

**Freedom of Expression in Sri Lanka:
How the Sri Lankan Constitution Fuels Self-Censorship and Hinders Reconciliation**

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Table of Contents

I.	INTRODUCTION	1
II.	FREEDOM OF EXPRESSION AND SELF-CENSORSHIP.....	3
A.	Types of self-censorship.....	4
1.	Good self-censorship	4
2.	Bad self-censorship.....	5
B.	Self-censorship in Sri Lanka	6
III.	SRI LANKA’S CONSTITUTION FACILITATES THE VIOLATION OF FREEDOM OF EXPRESSION, THEREBY PROMOTING SELF-CENSORSHIP	11
A.	Express textual limitations on the freedom of expression.....	11
B.	The Constitution handcuffs the judiciary	17
1.	All law predating the 1978 Constitution is automatically valid	18
2.	Parliament may enact unconstitutional laws which the Supreme Court is powerless to strike down.....	21
3.	Procedural obstacles to bringing freedom of expression claims to court	23
C.	The Constitution creates a powerful executive that can act with impunity	25
D.	The Constitution’s Sinhalese bias silences Tamil speech	31
IV.	SELF-CENSORSHIP HINDERS POST-WAR RECONCILIATION AND REFORM	32
V.	CONCLUSION.....	34

I. INTRODUCTION

In May 2009, the Government of Sri Lanka formally declared an end to the 26-year civil war between the Government and the Liberation Tigers of Tamil Eelam (LTTE), which was rooted in the ethnic and political conflict between the Tamil minority and the Sinhalese majority.¹ The current administration, headed by President Mahinda Rajapaksa, proclaims that the country is a free and democratic society that is finally moving forward, putting its long and bloody history behind it.² As part of that progress, the President claims that “Sri Lanka has . . . committed itself to ensure media freedom as part of its democratic values.”³ On its face, Sri Lanka’s legal regime appears to support this statement. Article 14 of Sri Lanka’s Constitution guarantees “the freedom of speech and expression including publication” to “every citizen,”⁴ and as a party to the International Covenant on Civil and Political Rights (ICCPR), Sri Lanka is bound by Article 19, which requires that States respect and protect freedom of expression.⁵

Yet recent interviews⁶ with Sri Lankan journalists, editors, activists, and attorneys reveal a pervasive culture of fear-induced self-censorship among the Sri Lankan media⁷ that prevents the full and open discussion of the Government and the recent war. It is clear, therefore, that

¹ The civil war between the Government and the LTTE began in 1983. The LTTE advocated for an independent Tamil state and occupied the North and East of Sri Lanka.

² See President Mahinda Rajapaksa, Address at the 64th Independence Day Celebrations at Anuradhapura (Feb. 2, 2012), available at http://www.president.gov.lk/speech_New.php?Id=122.

³ *Protest at a Time Govt is Committed to Free Media Is Meaningless*, NEWS.LK, Jan. 25, 2012,

<http://www.news.lk/news/sri-lanka/1317-protest-at-a-time-govt-is-committed-to-free-media-is-meaningless>.

⁴ SRI LANKA CONST. art. 14(1)(a).

⁵ International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁶ The author spoke with over twenty-five Sri Lankans, including journalists, editors, activists, attorneys, and government officials, between January 2 and January 16, 2012 as part of the University of Virginia School of Law’s Human Rights Study Project. The views expressed in this paper are those of the author alone and do not reflect the views or opinions of the University of Virginia School of Law or any other part of the University of Virginia.

⁷ Although self-censorship is a problem throughout Sri Lankan society, this Paper focuses on the media and primarily on newspapers. Most news in Sri Lanka is reported in newspapers, whereas radio and television stations focus on entertainment. Interview with A.P. Mathan, Editor, *TamilMirror*, in Colombo, Sri Lanka (Jan. 10, 2012); interview with Jatila Wellaboda & Ramal Siriwardena, Editors, *Lakbima Newspapers*, in Colombo, Sri Lanka (Jan. 11, 2012). Although much news regarding Sri Lanka is now distributed on the internet, it is estimated that only 10 percent of the Sri Lankan population has regular internet access. See interview with Nalaka Gunawardene in Colombo, Sri Lanka (Jan. 11, 2012); Internet World Stats, <http://internetworldstats.com/asia.htm#lk> (estimating that 11.8 percent of population used the internet as of December 31, 2011).

despite its express guarantee of freedom of expression, Sri Lanka's Constitution is failing to protect that right in practice. More problematic, however, is that the Constitution itself is facilitating the violation of freedom of expression, thereby encouraging self-censorship and undermining the post-war reconciliation process.

To understand how the Constitution fuels self-censorship, it is important to grasp the relationship between self-censorship and the violation of the right to freedom of expression. Thus, this Paper begins by distinguishing between acceptable and appropriate forms of self-censorship and fear-induced self-censorship. It explains how fear-driven self-censorship is caused by the violation of freedom of expression and describes the particular types of ICCPR Article 19 human rights violations that intimidate Sri Lankan journalists and editors⁸ into silence.

The Paper then suggests that the Constitution facilitates those violations in four ways. First, the Constitution, as interpreted by the Supreme Court, directly undermines freedom of expression by permitting vague and overbroad restrictions on freedom of speech on the grounds of national security. Second, the Constitution handcuffs the judiciary by preventing it from hearing cases alleging violations of freedom of expression and from striking down laws that violate freedom of expression. Third, by establishing a powerful executive, the Constitution makes it easier for the Government to violate the right and more difficult for it to be held accountable. And fourth, by promoting Sinhalese supremacy, the Constitution tacitly approves the Government's pro-Sinhalese stance, which encourages the self-censorship of Tamil and minority views. The Paper concludes by discussing how self-censorship hinders reconciliation and political and legal reform, thereby preventing the country from moving forward.

⁸ This paper uses the terms "journalists" and "editors" to refer to all those involved in the reporting, writing, and publishing of news.

II. FREEDOM OF EXPRESSION AND SELF-CENSORSHIP

The right to freedom of expression is recognized by Article 19 of the ICCPR as a fundamental human right. Indeed, the UN Human Rights Committee has recognized that freedom of expression “constitute[s] the foundation stone for every free and democratic society” and is “essential for the promotion and protection of human rights.”⁹ Although scholars have put forth many justifications for freedom of expression, one of the most important is its relationship to democracy. The democratic process is premised on the free exchange of information and public discussion: citizens cannot evaluate political leadership and hold the government accountable for excesses without the ability to learn about and freely discuss matters of public concern.¹⁰ Freedom of the press is implicit in the right to freedom of expression because the media “performs a vital service in a democracy by providing a political arena for debate and the exchange of information and ideas.”¹¹

All governments at times restrict freedom of expression by prohibiting the publication, distribution, and discussion of certain types of information. Indeed, both international law and the domestic law of many nations have upheld restrictions on the rights of speech and expression when necessary to protect national security, public order, public health or morals, or the reputations of others.¹² But vastly more information is suppressed indirectly by self-censorship—

⁹ UN Human Rights Comm., General Comment No. 34: Article 19: Freedoms of opinion and expression ¶¶ 2-3, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter UN HRC General Comment 34].

¹⁰ See Andrew T. Kenyon, *What Conversation? Free Speech and Defamation Law*, 73 MODERN L. REV. 703-05 (2010) (discussing various perspectives on the democratic rationale for free speech).

¹¹ Report of the Special Rapporteur, Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶ 130, UN Doc. E/CN.4/1995/32 (Dec. 14, 1994) (by Mr. Abid Hussain).

¹² See, e.g., ICCPR, *supra* note 5, art. 19; Convention for the Protection of Human Rights and Fundamental Freedoms art. 10, Nov. 4, 1950, 213 U.N.T.S. 221; American Convention on Human Rights art. 13, Nov. 22, 1969, 1144 U.N.T.S. 123; INDIA CONST. art. 19(2) (permitting “reasonable restrictions” on freedom of speech); *New York Times Co. v. United States*, 403 U.S. 713 (1971) (suggesting that prior restraints on publication may be permissible to protect national security).

that is, by people choosing not to speak or publish at all.¹³

A. Types of self-censorship

1. Good self-censorship

Not all self-censorship is “bad,”—that is, indicative of human rights violations.¹⁴ Much of it is inevitable, if not desirable, in a free society. “Good” self-censorship reflects the voluntary exercise of a person’s right to remain silent, which is intrinsic to the right of free speech. There are many acceptable and appropriate reasons people choose to remain silent. For example, media institutions often refrain from speaking or publishing based on their own moral and ethical values. Many refuse to publish the names of rape victims in order to protect the victim’s privacy.¹⁵ Others redact information that they deem a threat to national security.¹⁶ Journalists and editors also frequently self-censor information that could harm or upset their institution’s owners, advertisers, readers, or other patrons.¹⁷

Journalists and editors also self-censor in order to comply with valid domestic law.¹⁸ The ICCPR permits restrictions on speech and expression only in narrowly defined circumstances: restrictions must be “provided by law” and “necessary” to protect the “rights and reputations of

¹³ See Paul Sturges, Address at the LIBCOM Conference, *Self-Censorship: Why We Do the Censors’ Work for Them* 1 (Nov. 2008), <http://www.ifla.org/files/faife/publications/sturges/self-censorship.pdf>.

¹⁴ This Paper borrows the distinction between “good” and “bad” self-censorship from Robert A. Sedler’s article *Self-Censorship and the First Amendment*. See Robert A. Sedler, *Self-Censorship and the First Amendment*, 25 NOTRE DAME J.L. ETHICS & PUB. POL’Y 13 (2011). The terms are not meant to carry a moral valence, but rather to serve as a convenient shorthand for the distinction between free and voluntary self-censorship and fear-induced self-censorship.

¹⁵ Sedler, *supra* note 14, at 25-26.

¹⁶ *Id.* at 34. For example, when the *New York Times* published U.S. embassy cables provided to it by WikiLeaks, it voluntarily excluded “information that would endanger confidential informants or compromise national security.” *A Note to Readers: The Decision to Publish Diplomatic Documents*, N.Y. TIMES, Nov. 28, 2010, at A10.

¹⁷ A survey of U.S. journalists by the Pew Research Center in 2000 revealed that 29 percent of journalists “sometimes” avoid publishing stories that could damage their news organization or its parent company. PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, JOURNALISTS AVOIDING THE NEWS: SELF-CENSORSHIP: HOW OFTEN AND WHY 1 (Apr. 30, 2000). Twenty-three percent said that they sometimes avoid stories that could harm advertisers. *Id.*

¹⁸ See Sturges, *supra* note 13, at 3-4.

others” or to protect national security, public order, or public health or morals.¹⁹ When domestic laws that prohibit speech fall within one of these permissible categories, they are valid and any self-censorship done to comply with them is an acceptable consequence. For example, most countries have defamation laws that prohibit speech injuring the reputation of another person.

2. Bad self-censorship

“Bad” self-censorship occurs when a person remains silent out of fear of illegitimate sanction or reprisal, either by the government or by a private party that the government is unwilling to apprehend and prosecute. This form of self-censorship is closer to traditional censorship: a person still has a choice whether to speak, write, or publish, but that choice “has been seriously distorted by the intentional act of another.”²⁰ While bad self-censorship is not itself a human rights violation, it is the result of threats, intimidation, and attacks that are. Pursuant to Article 19 of the ICCPR, every State has an obligation to respect freedom of expression, including an obligation to protect citizens from actions by private parties that impair that freedom.²¹ When a State enacts laws or participates in or funds actions intended to threaten or intimidate citizens into silence, it violates Article 19.²² Likewise, a State violates Article 19 by failing to adequately investigate and prosecute private parties that attack, threaten, or intimidate those who might speak out.²³ Thus, bad self-censorship is evidence that the State is violating the right to freedom of expression either by directly intimidating and threatening journalists itself, or by indirectly enabling such intimidation and threats.

While most of the consequences of State violations of human rights are visible, self-censorship is particularly invidious because it is invisible and its effects are unquantifiable. By

¹⁹ ICCPR, *supra* note 5, art. 19(3).

²⁰ John Horton, *Self-Censorship*, 17 RES PUBLICA 91, 98 (2011).

²¹ UN HRC General Comment 34, *supra* note 9, ¶ 7.

²² *Id.* ¶ 23.

²³ *Id.*

arbitrarily arresting and detaining one journalist for criticizing the government, the State may silence ten others. The journalist who is detained has a clear claim against the government under ICCPR Article 19 for a violation of his right to freedom of expression and under ICCPR Article 9 for arbitrary arrest and detention. But although the government has also violated the freedom of expression of the ten other journalists who are intimidated into silence, because that intimidation is indirect, it is much harder to prove. After all, those ten suffered no physical injury and probably have no evidence that the government intended to threaten them by arresting their colleague. Thus, they are likely to take the threat to heart and remain silent, which means both that the violation of their freedom of expression goes undetected and that the role of the media as watchdog is undermined.²⁴

B. Self-censorship in Sri Lanka

Both good and bad self-censorship are prevalent in Sri Lanka, and at times distinguishing between them can be difficult.²⁵ During the 26-year war, nearly all Sri Lankans took sides. Some favored the LTTE, while others sided with the Government. Some sought a peaceful solution to the conflict, while others advocated for ending the war using force. Remaining neutral was not easy because people on both sides suspected moderates of supporting their opponents.²⁶ The reasons people chose one side over another were not always ideological: people feared upsetting

²⁴ See Office of the Special Rapporteur for Freedom of Expression, Inter-Am. Comm'n Hum. Rts., Background and Interpretation of the Declaration Principles, ¶ 39, <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=132&IID=1> (noting that the intimidation of journalists is carried out with “two concrete aims:” first, to prevent journalists from investigating abuses, irregularities, and illegal acts and to ensure such investigations “never receive the public debate they deserve;” and second, to “send[] an unmistakable message to all members of civil society engaged in” such investigations in order to “silence the press in its watchdog role” and “keep society from being informed about such occurrences, at any cost”).

²⁵ One clear example of good self-censorship in Sri Lanka is self-regulation of the media. Sri Lanka’s media institutions have developed a Code of Professional Practice to “ensure that the print medium in Sri Lanka is free and responsible and sensitive to the needs and expectations of its readers.” Code of Professional Practice (Code of Ethics) of the Editors Guild of Sri Lanka, preamble (2008). This code instructs newspapers, among other things, to refrain from publishing the names of victims of sex crimes and of juvenile suspects in criminal cases unless it is both legal and in the public interest. *Id.* at ¶ 6.2.

²⁶ Interview with Gunawardene, *supra* note 7.

those in power, whether it be the LTTE in the North or the Government in the South. After decades of conflict, that war mentality is hard to shake and Sri Lankans continue to self-censor in support of those old positions.²⁷ Determining whether an individual's continued self-censorship in the wake of the war is driven by true belief in the fallacy of alternative viewpoints, ingrained habit, or genuine fear of reprisal can be difficult.

Despite these challenges, it is clear that bad self-censorship is rampant in post-war Sri Lanka. Both the topics that journalists self-censor and the attacks on journalists indicate that they are self-censoring out of fear of human rights violations committed by or with the acquiescence of the Government. The media refuses to publish stories critical of President Rajapaksa, his brothers (who currently serve as Defence Secretary, Minister of Economic Development, and Speaker of Parliament), his sons, the Ministry of Defence, and the military.²⁸ Self-censorship regarding these topics is so pervasive that at times it prevents the publication of information that most people are already aware of. For example, one interviewee described an incident involving the “Night Races”—Formula One auto racing on the streets of Colombo—that took place in December 2011 with the support of the President's sons. One of the cars crashed into the stands, killing two people and injuring many others. Despite the fact that news of the accident spread quickly by word of mouth, not a single newspaper or television station reported the accident because it cast a shadow over an event sponsored by the President's sons.²⁹

The media also avoids discussing the war and its residual effects, particularly anything critical of the Government's approach to the war and its aftermath. The Government has made it clear that it is focused on the future—“development” is the current watchword—and is not

²⁷ *Id.*

²⁸ Interview with Sanjana Hattotuwa, Editor, *Groundviews*, in Colombo, Sri Lanka (Jan. 3, 2012); see also Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka ¶ 413 (Mar. 31, 2011) (finding that “there is very limited tolerance of views critical of the Government or sympathetic to Tamil grievances”).

²⁹ Interview with a human rights activist who prefers to remain anonymous in Colombo, Sri Lanka (Jan. 10, 2012).

interested in discussing the past.³⁰ Media coverage reflects this preference, leaving many issues in the North, such as the taking of private property for government use and the rehabilitation and resettlement of internally displaced peoples (IDPs) and ex-detainees, unknown and undiscussed in the South.³¹

The litany of recent attacks on journalists critical of the Rajapaksa administration justifies their fear that speaking out against the Government will result in a reprisal. Perhaps the most prominent examples are the 2009 assassination of Lasantha Wickrematunge, the editor of the *Sunday Leader*, and the 2010 disappearance of Prageeth Ekneligoda, a journalist and cartoonist for *LankaeNews*. Wickrematunge, who openly opposed the war and advocated for dialogue with the LTTE rather than a military solution to the war, predicted his own assassination by the Government in an editorial published posthumously.³² Ekneligoda supported General Sarath Fonseka, who ran against Rajapaksa in the 2010 presidential elections, and drew cartoons critical of the Government.³³ The current editor of the *Sunday Leader*, Frederica Jansz, has received death threats for providing evidence in the trial of General Fonseka that implicates Defence Secretary Gotabhaya Rajapaksa in the murder of LTTE surrenderees.³⁴ Many suspect that the Government itself is behind these attacks, a belief supported by the fact that the investigations into these attacks have largely floundered, resulting in neither prosecution of the perpetrator(s)

³⁰ Interview with Suresh Sallay, Coordinator for Foreign Intelligence, Sri Lanka Ministry of Defence, in Colombo, Sri Lanka (Jan. 16, 2012).

³¹ Interview with Hattotuwa, *supra* note 28; *see also* interview with Sandya Ekneligoda, activist and wife of Prageeth Ekneligoda, a disappeared journalist, in Colombo, Sri Lanka (Jan. 12, 2012).

³² *See* Lasantha Wickrematunge, Editorial, *And Then They Came For Me*, SUNDAY LEADER, Jan. 11, 2009, <http://www.thesundayleader.lk/20090111/editorial-.htm>.

³³ INT'L FED'N OF JOURNALISTS, FREE SPEECH IN PERIL: PRESS FREEDOM IN SOUTH ASIA 2010-11, at 40 (2011).

³⁴ *Death Threats Against Newspaper Editor*, SUNDAY LEADER, Nov. 6, 2011, <http://www.thesundayleader.lk/2011/11/06/death-threats-against-newspaper-editor/>.

nor any form of redress for the victims.³⁵

While perpetrators of attacks on journalists have not been identified, let alone prosecuted, journalists themselves have been arrested, detained, and prosecuted for their writing. N.

Vithyatharan, former editor of two Tamil newspapers, *Uthayan* and *Sudar Oli*, which were critical of the Government's military offensive against the LTTE, was arrested in February 2009 by the police and detained for two months without charge.³⁶ A Tamil journalist, J.S.

Tissainayagam, was arrested in March 2008 and detained for five months before being charged with violating the Prevention of Terrorism Act on the basis of two articles he had written accusing the Government of targeting Tamils during the war.³⁷ He was tried and sentenced to twenty years of hard labor, before being pardoned by President Rajapaksa in 2010 in response to international pressure.³⁸

The Government has also used economic threats to silence media criticism and dissent. Because the Government controls a significant proportion of Sri Lanka's economy, it sanctions newspapers by withdrawing advertising.³⁹ Although all newspapers take the interests of advertisers into account when deciding what to publish, their advertising base is normally spread across a variety of different companies with diverse interests so that even if one company withdraws advertising, the newspaper is unlikely to face significant financial difficulties. When

³⁵ J.C. Wellamuna, Lawyers for Democracy and Transparency International, Remarks at the Protest on the Anniversary of Lasantha's Death, hosted by Platform for Freedom, in Colombo, Sri Lanka (Jan. 12, 2012); Interview with Dilrukshi Handunnetti, Transparency Int'l, in Colombo, Sri Lanka (Jan. 6, 2012).

³⁶ Interview with N. Vithyatharan, in Colombo, Sri Lanka (Jan. 12, 2012); see also *Alert: Newspaper Editor Nadesapillai Vithyatharan Severely Beaten in Prison*, INT'L FREEDOM OF EXPRESSION EXCHANGE, Mar. 2, 2009, http://www.ifex.org/sri_lanka/2009/03/02/newspaper_editor_nadesapillai_vithyatharan/.

³⁷ See INT'L PRESS FREEDOM & FREEDOM OF EXPRESSION MISSION TO SRI LANKA, MEDIA UNDER FIRE: PRESS FREEDOM LOCKDOWN IN SRI LANKA 17-19 (2008).

³⁸ See *Sri Lankan Tamil Journalist Tissainayagam Gets Presidential Pardon*, DAILY NEWS & ANALYSIS, May 3, 2010, http://www.dnaindia.com/world/report_sri-lankan-tamil-journalist-tissainayagam-gets-presidential-pardon_1378434.

³⁹ Interview with Hattotuwa, *supra* note 28 (estimating that the Rajapaksa brothers together control 75 percent of Sri Lanka's GDP); Interview with members of the Sri Lanka Press Institute in Colombo, Sri Lanka (Jan. 5, 2012); Interview with Jehan Perera & Joe William, Nat'l Peace Council, in Colombo, Sri Lanka (Jan. 5, 2012).

the Government controls the bulk of advertising, a newspaper must choose between publishing an anti-government story and losing much of its funding.⁴⁰ Likewise, because all newsprint in Sri Lanka is imported, the Government can control access to it by imposing high import duties.⁴¹ Unsurprisingly, most Sri Lankan newspapers respond to these threats by self-censoring in order to remain in business.

Finally, Sri Lankan journalists and editors, like those everywhere, self-censor stories critical of their newspaper's owners and publishers to protect their own livelihoods. But because the Government both directly and indirectly controls so many of Sri Lanka's media outlets, such self-censorship results in a dearth of newspapers willing to criticize the Government. The Government-owned publisher Associated Newspapers of Ceylon Limited (also known as Lake House) publishes two English newspapers, nine Sinhala newspapers and magazines, and two Tamil newspapers.⁴² Many non-Government owned newspapers have strong Government connections: Thilanga Sumathipala, a Member of Parliament who was appointed by President Rajapaksa as a community organizer for the Sri Lankan Freedom Party, owns two major newspapers, and Nimal Welgama, who was appointed Chairman of Sri Lanka Telecom by President Rajapaksa and is brother to the Minister of Transport, is the CEO of the Upali Group of Companies which publishes four major newspapers.⁴³ The UN Human Rights Council has

⁴⁰ See UN HRC General Comment 34, *supra* note 9, ¶ 41 (“Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression.”).

⁴¹ Interview with Sri Lanka Press Institute, *supra* note 39; Colombo Declaration on Media Freedom and Social Responsibility ¶ 8 (2008).

⁴² The Lake House published English newspapers are *Daily News* and the *Sunday Observer*; the Sinhala newspapers and magazines are *Dinamina*, *Silumina*, *Budusarana*, *Mihira*, *Tharunee*, *Navayugaya*, *Sarasaviya*, *Subasetha*, and *Kreedaa*; and the Tamil newspapers are *Thinakaran* and *Thinakaran Vaaramanjari*.

⁴³ See *Sri Lanka's “Free” Media*, SUNDAY LEADER, Oct. 31, 2010, <http://www.thesundayleader.lk/2010/10/31/sri-lanka%E2%80%99s-%E2%80%9Cfree%E2%80%9D-media/>. Sumathipala owns *Lakbima* and *LakbimaNews*, and the Upali Group publishes the *Daily Island*, the *Sunday Island*, *Irida Divaina*, and *Divaina*. *Id.* The Government also owns the Sri Lanka Broadcasting Corporation which operates six radio stations and two television networks. All private radio and television stations as well as internet service providers (ISPs) must be licensed by the Telecommunications Regulatory Commission of Sri Lanka.

recognized that “the State should not have monopoly control over the media” for precisely this reason—undue control by the State of the media interferes with the free expression of a diversity of views necessary in a democratic society.⁴⁴

III. SRI LANKA’S CONSTITUTION FACILITATES THE VIOLATION OF FREEDOM OF EXPRESSION, THEREBY PROMOTING SELF-CENSORSHIP

How can the prevalence of self-censorship driven by fear of human rights abuse be reconciled with Sri Lanka’s Constitution, which expressly guarantees freedom of expression? The Sri Lankan Constitution demonstrates that the provision of a right is insufficient to guarantee its protection. Although Article 14 expressly and unequivocally protects free expression, other provisions of the Constitution weaken the right and undermine its protection. While some of these provisions place express limits on freedom of expression, others restrict it indirectly by establishing a powerful executive and a weak judiciary that make it easy for the Government to violate the right and difficult for it to be held accountable. Combined, these factors allow the Government to violate freedom of expression with impunity, creating the atmosphere of fear that fuels self-censorship in Sri Lanka.

A. Express textual limitations on the freedom of expression

As noted above, the ICCPR permits, and nearly all nations impose, certain limited restrictions on the freedom of expression. Sri Lanka’s Constitution mirrors the language of the ICCPR when it permits restrictions “prescribed by law in the interests of the national security, public order, and the protection of public health or morality.”⁴⁵ It also goes on to allow restrictions “for the purpose of securing due recognition and respect for the rights and freedoms of others” and for “meeting the just requirements of the general welfare of a democratic

⁴⁴ UN HRC General Comment 34, *supra* note 9, ¶ 40.

⁴⁵ SRI LANKA CONST. art. 15(7).

society.”⁴⁶ Although these provisions offer a number of justifications for restrictions on speech, given the recent and lengthy conflict, it is no surprise that the one most often invoked by the Government and interpreted by the courts is national security. By interpreting the national security justification for restrictions on free speech in the Sri Lankan Constitution more broadly than permissible under international law, the Supreme Court has upheld vague, overbroad laws that criminalize legitimate speech in violation of Article 19. By sanctioning prosecutions under these laws, the Court encourages self-censorship.

The UN Human Rights Committee has stated that restrictions on the right to freedom of expression must be both necessary and proportionate.⁴⁷ The “necessary” prong of the test does not refer to what the government thinks is necessary, but rather to what is necessary in a democratic society which respects human rights.⁴⁸ The European Court of Human Rights has said that a democratic society is founded on freedom of expression and “characterized by ‘pluralism, tolerance, and broadmindedness.’”⁴⁹ A restriction must also be proportionate—that is, the least intrusive means required to protect a legitimate, demonstrated, and particularized national security interest.⁵⁰ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information reaffirm those requirements and note that the burden of demonstrating the validity of a restriction lies with the government, not the petitioner.⁵¹

Although Article 4 of the ICCPR permits derogation from its obligations to protect freedom of

⁴⁶ *Id.* In a separate provision, the Constitution also allows restrictions “in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation, or incitement to an offence.” *Id.* art. 15(2).

⁴⁷ UN HRC General Comment 34, *supra* note 9, ¶¶ 33-35.

⁴⁸ See Sandra Coliver, *Commentary on the Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, in *SECRECY AND LIBERTY: NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION* 26-27 (Sandra Coliver et al. eds., 1999).

⁴⁹ *Id.* at 27 (quoting *Castells v. Spain*, 236 Eur. Ct. H.R. (ser. A) at 23 § 46 (1992)).

⁵⁰ UN HRC General Comment 34, *supra* note 9, ¶¶ 34-35.

⁵¹ Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Principles 1-2 (1996) [hereinafter *Johannesburg Principles*].

expression during public emergencies, derogations “must be of an exceptional and temporary nature”⁵² and “required by the exigencies of the situation.”⁵³ Thus, even during periods in which Sri Lanka’s nearly 30-year state of emergency was valid under international law,⁵⁴ the Government could derogate from its obligations to protect freedom of expression only temporarily and when absolutely necessary in light of the circumstances.

In certain cases decided during the war, the Sri Lankan Supreme Court was receptive to freedom of expression claims, finding that the Government had failed to adequately justify regulations, or the application thereof, that infringed on the freedom on national security grounds. For example, in *Perera v. Attorney General*, the police arrested members of the Revolutionary Communist League who were handing out leaflets accusing the Government of trampling student and teacher rights.⁵⁵ The Court held that an emergency regulation that forbade the distribution or posting of posters, handbills, and leaflets in a public place without permission of the Inspector General of Police violated Article 14 of the Sri Lankan Constitution because it contained no nexus to national security and no guiding principle to control police discretion.⁵⁶ Likewise, in *Peris v. Attorney General*, the Court held that the arrest of university students attending a meeting of the Ratawesi Paramuna movement—a group that criticized the JVP political party then in power—violated their freedom of expression.⁵⁷ The students were charged

⁵² UN HRC General Comment 34, *supra* note 9, ¶ 2.

⁵³ *Id.* ¶ 4.

⁵⁴ An officially proclaimed state of emergency is only valid under international law for purposes of derogating rights when the situation amounts to “a public emergency which threatens the life of the nation.” UN Human Rights Comm., General Comment No. 29, ¶ 2, UN Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001). Armed conflict such as that experienced by Sri Lanka throughout the 30-year state of emergency is not enough on its own to justify derogation of rights unless it “threatens the life of the nation.” *Id.* ¶ 3. Although Sri Lanka experienced many moments of violence and upset during the state of emergency, it is unlikely that the country was constantly on the edge of overthrow throughout the entire 30-year period. This Paper lacks the space to examine precisely when the state of emergency was valid under international law, thereby potentially justifying derogation from the right to freedom of expression.

⁵⁵ *Perera v. Attorney General*, 1 S.L.R. 199, 206-09 (1992).

⁵⁶ *Id.* at 230.

⁵⁷ *Peris v. Attorney General*, 1 S.L.R. 1 (1994).

with violating Emergency Regulation 23, which prohibited conspiring or attempting to overthrow the government. The Court found that while the regulation was valid on its face, its application to petitioners was invalid because the students, who were peaceably criticizing the government and mobilizing support for their cause, presented no threat to national security.⁵⁸

In contrast, in cases involving regulations banning the publication of particular content by the media, the Court has been substantially more deferential to the Government's national security interests. In these cases, the Court has taken the Government's asserted justification for the regulations—that they were necessary to protect military and police operations in wartime—at face value and probed little into whether the regulations were necessary to achieve, and proportionate to, that interest. *Wickramasinghe v. Jayasinghe*⁵⁹ and *Abeysekera v. Rubasinghe*⁶⁰ both concerned facial challenges to emergency regulations that forbade the publication by newspapers of materials relating to military operations, deployments, and procurements. The regulations also prohibited publication of statements pertaining to the official conduct, morale, or performance of members of the military. Despite noting that the Government bears the burden of justifying restrictions on free expression, the Court upheld the regulations in both cases. Notably, the Court did not determine that the regulations were permissible derogations of freedom of expression in light of a specific public emergency. Rather, in both cases, the Court deferred to the Government's stated national security justification for the restrictions, citing the “time of national crisis and . . . the context of an ongoing civil war.”⁶¹

In *Wickramasinghe*, the Court supported its holding by noting that the regulation applied

⁵⁸ *Id.* at 142.

⁵⁹ *Wickramasinghe v. Jayasinghe*, 1 S.L.R. 300 (1995).

⁶⁰ *Abeysekera v. Rubasinghe*, 1 S.L.R. 314 (2000).

⁶¹ *Wickramasinghe*, 1 S.L.R. at 308.

only to “matters which could be classified as ‘sensitive information,’”⁶² but failed to explain why information concerning the conduct and performance of a member of the military would always be “sensitive.” Likewise in *Abeysekera*, the Court accepted at face value the Government’s interest in preventing the “demoralization” of its troops as a valid national security interest and never questioned whether prohibiting *all* statements relating to the performance of members of the armed forces was necessary to achieve that interest.⁶³

In a third case, *Visuvalingam v. Liyanage*, the Court upheld an emergency regulation barring publication of the *Saturday Review*, an English newspaper published in Jaffna. Although the Court agreed that the newspaper’s publishers “have tried to be as objective as possible,” it held that in light of the ongoing conflict and state of emergency, the decision to prohibit publication was “reasonable.”⁶⁴ The Court never inquired into whether the total prohibition on publication was *necessary* to protect national security.⁶⁵ Notably, in none of these cases did the Court question whether the Government’s true interest was in preventing the publication of stories critical of or embarrassing to the Government, neither of which is a valid national security interest.⁶⁶

While *Perera* and *Peris* indicate that the Court knows how to hold the Government accountable for vague and overbroad regulations, *Wickramasinghe*, *Abeysekera*, and *Visuvalingam* demonstrate how its analysis changes in cases involving the media. Despite its recognition of the importance of the media in a democratic society,⁶⁷ the Court is much more deferential to and much less probing of the Government’s purported national security interest in

⁶² *Id.*

⁶³ *Abeysekera*, 1 S.L.R. at 380-81.

⁶⁴ *Visuvalingam v. Liyanage*, 2 S.L.R. 123, 143 (1984).

⁶⁵ The European Court of Human Rights has stated that to be “necessary,” a restriction on freedom of expression must be more than just “reasonable” or “desirable.” *See* Coliver, *supra* note 49, at 28.

⁶⁶ *See* UN HRC General Comment 34, *supra* note 9, ¶ 42; Johannesburg Principles, *supra* note 51, at Principle 2(b).

⁶⁷ *See, e.g., Abeysekera*, 1 S.L.R. at 330-31.

those cases. By upholding regulations without examining their necessity and proportionality and without questioning the Government's asserted national security interest, the Court permits the Government to criminalize legitimate speech, thereby violating freedom of expression under Article 19 of the ICCPR. The Court's solicitude to vague, overbroad regulations targeting the media encourages journalists to self-censor stories relating to the war. Such self-censorship undermines what the Court itself has recognized as the press' "vital role of 'public watchdog.'"⁶⁸

Now that the war has ended, it is not clear whether the Court will continue to uphold laws and regulations that infringe freedom of expression on national security grounds. A search for more recent Sri Lankan case law found no cases since the end of the war in 2009 addressing either freedom of expression or restrictions on rights premised on national security.⁶⁹ The President allowed the state of emergency that had been in place in Sri Lanka since 1983 to lapse in the fall of 2011, which also led to the lapse of all emergency regulations passed thereunder. However, the Government has introduced new regulations under the Prevention of Terrorism Act that have the same effect as many of the lapsed emergency regulations,⁷⁰ indicating that it may continue to use national security as a justification for new regulations. Defence Secretary Gotabhaya Rajapaksa's remarks during a speech in January 2012 support that supposition: he stated that the LTTE remains "a grave threat to our national security" and that "there is still a

⁶⁸ *Id.* at 339.

⁶⁹ Some, but not all, more recent Supreme Court judgments are available on the Supreme Court's website at www.supremecourt.lk. The lack of relevant cases may reflect the decline in the number of fundamental rights petitions filed over the past few years. *Marked Decline in Fundamental Rights Petitions*, INDEP. TELEVISION NETWORK NEWS, Feb. 13, 2012, <http://www.itnnews.lk/latest/?p=35915> (the number of petitions filed in 2009 was 1010; in 2010, 669 were filed; and in 2011, 602 were filed). Although the cause of the decline is not clear, it may be due in part to the end of the war as well as the increased politicization and growing distrust of the judiciary.

⁷⁰ Gazette Nos. 1721/2, 1721/3, 1721/4, 1721/5 (Aug. 29, 2011); see also J.C. Weliamuna, *Lifting of Emergency: Exposing the Sham Exercise*, GROUNDVIEWS, Sept. 16, 2011, <http://groundviews.org/2011/09/16/lifting-of-emergency-exposing-the-sham-exercise/>.

need for the continued existence of a strong military within Sri Lanka.”⁷¹

In recent months, various government ministries have issued new regulations that appear to violate freedom of expression. In November 2011, the Media Ministry blocked five news websites and issued a regulation requiring websites that publish news about Sri Lanka and its citizens to register with the Ministry.⁷² In March 2012, the Ministry of Defence ordered news outlets to seek prior approval before sending out mobile phone alerts about the military and police.⁷³ Should the Court continue to defer to the Government’s assertion of national security in considering challenges to these and other regulations and decline to apply a strict necessity and proportionality test, it will continue to promote media self-censorship.

B. The Constitution handcuffs the judiciary

Even in cases in which the judiciary might be willing to find that a law violates freedom of expression under Article 14, the Constitution often prevents it from doing so. The Constitution imposes numerous limitations on the ability of victims to challenge and courts to strike down laws inconsistent with the Constitution. These provisions mean that many laws that arguably violate freedom of expression under both the Sri Lankan Constitution and the ICCPR remain on the books and can be used to prosecute journalists, editors, activists, and others. Just as journalists self-censor to avoid prosecution under vague, overbroad laws upheld by the Court on national security grounds, they also self-censor to avoid prosecution under laws inconsistent with the Constitution, which they know the Court is unable to strike down.

⁷¹ Gotabhaya Rajapaksa, Defence Secretary, Sri Lanka Ministry of Defence, Speech, Future Challenges of National Security in Sri Lanka (Jan. 11, 2012), available at http://www.defence.lk/new.asp?fname=20120111_01.

⁷² *Sri Lankan Media Rights Group Files Court Challenge After Government Blocks 5 Websites*, WASH. POST, Dec. 6, 2011. The Free Media Movement has filed a fundamental rights petition in the Supreme Court against the Ministry alleging that the regulation violates freedom of expression. *Id.*

⁷³ Ranga Sirilal, *Sri Lanka to Censor News Alert About Military, Police*, NEWS DAILY, Mar. 12, 2012, <http://www.newsdaily.com/stories/bre82b0sw-us-srilanka-censorship/>.

1. All law predating the 1978 Constitution is automatically valid

Article 16(1) expressly provides that “all existing written law and unwritten law” that predated the ratification of the 1978 Constitution “shall be valid and operative notwithstanding any inconsistency with” fundamental rights.⁷⁴ Article 16(2) likewise permits courts to sentence defendants to “any form of punishment recognized by any written existing law” that pre-dated ratification.⁷⁵ These two provisions mean that any laws enacted prior to 1978 cannot be struck down by the judiciary even if they violate freedom of expression.⁷⁶ In *Hewamanne v. De Silva*, the editor and publisher of the *Daily News* were charged with contempt of court for publishing stories about corruption in the judiciary. They argued in defense that the existing contempt of court laws violated their rights of freedom of speech and expression under Article 14 of the Constitution. The Court agreed that the freedoms of speech and expression in Article 14 “if applicable, may have modified probably to some degree the existing law of contempt of court.”⁷⁷ However, because Sri Lanka’s law of contempt of court law derived from the English law during the colonial period, it pre-dated 1978 and was therefore valid under Article 16 regardless of any inconsistencies with freedom of expression.⁷⁸

Because of Sri Lanka’s colonial history, many of its laws pre-date 1978. They fall into three main categories: laws that date from the British colonial period which ended in 1948; laws that date from the period between 1948 and 1972 when Sri Lanka (Ceylon) was a British dominion; and laws enacted after the ratification of the 1972 Constitution, which established the Republic of Sri Lanka, but before ratification of the 1978 Constitution. Enacted during the very

⁷⁴ SRI LANKA CONST. art. 16(1). In the Sri Lankan Constitution, civil and human rights are referred to as “fundamental rights.”

⁷⁵ *Id.* art. 16(2).

⁷⁶ *See Withanage v. Amunugama*, 1 S.L.R. 391, 409 (2001) (finding that the National Film Corporation Act of 1971 is valid notwithstanding any inconsistency with the rights of freedom of speech and expression).

⁷⁷ *Hewamanne v. De Silva*, 1 S.L.R. 1, 12 (1983).

⁷⁸ *Id.* at 12-13.

end of the colonial period, the Public Security Ordinance of 1947 (PSO) permits the President to declare a state of emergency, during which he can promulgate emergency regulations “as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community.”⁷⁹ In *Wicremabandu v. Herath* the Supreme Court held that the PSO is valid under Article 16 regardless of whether it infringes fundamental rights.⁸⁰ The Court did note, however, that Article 16 does not protect regulations promulgated under the PSO that violate fundamental rights.⁸¹

While this finding at first glance appears to protect freedom of expression from Government overreach under the PSO, Article 15 of the Constitution permits restrictions on fundamental rights contained in “regulations made under the law for the time being relating to public security.”⁸² As seen in the discussion above, the Court has interpreted national security liberally, upholding vague and overbroad emergency regulations that violate the right of freedom of expression under international law. Indeed, during the war the President promulgated numerous emergency regulations under the PSO that infringed upon freedom of expression and had little if any nexus to national security, including a requirement that “editorial comment, feature stories, and news reports on any subject” be submitted for government approval prior to publication and a prohibition on publication of any matter under consideration by any Minister or Ministry.⁸³ Although the President has let the state of emergency lapse, under the PSO he may declare a new state of emergency at any time, thereby renewing his power to promulgate emergency regulations.

⁷⁹ Public Security Ordinance, No. 25 of 1947, § 5(1).

⁸⁰ *Wicremabandu v. Herath*, 2 SLR 348, 356 (1990).

⁸¹ *Id.*

⁸² SRI LANKA CONST. art. 15(7).

⁸³ CENTRE FOR POLICY ALTERNATIVES, FREEDOM OF EXPRESSION ON THE INTERNET IN SRI LANKA 22 (2011).

The Official Secrets Act of 1955, enacted during the British dominion period, makes it an offence for a person with access to official secret information to communicate it to anyone unauthorized to receive it.⁸⁴ An official secret is defined broadly to include secret codes and information relating to secret places or anything therein; any information relating to “any arm of the armed forces” or “any equipment, organization, or establishment intended to be or capable of being used for . . . the defence of Sri Lanka;” and any information “relating directly or indirectly to the defences of Sri Lanka.”⁸⁵ This broad definition means that journalists who report classified information, even if obtained legally, face prosecution. Indeed, because the Act even reaches journalists who report unclassified, non-sensitive information that is merely “indirectly” related to the defenses of Sri Lanka, it is overbroad on its face in violation of Article 19 of the ICCPR. Although no journalist has ever been prosecuted under the law, according to Freedom House the Act is used to threaten them into silence.⁸⁶

The Press Council Act of 1973, passed while the 1972 Constitution was in force, also infringes upon freedom of expression. It establishes a Press Council consisting of the Director of Information and six members appointed by the President.⁸⁷ The Council may hold inquiries whenever it believes a newspaper has published an “untrue” or “improper” statement or has engaged in professional misconduct.⁸⁸ After the inquiry, the Council may order the newspaper to publish a correction, censure the offending journalist, editor, publisher, or printer, or order the offending individual to apologize to the appropriate party.⁸⁹ In particular, the law prohibits publication of the contents of cabinet meetings, decisions, or correspondence; official secrets;

⁸⁴ Official Secrets Act, No. 32 of 1955, § 7.

⁸⁵ *Id.* § 27.

⁸⁶ FREEDOM HOUSE, FREEDOM OF THE PRESS 2011 – SRI LANKA (2011), <http://www.freedomhouse.org/report/freedom-press/2011/sri-lanka>.

⁸⁷ Press Council Act, No. 5 of 1973, § 3.

⁸⁸ *Id.* § 9.

⁸⁹ *Id.*

and fiscal policies under consideration by the Government.⁹⁰ By banning such a broad range of legitimate speech, the law violates Article 19 of the ICCPR. Although the law sat dormant for many years, the Government reactivated it in 2009.⁹¹ This renewed threat of prosecution encourages self-censorship regarding government decision-making, which undermines the role of the media in exposing government excesses and ensuring transparency.

2. Parliament may enact unconstitutional laws which the Supreme Court is powerless to strike down

A second way in which the Constitution handcuffs the judiciary is via Article 84, which permits the Parliament to pass a law inconsistent with the Constitution with a two-thirds vote in favor of the bill.⁹² Once enacted, the law is valid and enforceable despite its inconsistency with the Constitution.⁹³ Article 83 of the Constitution requires approval by the people at a referendum in addition to the two-thirds majority vote of Parliament for the enactment of laws that are inconsistent with Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), or 62 of the Constitution.⁹⁴ Notably, these articles include only two fundamental, human rights: the right to freedom of thought, conscience, and religion (Article 10) and the right to be free from torture and cruel, inhuman, or degrading treatment or punishment (Article 11). Article 83 omits from the referendum requirement laws inconsistent with all other fundamental rights, including the rights of equality, freedom from arbitrary arrest and detention, freedom of association and movement, and, importantly, freedom of speech and expression. Therefore laws that would alter the national flag, the national anthem, and the national day (Articles 6, 7, and 8) are more difficult to pass than

⁹⁰ *Id.* § 15-16.

⁹¹ *Reactivation of Discredited Press Council Law a Step Backward for Sri Lanka*, INT'L FED. OF JOURNALISTS, June 25, 2009, <http://www.ifj.org/en/articles/reactivation-of-discredited-press-council-law-a-step-backward-for-sri-lanka>.

⁹² SRI LANKA CONST. art. 84.

⁹³ *Id.* art. 80(3) (“Where a bill becomes a law upon the certificate of the President or the Speaker . . . no court or tribunal shall inquire into, pronounce upon or in any manner call in question the validity of such Act on any ground whatsoever.”).

⁹⁴ *Id.* art. 83.

laws that violate freedom of speech and expression.

The Court in *Weerawansa v. Attorney General* held that because the Prevention of Terrorism Act (PTA) was enacted by a two-thirds majority, it is valid despite any inconsistencies with the Constitution.⁹⁵ The PTA prohibits the publication by a newspaper without prior approval of “any matter relating to” the commission or investigation of an offence under the Act or the incitement to violence, or matters likely to cause religious, racial, or communal disharmony.⁹⁶ The UN Special Rapporteur on Freedom of Expression has found that laws similar to the PTA in other countries, such as South Korea’s National Security Act, violate Article 19 of the ICCPR by establishing vague standards that chill discussion on matters of public interest.⁹⁷

In 2009, a Tamil journalist, J.S. Tissainayagam, was sentenced by the High Court in Colombo to twenty years of hard labor for writing two articles that incited communal violence in violation of the PTA.⁹⁸ His articles accused the Government of being “the main perpetrator of the killings” of Tamils in the Government-controlled areas in the North and East and of using the Tamil population as a “human shield” against LTTE attacks.⁹⁹ Although he was later pardoned by President Rajapaksa, his conviction highlights how the Government has abused the overbroad language of the PTA.¹⁰⁰ Indeed, the International Commission of Jurists observers who sat in on Tissainayagam’s trial expressed concern that the Government appeared to be using the PTA to

⁹⁵ *Weerawansa v. Attorney General*, 1 S.L.R. 387, 395 (2000).

⁹⁶ Prevention of Terrorism Act, No. 48 of 1979, § 14(2).

⁹⁷ Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, Mission to the Republic of Korea, ¶¶ 65-71, UN Doc. A/HRC/17/27/Add.2 (Mar. 21, 2011).

⁹⁸ *See Sri Lankan Tamil Journalist Tissainayagam Gets Presidential Pardon*, DAILY NEWS & ANALYSIS, May 3, 2010, http://www.dnaindia.com/world/report_sri-lankan-tamil-journalist-tissainayagam-gets-presidential-pardon_1378434.

⁹⁹ INT’L FED. OF JOURNALISTS, KEY CHALLENGES OF MEDIA AFTER WAR’S END: REPORT OF THE INTERNATIONAL PRESS FREEDOM MISSION TO SRI LANKA 15 (2010).

¹⁰⁰ The Government has also used the PTA to justify arrests without cause and detention without charge. *See, e.g., Weerawansa v. Attorney General*, 1 S.L.R. 387, 395 (2000); *Padmanathan v. Sub Inspector Paranagama*, 2 S.L.R. 225 (1999).

target people investigating war crimes or other breaches of domestic or international law.¹⁰¹

Faced with these overbroad and vague laws which courts cannot find unconstitutional even if they wanted to, it is no wonder that many journalists self-censor criticism of the Government and stories relating to the war in order to avoid prosecution.

3. Procedural obstacles to bringing freedom of expression claims to court

The Constitution also imposes procedural restrictions that make it difficult in practice to challenge the constitutionality of a law or an executive action, such as a regulation or order. The only remedy available for violation of one's constitutional right to freedom of speech and expression by executive action is a fundamental rights petition filed with the Supreme Court.¹⁰² Under Article 126, however, a person has only one month after the infringement of his rights, or learning of an imminent infringement, to petition the Court for relief.¹⁰³ Article 126 gives the Supreme Court sole jurisdiction over fundamental rights claims so if a person fails to file a petition within one month, she loses access to a remedy. Given the time and costs involved in locating and consulting a fundamental rights attorney, drafting a petition, and traveling to Colombo where the Supreme Court sits, challenging executive actions that infringe on free speech is difficult.¹⁰⁴ Journalists may choose to self-censor to avoid inciting an attack or violating an unconstitutional regulation, knowing that their only remedy is a fundamental rights petition that they cannot access in practice.

Sri Lanka's Constitution limits consideration of the constitutionality of laws to a one-week window after the bill is placed on the Order of Paper of Parliament.¹⁰⁵ After a bill becomes

¹⁰¹ INT'L COMM'N OF JURISTS, TRIAL OBSERVATION REPORT REGARDING PROCEEDING BEFORE THE HIGH COURT OF COLOMBO, SRI LANKA BROUGHT AGAINST MR. J.S. TISSAINAYAGAM ¶ 58 (2009).

¹⁰² SRI LANKA CONST. art. 17.

¹⁰³ *Id.* art. 126.

¹⁰⁴ *See* INT'L CRISIS GROUP, SRI LANKA'S JUDICIARY: POLITICISED COURTS, COMPROMISED RIGHTS 5-6 (2009).

¹⁰⁵ SRI LANKA CONST. art. 121.

law, its constitutionality cannot be challenged in court.¹⁰⁶ This provision makes it easier for the Government to enact laws that violate freedom of speech and expression because unless a citizen files a petition within one week of the bill's placement on the Order of Paper, the Supreme Court will not review it at all. Without a finding by the Supreme Court that the bill is unconstitutional, the Parliament can pass it by a simple majority, rather than the two-thirds majority necessary to pass an unconstitutional law under Article 84. Bills deemed "urgent" by the Cabinet of Ministers are sent directly to the Supreme Court for immediate review of their constitutionality within twenty-four hours.¹⁰⁷ Because they are not released to the public in advance, citizens are unable to contribute to the review process.¹⁰⁸

The Official Secrets Act and Press Council Law taken together with the one-week limitation on challenging the constitutionality of bills severely impede freedom of expression. Because the two laws are so broad, newspapers may need more time to consider whether the publication of particular information relating to a pending bill would violate either law. However, if they cannot determine whether to publish within one week, or decide not to publish for fear of prosecution, the information related to the bill is not revealed in time for citizens to file a petition challenging the constitutionality of the bill. In such a situation, not only is the newspaper's freedom of expression violated by the overbroad laws, the democratic purposes underlying that freedom are undermined because the public is left uninformed and unable to exercise its right to challenge a potentially unconstitutional bill. Indeed, the Lessons Learnt and Reconciliation Commission created by the Government to evaluate the end of the war acknowledged that the time provided for citizens to challenge the constitutionality of laws is

¹⁰⁶ *Id.* art. 80(3).

¹⁰⁷ *Id.* art. 122.

¹⁰⁸ See Quintus Perera, *Sri Lanka—Unique Case Where Parliament Can Pass Even Bills Violating the Constitution*, SUNDAY TIMES, Dec. 4, 2011, <http://sundaytimes.lk/111204/BusinessTimes/bt07.html>.

“grossly inadequate” and that “[p]ublic intervention regarding proposed legislation is an integral part of a vibrant democracy.”¹⁰⁹

C. The Constitution creates a powerful executive that can act with impunity

Sri Lanka’s Constitution further undermines freedom of speech and expression by eroding the separation of powers and concentrating power in the President, rendering him able to violate freedom of expression with impunity. The inability of victims of Government-sponsored threats and attacks to hold the President or other executive officials accountable encourages self-censorship to avoid inciting those attacks in the first place. To understand why the 1978 Constitution centralizes so much power in the President, creating a largely unaccountable executive, it is important to look at Sri Lanka’s constitutional history.

Sri Lanka’s first constitution after achieving independence from Britain in 1948 was the Soulbury Constitution, drafted by Britain’s Soulbury Commission in 1946. Under the Soulbury Constitution, Ceylon remained a British dominion with its sovereignty vested in the British monarchy.¹¹⁰ Of key importance for purposes of Sri Lanka’s constitutional development was Section 29(2) which prohibited the Parliament from making any law that conferred upon a community or religion a benefit not conferred upon other communities or religions.¹¹¹ The Privy Council, which functioned as the final court of appeal at that time, held that Section 29(2) could not be amended by Parliament, despite the fact that Section 29(4) granted Parliament the power to amend constitutional provisions by a two-thirds majority vote.¹¹² The Council found that Section 29(2) was intended to protect “the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which inter se, they accepted the constitution, and these

¹⁰⁹ REPORT OF THE COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION ¶ 8.205 (Nov. 2011).

¹¹⁰ V.K. Nanayakkara, *From Dominion to Republican Status: Dilemmas of Constitution Making in Sri Lanka*, 26 PUBLIC ADMIN. & DEV. 425, 428 (2006).

¹¹¹ SOULBURY CONST. § 29(2).

¹¹² *Bribery Comm’n v. Ranasinghe*, 66 N.L.R. 73, 78 (1964).

are therefore unalterable under the Constitution.”¹¹³

The 1972 Constitution, which established the Republic of Sri Lanka, was in large part a response to the Soulbury Constitution’s limitations on the powers of the Sri Lankan Parliament.¹¹⁴ The drafters of the 1972 Constitution came to power on a nationalistic platform and proclaimed that they “are trying to reject the theory of the separation of powers. We are trying to say that nobody should be higher than the elected representatives of the people”¹¹⁵ To that end, the 1972 Constitution vested executive, legislative, and judicial power in a single National State Assembly.¹¹⁶ The result was an “entrenchment of majoritarianism,” in which “the notion that majority decision making was the cardinal, if not the only, feature of a democratic society” became the justification for complete legislative supremacy.¹¹⁷

The executive presidency established by the current 1978 Constitution was a direct reaction to the legislative supremacy of the 1972 Constitution. The chief architect of the 1978 Constitution, J.R. Jayewardene, said as much, stating that a developing country like Sri Lanka needs a strong executive who is “not afraid to take correct but unpopular decisions because of censure from its parliamentary party.”¹¹⁸ Under the 1978 Constitution, the president is directly elected by the people, independent of the legislature. Unlike in the 1972 Constitution in which the Cabinet of Ministers was removable by a vote of no confidence by the legislature, under the 1978 Constitution the President alone determines the number of Cabinet Ministries.¹¹⁹ He

¹¹³ *Id.*

¹¹⁴ R. Edrisinha & N. Selvakkumaran, *Constitutional Change in Sri Lanka Since Independence*, 13 SRI LANKA J. SOCIAL SCIENCES 79, 87 (1990).

¹¹⁵ *Id.* at 87 (quoting Felix R. Dias Bandaranaike, a member of the United Front Government).

¹¹⁶ SRI LANKAN CONST., 1972, § 5.

¹¹⁷ Edrisinha & Selvakkumaran, *supra* note 114, at 91.

¹¹⁸ WELIGAMAGE D. LAKSHMAN & CLEMENT A. TISELL, SRI LANKA’S DEVELOPMENT SINCE INDEPENDENCE 83 (2000) (quoting J.R. JAYEWARDENE, SELECTED SPEECHES 1944-1973, at 72 (1974)).

¹¹⁹ SRI LANKA CONST. art. 44.

appoints both the Cabinet Ministers and the Prime Minister, who presides over Parliament.¹²⁰

The President has immunity from suit for any acts or omissions done in his official or personal capacity¹²¹ and can be removed from office only by a two-thirds vote of Parliament and a determination by the Supreme Court that the President is “permanently incapable of discharging the functions of his office,” or guilty of intentionally violating the Constitution or other law.¹²²

The President can also bypass the legislature entirely and submit any bill to the people for a referendum.¹²³

In September 2010, President Rajapaksa pushed the Eighteenth Amendment to the Constitution through Parliament as an urgent bill, thereby preventing citizen review prior to its consideration by the Supreme Court.¹²⁴ The Amendment further concentrates power in the President, removing the two-term limit for the President and the provisions of the Seventeenth Amendment that imposed checks on the President’s appointment powers. The Seventeenth Amendment created a Constitutional Council that recommended and approved presidential appointments, including judges and members of the Election Commission, Public Service Commission, National Police Commission, and Human Rights Commission, among others.¹²⁵ In contrast, the Eighteenth Amendment merely requires that the President “seek the observations” of a Parliamentary Committee regarding appointments.¹²⁶

By eliminating checks on the President, the newly-amended Constitution allows the

¹²⁰ *Id.* art. 43.

¹²¹ *Id.* art. 35.

¹²² *Id.* art. 38.

¹²³ *Id.* art. 85(3).

¹²⁴ INT’L CRISIS GROUP, RECONCILIATION IN SRI LANKA: HARDER THAN EVER 21 (2011).

¹²⁵ Seventeenth Amendment to the Constitution, An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka, L.D. – O. 47/2001, arts. 41B & 41C, *available at*, <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html>.

¹²⁶ Eighteenth Amendment to the Constitution, An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka, L.D. - O 19/2010.sec. 5, art. 41A, *available at*, <http://www.lawnet.lk/downloads/18thAmendmenAct-E.pdf>.

President to violate freedom of expression and other fundamental rights with impunity. The President is now not only commander in chief of the armed forces,¹²⁷ he also commands the police force via his power to appoint members of the National Police Commission. The President therefore has direct control over the two forces which are both responsible for protecting journalists and investigating attacks on them and yet also most often accused of committing the human rights violations that intimidate and threaten journalists into silence. As the Committee to Protect Journalists noted in its 2011 Impunity Index, “[a]ll nine journalist murders in the past decade have gone unsolved, leaving persistent questions as to whether authorities have been complicit in some of the crimes.”¹²⁸ Indeed, in his posthumous editorial Lasantha Wickrematunge called out President Rajapaksa directly, saying,

In the wake of my death I know you will make all the usual sanctimonious noises and call upon the police to hold a swift and thorough inquiry. But like all the inquiries you have ordered in the past, nothing will come of this one, too. For truth be told, we both know who will be behind my death, but dare not call his name.¹²⁹

Via his total control over the Cabinet Ministers, the President can cause Ministries to promulgate regulations and issue orders that impinge on freedom of expression, such as the Defence Ministry’s recent order regarding mobile phones and the Media Ministry’s website registration regulation.¹³⁰ President Rajapaksa has further consolidated his power over the Cabinet by appointing his brothers to two of the most powerful ministries: Gotabhaya Rajapaksa is Secretary of the Ministry of Defence and Urban Development and Basil Rajapaksa is the Minister of Economic Development. The President himself is Minister of Defence, Finance and

¹²⁷ SRI LANKA CONST. art. 30(1) (“There shall be a President of the Republic of Sri Lanka, who is . . . Commander-in-Chief of the Armed Forces.”).

¹²⁸ COMMITTEE TO PROTECT JOURNALISTS, GETTING AWAY WITH MURDER: CPJ’S 2011 IMPUNITY INDEX (2011). CPJ ranked Sri Lanka the fourth worst country in its index based on the number of unsolved murders of journalists that occurred between January 1, 2001 and December 31, 2010. *Id.*

¹²⁹ Wickrematunge, Editorial, *supra* note 32.

¹³⁰ *See supra* Section III.A.

Planning, Ports and Aviation, and Highways.¹³¹ Between them, the Rajapaksa brothers control ninety-four Government departments, which include everything from the military and police to taxation and transportation to tourism and wildlife conservation.¹³² Given this consolidation of control, it is unsurprising that economic sanctions against outspoken newspapers have increased.¹³³

President Rajapaksa maintains a firm grip on Parliament as well. A third brother, Chamal Jayantha Rajapaksa, is Speaker of Parliament, and a son, Namal Rajapaksa, is a Member of Parliament. The President's coalition currently controls two-thirds of Parliament,¹³⁴ enough to pass laws inconsistent with the Constitution under Article 84 and to amend the Constitution under Article 82. Indeed, the Eighteenth Amendment was ratified in September 2010, only five months after Rajapaksa's coalition secured the necessary two-thirds majority in the April 2010 parliamentary elections.

The Constitution prevents either the President himself or his ministers and other executive officials from being held accountable in court for freedom of expression violations. Because he is immune from suit while in office,¹³⁵ the elimination of the two-term limit may prevent the President from ever personally being held accountable in court. The President can only be removed via a two-thirds majority vote of Parliament and an adverse determination of the Supreme Court.¹³⁶ Given that the President can dissolve Parliament at any time and appoints both the Prime Minister and the judges of the Supreme Court, it is unlikely that he will be

¹³¹ Government of Sri Lanka, Government Ministers, http://www.priu.gov.lk/Govt_Ministers/Indexministers.html.

¹³² R. Wijewardene, *94 Government Departments Under Direct Family Control*, SUNDAY LEADER, May 9, 2010, <http://www.thesundayleader.lk/2010/05/09/94-government-departments-under-direct-family-control/>.

¹³³ See *supra* Section II.B, discussing forms of economic sanctions and reprisals against the media.

¹³⁴ *My Brothers' Keepers: In Sri Lanka the Grip of the Rajapaksas Only Tightens*, ECONOMIST, Feb. 11, 2012, <http://www.economist.com/node/21547252>.

¹³⁵ SRI LANKA CONST. art. 35; see also *Victor Ivan v. Sarath Silva*, 1 S.L.R. 309 (2001) (holding that the President is immune from a suit challenging his appointment of the former attorney general as Chief Justice of the Supreme Court).

¹³⁶ SRI LANKA CONST. art. 38.

impeached. Because the President controls election machinery via his power over the Election Commission, Public Service Commission, and National Police Commission, if so inclined, he can ensure that he does not lose elections, thereby maintaining immunity for life.¹³⁷

As for suits against executive officers, because the President appoints members of the Supreme Court, the Court of Appeals, and the Judicial Services Commission, he can ensure that the judiciary upholds his positions and protects his officials. To maintain favor among judges, the President reportedly offers retired judges positions as diplomats in desirable locales.¹³⁸

Human rights activists and attorneys indicate that judgments so predictably favor the Government that there is no point in filing suit.¹³⁹ The judgment in the Tissainayagam case illustrates the bias of the judiciary. In finding that Tissainayagam's articles incited violence in violation of the PTA, the High Court's reasoning was tautological. Regarding Tissainayagam's intent, a required element of the crime which the prosecution had to prove beyond a reasonable doubt, the Court referenced none of the evidence presented by either party and merely stated:

After willfully writing wrongful facts and instilling violence [sic] acts on the people who read [them] by meaning to instill such a thing, it is evident that this Accused had in mind an idea to create communal unrest or an idea to create anger. By creating such ideas in the Readers what was his aim? Definitely with the idea of creating violent acts amongst the communities. From this it is clear that the Accused through these Articles had a motive to do a crime. . . . Accordingly when considering at the mental level of an ordinary person it is very clear that what the Accused has written incites a crime causing envy, anger and cruelty in a mind.¹⁴⁰

By giving the President near total control over the military, police, and civil service, the Constitution allows him to orchestrate and execute threats and attacks intended to intimidate

¹³⁷ TRANSPARENCY INT'L SRI LANKA, ADVERSE IMPACT OF THE 18TH AMENDMENT ON GOVERNANCE 7 (2010).

¹³⁸ Interview with Handunnetti, *supra* note 35; *see also* Rutherford Hubbard, *Judicial Independence in Sri Lanka*, in TRANSPARENCY INT'L SRI LANKA, SRI LANKA GOVERNANCE REPORT 2011, at 92 (2011).

¹³⁹ Interview with Handunnetti, *supra* note 35; Interview with human rights activists who prefer to remain anonymous in Colombo, Sri Lanka (Jan. 10, 2012).

¹⁴⁰ Sri Lanka v. Tissainayagam, Case No. HC 4425/2008, at 35 (Colombo High Ct. No. 1 2009), English translation available at <http://sunandadeshapriya.files.wordpress.com/2009/09/tissa-judgement-eng-translation-written-submisison.pdf>.

journalists into silence. It also allows him to delay and hinder investigations into private acts of violence and intimidation against journalists. Although such acts are clear violations of Article 19 of the ICCPR, the President's control of the judiciary and Parliament ensures that he and his officials will not be held accountable. In an environment in which the President can act with impunity, it is no wonder that journalists self-censor to avoid becoming a victim without recourse.

D. The Constitution's Sinhalese bias silences Tamil speech

The Constitution enshrines the superiority of the Sinhalese people which encourages self-censorship among Tamils and other minorities by sending a signal that minority views are less valuable and their rights less worthy of protection. In Article 9, the Constitution makes Buddhism, the religion of most Sinhalese people, the state religion. Although the Constitution also guarantees freedom of religion, by expressing a preference for Buddhism over the religions of minorities, namely Hinduism, Islam, and Christianity, the Constitution expresses a subtle preference for the Sinhalese people. Likewise, in Article 18(1), the Constitution states that the "official language of Sri Lanka shall be Sinhala." It then goes on in Article 18(2) to state that "Tamil shall also be an official language." While this wording may appear trivial, language played a prominent role in the genesis of the conflict: the Sinhala Only Act of 1956, which made Sinhala the only official language of Sri Lanka, precipitated the deterioration of Sinhala-Tamil relations.¹⁴¹ Hence, the fact that Sinhala and Tamil were not given equal footing in the same

¹⁴¹ Because all government officials had to be proficient in Sinhala, the Act led to steep decline in the number of Tamil civil servants. Interview with Sanjor Perera, Ass't Commissioner, Official Languages Dep't, in Colombo, Sri Lanka (Jan. 9, 2012). Sinhalese officials began policing and governing Tamil-dominated areas, which fueled Tamil resentment. Interview with Paikiasothy Saravanamuttu, Director, Centre for Policy Alternatives, in Colombo, Sri Lanka (Jan. 3, 2012). As English was phased out of the educational system, Sinhalese and Tamil children no longer had a common language, which deepened the cultural divide and made it easier for extremists on both sides to persuade recruits of the evils of the other ethnicity. See interview with Gunawardene, *supra* note 7.

provision of the Constitution is seen by many Tamils as a slight.¹⁴²

There has also been controversy surrounding the national anthem, which is provided for by Article 7 of the Constitution. In 2010, Cabinet ministers considered ordering that only the Sinhala version of the anthem be sung publicly.¹⁴³ One minister, Wimal Weerawansa, called the Tamil version of the anthem “a joke” and “a mistake [that] need[s] to be corrected.”¹⁴⁴ Although the ban on the Tamil anthem was never officially passed, on Sri Lanka’s most recent Independence Day (February 4, 2012), the anthem was sung only in Sinhala at the official celebration attended by President Rajapaksa.¹⁴⁵

Although these slights may seem minor, the long history of violence and conflict between the Sinhalese and Tamil peoples magnifies them. Constitutionalizing Sinhalese superiority sends a signal to minority groups that the law favors the Sinhalese majority, including President Rajapaksa’s largely Sinhalese government. This promotes self-censorship of pro-Tamil viewpoints, as journalists know that the Government disfavors such views and that the law favors the Government.¹⁴⁶

IV. SELF-CENSORSHIP HINDERS POST-WAR RECONCILIATION AND REFORM

Violations of freedom of expression and the resulting self-censorship impair the democratic process in every nation, but they are particularly harmful in Sri Lanka. The country is only just beginning to recover from nearly three decades of war. Although the LTTE has been defeated, the ethnic tensions that fueled the war remain. By silencing public discussion of the

¹⁴² Interview with human rights activists who prefer to remain anonymous in Colombo, Sri Lanka (Jan. 10, 2012).

¹⁴³ *Sri Lanka Minister Denies Tamil National Anthem Ban*, BBC NEWS, Dec. 13, 2010, <http://www.bbc.co.uk/news/world-south-asia-11980434>.

¹⁴⁴ *Is the Tamil Version of Our National Anthem a Joke?*, GROUNDVIEWS, Dec. 16, 2010, <http://groundviews.org/2010/12/16/is-the-tamil-version-of-our-national-anthem-a-joke/>.

¹⁴⁵ *National Anthem Not Sung in Tamil on Independence Day Celebrations Despite LLRC Recommendation*, SRI LANKA BRIEF, Feb. 9, 2012, <http://www.srilankabrief.org/2012/02/national-anthem-not-sung-in-tamil-on.html>.

¹⁴⁶ See interview with Mathan, *supra* note 7 (noting that Tamil journalists are particularly careful about criticizing the Government).

war and the Rajapaksa administration, the Government is hindering the reconciliation and reform necessary for Sri Lanka to move forward to a “sustainable peace.”¹⁴⁷

Post-war reconciliation requires that the Government accept accountability for human rights violations committed during the war. The process of uncovering, documenting, and redressing violations, in turn, requires that the Government engage with and acknowledge the value of alternative perspectives. By stifling those perspectives via intimidation and threats, the Government not only undermines the reconciliation process; it also fuels the very tensions that caused the war by further violating the rights of Tamils and other minorities.

By silencing critics, the Government also prevents the public dialogue necessary to achieve significant political and legal reform. Given the Rajapaksa administration’s firm grip on all three branches of government, it is unlikely that the Constitution will be amended without a large-scale groundswell of public support.¹⁴⁸ That groundswell is unlikely to occur so long as the media continues to self-censor, rendering many of the country’s most significant problems—such as the conditions in the North—invisible to the majority of the population.¹⁴⁹ When people are unaware of the problems, they have no incentive to protest and demand change, constitutional or otherwise. The Constitution, then, is preventing its own reform by discouraging the open dialogue and criticism essential to achieving the critical mass needed to demand

¹⁴⁷ REPORT OF THE SECRETARY-GENERAL’S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA ¶ 413 (Mar. 31, 2011) (“A free press is a vital component of a society that respects human rights and is among the conditions required for sustainable peace.”).

¹⁴⁸ Two interviewees referenced the Arab Spring, noting that Sri Lanka needs a similar uprising in order for there to be significant political change. *See* interview with Ekneligoda, *supra* note 31; interview with Hattotuwa, *supra* note 28. Both doubted a similar event would occur in Sri Lanka in the near future because the Government has such tight control of the country, interview with Hattotuwa, *supra* note 28, and because the majority of the Sinhalese population in the South is “still sleeping”—that is, they remain unaware of the oppressiveness of the Government, interview with Ekneligoda, *supra* note 31.

¹⁴⁹ Interviewees accused the Government of militarizing and “colonizing” the North by maintaining a large military presence despite the end of the war and moving Sinhalese people there in order to dilute the Tamil population. Interview with Vithyatharan, *supra* note 36; interview with Saravanamuttu, *supra* note 141. According to one activist, the general public “doesn’t have a clue” as to the extent of the Government’s involvement in human rights violations. Interview with Ekneligoda, *supra* note 31.

change.

Reconciliation and reform are intertwined. Constitutional reform that reflects the will of all Sri Lankans, including Tamils, Muslims, and other minorities, cannot occur until the people of Sri Lanka confront and address the war, its underlying causes, and its continuing repercussions. Likewise, reconciliation cannot occur if the people cannot hold the Government accountable for human rights violations committed both during and after the war. The Government claims it is committed to moving forward¹⁵⁰ and yet by continuing to violate freedom of expression, it undermines the processes necessary to achieve that goal and draws the country back toward the conflicts of the past.

V. CONCLUSION

If the Constitution causes self-censorship and self-censorship prevents constitutional reform and reconciliation, how can Sri Lanka break free of this cycle? Self-censorship remains a choice, albeit a distorted one, and there are still brave Sri Lankans willing to risk reprisal and sanction in order to speak out honestly and critically. As time passes and the President's sheen as the man who won the war wears off, people will be more likely to listen to them. Public protests are beginning, at least in Colombo, against Government impunity and corruption, indicating that dissent may be on the rise.¹⁵¹ A few media outlets, such as the *Sunday Leader* and *Groundviews*, openly condemn Government practices. Others are more judicious in their criticism, but have not been totally silenced. The tightknit Sri Lanka human rights community remains strong and cautiously outspoken. And the international community's recent recognition of Sri Lanka's

¹⁵⁰ Interview with Sallay, *supra* note 30.

¹⁵¹ The author attended a protest against Government impunity arranged by the Platform for Freedom on the anniversary of Lasantha Wickrematunge's death on January 12, 2012 in downtown Colombo. Sri Lankan media organizations designated January 2012 as "Black January" in protest of the lack of press freedom in the country. See "*Black January*" Marked Amidst Rival Protests, BBC SINHALA, Jan. 25, 2012, http://www.bbc.co.uk/sinhala/news/story/2012/01/120125_black_january.shtml.

human rights violations may encourage still others to speak out.¹⁵² Moreover, as more Sri Lankans gain access to the internet and learn English, the Government will have a harder time shielding the populace from alternative perspectives. There is hope, then, for freedom of expression in Sri Lanka, so long as the brave few remain “unbowed and unafraid.”¹⁵³

¹⁵² See UN Human Rights Council, Resolution, Promoting Reconciliation and Accountability in Sri Lanka, UN Doc. A/HRC/19/L.2 (adopted Mar. 22, 2012) (“Noting with concern that the [LLRC Report] does not adequately address serious allegations of violations of international law” and “Request[ing] the Government of Sri Lanka . . . to address alleged violations of international law”).

¹⁵³ This is the slogan of the *Sunday Leader*, one of the more outspoken and critical newspapers in Sri Lanka.