

PA GOVERNMENT AND MEDIA REFORM: A RECORD OF FAILURE

Given the prominence of media reform in its 1994 election manifesto, the government's performance in this field has been extremely disappointing. First, the then media Minister appointed four committees to report on different aspects of media reform. The recommendations of these committees, however, have not been implemented. Indeed, the government has said that it no longer intends to proceed with one important element of its original policy, which was to 'broadbase' ownership of Associated Newspapers of Ceylon Ltd, the state-owned newspaper group.

Then, in April 1997 the government suddenly and completely unexpectedly tabled a Bill in Parliament to establish a new broadcasting authority. Had this Bill been enacted, far from creating the independent, plural media environment that reformists have lobbied for and government policy statements appeared to support, it would have extended and institutionalized direct political control of the broadcasting media.

The bill was tabled without any public announcement shortly before the long New Year holiday, when most workplaces are closed. Under Sri Lanka's Constitution, the constitutionality of proposed legislation can be challenged in the Supreme Court, but only within one week of the Bill being tabled in Parliament. Given the timing to this Bill, there was every chance that it would pass unnoticed and unchallenged, and become law. In the event, however it was noticed and numerous media organizations and human rights organizations campaigned against it. A total of 15 petitions were filed in the Supreme Court challenging its constitutionality.

In a landmark judgment in May 1994 the Supreme Court ruled that the Bill was unconstitutional and it was withdrawn. Of particular significance in the judgement was the Court's view "that the principle of pluralism, of which the State is the ultimate guarantor... must be safeguarded in order to ensure that freedom of thought and expression may not only survive but thrive and flourish vigorously".

Subsequently, a new Media Minister-Mangala Samaraweera-took office with a renewal of reformist pledges. He soon proposed the repeal of the Parliamentary Powers and Privileges (Amendment) Act of 1978, which had given Parliament itself the power to punish statements or actions that were deemed to interfere with its work, which was done in September 1997. He then established a cross-party Parliamentary Select Committee on the Legislative and Regulatory Framework relating to Media. Although the motion establishing the Select Committee was adopted in August 1997, it took several months for the committee to be set up and to start its work. It has yet to complete its deliberations.

The Select Committee's terms of reference emphasize the values of independence and pluralism in media reform. The Select Committee is mandated to make recommendations on various matters, including:

- * the establishment of a new broadcasting authority "which is efficient, competitive and responsive to consumer needs and to ensure that pluralism is achieved in broadcasting as a whole";
- * the repeal of amendment of the Sri Lanka Press Council Law and other legislation which limits free expression and the independence of the media;
- * the creation of a new Media Council "to promote the freedom and responsibility of both the print and electronic media, the right to information of citizens and the maintenance of high standards of communication ethics";
- * guidelines for government advertising;
- * criteria for ensuring the independence of the Media Council.

While the terms of reference for the Select Committee promise the possibility of positive reforms through the creation of free, independent and pluralistic framework for the media, there is nevertheless concern that the Select Committee process itself may in fact delay the implementation of reform in certain areas. In particular, there is already a considerable body of work on the legislation that limits free expression and the independence of the media, and which is contrary to Sri Lanka's obligations under the International Covenant on Civil and Political Rights (ICCPR). Some of these laws could simply be repealed without any new legislation needing to be drafted covering these matters. Indeed, the Committee on reform of media laws recommended the repeal of Section 479 of the Penal Code, which deals with criminal defamation, and Section 118 of the Penal Code, which is concerned with bringing the Queen or President into contempt. It also recommended the repeal of Section 16 of the Press Council law of 1973, which prohibits newspapers from publishing proceedings of Cabinet meetings and other matters. In addition, it recommended the repeal of *all four* amendments to the Parliament (Powers and Privileges) Act of 1953 as well as the repeal of paragraphs 7 and 8 of the Schedule to the original Act. It recommended these changes in order to remove obstacles to the free and fair reporting of parliamentary proceedings, and to bring the Act in line with the provisions of freedom of expression contained in the ICCPR. The 'Colombo Declaration' includes similar recommendations on the laws which should be repealed. The present government, however, repealed only one of the four amendments to the law on parliamentary privilege and took no further steps. This was despite its October 1994 Media Policy promising that it would rescind the existing Parliamentary Privileges Act and replace it with

a new Act which would not obstruct the free and fair reporting of parliamentary proceedings.

Until the Parliamentary Select Committee reports, the government's media reform programme appears to have been put on hold. The promise of reform remains for as long as the Select Committee sits; but Select Committees can take a long time to conclude their work, and meanwhile the practice of the government in relation to the media becomes ever more censorious, as this report has described.

Media freedom-and freedom of expression more generally-remain matters of vital public interest in Sri Lanka. The vigilance and prompt action of media and human rights organizations was able to prevent a highly retrograde and authoritarian Broadcasting Authority Bill from being sped through Parliament unchallenged. The numerous submissions which individuals and civil society organizations have made to the Parliamentary Select Committee are one indication of the extent of public concern on this issue. The adoption of the 'Colombo Declaration on Media Freedom and Responsibility' in April 1998 is another. It is surely now time for the government to act.

Since the PA government came to power in 1994, ARTICLE 19 has made a series of recommendations for the promotion and protection of freedom of expression. It believes such reform are vital to future peace in Sri Lanka and integral to the development of a genuinely democratic and pluralistic political culture. They are consistent with both the government's stated policy of freedom of expression and with Sri Lanka's international treaty obligations. If implemented, they would certainly help address, and prevent, the continuing human rights violations documented in this report.

In addition to the measures recommended in previous ARTICLE 19 reports for reform of the media environment, there is one further matter which it is imperative for the government to act on:

Censorship under emergency regulations must be lifted

If there was ever any credibility in the government's argument that irresponsible reporting by the media created security risks, and that therefore censorship was necessary, it has surely now been shattered. The greatest debacles suffered by the military have been while such censorship was in force: the loss of Mullaitivu camp in 1996 and the fall of Kilinochchi to the LTTE in late September 1998-both with enormous loss of life-both happened during periods of censorship under emergency regulations. The protection of national security is certainly a legitimate ground for limiting freedom of expression, but such limitations must always be very narrowly drawn to ensure that they cannot be abused and used for other purposes. As practiced in Sri Lanka, censorship appears to have other objectives. It denies the public their right to know what is really happening on the war front, and attempts to turn the media into a propaganda to serve the government's interest. More and more of the state's resources are being channeled into the defence budget, more and more young men are dying or suffering injuries in warfare, and increasing numbers of civilians suffer the ill-effects of long-term and multiple displacement. Yet the public is denied access to information that would help it properly understand and assess the government's military and political strategies for the north and east and their prospects for success, while 'national security' concerns now pervade more and more areas of life. ■

The Civil Rights Movement's Appeal to Wayamba Voters **TO THE VOTERS OF WAYAMBA TODAY AND THE REST OF THE COUNTRY TOMORROW**

**YOU HAVE A WEAPON MORE POWERFUL THAN THE BULLET AND THE BOMB !
USE IT TO PROTECT SOCIETY**

You have a right to support the party of your choice. Others have the right to support the party of their choice. Recognition of this right is basic to the free, democratic and peaceful society which is our hope for the future.

When political parties, or some of their supporters, resort to violence or other election malpractices, they strike a blow at this hope. They will abandon such disgraceful behavior only when they learn that you, the voters, are not prepared to accept it.

At election time you, the peace-loving citizen, whatever your political loyalties, can make a crucial contribution to the protection of democracy.

- * Condemn political violence and other malpractices whoever engages in them.
- * Express your disapproval in whatever way you find appropriate, whether in conversation with persons in your area, in particular with persons who canvass your vote, or in letters to your party leaders at all levels.
- * Do not vote for any candidate who engages in or condones political violence or other election malpractices.

Please spread this message among others !

Increasing reports of election-related violence and other malpractices indicate a serious threat not merely to the fairness of the coming poll, but to the democratic system itself. Faith in the democratic process, so severely shaken in recent years, needs to be nurtured and strengthened. Yet once again instead we find it placed in jeopardy. Deeply dismayed, the Working Committee of the Civil Rights Movement decided to make this appeal to the public.

IN DEFENSE OF CIVIL SOCIETY INITIATIVES FOR DEMOCRACY

We welcome and strongly support the initiative of election monitoring undertaken by the CMEV, PAFFEREL and MFFE during the recently concluded provincial council election of the North-western province.

Organizations of the democratic civil society have a legitimate duty to intervene at occasions like elections when our institutions and practices of democracy are called upon to function effectively so that the people could exercise their fundamental right to vote without hindrance. Elections are also the best forum where the behavior of political actors and parties, leaders, and candidates and can be evaluated by the citizenry.

Monitoring of elections in Sri Lanka and elsewhere has been necessitated by the prevalence of anti-democratic practices resorted to by political actors to ensure electoral victories through means of violence, intimidation and blatant violation of laws pertaining to the conduct of election campaigns and elections. Sri Lanka's electoral experience since the 1980's has been a particularly negative one. Free and fair elections have been ensured only when the society as a whole asserted itself to safeguard the principles and values of open and competitive democracy. In Sri Lanka's recent struggles for democracy, civil society initiatives have played a catalytic role. Election monitoring is a significant sphere of action to which the civil society has a legitimate claim.

We wish to re-iterate the fact that the election process of our country needs to be freed from the anti-democratic forms of behavior which some political actors seem to accept as normal and totally outside the concerns of civil society. Electoral democracy requires the adherence by all to the principles of free and fair elections. Violation of those principles deserves to be exposed irrespective of who the agents are of such violations.

We wish to remind all political actors that in Sri Lanka today political events take place in a context of a vigilant civil society and a freer media that will no longer tolerate the violent and arbitrary acts of political parties in their quest for power.

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Signed by

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