

Pakistan, was very lukewarm and was ultimately the principal influence in persuading Pakistan to withdraw its resolution. Was Iran convinced that the record of India in Kashmir was without blemish? No. Iran could not procure from Russia spare parts and accessories for the military equipment it had bought earlier from the Soviet Union. India promised to keep this war machine going for two years with parts from their stockpile and from domestic manufactures. To the state and government of Iran, this was more important than the human rights of the Kashmiris.

One must recognize these limitations of UN human rights mechanisms. But, nevertheless, one must also accept that the greater concern for human rights shown by our government, as evidenced in various ways referred to earlier in this article, was a direct result of the pressures of UN and other international mechanisms. To that extent we have to be thankful for their existence and for the international covenants to which they owe their existence.

Documents

The following is the text of the oral presentation made by Jan Bauer on behalf of Article 19, the International Centre Against Censorship, at the 50th session of the UN Commission on Human Rights in Geneva in February, 1994. This presentation relates to the item 12 of the Commission's agenda on 'the Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World.'

FREEDOM OF OPINION AND EXPRESSION IN SRI LANKA

Jan Bauer

In July, 1993, ARTICLE 19, the International Centre Against Censorship, sent a four-person fact-finding delegation to Sri Lanka on the issue of freedom of opinion and expression.

ARTICLE 19 both welcomes and acknowledges the reduction in the incidents and degree of violence in Sri Lanka in the last two years. There remain, however, constitutional provisions, laws and practices which continue to infringe severely the fundamental right to freedom of expression, and developments in Sri Lanka in the seven months since our visit are disquieting. In addition the continuing failure of the Sri Lankan government to investigate and bring prosecutions in respect of massive violations in the recent past represents the denial to the Sri Lankan people of their right to know the truth which is a fundamental aspect of the right to freedom of expression and information.

Among our concerns is the promulgation of Emergency Regulations on sedition, which had been withdrawn in June 1993 only to be reintroduced this past December. There are two troubling aspects to these regulations ARTICLE 19 wishes to emphasize.

First, the promulgation of these laws as Emergency Regulations has meant that they were not subject to public or parliamentary debate before coming into force. ARTICLE 19 considers this side-stepping of the democratic process a serious violation of freedom of expression. It also contradicts the statement of the representative of Sri Lanka at the 49th session of the Commission, to the effect that

there is a "democratic form of governance which Sri Lanka has uninterruptedly practiced for over half a century."

Second, the Emergency Regulations restoring laws on sedition violate international and comparative standards, not least because their wording is board and vague. It must also be noted here, as has been pointed out by ARTICLE 19 to President Wijetunge, that courts throughout the Commonwealth have condemned sedition laws that purport to punish speech short of incitement to violence. The Sri Lankan Emergency Regulations do not require incitement to violence. The law also makes it a crime to display posters or distribute leaflets "the contents of which are prejudicial to public security". In addition, the regulations make civil disobedience a crime of sedition with a penalty of up to 20 years' imprisonment.

ARTICLE 19 acknowledges that a change to the regulations, introduced on 5 January 1994, removed an earlier provision making it an offence to "bring or attempt to bring the President or the government into hatred or contempt". This change will have little impact, however, on the manner in which the law is interpreted and charges preferred against journalists and others seeking to exercise their right to freedom of opinion and expression.

A number of the recommendations in our report, which will be published shortly, call for changes in laws which continue to restrict freedom of expression and which contradict article 19 of the International Covenant on Civil and Political Rights. These changes

alone, however, will not resolve the very real problem of informal censorship in Sri Lanka.

The ARTICLE 19 mission to Sri Lanka found ample evidence to support the claim that the hand of government operates in virtually every sphere of society and outside the context of law to abridge the right to freedom of expression. This may be accomplished through exerting economic and financial control, threatening ostracism or actually perpetrating violence against an individual, a publication, a group of publications or a non-governmental organization working in the area of freedom of expression. As a result, it can be said that a systemic and entrenched culture of censorship permeates all the institutions of society.

This pervasive atmosphere of informal censorship raises the question of what kind of challenge can be mounted by Sri Lankan or external human rights groups to combat it. For, by definition, this kind of censorship exists as a grey area of threats and pressures. Informal censorship and the self-censorship it encourages are difficult to document but are relatively easy to dismiss and certainly are not often held against a government by an international community eager to see improvements. Our conclusions following our mission therefore reflect grave concern that in Sri Lanka, as in other countries, criticism from the international community and an insistence that there be a return to the rule of law and good governance, as pre-conditions for further aid agreements, has pushed abuse into this "informal" arena.

It is therefore our view that the reintroduction of Emergency Regulations on sedition, coupled with other policies and informal practices, supports our hypothesis that the improvements in human rights frequently cited by the Sri Lankan government in this forum — and too often accepted by the Commission on Human Rights at face value — were, and remain, tenuous. They are not institutionally based and thus do not provide real protection for freedom of expression in general and the media in particular.

At the 49th session of the Commission on Human Rights, the distinguished representative for the government of Sri Lanka outlined his government's proposed plan of work for 1993 to ensure that the human rights situation in Sri Lanka improved.

ARTICLE 19 offers the following observations on two points in this undertaking.

First, we acknowledge that the government has followed through on its commitment to consider favourably accession to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. We remain concerned, however, that certain laws and practices relating to

the treatment of detainees and prisoners in Sri Lanka will remain at variance with the obligations defined in this international human rights instrument.

Second, we commend the government for its intention to conduct "a comprehensive review and revision of emergency legislation" but

note that such a review appears to have been restricted to measures relating to arrest and detention. As stated above, while the provision relating to bringing the President or the government into hatred or contempt has been repealed the manner in which the law is interpreted and applied, and the reintroduction of articles on sedition, suggest that, at the least, a continuing review and revision of emergency legislation is required.

Based on the findings of our mission in July of last year and information subsequently received, ARTICLE 19 is not confident that the human rights that situation in Sri Lanka will substantially improve without greater involvement by the Commission on Human Rights. We therefore call on the Commission, at this 50th session, to appoint a Special Rapporteur for a term of one year to investigate and report to the Commission, to provide concrete recommendations and to work with the government of Sri Lanka to address the concerns we have outlined above as well as others. Specially, ARTICLE 19 calls on the government to cooperate with the Special Rapporteur to, among other issues:

1) ensure a) that there is a full disclosure to the people of Sri Lanka, through uncensored reports in the media, of the discovery of mass graves at Suriyakanda, and; b) that an inquiry into the circumstances surrounding the deaths of those whose bodies were found in the mass grave be carried out, in accordance with the recommendations of the Working Group on Disappearances, c) that those considered responsible be charged and held accountable for their actions in a court of law, and d) that human rights monitors and journalists be kept fully informed so that the inquiry and its findings may be open to public scrutiny.

2) ensure access for all political parties to the government-controlled broadcast and print media in this pre-election period, and;

3) ensure full cooperation with Mr Abid Hussain, the Special Rapporteur on Freedom of Opinion and Expression, in the investigation of both legal and informal limitations to the right to freedom of expression and the adoption of policies and practices to eliminate obstacles to the enjoyment of this right for all people.

In January 1993 the Sri Lankan government announced (not for the first time) its intention to establish a national human rights commission. We note that no date for the creation of this body, nor its terms of reference or constitution have been made public. ARTICLE 19 wishes to place on record our serious reservations about the establishment of yet another national institution in Sri Lanka which, if it follows the pattern of its predecessors — namely the Human Rights Task Force and the Inquiry into Disappearances — will serve the government's international public relations purposes far more than it will address the grave problem of public accountability for human rights abuses and the need for prosecutions to be brought against those who perpetrate these abuses.

In closing, ARTICLE 19 notes that in the undertaking given by the Sri Lankan government at the 49th UNCHR session, the following statement was included: "The government will continue to pursue its policy of openness and cooperation with regard to further measures for the promotion and protection of human rights. Collaboration with the United Nations, national institutions and interested governments will continue to be an integral part of this policy."

ARTICLE 19 calls on the government of Sri Lanka to practice this same policy of openness and cooperation in its dealings with non-governmental organizations both within Sri Lanka and externally based. ARTICLE 19 also calls on the government of Sri Lanka vigorously to pursue a policy of openness with the people of Sri Lanka themselves by ensuring the effective and full enjoyment of the right to freedom of opinion and expression.

Documents - Human Rights

VIENNA DECLARATION AND PROGRAMME OF ACTION ADOPTED ON JUNE 23, 1993

World Conference (WC) on Human Rights

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the WC affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner.

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms.

Reaffirming their commitment to the purposes and principles contained in the Charter of the UN and the Universal Declaration of Human Rights.

Reaffirming the commitment contained in Article 56 of the UN Charter to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of human rights and fundamental freedoms for all.

Emphasizing the responsibilities of all States, in conformity with the UN Charter, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

Recalling the Preamble to the UN Charter, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and nations large and small.

Recalling also the determination expressed in the Preamble of the UN Charter to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

Emphasizing that the Universal Declaration, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the UN in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Considering the major changes taking place on the international scene and the aspiration of all the people for an international order based on the principles enshrined in the UN Charter, including

promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity.

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world.

Recognizing that the activities of the UN in the field of human rights should be rationalized and enhanced in order to strengthen the UN machinery in this field and to further the objectives of universal respect for observance of international human rights standards.