁴ The two reports, titled “Scandalous Plunder of a Battered People” and “The High Price of Freedom”, were investigated and written by the *Sunday Times* Insight Team. They are available at the following links: http://www.sundaytimes.lk/090906/News/nws_02.html and http://www.sundaytimes.lk/090906/News/nws_24.html

¹⁵ The August report titled “The Shame of Menik Farms” is available at <http://www.groundviews.org/2009/08/23/the-shame-of-menik-farm/> and the October report at: <http://www.groundviews.org/2009/10/13/breaking-news-flooding-and-unrest-again-at-menik-farm/>.

¹⁶ “180 days after the end of war, the return of the IDPs: an eye-witness account”, available at: <http://www.groundviews.org/2009/11/18/180-days-after-end-of-war-the-much-anticipated-return-of-idps-an-eyewitness-account/#more-2026>.

¹⁷ The motorised three-wheeler rickshaw that is a popular mode of transport all over Sri Lanka.

¹⁸ See the full text of Sonali Samarasinghe’s letter, which recounts some of these events at: <http://www.groundviews.org/2009/03/26/is-the-president-hiding-lasantha-wickremetunges-killers/>

¹⁹ As this report is prepared for publication, the mission has learnt that Jayantha has left Sri Lanka with his family for an undisclosed destination. His temporary exile for security reasons, is being supported by a network of global press freedom bodies who have sought anonymity.

²⁰ <http://asiapacific.ifj.org/en/articles/popular-news-website-banned-in-sri-lanka>

²¹ See his interview in Sinhala, with English subtitles, at: <http://video.dailymirror.lk/videos/53/mervyn-silva-on-hot-seat>. The key portions come from just before the halfway point, minute 7:00 onwards.

²² “Rigorous imprisonment” in the penal system followed by Sri Lanka, is equivalent to what some countries refer to as “hard labour”.

²³ As this report is sent to press, the Attorney-General of Sri Lanka has informed the Court that the GoSL has no objection to bail being granted.

²⁴ It could be mentioned here that Sri Lanka, unlike India and most other South Asian nations, is a signatory to the International Convention Against Torture.

²⁵ Jasikaran and Valarmathy formally registered their marriage on November 1, shortly after their release. They left the country for an undisclosed destination on December 10, managing to make it on board their flight out of Colombo just ten minutes before departure, on account of a serious effort to stop them by police and intelligence personnel.

²⁶ See the report in the November 29 edition of the *Sunday Times*, <http://www.sundaytimes.lk/091129/Columns/political.html>.

ABBREVIATIONS AND ACRONYMS

ANCL	Associated Newspapers of Ceylon Ltd
CCD	Colombo Crimes Division
CID	Criminal Investigation Division
EC	European Commission
EPDP	Eelam Peoples' Democratic Party
EU	European Union
FMM	Free Media Movement
GoSL	Government of Sri Lanka
GSP+	(Enhanced) Generalised System of Preferences
IDP	Internally Displaced Person
IGP	Inspector General of Police
ITN	Independent Television Network
JMO	Judicial Medical Officer
JVP	Janata Vimukti Peramuna
LTTE	Liberation Tigers of Tamil Eelam
MCNS	Media Centre for National Security
PCCSL	Press Complaints Commission of Sri Lanka
PTA	Prevention of Terrorism Act
SLPI	Sri Lanka Press Institute
SLR	Sri Lankan Rupees
SLWJA	Sri Lanka Working Journalists' Association
TID	Terrorism Investigation Division
TMVP	Tamil Makkal Viduthalai Puli
UNF	United National Front

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