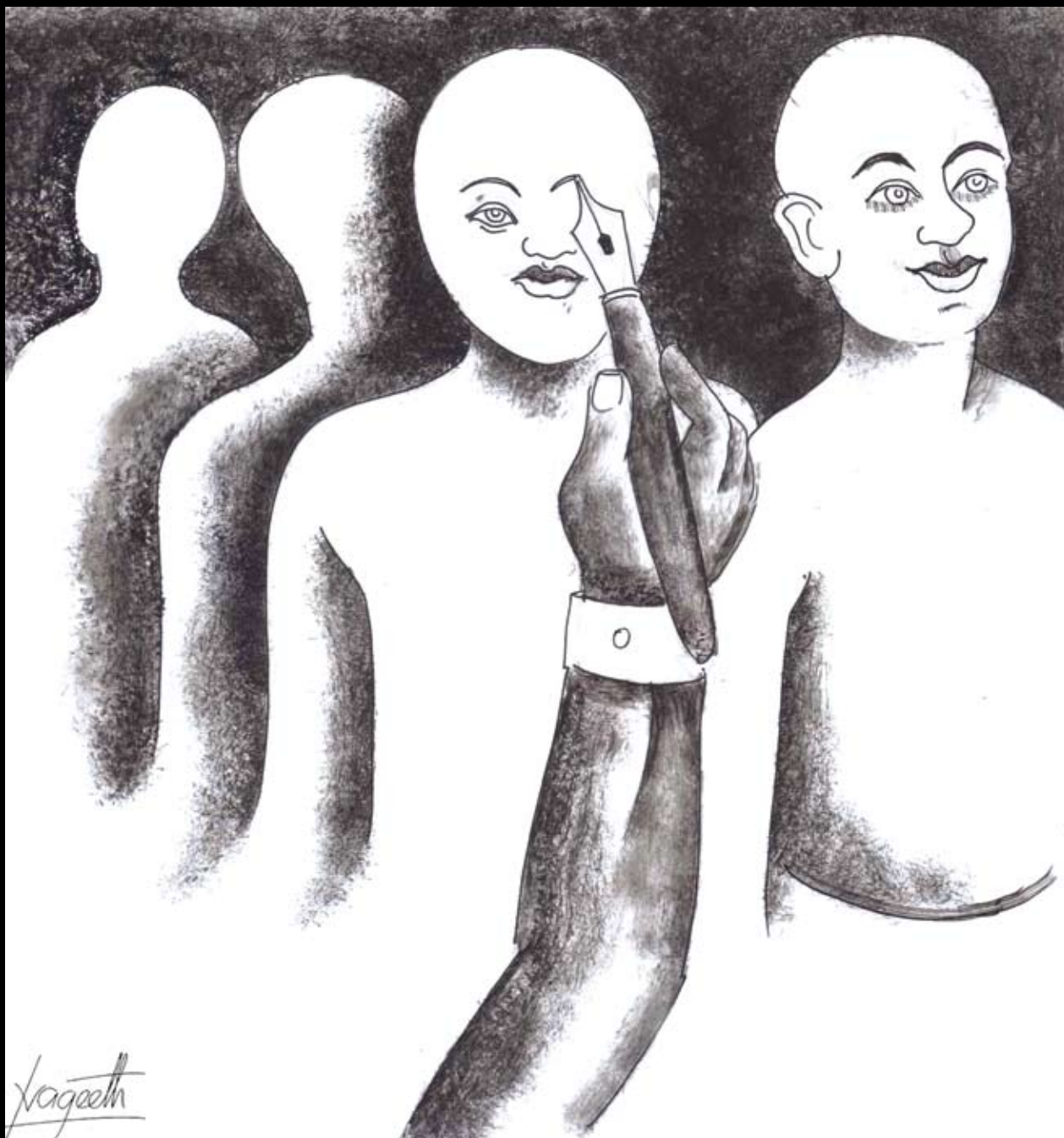


Free Speech in Peril

PRESS FREEDOM IN SOUTH ASIA 2010-11



'Providing eyesight is a sacred duty of the media' – Prageeth Ekmaligoda, missing since January 2010

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See Annex: Incidents of Press Freedom Violations by Country, May 2010 – April 2011 at <http://asiapacific.ifj.org> for a listing of specific cases of violations of press freedom.

May 2011

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FREE SPEECH IN PERIL: PRESS FREEDOM IN SOUTH ASIA 2010-11

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Cover: This illustration by Prageeth Eknaligoda was first exhibited after the artist's disappearance in January 2010 with a caption in Sinhala that read: "Providing eyesight is a sacred duty of the media". The illustration is published here with the permission of the Eknaligoda family.

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SRI LANKA

Fight continues for free media

Media in Sri Lanka is struggling for a conducive environment for independent reporting after a tumultuous two years, which saw the murder of a prominent editor, fire-bombing of an independent television station and numerous brutal attacks on journalists, compelling more than 50 media personnel to flee the country.

Overtly, 2011 has been a period of relative calm and overall the situation has improved from what it was during the final phase of the war and the immediate aftermath of the 2010 presidential election. No murders of journalists were reported last year. And although there has been a decline in the number of recorded attacks on journalists several incidents were reported. The most recent of these include:

- The attack by uniformed police officers on photographers covering an anti-government protest by undergraduate students in December 2010;
- The arson attack on *Lanka-e-News* office in January 2011 which gutted its premises. The month also saw an attack on a group of journalists at the Bandaranaike International Airport (BIA) in Katunayake near Colombo. Dr Wickremabahu Karunaratne, Leader of the New Left Front, was returning to Colombo after a trip overseas and the journalists were covering an attack on him and his party by a group of BIA employees, allegedly enjoying government patronage;

- In February 2011, on the day the country celebrated its sixty-three year anniversary of independence, journalists covering an opposition protest march were attacked; and
- A prominent journalist was abducted and attacked in the Eastern province in March 2011.

In the final years of the war, journalists, local and foreign, were barred from the North, unless they were part of a government entourage or embedded with the army, making it impossible for independent reportage from these areas. Local journalists are now free to travel to parts of the war-devastated North that are open to the public, primarily Jaffna, though large areas still remain out of bounds, movements of the journalists are constantly monitored and foreign journalists are still required to obtain clearance from the Ministry of Defence.

The reporting climate is in no way conducive to assertive journalism. Sunil Jayasekara, convenor of the Free Media Movement (FMM) admits the situation may appear to have improved, but cautions that fewer attacks and the absence of killings do not mean the environment is favourable for journalists to practice their craft without fear of reprisal. A number of International media and human rights groups have echoed Jayasekara's sentiment.

The IPS news agency in a report in January this year quoted a journalist who returned to the country briefly after fleeing in mid-2009, as saying: "I felt safe enough to visit but not to work". The statement, many journalists and media activists agree, illustrates the current uncertain reporting climate. There are still high levels of anxiety and journalists



A Global Day of Action protest in Colombo in August marked 200 days since the disappearance of *Lanka-e-News* columnist and cartoonist Prageeth Eknaligoda on January 24, 2010. (Photo: Sampath Samarakoon)

Mobilising for a disappeared colleague

More than a year after his disappearance on 24 January 2010, cartoonist and columnist Prageeth Eknaligoda remains missing and questions about his whereabouts are unanswered.

Eknaligoda was last seen by the staff of *Lanka-e-News*, the news portal where he worked as a freelancer, as he left the office about 8.30pm. The polls for Sri Lanka's presidential elections were due to open within 36 hours. Eknaligoda was talking on the phone and left his office in a three-wheeler taxi to meet an unknown person.

It was not the first time Eknaligoda had been targeted. On 27 August 2009, he was abducted on his way home, pulled into a white van, robbed and held blind-folded until the early hours of the morning.

Eknaligoda is an insulin-dependent diabetic who underwent open heart-surgery in 2005. Grave concerns are held for his welfare, and the worst is feared.

Known for his outspoken political views, Eknaligoda was involved in left-wing politics since the 1970s, and his opinions often landed him in trouble. In 1996, Eknaligoda resigned from the state-owned Lake House group of newspapers after declining a demand by the then president that he draw a cartoon ridiculing the opposition leader.

Eknaligoda was known to have supported former Army Commander Sarath Fonseka, an opponent of President Mahinda Rajapaksa, during the 2010 presidential elections. His cartoons were also frequently critical of Sri Lanka's administration.

International activist groups are deeply worried for Eknaligoda's safety and the failure of the Sri Lankan authorities to investigate his disappearance thoroughly.

Soon after Eknaligoda was reported missing, police claimed they lacked sufficient resources to investigate during the election period. Yet authorities have maintained their attitude of indifference for more than a year since. Police have not revealed call records from Eknaligoda's phone nor have they managed to trace his mobile phone.

Statements issued by authorities and the Ministry of Information have provided no information on Eknaligoda's whereabouts or on the progress of the investigation itself. Some senior officials, including Defence Minister Gotabhaya Rajapaksa (the brother of the President), allege Eknaligoda staged his own disappearance. No evidence has been offered for this assertion.

Sri Lankan and international press freedom groups conducted several local and international protests and campaigns to demand answers and action. A Global Day of Action was declared 200 days after Eknaligoda disappeared. On 10 August 2010, a coalition of Sri Lankan press freedom groups including the Free Media Movement (FMM), the Sri Lanka Working Journalists' Association (SLWJA) and the Federation of Media Employees' Trade Union (FMETU) staged a *satyagraha*, or silent protest. More than 350 people joined the protest, a healthy turnout considering Sri Lanka's



The wife of former Sri Lankan Army Chief Sarath Fonseka, joins Sandhya Eknaligoda (right), wife of missing journalist Prageeth Eknaligoda, in August to protest against official apathy (Photo: Paba Deshapriya)

stifling environment for public displays of discontent.

On 18 January 2011, the Alliance of Media Organisations staged another protest in Colombo to mark two years since the murder of *Sunday Leader* editor Lasantha Wickrematunge and one year since Eknaligoda's disappearance.

In both cases, authorities have been very slow to investigate. Little or no information has been made public, leaving journalists and press freedom activists to question the integrity of the investigations and the will of state actors to redress the culture of impunity for violence against the media.

Eknaligoda's wife, Sandhya, and two young sons are frustrated with local authorities and have turned to the international community for help. One year after Eknaligoda vanished, Sandhya delivered a letter to the United Nations in Colombo. The letter called on the UN Resident and Humanitarian Coordinator in Sri Lanka, Neil Buhne, and UN Secretary-General Ban Ki-moon to encourage the Government of Sri Lanka to expedite investigations into the disappearance of her husband. Sandhya has also appealed to current and former Sri Lankan ministers and members of parliament, though she is yet to receive a reply.

In August 2010, Eknaligoda's family filed a *habeas corpus* petition with a Colombo court. Six hearings into the case produced no significant findings. Police failed to appear at the sixth hearing. Senior State Counsel Sameendra Wickrama said objections to the petition had been filed and encouraged the petitioners' Counsel Krishmal Warnakulasuriya to file counter-objections.

Thanks to unrelenting diplomatic pressure, Sandhya's letter to the UN and joint international advocacy actions by international press freedom organisations, the petition is set to be considered by a court of appeal in Colombo on 26 May 2011. While it is disappointing that the petition is only now gaining the Sri Lankan courts' full attention, it is nonetheless a necessary step toward solving the mystery of Eknaligoda's disappearance and achieving justice for his family.

continue to look over their shoulders and continue to curtail their comments and reports.

A major factor contributing to this sense of unease is the government's failure to conduct proper investigations into any of the attacks against media persons and institutions, which has helped foster a climate of impunity and indifference. Three incidents that are significant in this context are the murder of *Sunday Leader* editor Lasantha Wickrematunge and the arson attack on MTV/Sirasa in January 2009 and the disappearance of *Lanka-e-News* cartoonist Prageeth Eknaligoda in January 2010 (see box).

Journalists for Democracy in Sri Lanka (JDS) reflected the sentiment of nervousness when they rejected a call by Attorney General Mohan Peiris in March 2010 for exiled journalists to return to Sri Lanka. Peiris offered assurances that the government would provide protection to those who returned to the island. JDS in response urged the AG to take immediate steps to prove he is serious about media freedom and as an initial step asked him to prove his good intentions by disclosing the whereabouts of Prageeth Eknaligoda and to expedite investigations into the many unsolved crimes against media workers during the Mahinda Rajapaksa period of rule. To date, such action has not been forthcoming. Jayasekara believes if there had been a purposeful investigation into at least one of the high profile cases, it would have gone a long way in easing fears among journalists.

Journalists and media activists say that the reporting environment is so insecure that journalists can report only what the government or those closely affiliated with the ruling party wish to make public, and point to examples of drastic reprisals for media that does not toe the line, such as the one inflicted on *Lanka-E-News*.

Influence in many forms

A more insidious threat to media freedom emerging in Sri Lanka is the increasing number of media houses coming under government control through political manoeuvring. Media owners have become government MPs or ministers and editors have become close affiliates of powerful ministers. The owners of mainstream newspapers such as *Island/Divaina* (Upali Group), *Lakbima* (Sumathi Publishing) are either government MPs or have close relatives who are in government. *The Nation* is owned and run by close affiliates of the Rajapaksa family. The Wijaya Group has no direct connections with the government, though the editor of *Lankadeepa* (the group's Sinhala language paper) is the President's nominee to the Sri Lanka Press Council.

One case in point is Asia Broadcasting Corporation Private Limited (ABC Network), which ran five radio channels in Sinhala, Tamil and English that were shut down by the government in October 2007 over a report about alleged activities of the separatist Liberation Tigers of Tamil Eelam (or Tamil Tigers) in the south of the island nation. In April 2008 the network was reissued its licence after a member of the opposition United National Party (INP)

Duminda Silva, brother of network owner Raynor Silva, crossed over to the government side.

Licences for television and radio in the post-1995 period (there were five prior to this with only TNL operating as an independent channel) were given to political allies. Today, with the proliferation of television and radio channels, a large number are government-controlled by proxy. Newspapers and TV channels that attempt to be independent suffer violent attacks, threats - such as the withdrawal of broadcast licences - and intimidation.

"This is a hidden threat many fail to see when they say media freedom situation in Sri Lanka has improved," says Jayasekara. Other media activists point out that the situation has led to policy and content slanted in favour of the government. Media freedom is curtailed on one side by a repressive regime and on the other by a pro-government management, says Jayasekara.

Legitimising media suppression

Another serious concern is government efforts to exert more control over the media through numerous legal mechanisms. This has led many international observers to opine that the process of legitimising media suppression in post-war Sri Lanka is well underway.

In June 2009, shortly after the final victory over the Tamil Tigers, the government announced its intent to revive the draconian Press Council Law (PCL) and in 2010, despite protests from media organisations, appointed a chairman and four members to the board. According to the Press Council Act the composition of the Council consists of seven members, five appointed by government, one working journalist and one working employee to be nominated by the industry and representative media organisations. The seven members must be in place for the Council to be deemed a legal entity. Notwithstanding the fact that the media industry and journalists' organisations have unanimously refused to name their representatives despite repeated requests from the government, the Council is functioning, placing advertisements in newspapers and requesting readers to send in their complaints. It has also sent "right of reply" letters to newspapers.

Media organisations and the industry consider that without the full complement of members, the Press Council is operating illegally and are contemplating legal action. They are however wary of moving ahead because of the risk of the government opening a Pandora's box, a reasonable fear given the extent to which the country's judiciary has become politicised. Although the PCL was replaced by the Press Complaints Commission of Sri Lanka (PCCSL) in 2003, and the Law's punitive provisions have not been operational since 1994, the Law itself was not repealed. The PCL gives the government wide-ranging powers to fine and sentence journalists and publishers reporting on a range of public interest issues, including the internal communications of the government and decisions of the Cabinet, to extended periods of imprisonment.

New authority and law raises concerns

Another development of serious concern is the establishment of the Media Development Authority (MDA), purportedly to “help guide local media institutions to improve media ethic”. Though its title and publicly stated purpose sound innocuous, early draft rules specify the authority will be tasked with: “ensuring clear, consistent and predictable regulatory policies and guidelines to protect core values and safeguard public interests, and to foster a pro-business environment for industry players through policy, process of registration and professional recognition.” The wording is remarkably similar to that of Singapore’s recently revised law establishing its own MDA.

A Broadcasting Authority Law is also in the pipeline, though not written yet. Singapore’s Broadcasting Authority Act allows the government to declare any foreign broadcasting service as “engaging in the domestic politics of Singapore”, therefore requiring prior approval of the Media Minister for domestic transmission. If written with the same intent, Sri Lanka’s law could effectively allow the government to stop transmission of foreign media into the country.

As a forerunner to this, the government has already gazetted regulations for licences to new private television broadcasting stations, internet service providers and telephone networks. This is a scaled-down version of the controversial regulations it sought to introduce in late 2009, which placed restrictions on news telecasts as well as other material disseminated over the internet. At present, private television and radio stations are provided “temporary licences” under the Sri Lanka Rupavahini Act and can operate with it for an unspecified period. Sixteen private television broadcasters function under this provision of the Act.

The legal manoeuvres follow an aborted attempt by the Media Ministry to make it mandatory for journalists in the print media to declare their assets under the terms of the 1988 Declaration of Assets and Liabilities Act. Initiated in the run-up to the April 2010 Parliamentary elections, the move was viewed by the media industry as another legal mechanism being used by the government to control the media, especially since adherence to the Act, which is applicable to proprietors, editors and members of editorial staff under Section 2 of the Newspaper Ordinance, and covers members of parliament, judges and public officers, has largely been a voluntary exercise with no statutory compulsion.

Justice elusive in Wickrematunge murder

Sunday Leader editor Lasantha Wickrematunge was murdered on January 8, 2009 by motorcycle-riding assailants in close proximity to a High Security Zone in the outskirts of Colombo. One year after the killing the Criminal Investigation Department (CID) of the Sri Lankan police reported to court that he died from a head injury inflicted by a sharp weapon. Earlier court was told he had died from gunshot injuries to the

head. The autopsy findings have never been released.

Two years on, investigations into the murder have not progressed beyond the perfunctory level and many believe the arrests made so far do not give the impression that an honest attempt is being made to find who ordered the killing. Wickrematunge’s family does not believe the investigation is being conducted with any real purpose and it may take a long time, and a change of government, to get to the bottom of the crime.

Police says the case is still being investigated. The current official position on this, as attributed to the police spokesman Prishanta Jayakodya by an Associated Press news agency report is that “it is not possible to make immediate conclusions in a planned killing like this”. The police have however said that it will “conduct a systematic investigation and arrest the culprits”. The delay, according to the spokesman is unexceptionable, since “other legal systems around world sometimes take six to eight years to solve murders.”

In a curious twist of events 15 military intelligence officers were detained for a brief period in an attempt to implicate former Army Commander Sarath Fonseka in the murder following his defeat at the 2010 presidential elections. All, barring one, a former member of the Army Intelligence, were released with no explanation being given to court.

To date more than 50 hearings have been held before a magistrate’s court and the police still seem to be clueless. At a hearing held on 9 January 2011, one day after the second anniversary of the murder, police told courts that investigations were being carried out based on information regarding the involvement of a former member of Army Intelligence Unit and a garage owner in the assassination. At a more recent hearing on 10 March 2011, the Terrorist Investigation Department (TID) informed Court, that investigations pertaining to the murder of Wickrematunge are currently being conducted with the use of modern technology.

However, on 13 January 2011, President Mahinda Rajapaksa told the Sri Lankan media that his government had no evidence to continue an investigation into the murder Wickrematunge. Rajapaksa made this comment in response to a question raised by Lasantha’s brother Lal in the presence of about 60 media personnel, including editors, publishers and government ministers, at a customary monthly presidential breakfast.

Attacks on media outlets continue

The studio complex of MTV/MBC Media Network, the broadcaster of popular TV channel Sirasa TV in Depanama, Pannipitiya was attacked by an unidentified armed gang in the early hours of 6 January 2009. The main Control Room (MCR) of the station was completely gutted by fire. The Station was also attacked two days earlier and its main office in Colombo was attacked in March 2010.

Sirasa media network, prior to the 6 January attack was criticised by several government ministers as being pro-Tamil Tigers. Immediately after the attack Gotabhaya Rajapaksa alleged the attack was an inside job and said there were many motives for the MTV-MBC to destroy its own station. Media organisations have accused the government of being complicit in the attack, and the police have continued to maintain that no conclusions had been made on the motives or the culprits. While the station is back in operation today, the devastated control room is sealed. The station's owner, Maharajah TV, is locked in a dispute with its insurance company, and police have asked that the space not be disturbed while they continue their investigation. Sirasa staffers however said there is no evidence of any active police investigation at the scene.

While investigations into the January 2009 attack lie in limbo, 16 suspects involved in the March 2010 attack on its main office were identified in CCTV footage. The 16 were identified as residents of the Kelaniya electoral district, with several being members of the United People's Freedom Alliance (UPFA), led by President Rajapaksa's party, the Sri Lanka Freedom Party (SLFP). Many of those identified it transpired, were attached to the local administration body, the Kelaniya Pradeshiya Sabha. The suspects were arrested, produced before courts before being released on bail.

Police however are accused of trying to hinder court proceedings. Initially they failed to produce the suspects in court, then they produced only 14 of the 16 accused, saying the addresses of the other two were unknown. In the latest hearing on 10 January 2011, police claimed that the information book containing all statements pertaining to the incident had been sealed in connection with another case and as such they were not able to be filed in the suspects' cases. The court has ordered police obtain certified copies of all statements, send them to the Attorney General's Department and submit them to court.

Lanka-e-News under constant attack

The office of the news portal *Lanka-e-News* located in the outskirts of Colombo, was set on fire midnight 31 January, compelling many to dub January as the black month for media freedom in Sri Lanka. Preliminary investigations confirmed that petrol was used to start the fire, which completely consumed the offices of the online publication, including a library of e-news archives and thousands of valuable books. The website has been very critical of both President Mahinda Rajapaksa and his brother Defence Secretary Gotabhaya Rajapaksa. In the week prior to the arson attack it carried detailed reports of Rajapaksa's sudden and secret visit to the United States, which the website reported was for medical purposes. In another report it



The January arson attack on the Malabe offices of *Lanka-e-News* spurred calls for a full investigation among press freedom defenders in Colombo. (Photo: Sampath Samarakoon)

questioned whether Gotabhaya had perjured himself in court while giving evidence in the "White Flag" case involving the killing of Tamil Tiger rebels allegedly gunned down when seeking to surrender in the last phases of the country's civil war in 2009.

There was wide spread condemnation of the arson attack. Media groups staged a protest the next afternoon demanding that the perpetrators be arrested. Shortly afterwards police said they had arrested a suspect said to be a member of a gang that works on contract. A second suspect was arrested 48 hours later.

In a farcical investigation, the police identified the main suspect as 'Boothaya' (ghost), saying he had taken the contract and subsequently directed his accomplice to destroy the *Lanka-e-News* office. They also said the order to attack had come via a telephone call from a person living abroad. The two suspects were released on bail on 18 February, each paying surety of Sri Lankan Rupees (SLR) 300,000 (USD 2,700) and ordered to regularly report to the nearest police station. The case is continuing at the time of writing.

Lawyers appearing for the suspects have said both had been arrested on false charges. Boothaya was handed over to the police by his mother after police told his mother they had a warrant against him, while his associate had been arrested from his home. Both are known to the local police and have a background of substance abuse. Lawyers claim that neither suspect seemed to even know where the *Lanka-e-News* office was located. Both suspects have pleaded not guilty to all charges.

The attack is seen as a culmination of a series of threats directed against the website. Its editor, Sandaruwan Senadeera who fled the country shortly after the disappearance of Prageeth Eknaligoda, has been detained and questioned by the TID on several occasions, the site is routinely blocked. The office was sealed by an unidentified gang shortly after the January 2010 presidential election. The staff were forced out of the previous office in Rajagiriyaya,

and since the attack, have trouble relocating as no landlord is willing to rent space for an organisation that may well face further attacks.

Self censorship in Jaffna

There continues to be an active restriction of space for critical reportage with journalists adopting self-censorship as a means of safeguarding themselves. One of the outcomes of this has been the failure of mainstream media to provide fair and objective reporting on issues that concern the general public. Mainstream media, specifically the Sinhala language media has also failed to provide objective or even adequate reporting on the situation in the North, not only about the poor progress of resettlement of the displaced but also the growing environment of uncertainty and unease following a spate of murders and abductions.

There was little reporting of the murder in Jaffna of an education official in December 2010 who had criticised the government's decision to force Tamil children to sing the national anthem in Sinhalese. Apart from the Daily Mirror and the BBC no other media, print or electronic reported on the desecration of graves in Jaffna, though many reported on the 4 March opening of the new Army Headquarters constructed on the grave site.

Citizen journalism web portal *Groundviews*, publishing an English version based on the Sinhala translation of a report in the Tamil daily *Uthayan* -- published from Jaffna -- said that not a single Sinhala newspaper had published a similar account of the events and claimed that readers of its Facebook page had expressed grave concern and outrage of the action of the army.

In February the Overseas Press Club of America (OPC) in a letter to President Rajapaksa said violence and intimidation was causing established journalists to censor their own coverage and warned that it was a loser's game as critics of perceived or actual unfairness by their leaders were increasingly turning to social media when trusted media voices were being silenced or muted. Would it not be better, they asked, to allow the established media a full voice, regardless of their diversity of views?

The process of self-censorship has also had its impact on the coverage of proceedings of the Lessons Learned and Reconciliation Commission (LLRC), set up since the end of the civil war as a part of the process of national reconciliation and social justice. Incidents where local and foreign journalists were banned from attending LLRC sessions in the Boosa detention camp received wide publicity. What remained unreported in most media however was the disturbing accounts of the end of the war, even though several journalists from English and Sinhalese-language media have been allowed to follow the LLRC's work. It was once again left to Groundviews



On January 31, arsonists attacked the *Lanka-e-News* office, near Colombo. The news portal and its journalists, known for their critical reporting, have long suffered targeted violence. (Photo: Sampath Samarakoon / Creative Commons)

to fill in this void. In January 2011 the citizen journalism website launched two archives covering media reports on and submissions to the LLRC. These are available at the following web address: <http://groundviews.org/2011/01/17/archive-of-lessons-learnt-and-reconciliation-commission-llrc-submissions-and-media-reports/>.

BBC journalists were also prevented from attending several LLRC interview sessions with the Tamil population in September 2010 in Killinochchi, Mullaitivu and elsewhere. The BBC journalists had earlier been able to cover the commission's work in the country's north in August 2010. At this time, the Tamil daily *Thinakural* and the Colombo-based English-language *Sunday Times* published devastating accounts of cases of forced disappearances of Tamils at the end of the civil war.

Media freedom organisations expand

The five leading media organisations – the Free Media Movement (FMM), the Federation of Media Employees' Trade Union (FMETU), the Sri Lanka Tamil Media Alliance (SLTMA), the Sri Lanka Working Journalists Association (SLWJA) and the Sri Lanka Muslim Media Forum (SLMMF) - which renewed and consolidated their activism beginning from the end of the civil war, have, with the Editors' Guild, conducted a series of protests against the re-activation of the Press Council Law. This group of organisations has expanded further and formed the Alliance of Media Organisations in a bid to make the campaign for media rights more effective. New members of the Alliance include the South Asian Free Media Association (SAFMA) and Journalists Against Suppression (JAS). Alliance members are now in the process of discussing a more comprehensive campaign for media freedom and human rights with a wider group of civil society organisations, trade unions and professional bodies.



Visit asiapacific.ifj.org or www.ifj.org for more information.

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