

A photograph of a young child sleeping on a patterned mat on the floor of a cluttered room. The child is wearing a light-colored cloth around their waist. The room is filled with various items, including bags, bottles, and a fan, suggesting a crowded and possibly impoverished living environment. The text "Reporting on Human Rights in Sri Lanka" is overlaid in the center of the image.

Reporting on Human Rights in Sri Lanka

A handbook for media professionals

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Partners include the Free Media Movement, the Federation of Media Employees Trade Unions, the Sri Lanka Working Journalists' Association, the Sri Lanka Tamil Media Alliance and the Sri Lanka Muslim Media Forum, collectively representing about 5000 journalists across Sri Lanka.

Acronyms

CERD : Committee on the Elimination of Racial Discrimination

CPA : Centre for Policy Alternatives

CRC : United Nations Convention on the Rights of the Child

EC : European Commission

FMETU: Federation of Media Employees Trade Unions

FMM: Free Media Movement

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICRC: International Committee of the Red Cross

IDPs: Internally displaced peoples

IFJ: International Federation of Journalists

LTTE: Liberation Tigers of Tamil Elam

NGO: Non-government organisation

SAARC: South Asian Association for Regional Cooperation

SLMMF: Sri Lanka Muslim Media Forum

SLRC: Sri Lanka Rupavahini Corporation

SLTMA: Sri Lanka Tamil Media Alliance

SLWJA: Sri Lanka Working Journalists' Association

UN: United Nations

Preface

Conflict and the abuse of human rights are a significant factor in the lives of many individuals and communities across Sri Lanka. As observers of their society, journalists in Sri Lanka bear witness every day to the terrible human rights violations that accompany conflict, civil strife, deprivation and economic, social and political inequity. Many journalists in Sri Lanka are committed to peace-building and defending the rights of all people in their communities. However, it is also the case that gross violations continue in an environment where much of the media is either passive in its approach to reporting or is a partisan instrument of propaganda that conceals or justifies rights abuses committed by a variety of actors.

Journalists need to work to the highest standards to ensure that all citizens have access to the fair and accurate information they need to know with regard to what is happening in their society and to call their political leaders to account. To fulfill this duty, journalists need a way of working that does not depend on the whims of politicians or media owners. They need to follow standards that give them a degree of independence and that make their work relevant and significant. By basing their work around the human rights of ordinary people, journalists have objective criteria by which to judge the performance of governments and other power-holders, including business, police, courts and all state institutions.

Human rights include the right to life, the right to freedom of expression the right to freedom from fear, the rights of minorities and of majorities, the right not to be exposed to violence in the home, the right to education, the right of people under arrest to be treated fairly, the right to a fair trial, the right of people with disabilities to respect as a person, and the right of all people to be treated with fairness and equality. Human rights concern the relationships between majorities and minorities and set standards to protect the weak against the strong.

These standards have been debated and agreed in international arenas. Governments around the world have signed international human rights agreements, including the Government of Sri Lanka. Journalists should observe how governments incorporate and apply human rights standards within local legal systems. Many people do not know their rights, but journalists can help to inform them via their day-to-day coverage of the events and issues in which ordinary people are interested: employment, health, crime, punishment, education, sport and even fashion.

Journalists can also deliver on people's right to freedom of expression by focusing their cameras and their reporting to a greater extent on ordinary people. In helping people to understand better their own lives, journalists and the media can help individuals and communities to strengthen their ability to stand up for their rights. Quality reporting and a real understanding of rights and the conditions in which people live can promote opportunities for peaceful coexistence and reduce the potential for conflicts emerging from misunderstandings, rumours and misinformation. Journalists and media institutions that ground their work in the rights of ordinary people in their communities will achieve a wider audience and greater respect.

Reporting on Human Rights in Sri Lanka, which is adapted from materials developed by the International Federation of Journalists (IFJ) and uses research in Sri Lanka by the Centre for Policy Alternatives (CPA), with the support of the European Commission (EC), looks at how human rights instruments have evolved internationally, how they should be applied within countries, and practical suggestions for putting human rights at the centre of a journalist's work. Examples of human rights abuses and some cases of improvements are derived from Sri Lanka, South Asia and elsewhere. It is hoped that organisations will use this handbook to stimulate discussion in the newsroom and to organise training around the issues raised.

At the same time, the IFJ believes that there cannot be free and high-quality journalism if journalists are treated badly and underpaid. To defend the rights of others, journalists must be able to defend their own rights. In many countries, including Sri Lanka, journalists may be illegally employed, they do not have the security of contracts, they sometimes do not receive payment, they are subject to unfair dismissals, and there is pressure in the newsroom that undermines their independence. Courageous journalists and independent media who seek to report the truth about the conflict, corruption and other forms of inequity in Sri Lanka face the very real risk of being threatened, beaten or killed with impunity. For these reasons, the IFJ and its partners in Sri Lanka advocate strong associations that can work on professional issues and strong trade unions which can deliver on journalists' own social and employment rights, including their right to work without the risk of violent repercussions.

Journalists do not have to choose between defending their own rights and those of the public. By doing one they strengthen their ability to do the other.

Jacqueline Park
Director
IFJ Asia-Pacific

Introduction

Aims and overview

The aim of this handbook is to identify the central importance of human rights in the everyday work of journalists and to make clear how a rights-based approach to reporting has a positive influence in raising media standards, defending press freedom and encouraging the conditions for dialogue that promote conflict resolution and peace-building. *Reporting on Human Rights in Sri Lanka* addresses why journalists in Sri Lanka need to know about human rights, in particular the rights of women, children and ethnic and other minorities, and the challenges on this front for journalists, editors and publishers. It is intended as a tool for journalists and media institutions to assist them in their role as public watchdogs and defenders of basic human rights.

The handbook was developed as part of the Media for Democracy programme of the International Federation of Journalists (IFJ) to promote a democratic media that in turn supports the human rights of all individuals, including the rights of journalists. The programme is based on several key principles: That public and media scrutiny of the exercise of political power is essential in a democratic society; that media laws must align with international standards and be constructed in consultation with journalists; and that journalists and media owners have a duty to work to the highest standards and are responsible to set up structures for effective self-regulation.

The United Nations says that upholding human rights is the foundation of freedom, justice and peace. It follows therefore that wherever there is a lack of freedom, or there is injustice and conflict, human rights have been breached.

The right to life and safety are fundamental to the individual. But freedom of expression may also be considered fundamental, because in its absence it is virtually impossible to advance and protect other human rights. Without free expression, human rights violations can go unreported and those who violate the rights of individuals and thus harm communities can act with impunity. For this reason, the preamble of the United Nations Declaration on Human Rights puts the right to speak out on centre stage.

As the watchdogs of government and power, journalists and media institutions have an essential role to play in speaking out and defending and upholding human rights. Human rights reporting should be a priority for independent quality journalism. By exposing the excesses of power-holders, journalists and media institutions can help to address and reduce rights violations by putting public pressure on the perpetrators. Journalists are also a necessary source of information for national, regional and international human rights organisations that fight to restrain arbitrary and violent behaviour.

Human rights are a significant factor in international politics and diplomacy. Even the most brutal regimes or opposition groups tend to try to hide their abuses and put forward a positive profile to the outside world. International assistance and protection from costly and embarrassing sanctions or embargoes often depend on how a country's leaders behave in terms of human rights, or how they are perceived to behave. Journalists and the media are a key element in shaping such perceptions.

The handbook incorporates the results of a survey of about 100 journalists and 40 civil society organisations in Sri Lanka regarding their views on human rights and the media. The journalists mainly worked in metropolitan print media while the civil society respondents mostly worked with national non-government organisations (NGOs), as well as some United Nations or intergovernmental agencies. Many of the journalists considered themselves well informed on basic human rights and related violations, but a big proportion admitted to a lack of sufficient awareness of international human rights laws and standards. A smaller number felt they knew too little about different minority groups and the root causes of Sri Lanka's ongoing conflict. *Reporting on Human Rights in Sri Lanka* is designed to assist them in their work by focusing on priority human rights issues, international conventions and standards, professional approaches to diversity in journalism, the role of the media in building community awareness about human rights, and appropriate sources of information for journalists.

Conflict

The most obvious challenge to human rights in Sri Lanka is the country's return to war in mid-2006 and the Government's formal withdrawal from a ceasefire with the Liberation Tigers of Tamil Elam (LTTE) in early 2008. Every day, the fundamental rights of people caught up in

the war are violated and international human rights agreements are breached as a matter of course. The violations are especially intense for people caught in the most conflict-intense areas in the North and East. Among civilians, the most basic individual right to life and to safety is under attack from all sides. More than 200,000 people are sheltering in camps for the internally displaced, where food, health, education and safety are in short supply. Another 15,000 people have fled their homes to seek refuge in India. Warring parties, including government security forces, the LTTE and the Karuna group (an armed group that split from the LTTE and cooperates with government forces) recruit boys and girls aged under 18 to fight their bloody battles.

Ethnic tensions and conflict are at boiling point. Disappearances, attacks on civilians and random death are common. Official restrictions, intimidation and outright murder limit the free flow of critical and factual information about the conflict and journalists are attacked via threats and physical assault because of their efforts to get the story out. As free expression is stifled, hate speech has gained prominence, fuelling a vicious cycle of rights violations.

Other rights abuses

However, violations of the rights of Sri Lankans occur not only in the context of two decades of conflict. Beyond the war zone, reporting on human rights issues should be considered an essential component of the everyday work of journalists and media institutions. Reporting on human rights is about a whole spectrum of abuses and not only about mass murder or war crimes. Discrimination against various groups (women, people with HIV, homosexuals, and on the basis of religious beliefs), the exploitation of child labourers, and censorship are also important territory for journalists reporting from a rights-based perspective.

In the CPA survey, both journalists and civil society representatives felt the main human rights issue facing Sri Lanka was discrimination against minority groups, and that this issue was underreported or commonly misreported. Journalists highlighted problems in reporting on discrimination against minority groups, noting that the issue was most likely to be reported in the context of conflict and terrorism. In their own workplaces, most of the journalists said their media organisations did not provide strategies or campaigns to raise staff awareness about non-discrimination at work.

Other human rights issues prioritised by the survey respondents concerned freedom of expression violations, internally displaced peoples (IDPs), torture allegations and missing persons. Less priority was accorded to child soldiers, discrimination in regard to gender, and access to employment, food and clean water. The respondents diverged on the most underreported issues after discrimination against minority groups. For civil society it was gender discrimination while for media it was torture, followed by gender discrimination.

Freedom of expression

The constitutions of most countries recognise freedom of the media, but there are many cases where media has been used for political reasons or where its freedom has been restricted. The media itself sometimes facilitates this political pressure. There are cases where the media seeks favours to evade legal restrictions, favours which one day have to be paid back. Media ownership is often non-transparent and there is concern about the connection between media and politicians, which constitutes a serious threat to media freedom and independence. It is editors-in-chief and owners, or editor-owners, who collaborate with political pressure. The ordinary journalist has no choice but to obey since his or her legal position is not protected by law. Many journalists work illegally without regular working contracts. Governments also find other, *prima facie* legal, ways to control and manipulate media, for example by allocating public service advertisements only to favoured media.

What to do

Human rights are rights for everyone, and journalists need to play a very active role in raising awareness about them and protecting them. Journalists and media institutions need to get their facts right, and then to provide fair and critical analysis. Journalists should investigate the causes of problems and possible solutions. They should report fairly on the standpoints of all parties and cooperate with the civil society organisations that work directly on rights issues.

Reporting on human rights is not only about violations and abuses. It is also about encouraging awareness of rights and highlighting positive implementation. Journalists can take a rights perspective in reporting on a wide range of issues, from campaigns against the use of child soldiers, to positive actions taken by authorities, to the activities of civil society organisations, to the ways in which ethnically diverse

communities cooperate. Such topics, of course, should be approached with the same professional standards as any other story.

Finally, journalists should not only ask governments and power-holders what they are doing about a problem, but they need to take the time to investigate whether there is a comprehensive legal framework that meets international standards. Journalists should know the law and report on gaps in legislation. In improving their own knowledge of and commitment to human rights, journalists will together improve the quality of media reporting, generate open debate, and support the strengthening of democratic processes and peace-making in Sri Lanka.

Chapter 1

Why are journalists concerned with human rights?

This may seem a trivial question, because journalists are often in the front line of the defence of human rights. We think of the journalist who writes about war crimes, the publisher who risks jail by exposing arbitrary arrests, the reporter who documents the abuse and exploitation of children as practising the highest form of our profession. Journalists are capable of showing how human rights are universal, shared by friends and enemies alike, and can distinguish between fundamental rights and the rhetoric of shallow and nationalistic politicians. Even in closed societies, a few journalists always try to shine a light on injustice and repression. Journalists who expose human rights abuses alert the public and create pressure for change.

What we might call “heroic” journalism constitutes a tiny part of the whole. Most journalists, most of the time, are not challenging overbearing government or exposing gross human rights abuses. Their day-to-day reporting beats seem more mundane as they report on politics, crime, social issues, business, sport, or entertainment. However, the promotion and defence of human rights is important at this level. Human rights reporting is not only about exposing large-scale abuse, it is about how people are treated in everyday life. Indeed, in order for some journalists to be heroic on a grand scale, all journalists need to apply a human rights agenda in their work. It is unlikely that heroes will emerge from a community that does not concern itself with human rights on the day-to-day level.

Journalists and human rights

The role of the journalist is to report honestly on society. The media is sometimes described as a “watchdog” whose job is to give the alarm when people’s rights are under threat or abused. The media hold people in power to account and tell the public how that power is used or abused.

Human rights standards represent the broad criteria by which those people in power should be judged. They are an attempt to set objective minimum standards as to how states should treat citizens and, by implication, how citizens treat each other. In focusing on the human rights standards, journalists bring society into focus. This is not because there is something noble about a human rights perspective. It is professionally more complete. Human rights reporting is the reporter's equivalent of having more than one camera angle. It enables the reporter to examine a situation from different points of view, from the perspectives of all those affected. It therefore gives a more complete and more accurate picture.

Journalists find it very difficult to work if people are not free to express themselves and publishers are not free to publish. Human rights instruments give individuals the rights to freedom of thought and belief, and to freedom of expression. One of the main functions of journalism is to help people to achieve these rights. The rights of media and citizens are mutually supportive. People can only demonstrate their right to freedom of expression when publishers, editors and journalists deliver a broad and pluralistic media.

And publishers, editors and journalists only have a right to press and media freedom in so far as they are willing to use this right to deliver on people's right to freedom of expression. Media freedom is the first right to be constricted when states start to abuse the human rights of their citizens. Journalists resist such restrictions or become professionally flabby, passively publishing only what the authorities allow them to publish. Journalists who work in this manner become complicit in their own imprisonment.

Like other people, journalists have a personal interest in the rights that allow them to live in freedom, and to be free from fear or oppression. Journalists have families and belong to communities, and so have a direct personal interest in safety, freedom from fear and freedom from repression. The more that journalists are grounded in communities, the more they will be aware of human rights restrictions. Good journalists are curious about society and can deduce from what they learn that most communities want the same things: to be valued as individuals and groups, and be able to grow and develop in safety, without fear and with equality of opportunity. One important reason for news organisations to achieve diversity in staffing is that journalists from

different backgrounds understand more acutely the sensibilities of different communities. A newsroom whose composition mirrors the social diversity of a nation is better able to monitor human rights abuses in that society.

Human rights reporting in Sri Lanka

In the CPA survey, a high number of the civil society respondents thought that the Sri Lankan media had improved since 2000 in reporting on human rights issues generally, and more specifically on rights concerning children, women, minority and disadvantaged groups, as well as the conflict. However, all stressed that lack of balance remained a critical factor in incorrect reporting, followed by a resort to stereotypes. Many expressed concern about publishing the identities of victimised children and sensationalist reporting. They generally agreed that a media focus on human rights issues was very important to the work of their organisations.

Most of the journalists said the media had a role to play in promoting and protecting human rights, and they saw their role as being to inform, to remain objective and neutral, to reduce and prevent human rights violations, to give a voice to minorities, and to alleviate stigma regarding minorities.

A high proportion of the journalists also agreed with the civil society respondents that media institutions had not done enough to introduce measures to provide accurate, balanced and fair information on disadvantaged groups.

Most of the journalists thought the main step to be taken to improve reporting on conflict and human rights issues was to institute better quality controls in fact-checking. Almost two-thirds said the main way in which journalists could influence a change of media culture around human rights issues was to become better informed about minorities. Many wanted to see human rights related reports receive greater prominence in coverage and they expressed a desire for assistance in identifying different angles for reporting on minority issues. They almost all pointed to a need to be provided with more information about disadvantaged groups.

However, relatively few of the media respondents said they wanted greater access to people in minority groups and NGOs dealing with

human rights issues. The surprisingly low response on this point may be related to an overall concern within the media about the quality of information provided by NGOs and other agencies working on minority and human rights issues. Many of the journalists regarded the information provided by such entities as limited or only satisfactory, with a few considering it biased. Clearly, there is a critical need for relationship building between media and civil society representatives if reporting on human rights issues is to improve.

Alerting people to rights abuses

To be an effective scrutineer the media must have access to information, the resources to investigate and the ability to question people with power. This means not only a legal and *de facto* right to question, but also the professional commitment and training to do so. It is not enough to attend press conferences and write down what you are told. Journalists question what they are told, and why they are being told it. Obviously a journalist requires skills, for example to understand figures and to read a balance sheet, but questioning authority is mainly about developing an independent state of mind, and refusing to be overawed by the trappings of power. The independence of individual journalists also depends on the kind of support they receive from their news organisations, as it is difficult for an individual to be independent if the media owner, or worse still the editor, is compromised. Independence of the media is a factor not only of the legal framework in a country, but also of the business, social and political links between the media and other forces within society. The relationship between media owners, governments, political parties and other powerful forces within society can affect this.

The ability of the media to inform people about their rights and about abuses depends on its ability to reach the public. At extremes, the media cannot deliver if presses are closed, magazines are confiscated or programmes are jammed. This is not only a factor of circulation and audience figures but also whether coverage is comprehensive. Newspapers and magazines targeted only on influential metropolitan audiences, radio stations that broadcast in an “official” language different from the one people speak at home and TV channels that devote hours of time to officially sanctioned news, lose potential audiences. Public service broadcasters and serious newspapers should be aware of the need to address the whole of their audience, and not be content with a niche audience of those who enjoy studio discussions and political

debate. Commercial media, especially powerful commercial TV, should be obliged to deliver a well-resourced, independent and vigorous news service at prime time. Programmes need to reach young people as well as older people, women as well as men, minorities as well as majorities. There is, of course, nothing wrong with media as entertainment - indeed it is important to get away from the idea that effective journalism has to be dull, studio bound and always serious. But the entertainment value of media should partner, rather than substitute for, journalism that polices human rights. Put it this way: entertainment can be a good way of relaxing and probably a sign that no catastrophe is happening backstage, or it can be a way of distracting people from what is happening in the lives of their fellow citizens. When there isn't any news, does that mean nothing is happening, or does it mean that no one is reporting it?

What tools do journalists need?

Some journalists at least need a working knowledge of the main articles of human rights and to know where to go to research specific rights or regulations. They need to know how these rights have been enacted (or not) in the countries where they work. They need to know how these human rights can be enforced and how abuses can be challenged. Journalists also need protection. This protection can come in many forms. It can take the form of legislation to enshrine press freedom. It sometimes comes because courts - including international courts - see media freedom as vital to democracy and to providing a forum in which people can review the actions of governments. Perhaps the most important form of protection is solidarity - the mutual support that journalists can give to each other, by protesting at each media freedom breach and by creating strong and united professional associations and unions. For this to work, journalists must be willing to defend not only their own media, but also media and journalists with different politics, ethnic focus or style to their own. Increasingly, solidarity and protests have an international dimension, so that journalists can appeal to colleagues outside their country, if they are not adequately supported at home.

Codes of conduct and training

The CPA survey highlighted that media institutions in Sri Lanka generally do not provide their staff with sufficient resources and mechanisms for learning about how to report on the wide range of very serious human rights issues affecting the country. Journalists need and want codes of ethics, reporting guidelines and related training.

Just over half of the media respondents thought a code of ethics for day-to-day practice was essential to build a media culture in Sri Lanka that could contribute effectively to promoting human rights and resolving the conflict. An assurance of editorial freedom and provision of reporting guidelines were other important factors, with diversity in the newsroom considered a less important factor. Almost all said appropriate training would allow them to put ethical journalism into practice.

But while many of the media respondents said their institutions had a code of ethics, one fifth was not aware of in-house codes. And almost half of the respondents who were aware of their institutions' codes said they had received no training on professional ethics. Similarly, just under half the respondents said their institutions had guidelines for reporting on conflict and disadvantaged groups, but about half of these respondents did not have copies. Just 30 per cent had received training on reporting on conflict or war, human rights and disadvantaged groups. The two-thirds who said they had received no such training almost all wanted it, especially in regard to conflict reporting.

Human rights touch every area of life

Journalists have a unique place in the defence of human rights. Journalism is also interested in every avenue of human life. We take for granted that newspapers, TV and radio stations are concerned with matters of state - what the executive is doing, what laws are passed in Parliament, the main social issues. But journalism is also about the everyday interests of women, men and children. Publications and programmes specialise in agriculture, sport, women's issues, science, embroidery, children, finance, art and every area of technical expertise. Human rights reporting can become part of the basic training of journalists in all areas of interest, not so they can "do good" but so that they can become more effective reporters.

(i) Policy makers

Policy makers - editors in chief, station managers, editorial directors, heads of news and so on - have an essential role in sensitising their organisations and staff to their human rights role. They set the agenda for a broadcasting organisation, publication or agency. They are the first line of defence when an editorial line or a story provokes a reaction. They must assess the risks of being taken to court, censored or shut down. They must judge whether a story will be run even though the

advertising manager is warning that revenue will be lost. If the people who fill these positions have a clear attitude towards human rights and towards press freedom they will attract the best and most committed journalists to work for them, and their newspaper, broadcasting station or agency will be effective in the campaign for human rights. If they are cautious and half-hearted, their output will be bland and spineless. The editor in chief or station manager needs a working knowledge of the key human rights instruments and how these rights relate to the freedom to publish. She or he needs rapid access to a lawyer with specialist knowledge.

(ii) Senior journalists

Below the layer of policy makers comes an influential layer of senior journalists who include producers, news editors and chief subeditors. If the reporter is the eyes and ears of the news gathering process, the newsroom makes sense of that intelligence and decides how it will be used. They are often responsible for recruiting editorial staff and for their training. They allocate staff for particular stories and allocate the time to follow up a story. These senior newsroom journalists shape the day-to-day content of programmes and publications and create a culture in which the journalists work. They play an important advisory role to ensure that specialist reporters, who develop close links with official sources, retain a correct degree of independence and do not become too close to the agency on which they are reporting.

(iii) Specialist reporters

For specialists on some reporting beats, an awareness of human rights is essential. For example:

- Political and parliamentary reporters need to know in detail about the powers of the executive and the legislature, and to be vigilant if these powers are overstepped. They should be specialists in knowing what official information they are entitled to receive and be continually policing these rights.
- A police reporter needs to know her or his rights in relation to seeking information, official documents, protection of sources etc. In their watchdog role they need to know the rights of people who are being questioned, who have been arrested and who are in custody. A crime reporter may tackle an outbreak of violent crime by considering the human rights of the victims and what is done to uphold them. She

or he will also be aware of the rights of those who have been arrested or convicted of offences.

- The job of the court reporter is not just to present sensational crime stories from a prosecution perspective but also to monitor whether individuals have fair hearings, including the right to adequate defence and the right to be tried within a reasonable time. Court reporters are also responsible for alerting newsrooms when courts sit in secret or when they issue orders to withhold from publication verdicts, sentences, evidence or the names of witnesses. They should be closely involved with senior editorial staff in discussions about challenging such decisions. A court reporter needs to know how the independence of the courts is guaranteed.

Other journalists may not consider that they have such “political” areas of work, but they too should be concerned with human rights. Indeed, they can have a greater influence on the public because they are addressing audiences which may not already be sensitised about human rights issues. For example:

- A fashion journalist can be concerned with the conditions in which garments are produced and multinational employment practices.
- Children’s media can address the need for young people to have a forum where they can express their opinions and be heard.
- Sports journalists can report on the pressures on young sportspeople, the fairness of contracts and issues such as the abuse of drugs.
- A travel writer can report on exploitation of children in tourism.

Tourism and rights

The World Tourism Organisation adopted a Global Code of Ethics for Tourism in 1999, but journalists and the media industry appear to know little about it, even within the high-profile circles of travel journalism.

The UN General Assembly officially recognised the code in 2001. The code states:

“Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children ...”
Article 2 (2).

“The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism, as such, in accordance with international law, it should be energetically combated ... and penalised without concession by the national legislation of both the countries visited and countries of the perpetrators of these acts, even when they are carried out abroad.” Article 2 (3)

For more information on the code, see <http://tourismpartners.org/globalcode.html>

Chapter 2

What are human rights?

“Too often, Governments lack the political will to implement international norms they have willingly accepted ... It is often those who most need their human rights protected, who also need to be informed that the Declaration [on Human Rights] exists - and that it exists for them.”

*UN Secretary-General Ban Ki-moon
Human Rights Day, December 10, 2007*

Human history has been driven by the desire of nations, ethnic groups, social classes and other groups to achieve justice, fair treatment and freedom from oppression. This desire for equality and justice has fuelled social revolutions, independence movements, the abolition of slavery, and movements to establish equal rights for women. These social movements have been driven by the idea that people have rights and are entitled to assert and defend them until they are achieved. Some of these movements have been more fundamental than others, but many focused mainly on the needs of one class or section of society.

All societies have power structures, and give some people more power and authority than others. In autocracies, or where political power is inherited, there is a fault line between those who have rights and those who do not. States born out of movements for social justice promise freedom from oppression, equality of treatment and the basic essentials of life but do not always prove effective at delivering them. In democracies, power is in theory delegated and controlled by the people. But the rich have more power than the poor and people often have little control over those who have political power. Sometimes groups are excluded from political and social rights because they are not citizens, or because they belong to the wrong ethnic group or because they have disabilities.

Universal Declaration of Human Rights: A Summary

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 1

The rights belong to everyone - irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2

The Declaration seeks to guarantee the right to life, liberty and security

Article 3

Freedom from slavery or servitude

Article 4

Freedom from torture, cruel, inhuman or degrading treatment or punishment

Article 5

Equality before the law and remedy when rights are abused

Articles 6-8

Freedom from arbitrary arrest, detention or exile

Article 9

A fair trial

Article 10

Be presumed innocent until proved guilty

Article 11

Privacy and protection against unfair attacks on reputation

Article 12

Freedom of movement

Article 13

Continued on facing page

The idea that everyone has rights is a revolutionary one, since it involves a jump from demanding justice for one group, to asserting that all individuals and groups of people have an equal claim to human rights. Human rights are the basic and fundamental rights which seek to ensure minimum standards of acceptable behaviour between the state and individuals, and by implication between individuals and groups.

They set a framework for the rights and freedoms of individuals, and the rights of communities, societies and states. Human rights protect individuals, allow communities to live in peace and to take some control over their own destiny. They protect individuals from unfair treatment and they put all people in an equal position before the law. Sometimes, the rights of individuals and communities conflict, while Governments often excuse human rights abuses by saying that they are defending the rights of society. There are also conflicts when the human rights of different individuals clash. This is why a human rights approach can be so useful for journalists because it allows media to present complexities from more than one viewpoint.

Human rights are universal legal guarantees that protect individuals and groups against government actions which interfere with fundamental freedoms and human dignity. They are internationally recognised and accepted, and the most basic rights apply as part of customary international law. According to the preamble of the Universal Declaration of Human Rights, upholding these rights is "the foundation of freedom, justice and peace in the world". Kivutha Kibwana, Law Professor at Nairobi University, put it like this when addressing an audience of journalists:

"Human rights are values, standards of claims which define, enhance and protect human dignity. Human rights are therefore standards which define and concretise citizenship and personhood; a human being devoid of human rights is a shell, a zombie. Human rights are then those rights that are fundamental in terms of defining and reaffirming citizenship and humanness."

Reporting Human Rights in Africa, IFJ seminar, March 1995

All journalists will benefit from reading the relevant international conventions and treaties occasionally to refresh their sense of the comprehensive nature of the rights they are trying to defend. If human rights are to be enforced, journalists and the public have to know something about them. How many journalists could name, without looking them up, half a dozen rights supported by the Universal Declaration of Human Rights? How many are aware of the South Asian Association for Regional Cooperation's (SAARC) position on human rights? When rights are reported in a way that relates them to the everyday reality of people, such rights will become more widely known.

In reporting on rights, relativist arguments such as those applied within SAARC need to be regarded with a critical eye. In an address to the SAARC forum in early 2007, Sri Lankan President Mahinda Rajapaksa found it sufficient to say that respect for human rights has been integral to the great cultural traditions of the sub-continent for millennia. "We, in our region, will continue to protect and advance human rights, including economic rights, despite having to struggle with differences and poverty left behind by centuries of colonial domination." (See Mahinda Rajapaksa's address, 14th SAARC Summit, New Delhi, April 3, 2007 : <http://www.saarc-sec.org/main.php>)

SAARC countries take the view that human rights are an internal matter for each member country. However, rhetoric that allows for some people or groups to be regarded as more equal on the basis of "tradition" and economic imperative fails ordinary people. All human beings are equal. The core of human rights is universal. The degree of observance of human rights within a country defines the quality of political leadership. Human rights standards should not threaten political leaders. Instead, adherence to human rights will provide the requisite environment for political systems to be stable and sustainable. Strict observance of human rights will guarantee the longevity of a political system and citizens will more readily accept the legitimacy of administrations that are sensitive to human rights. Above all, adherence to human rights will improve the quality of the lives of all citizens. (See Human Rights Watch: <http://hrw.org/english/docs/2007/03/29/asia15600.htm>)

The Universal Declaration of Human Rights

The development of human rights instruments in the 20th century was the first attempt to define these rights not for one group or nation but

Universal Declaration of Human Rights – Summary

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The UDHR seeks to guarantee the right to:

- seek asylum from persecution **Article 14**
- a nationality **Article 15**
- marry with 'free and full consent' **Article 16**
- own property **Article 17**
- conscience and religion **Article 18**
- freedom of opinion and expression **Article 19**
- peaceful assembly and association **Article 20**
- take part in government and periodic and genuine elections **Article 21**
- social security, economic and social rights **Article 22**
- work, equal pay, fair pay, the right to join a trade union, a limitation on hours of work and paid holidays **Articles 22 & 23**
- a standard of living adequate for health and well-being, security in times of unemployment, sickness, disability or old age. Special care and assistance for mothers and children **Article 25**
- free primary education **Article 26**
- share in arts, culture and scientific benefits including protection of intellectual rights **Article 27**
- social and international order **Article 29**

www.unhchr.ch

for the whole of humanity, and to set up a machinery designed to protect them. It can be argued that it was far easier to draw up and agree human rights instruments than to implement and enforce them, but the process has achieved a broad consensus that these rights are universal.

The Universal Declaration of Human Rights was adopted by the United Nations in 1948, setting down what were regarded as the essential rights and freedoms in just 30 articles. They cover a wide spectrum of human existence, from the right to “life, liberty and security of person” to the right to a job and a reasonable standard of living.

The Declaration identifies rights for individuals, but rights are also generalised for groups, such as the rights of women, the rights of ethnic minorities and the rights of children and young people. It clearly asserts the rights of women to equality, the rights of children to free education, the right of adults to a job with a fair rate of pay, the right to adequate leisure and the right to an adequate standard of living. Living free of poverty, with the potential to work to improve the health and standard of living of the community is itself a human right. The Declaration is not comprehensive. For example, the rights of people with disabilities and the rights of people to their own sexual orientation were not at that time recognised. But given that it is now almost 60 years old, the surprise is not what the Declaration leaves out, but at how inclusive and relevant it still seems today. It is an eloquent rebuttal of arbitrary power, abuse of power, mass killings, torture and enslavement.

We may have become cynical about the lack of commitment to human rights by the world’s powers and by the inability of the United Nations to work effectively, but it is hard to be cynical about this Declaration. It has the freshness of sincerity, and the journalistic virtues of direct language, brevity and ease of understanding. Has it succeeded? No. But it sets the standard for human behaviour, and should have a place on every newsroom wall.

Freedom of speech and belief are the first rights mentioned in the preamble, along with freedom from fear and want. If the rights to life and liberty are the cornerstones of the human rights charters, then freedom of speech is seen as the essential tool in achieving them.

The preamble affirms that:

“... the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Disregard and contempt for human rights “have resulted in barbarous acts which have outraged the conscience of mankind”, while “the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”.

Article 29 says that rights and freedoms can only be limited by law:

“... for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

States cannot uphold one right by infringing another. Article 30 of the Declaration states:

“... Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

The Declaration is not a treaty, but it forms part of customary international law and therefore binds all nations. Indeed, it can be said that there is an obligation on states to observe human rights in the UN Charter. In June 1971, the International Court of Justice ruled that South Africa’s occupation of South West Africa (now Namibia) was illegal. It based this mainly on arguments about the Charter given to South Africa by the League of Nations after World War I. But it also based its ruling on core values quoting, “... two principles of paramount importance: the principle of non-annexation and the principle that the well-being and development of the peoples concerned formed a sacred trust of civilisation.” This is sometimes quoted as the first example of the court basing a decision on some core human rights, although South Africa continued to plunder Namibia’s mineral deposits until December 1988.

The UN has developed a series of organs to protect, promote and monitor human rights. The central UN body in this regard is the Office of the High Commissioner for Human Rights (OHCHR), which today monitors and reports on human rights situations in particular countries or territories, and considers human rights themes worldwide.

The current High Commissioner for Human Rights is Louise Arbor. Detailed and easily accessible information on the mandate and work of

the OHCHR can found at: www.ohchr.org. According to the website, the OHCHR “...works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system: UN Charter-based bodies, including the Human Rights Council, and bodies created under the international human rights treaties and made up of independent experts mandated to monitor State parties’ compliance with their treaty obligations.”

There are of course many other UN bodies concerned with the protection of human rights. The main institution deriving directly from the Charter of the United Nations is the Human Rights Council (which has replaced the old Human Rights Commission). The main function of the Human Rights Council is the Universal Periodic Review, in which the human rights reports and records of all UN member-states are reviewed.

In addition, there are seven human rights bodies that have been created by separate treaties that monitor the implementation of the core international human rights treaties. These are:

- The Human Rights Committee (monitoring the International Covenant on Civil and Political Rights)
- The Committee of Economic, Social and Cultural Rights (monitoring the International Covenant on Economic, Social and Cultural Rights)
- The Committee on the Elimination of Racial Discrimination (monitoring the International Convention on the Elimination of All Forms of Racial Discrimination)
- The Committee on the Elimination of Discrimination against Women (monitoring the Convention on the Elimination of All Forms of Discrimination against Women)
- The Committee against Torture (monitoring the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)
- The Committee on the Rights of the Child (monitoring the Convention on the Rights of the Child)
- The Committee on Migrant Workers (monitoring the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families)

Detailed information on the work of all these bodies can be found at: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> and related links.

Covenants on Civil and Political Rights & Economic, Social and Cultural Rights

It was intended that the Declaration would become the basis for a universal treaty which states would sign and which would then become legally binding within each country. However, a single treaty could not be agreed, and it took almost two decades to approve the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and a further decade before they came into force. The General Assembly of the United Nations adopted both covenants on December 16, 1966. The ICESCR entered into force on January 3, 1976, and the ICCPR on March 23, 1976. The delay in adopting the covenants and the division of rights in this way reflects ideological differences during the Cold War.

It is not easy to decide whether a right is civic and political or economic and social (for example the right to own and pass on property is prominent in both covenants). In general, the ICCPR reflected the “individual freedom” approach of the Western capitalist countries, while the ICESCR reflected the concerns with social security, employment and collective rights of the Soviet Union and its allies. However, the two covenants are closely related and interconnected and there is a deliberate overlap. It is impossible to achieve “freedom from fear and want” without the rights in both covenants. The UN General Assembly declared in 1950 that “the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent”. The covenants add detail to the Declaration, but no new principles. They both emphasise the equality of men and women, and both include the right for all peoples to self-determination.

(i) International Covenant on Economic, Social and Cultural Rights

This legally binding treaty contains 31 articles, of which the first 15 set out rights and freedoms, and the final 16 provide details of reporting procedures and the supervisory role of the Committee on Economic, Social and Cultural Rights (CESCR). Unlike the rights contained in the ICCPR, economic, social and cultural rights do not all have to be

Summary of the ICESCR

Article 1 enhances the right to self-determination, to economic, social and cultural development, and to use natural resources.

Article 6 recognises the right to work at a freely chosen job.

Article 7 covers just and favourable working conditions, fair wages, and equal pay for women. Working conditions must be safe and include holidays with pay.

Article 8 guarantees the right to join a trade union and to strike in conformity with the laws. This may be restricted in the interests of national security or public order or to protect the rights and freedoms of others.

Article 9 recognises the right to social security, and **Article 10** says that the State should assist families, protect mothers, and protect children from exploitation.

Article 11 recognises the right to an adequate standard of living. "It is a fundamental right of everyone to be free from hunger."

Article 12 recognises the right to the highest attainable standard of health. States must aim to reduce infant mortality, promote child development, improve environmental and industrial hygiene, control epidemics, and ensure access to medical care.

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achieved immediately. Under the ICESCR, each state party undertakes to take steps "to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights". However, the principles and basic rights are non-negotiable.

The covenant covers equal rights for men and women; the rights to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health and to education. It provides for rights of self-determination; to form and join trade unions; to social security and social insurance; protection and assistance to the family; an adequate standard of living; freedom from hunger, to take part in cultural life; and to enjoy the benefits of scientific progress.

Article 2 spells out how states are obliged to seek to fulfil this covenant. Although some rights are conditional on "available resources", the principles are non-negotiable. States undertake to achieve covenant rights progressively, by all appropriate means and to the maximum of their available resources. This can take a long time, as illustrated by the fact that "the progressive introduction of free education" is still being pursued in some countries. Kenya implemented the right of every child to a free primary school place in 2003.

When they are implemented, covenant rights must be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, developing countries may determine to what extent they guarantee economic rights to non-nationals.

CESCR has a supervisory role. It distinguishes between "obligations of conduct" - what states must do - and "obligations of result" - things a state must achieve. States decide which measures are appropriate, but CESCR decides whether all appropriate measures have been taken. States submit reports to the Secretary-General of the UN (but in practice to CESCR) on the measures they have adopted and the progress made.

No particular system of government or economy is precluded from being able to fulfill obligations, but the systems must do the following.

- Be democratic
- Respect human rights

- Recognise and reflect the interdependence and indivisibility of the two sets of human rights: civil and political, and economic, social and cultural
- There is an obligation to ensure the satisfaction of minimum essential rights

States fail in their obligations if a significant number of individuals:

- Do not have enough essential foods
- Do not have essential primary health care
- Do not have basic shelter and housing
- Do not have basic forms of education

Although the achievement of some rights may be delayed in developing countries, this cannot be used as an excuse if funds can be found from somewhere. If necessary, states must cooperate with the international community to receive aid.

(ii) The International Covenant on Civil and Political Rights

This treaty enshrines the right to life and outlaws torture, enslavement, forced labour or arbitrary detention. It limits restrictions on the freedoms of movement, expression and association. The first 27 of 53 articles set out rights and freedoms while the final 26 cover application and supervision, including the creation of the Human Rights Committee (HRC), and a procedure under which one state may complain against another (though it has never been used).

Certain rights can never be suspended or limited, even in emergencies. These are the right to life, freedom from torture, freedom from enslavement or servitude, protection from imprisonment for debt, freedom from retroactive penal laws, the right to be recognised as a person before the law and freedom of thought, conscience and religion. If other rights are suspended this can only be to the extent strictly required by an emergency, and can never involve discrimination on the grounds of race, colour, sex, language, religion or social origin.

(iii) The Human Rights Committee

The covenant created the HRC as a supervisory body mandated to consider and comment on reports from states on measures they have adopted to give effect to covenant rights, and the progress they have made. In theory the HRC can consider complaints from one state that another state is not fulfilling its obligations or complaints from

Summary of the ICESCR

Continued from facing page

Article 13 recognises the right to education, which must aim to develop the personality and a sense of dignity, and promote understanding, tolerance and friendship among nations and racial, ethnic or religious groups.

Articles 13 and 14 lay down measures to achieve primary education for all, and “the progressive introduction of free education”.

Article 15 recognises the right to enjoy cultural life and the benefits of scientific progress. It protects intellectual property rights and scientific and creative freedoms.

Summary of the ICCPR

Under **Article 2** States undertake to ensure that all individuals enjoy the Covenant rights without discrimination. **Article 3** upholds the equal rights of men and women. Rights covered by the ICCPR include the rights:

- of peoples to self-determination (**Article 1**) and of minorities to enjoy their own culture, religion and language (**Article 27**)
- to life (**Article 6**), freedom from torture (**Article 7**), freedom from slavery (**Article 8**), and to liberty and security of person (**Article 9**)
- to freedom of thought, conscience and religion (**Article 18**), freedom of opinion and expression (**Article 19**), except that propaganda for war or racial or religious discrimination shall be prohibited (**Article 20**);
- to a fair trial and not to be tried twice for the same offence (**Article 14**), to be recognised as a person before the law (**Article 16**), to be treated equally before the law (**Article 26**), and with humanity and respect when detained (**Article 10**)
- not to be jailed for non-payment of debts (**Article 11**), and not to be subject to retroactive legislation (**Article 15**);
- to freedom of movement (**Article 12**), and not to be arbitrarily expelled (**Article 13**);
- to privacy (**Article 17**), family life and freedom to marry (**Article 23**), and the rights of the child (**Article 24**)

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individuals where a state has signed the First Optional Protocol. In practice, the inter-state complaints procedure has never been used. The committee submits an annual report to the UN General Assembly via the Economic and Social Council. It also makes interpretations (General Comments) which become part of human rights rules. For example, the HRC stipulated that it is not enough for states to pass legislation which accords with Article 2 (equality) and Article 3 (gender equality). They must take action to ensure that the principles are put into effect. In other examples, the HRC interpreted Article 6 to mean that the death penalty should be a quite exceptional measure, and “following orders” is no defence if accused of violating Article 7 forbidding torture and cruel, inhuman or degrading treatment.

There are two Optional Protocols to the ICCPR. The first allows the HRC to hear complaints from individuals. The second prohibits the death penalty. The First Option Protocol is an important mechanism for journalists. Once a country accedes to this Protocol, any individual within the territory of that country is given the right to directly submit complaints to the HRC against violations of human rights recognised by the ICCPR. The importance of this is that in countries where officials and the courts are reluctant to enforce human rights standards commensurate with those established by the ICCPR, an individual complainant has direct access to the treaty body which can give an authoritative decision on the violation and the scope of human rights protected by the ICCPR. In Sri Lanka, this right was available between 1997 and 2006, during which time it was used by prominent journalists and editors such as Victor Ivan in upholding the freedom of speech and expression. In 2006, the Supreme Court declared in the case of *Singarasa v. Attorney General* (S.C. Spl (LA) No. 182/99; decided on 15th September 2006) that recognising the jurisdiction of the HRC to entertain individual complaints is unconstitutional under the Sri Lankan constitution.

Both the CESR and the HRC comment on country reports and make recommendations to states. They also receive “shadow” reports from NGOs in each country and this is an opportunity for journalists to highlight shortcomings and carry out their own investigations. HRC country reports can be influential when a country is trying to meet international standards or is concerned about its own reputation and standing.

International Bill of Human Rights

The Universal Declaration of Human Rights and the two international Covenants are known collectively as the International Bill of Human Rights. These are rights from which no nation is exempt, and form a basis of customary international law. Although states sign up to the covenants, the Bill of Rights applies whether or not it is recognised. The rights apply to all, and they must be observed by all.

Other important human rights instruments

The second half of the 20th century saw the development of a large number of human rights instruments. It could be argued that reaching agreement on the wording of human rights instruments became a substitute for achieving rights. However, these agreements or treaties are important, in part because they also set up a mechanism for monitoring human rights and, in theory, at any rate, for calling nations to account. Some of the most important include the following.

(i) International Convention on the Elimination of All Forms of Racial Discrimination

The convention obliges state parties to criminalise and punish the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and acts of violence against any race or group of persons of another colour or ethnic origin.

The convention prohibits indirect as well as direct discrimination in areas such as the right to work, the right to join trade unions, the right to housing and the right of access to a public place. However, states can discriminate against non-citizens. The convention permits special protection (i.e. “affirmative action” or “positive discrimination”) to enable deprived racial or ethnic groups to redress imbalances.

The Committee on the Elimination of Racial Discrimination (CERD) was the first body created by the UN to monitor a human rights treaty. States submit periodic reports to the committee, which can also hear complaints from individuals if the state “opts in” to this provision.

In general, CERD complains that states are often late in submitting their country reports, and that too many reports simply point to the passing of legislation, without examining practice within the country. Journalists, when reporting such country reports, should look not just at the passing

Summary of the ICCPR

Continued from facing page

The ICCPR includes the rights:

- to peaceful assembly (**Article 21**), freedom of association (**Article 22**), to take part in public life and to vote (**Article 25**).
- Article 4 sets out how a State may temporarily suspend certain rights under certain conditions (derogations), while **Article 5** says that States and groups cannot use one Article to justify breaching another.

of laws, but also at the practice in the country. NGOs will be helpful in pointing out discrepancies between the legal position and practice within a country.

(ii) Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (adopted in December 1979) is sometimes described as the international bill of rights for women. It provides for equality between women and men in the enjoyment of civil, political, economic, social and cultural rights. Discrimination is to be eliminated through legal, policy and programmatic measures. Temporary special measures to accelerate women's equality are encouraged.

States are required to ensure equality in political and public life and eliminate discrimination in marriage and family life. They must take account of the particular problems of women in rural areas, and their special roles in the economic survival of the family.

The convention obliges states to modify social and cultural patterns of conduct to eliminate prejudices and customs and all practices based on the idea of the inferiority or superiority of either sex or on stereotyped roles for men and women.

The Committee on the Elimination of Discrimination against Women monitors the convention and the Optional Protocol for allowing individual complaints. However, a large number of countries entered reservations when ratifying the convention, particularly those applying to discrimination in the "private" sphere of work, home and family.

The issue of gender-based violence is not specifically addressed in the convention. In 1992, the Committee on the Elimination of Discrimination against Women extended the general prohibition on gender-based discrimination to include gender-based violence, which it defined as:

"... violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

The committee affirmed that violence against a woman constitutes a violation of her human rights, whether the perpetrator is a public official or a private person. In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women (resolution 48/104). The declaration sets out the steps which states and the international community should take to ensure the elimination of all forms of violence against women in public or in private life.

(iii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The convention came into force in December 1984 to strengthen prohibitions on torture and other cruel, inhuman or degrading treatment or punishment. The prohibition against torture is absolute and cannot be justified by exceptional circumstances, states of emergency or wars. Obeying orders cannot be used as a justification. The convention is therefore effectively binding on any soldier, police officer or state official. Torture is defined as:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

States must take effective measures to prevent torture. They must train police and the army, review interrogation rules and guarantee prompt and impartial investigation into allegations of torture and protect witnesses. States have an obligation not to expel, return or extradite a person to a state where he or she would be in danger of being tortured.

The convention provides for international supervision by the Committee against Torture (CAT), which can consider complaints from a state or (under Article 22) from individuals. Only a few states have agreed to answer complaints from individuals and to comply with the system of

Information about CAT can be found on the UNHCHR website <http://www.unhchrch/html/menu2/181stat3.htm>
Rulings can be found on the University of Minnesota Human Rights Library website <http://www.umn.edu/humanrts/index.html>

Convention on the Rights of the Child – highlights

Article 2 Rights must be respected without discrimination.

Article 3 When taking decisions, the best interests of the child comes first.

Article 5 States respect the rights of parents, families and guardians to provide appropriate guidance.

Article 6 Every child has a right to life and (Article 8) an identity.

Article 7 A child has a right to a name and nationality and, as far as possible, the right to be cared for by his or her parents.

Article 9 A child will not normally be separated from his or her parents against their will. **Article 11** States will prevent the illicit transfer of children abroad.

Article 12 Children have a right to hold and express views.

Article 13 Children have a right to freedom of expression and the right to access the media.

Article 14 States respect the right of the child to freedom of thought, conscience and religion.

Article 15 Children have the right to freedom of association and peaceful assembly.

Article 16 Children have a right to privacy, and protection against unlawful attacks on their honour or reputation.

Article 17 States will ensure children's access to a diversity of mass media.

Article 18 Both parents have a responsibility to bring up a child.

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state-to-state complaints. The committee can investigate, in cooperation with the state concerned, "reliable information" that torture is being systematically practised within its territory. Again, several states that ratified the convention have not agreed to this system of joint investigation.

Individual complaints to CAT include many about deportation of asylum seekers to countries where they may be tortured. The committee has said:

"... the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present."

The failure of so many countries to accept CAT hearings from individuals, and the tendency for this provision to be used frequently to try to prevent deportations, gives the statistics a lopsided appearance. Countries against which the greatest number of individual cases have been lodged such as Sweden, Switzerland, Canada, France and Australia are not countries that appear near the top of most lists of countries accused of torture.

In deportation cases, the complaint is usually against a country that does not practise torture, alleging that it is about to deport someone to a country that does practise torture. This allows CAT to publicise allegations about the country to which someone is being deported.

(iv) Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted in 1989 and came into force in September 1990. It has become the best-supported convention in UN history, at least in name. It has been ratified by 192 states. Only the United States and Somalia have not signed. However, since children's rights continue to be widely abused in many countries, enthusiasm for the Convention by no means reflects the real world situation.

The CRC recognises the vulnerability of children (young people up to the age of 18) and says that they should grow up in a family environment, in a spirit of peace, dignity, tolerance, freedom, equality and solidarity. It set up a Committee on the Rights of the Child to which states must report every five years. States agree to make the provisions of the CRC widely known to adults and to children, and to publicise their own reports to the Committee widely within their own countries. UNICEF is given special status to carry out work at the request of the Committee and to provide technical assistance to countries.

Two Optional Protocols to the CRC have been widely adopted. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict came into force in February 2002. This made it:

- Illegal for children to be coerced into military service before the age of 18.
- A war crime to conscript or enlist children under the age of 15 or to use them to participate in hostilities.

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography came into force in January 2002. It tackles trafficking of children for sexual purposes, prostitution of children, sex tourism, pornography depicting children and offences carried out through use of the internet. Its text expresses concern at:

“... the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography.”

Of particular interest to journalists:

- Article 8 protects the privacy and identity of child victims.
- Article 9 says that states must promote awareness “through information by all appropriate means” about harmful effects and preventive measures.

The full text of the CRC can be found at <http://www.unicef.org>

CRC – Highlights

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Article 19 States must protect children from violence, injury or abuse, neglect or exploitation.

Article 21 Adoption should be in the best interests of the child.

Article 22 Refugee children should receive protection and aid. **Article 23** Children with disabilities should live a full life.

Article 24 Children have a right to health.

Article 25 Children in care must have periodic reviews of care.

Articles 26 & 27 Children have a right to social security and an adequate standard of living.

Article 28 Children have the right to education, free at primary level. **Article 30**

Children from minorities have a right to their culture, religion and language. **Article 31** Children

have a right to leisure, play and recreation and to cultural and artistic life. **Articles 32 & 33**

A child must be protected from hazardous or harmful work, and from drugs. **Article 34** States

must protect children from all forms of sexual exploitation and abuse, and **(Article 35)** from

abduction, sale or trafficking, and **(Article 36)** from all other exploitation. **Article 37** protects

children from torture or cruel punishment. Children must never be sentenced to death. **Articles 38**

& 39 seek to protect children in armed conflicts. **Article 40**

Children need special treatment if they break the law.

(v) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

This convention was adopted in December 1990 to create international standards for the protection of the human rights of migrant workers and their families. Migrants are often restricted in the kind of work in which they can engage. Many fall victim to human traffickers who recruit them under false pretences and some are held under slave-like conditions. The convention provides for the establishment of a monitoring mechanism in the form of an international body of independent experts.

Treaties are not enough

These are just some of the conventions and treaties which have an impact on human rights. There are 23 treaties which relate to the advancement of the rights of women and children, including a convention on consent to marriage, a protocol against the smuggling of migrants by land, sea and air, and a convention on the nationality of married women. If treaties secured rights we would all live in peace, security and happiness. But governments do not have the will, means or ability to deliver these rights. The committee system of enforcement, together with Special Rapporteurs who can be sent to investigate the situations in member states, can highlight abuses. But the system is very slow and only works with the consent of the state concerned. Moreover the conventions seem to get longer, without necessarily becoming more effective. None of the formal measures will substitute for having a vigorous and active media to police rights and to hold governments to account.

Fundamental Rights recognised by the law and the Constitution of Sri Lanka (1978)

Chapter III of the Constitution of Sri Lanka (1978) relates to the fundamental rights declared and recognised by the constitution. These are mainly civil and political rights and do not include socio-economic rights. They include the following:

- Freedom of thought, conscience and religion (Article 10)
- Freedom from torture (Article 11)
- Right to equality (Article 12)
- Freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation (Article 13)

- Freedom of speech and expression including publication (Article 14 (1) (a))
- Freedom of peaceful assembly (Article 14 (1) (b))
- Freedom of association (Article 14 (1) (c))
- Freedom to form and join a trade union (Article 14 (1) (d))
- Freedom of lawful occupation (Article 14 (1) (g))
- Freedom of movement and residence (Article 14 (1) (h))
- Freedom to return to Sri Lanka (Article 14 (1) (i))
- Freedom to manifest religion or belief in worship, observance, practice and teaching (Article 14 (1) (e))
- Freedom to enjoy and promote culture and language (Article 14 (1) (f))

All these fundamental rights are legally enforceable by individuals by application to the Supreme Court (Article 17 read with Article 126 of the Constitution). The Supreme Court has a mixed record with regard to the protection of fundamental rights. At times, it has robustly intervened to enforce fundamental rights against oppressive action by the State, whereas in others, it has been more diffident.

Weaknesses of the fundamental regime under the Sri Lankan Constitution

While the 1978 Constitution improved fundamental rights protection by making them enforceable through the courts, there are also several weaknesses in the constitutional framework:

1. Article 16 validates all existing law even if inconsistent with fundamental rights. This violates the principle of constitutional supremacy whereby no ordinary law or practice inconsistent with the constitution can be held valid. It also undermines the protection of fundamental rights because there is little point in constitutionally recognising them if they can be overridden by any inconsistent previous law.
2. Closely related to the first point, Article 80 (3) prohibits any law to be questioned in a court for consistency with the constitution once it has passed. This feature too is in violation of the principle of constitutional supremacy, because once a law is passed, it cannot be struck down even if inconsistent with the constitution.

3. Although Articles 17 and 126 provide a remedy for violations of fundamental rights by recourse to the Supreme Court, it limits the effectiveness of the remedy by stipulating a restrictive time bar of only one month from the date of the alleged violation, within which a person can apply to the Supreme Court. Many modern constitutions permit a longer period than one month when questions of human rights are involved.
4. Closely related to the previous point are the provisions of Article 121, which allows a citizen to challenge the constitutionality of a proposed law prior to enactment. Article 121 states that within one week of a Bill being placed on the Order Paper of Parliament, a citizen may challenge its constitutionality before the Supreme Court. Generally, however, this has proved to be an ineffective remedy, although some significant exceptions exist. This is primarily because of the culture of secrecy in which political institutions and the law-making process work in Sri Lanka, whereby it is highly unlikely that many citizens and even journalists have sufficient information in order to meaningfully exercise the right to apply to the Supreme Court granted by Article 121.
5. Both Articles 17 and 126 refer to fundamental rights violations arising solely out of 'executive or administrative' action, i.e., governmental action. This means that violations committed by private persons and bodies are excluded from the remedy provided. In progressive modern constitutions such as that of South Africa, human rights violations by private actors are also punishable by the courts. Lawyers refer to this as the 'principle of horizontality'.
6. The Supreme Court is the court to which a person must apply at first instance in cases of alleged fundamental rights violations. This means that the Supreme Court is inundated with a high volume of such applications, and must also consider contested questions of fact in addition to pronouncing on the law. Modern international best practice requires that there is at least one appeal available to complainants, which means that it would have been better if a lower court, such as the provincial High Courts of Sri Lanka, had jurisdiction to hear fundamental rights

applications at first instance, with an appeal lying to the Supreme Court.

7. The framework for restrictions set out in Article 15 of the chapter on fundamental rights has also been criticised by some commentators on the grounds that the permissibility of restrictions on fundamental rights, especially during a state of emergency when they are most vulnerable, are unduly wide. In particular, Article 15 does not require justifications such as ‘necessity in a democratic society’, ‘reasonableness’ or ‘proportionality’ to be made out by the government prior to the imposition of restrictions. Such requirements of justification are essential in modern constitutions, and under international human rights instruments such as the European Convention on Human Rights, or the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a signatory. Moreover, during a state of emergency, emergency regulations (which is not law made by Parliament, but exclusively by the President) also have the legal effect overriding safeguards provided by ordinary law. This is particularly problematic in Sri Lanka because it has been (and continues to be) governed under a state of emergency for unusually long periods of time because of conflict conditions; because emergency regulations are not easily reviewable by the courts; and because the Sri Lankan Parliament has a poor record of monitoring, scrutinising and holding the executive to account over the operation of emergency regulations.

Some important fundamental rights cases decided by the Supreme Court

Freedom of thought, conscience and religion

Article 10 guarantees the freedom of thought, conscience and religion for all *persons*, whereas Article 14 (1) (e) guarantees the freedom to manifest religion or belief in worship, observance, practice and teaching only to *citizens* of Sri Lanka. Likewise, Article 10 is not subject to any restrictions whatsoever, whereas Article 14 (1) (e) is subject to a wide number of restrictions including on grounds of national security and public order and for protecting the rights of others. Also important in

this regard is Article 9, which states that the republic shall give to Buddhism the foremost place and that accordingly it shall be the duty of the state to protect and foster the Buddha Sasana, while assuring all other religions the rights granted by Articles 10 and 14 (1) (e). It should also be noted that Articles 9 and 10, but not Article 14 (1) (e), are ‘entrenched provisions’ of the constitution (Article 83), which means that they can only be amended by a two-thirds majority in Parliament and the approval of the people at a referendum.

In *Premalal Perera v. Weerasuriya*, the petitioner was an employee of the Railways Department, who complained that an administrative circular infringed his rights under Articles 10 and 14 (1) (e). The circular directed that a day’s salary for the month of January 1985 would be deducted from all railway employees as a contribution to the National Security Fund, except for those who requested an exemption. The petitioner stated that as a Buddhist, he could not consent to the contribution, as the money would be used for purchasing weapons to be used for the destruction of human life. He claimed that informing the railway authorities of this fact as required by the circular would expose him to harassment. The Supreme Court agreed with the petitioner that his freedom of thought, conscience and religion was guaranteed and protected by the constitution, but nonetheless held that the circular did not expose him to the harassment he feared.

A major matter of political controversy in the recent past has been the issue of religious conversions. It has been claimed that some Christian groups have engaged in aggressive methods of religious conversion, which in turn provoked sometimes a violent response from some quarters. Several times, it was also attempted to enact legislation prohibiting conversions that were done through forcible methods, economic inducement or some other such unethical manner.

The matter first arose when three Private Member’s Bills seeking to incorporate Christian organisations were challenged in the Supreme Court. In the *Christian Sahanaya Doratuwa Prayer Centre (Incorporation)* case, the Supreme Court held that the articles and powers of the body to be incorporated involved economic and commercial activities and included the provision of assistance of an economic nature. In these circumstances, there was in the court’s opinion a ‘likelihood’ that persons attending the prayer centre would be allured by economic incentives to convert. This, the court held, was inconsistent with the *free* exercise of

the freedom of religion guaranteed by Articles 10 and 14 (1) (e), because the provision of any allurements would distort and infringe the free exercise of those rights.

In the *New Wine Harvest Ministries (Incorporation)* case, the objects of the proposed corporation included the conduct of a broad range of activities aimed at the upliftment of the 'socio-economic conditions of people of Sri Lanka.' In this instance, the court held that mixing spiritual activities with those that involved uplifting the socio-economic conditions of the people of Sri Lanka in general would 'necessarily' infringe the free exercise of the rights guaranteed by Articles 10 and 14 (1) (e).

In the *Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)* case, the Supreme Court reaffirmed the previous decisions discussed above in respect of Article 10, and also went on to hold that the propagation of the Christian faith in manner proposed by the incorporation bill would infringe the Buddhism clause in Article 9.

In the challenge to a proposed anti-conversion law, the *Prohibition of Forcible Conversion of Religion Bill*, however, the Supreme Court adopted a slightly different approach. The Bill sought to prohibit and impose criminal punishments on persons who convert or attempt to convert any person from one religion to another by the use of force or allurement or by any fraudulent means. While the court considered the kind of 'unethical' methods of conversion sought to be prohibited by the Bill to be a permissible restriction under Article 15 (7) on Article 14 (1) (e), it nonetheless made a distinction between true evangelism and improper proselytisation and held that only the latter would be prohibited by the constitution. In these circumstances the court held that the Bill would have the effect of also prohibiting true evangelism, which was allowed by the constitution. In view of the determination of the Supreme Court, the proponents of the Bill did not go ahead with it.

Freedom from Torture

Article 11 states that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. It is an absolute right which cannot be restricted under any circumstances whatsoever, including states of emergency.

In *Sudath Silva v. Kodituwakku*, the petitioner complained of illegal detention and severe assault and torture by police office whilst in custody. In upholding the petitioner's complaint, the Supreme Court held that the freedom against torture is an absolute right, which cannot be abridged under any circumstances, and the full content of the right and the protection of the constitution must be available even to 'hardcore criminals.' Another important point of the case is that the report of the local medical officer who reported that there were no external injuries to the petitioner consistent with his complaints was dismissed by the court. The important principle was affirmed that any medical report given consequent to an examination of a complainant in the presence of the police must not be readily accepted.

In *Adhikary v. Amarasinghe*, the petitioners, husband and wife, were both slapped and abused by the security officers of a Minister in a traffic jam. The Supreme Court held that Article 11 extended to psychological harm and not only physical harm. Even though in this case the physical harm was not extremely serious, the psychological trauma suffered by the petitioners and their child was sufficient for a violation of Article 11.

In *Wijayasiriwardene v. Kumara*, the Supreme Court found that a police officer had struck a student outside the school premises with excessive force. However, the court took the view that for such an act to amount to a violation of Article 11, the circumstances and the person must be taken into account. In the circumstances of the case, the court did not consider that such a violation had taken place, even though excessive force was used.

An important consideration in cases of torture is the liability of the state for acts in violation of Article 11 committed by officers of the state such as police officers. In *Thadchanamoorthi v. Attorney General*, three junior police officers were alleged to have tortured the petitioner. The superior officer claimed that such acts were never authorised by him and that acts done by junior officers outside the scope of their powers could not give rise to liability of the state. The majority of judges in the Supreme Court took the view that in the absence of an 'administrative practice' condoning torture, for which relevant considerations would be the repetitive acts and official tolerance, the alleged acts of the junior police officers cannot give rise to state liability. A similar approach was taken in *Velmurugu v. Attorney General*. However, it must be noted that the

court in both these cases found that the petitioner had failed to establish torture. In *Velmurugu* and in *Mariyadas Raj v. Attorney General*, the dissenting judges had held that where the state had given a coercive power to its officers, the exercise of such power constitutes executive action, whether exercised in conformity with fundamental rights or not. This position was endorsed in *Vivienne Goonewardena v. Perera*, and is now the present position of the law. As noted before, in *Sudath Silva v. Kodituwakku* the Supreme Court reaffirmed this position strongly.

It will be recalled that Article 11 prohibits not merely torture, but also cruel, inhuman or degrading treatment or punishment. In *Sriyani Silva v. Iddamalgodda*, the Supreme Court held that although the right to life was not explicitly recognised by the constitution, such a right could be inferred from various provisions of the fundamental rights chapter. In *Subasinghe v. Police Constable Sandun*, the petitioner was taken handcuffed to the Dankotuwa town in a private vehicle, made to walk handcuffed across town, and then taken away. The Supreme Court held that this amounted to degrading treatment in terms of Article 11.

In *Kumarasena v. Sub-Inspector Shriyantha*, a young woman was arrested without reasonable grounds and during her detention of about six hours, was subjected to crude sexual harassment by police officers. The Supreme Court held that she had been subjected to degrading treatment.

Freedom from arbitrary arrest, detention and punishment

Article 13 concerns the rights recognised by the constitution relating to personal liberty. The specific rights recognised under this provision are freedom from arbitrary arrest (Article 13 (1)); right to be produced before a judge (Article 13 (2)); right to a fair trial (Article 13 (3)); freedom from arbitrary punishment (Article 13 (4)); presumption of innocence (Article 13 (5)); and freedom from retroactive penal legislation (Article 13 (6)).

Article 13 (1) states that no person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest. The 'procedure established by law' is set out in Section 23 (1) of the Code of Criminal Procedure Act No. 15 of 1979.

In *Mahinda Rajapakse v. Kudahetti*, the petitioner was an Opposition Member of Parliament and secretary of the Committee of Parliamentarians for Fundamental and Human Rights. He was

attempting to board a flight to Geneva to attend the 31st Session of the Working Group on Enforced or Involuntary Disappearances. He had in his possession documents and photographs showing human rights abuses. He was stopped at the airport by a police officer, who after disclosing that he was a police officer, informed the petitioner that he wished to examine the petitioner's luggage. After an exchange of words, the petitioner handed over his baggage, the documents and photographs were retained by the police office (issuing a receipt), and the petitioner boarded his plane. The Supreme Court held that this did not constitute an arrest.

In *Namasivayam v. Gunawardena*, the petitioner was travelling in a bus when he was arrested by a police officer at Ginigathhena. The petitioner stated that he was not informed of his arrest, whereas the respondent argued that there was no arrest. The respondent had merely 'required' the petitioner to accompany him to the Ginigathhena Police Station, and after questioning the petitioner, had 'released' him. The Supreme Court rejected this argument and stated that an unlawful arrest (for the reason of not informing the petitioner of the reason of arrest) had indeed taken place because even though there had been no actual use of force, the threat of force to procure the petitioner's submission was sufficient.

Similarly in *Piyasiri v. Fernando, ASP*, several customs officers were returning from work at the airport when they were stopped at Seeduwa by ASP Fernando of the Bribery Commissioner's Department. They were asked about foreign currency, foreign liquor etc in their possession and asked to proceed to the Seeduwa Police Station, in their own cars. There they were searched and asked to proceed to the Bribery Commissioner's Department for questioning, again in their own cars. They were released after giving an undertaking to present themselves at the Magistrate's Court the next day. The ASP denied formal arrest. The Supreme Court disagreed, stating that from the time the petitioners were stopped at Seeduwa to the time they presented themselves at the Magistrate's Court, they were under the coercive directions of ASP Fernando and consequently deprived of the freedom of movement in a way that constituted arrest.

There is a large number of cases in relation to the rights established by Article 13, which it is not possible to discuss here. It is a complex body of law, further complicated by the operation of emergency regulations, and the exercise of arrest and detention powers by poorly informed

and insufficiently rights-literate police officers and members of the armed forces.

Freedom of speech and expression including publication

Article 14 (1) (a) guarantees the freedom of speech and expression including publication. It is, however, a right that may be restricted in balance against other interests. Articles 15 (2) and (7) sets out the restrictions as may be prescribed by law on free speech. 'Prescribed by law' is an important factor, in that restrictions cannot be based on mere administrative decision, but must have the quality of law, although for this purpose, emergency regulations would be considered 'law'. The restrictions permitted by Article 15 (2) are the interests of religious and racial harmony, or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. The restrictions permitted by Article 15 (7) are the interests of national security, public order and the protection of public health and morality, or for purpose of securing due recognition for the rights and interests of others, or of meeting the just requirements of the general welfare of a democratic society. This provision has been criticised as being unduly broad and permissive of restrictions, and does not include requirements of justification prior to the imposition of restrictions, such as reasonableness and proportionality. However, the Supreme Court has on occasion read into the Article 15 additional requirements not found in the text of the constitution, such as that there should be a 'rational and proximate nexus' between the restriction and the object sought to be achieved by the restriction, established in the case of *Joseph Perera v. Attorney General*.

Freedom of expression has been one of the most exciting areas in which the Supreme Court has developed its case law, especially in the 1990s with some innovative and bold judgments. Consequently, it is impossible to discuss all or many of the important cases here. What follows is a short selection.

In *Victor Ivan v. Sarath N. Silva*, the petitioner who was the editor of the *Ravaya* newspaper, suggested that newspapers exercising the freedom of expression should be treated differently from ordinary citizens, in that in exposing misconduct and corruption, newspapers were performing a service to the public. The Supreme Court rejected this contention, holding that right under Article 14 (1) (a) was available to everyone alike.

In *Joseph Perera v. Attorney General*, the Supreme Court stated that the “Freedom of speech and expression means the right to express one’s convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode. It includes the expression of one’s ideas through banners, posters, signs etc. It includes the freedom of discussion and dissemination of knowledge. It includes the freedom of the press and propagation of ideas; this freedom is ensured by the freedom of circulation.”

In *Channa Peiris v. Attorney General*, it was stated that freedom of expression was based on the desire to discover the truth, the need of everyone to achieve personal fulfilment, and the demands of a democratic society.

In *Amaratunga v. Sirimal*, (also known as the *Jana Ghosha Case*) the Supreme Court held that in a political demonstration, drumming and clapping constituted freedom of speech and expression guaranteed by the constitution. On the basis of foreign authorities, the court went on to hold that there were many forms of expression which may be protected other than merely oral utterances and published material.

In a public interest application supported by the Centre for Policy Alternatives (CPA), in *Karunatileke v. Dayananda Dissanayake (No. 1)*, it was held that the act of voting constituted a form of expression protected by the free speech provision, even though the respondents argued that the franchise and fundamental rights must be kept separate.

In *Visuvalingam v. Liyanage*, it was held that the freedom to receive information is part of the freedom of expression and that accordingly, it was possible for readers of a regular newspaper arbitrarily shut down had the right to petition the court for a violation of the freedom of expression.

Similarly in *Fernando v. Sri Lanka Broadcasting Corporation*, the petitioner was a regular listener of a radio programme that was suddenly and arbitrarily stopped, and who claimed the stoppage had infringed his freedom of expression through being deprived of his right to receive information. The Supreme Court refused to recognise that a right to receive information, in the absence of such an express right as part of Article 14 (1) (a), was part of the freedom of expression recognised under the Sri Lankan constitution. However, the court stated that such a right

could be inferred from the freedom of thought recognised by Article 10, because a listener's access to the information imparted by the cancelled radio programme was what enabled him to exercise his freedom of thought.

Nevertheless in *Environmental Foundation Ltd. v. Urban Development Authority*, a right to information was recognised as being implicit in certain cases by the Supreme Court. The court stated that for freedom of expression to be meaningful and effective, the implicit right of a person to receive relevant information from a public authority in respect of matters that ought to be within public knowledge must be recognised. This was especially so when the public interest in disclosure outweighed the governmental interest in confidentiality. The case concerned an application made in the public interest by the petitioner environmental group about an alleged decision by the Urban Development Authority to hand over the management of the Galle Face Green to a private company, EAP Ltd.

In *Deshapriya v. Municipal Council, Nuwara Eliya*, the petitioners were the editor and proprietor of the *Yukthiya* newspaper. The Mayor of Nuwara Eliya had forcibly taken away bundles of the newspaper from a stall in Nuwara Eliya, and also threatened the stall owner that his agency with the state-owned Lake House newspapers would be cancelled. Taking this fact and the fact that the *Yukthiya* was perceived to be an 'anti-government' newspaper into consideration, the Supreme Court held that the petitioners' rights under Article 14 (1) (a) had been violated by the Mayor.

Freedom of Assembly

The freedom of peaceful assembly involves the right to participate in public rallies, meetings, processions and demonstrations and is guaranteed by Article 14 (1) (b). This right may be restricted in the interests of racial and religious harmony.

In *Wanigasuriya v. Peiris*, the petitioners wanted to hold a seminar on the decisions of the Supreme Court on human rights. The petitioners were ejected from the venue on the ground that they had breached a condition on which permission had been granted. The Supreme Court held that Article 14 (1) (b) had been violated.

In *Vivienne Goonawardena v. Perera*, a police officer acting in contravention of his statutory powers under the Police Ordinance, and arrested the petitioner on grounds that were not recognised by the law, was held to have violated the petitioner's right to assembly under Article 14 (1) (b). A similar result was achieved in *Athukorale v. de Silva*, when the police refused the United National Party to hold its May Day rally in Kandy.

Freedoms of association and to form and join a trade union

The freedom of association is guaranteed to every citizen under Article 14 (1) (c), and to form and join a trade union by Article 14 (1) (d). The freedom of association under Article 14 (1) (c) can be restricted under Article 15 (4) in the interests of racial or national harmony or the national economy. Both freedoms can further be restricted under Article 15 (7) in the interests of national security and other grounds set out therein.

An important constitutional provision having a significant bearing on the freedom of association is Article 157A introduced by the Sixth Amendment to the Constitution which was enacted in the immediate aftermath of the ethnic riots in 1983. This widely criticised amendment outlawed even the peaceful advocacy of a separate state, and also provided that where the Supreme Court declares a party or group has the establishment of a separate state as one of its objectives, such party or group would be immediately proscribed. There was also the provision for the loss of any parliamentary seats held by such party and forfeiture of property. It was under the terms of the Sixth Amendment that the Tamil United Liberation Front (TULF) Members of Parliament forfeited their parliamentary seats in 1983, by their refusal to take the special oath of allegiance prescribed by the amendment.

Similarly, under emergency regulations in force in the mid-1980s, the Communist Party, the Nava Samasamaja Party (NSSP) and the Janatha Vimukthi Peramuna (JVP) were proscribed in 1983. In *Sathyapala v. Attorney General* and *Mallikarachchi v. Shiva Pasupathi*, the Supreme Court held that a proscription order made under the emergency regulations cannot be challenged as a violation of fundamental rights because such orders were made by the President who enjoyed absolute legal immunity under Article 35 (1).

In *Gunaratne v. People's Bank*, the plaintiff was required by his employer, People's Bank, to resign from his membership of a trade union as a

condition for promotion. It was held on appeal by the Supreme Court that such a requirement was a violation of the right to join a trade union.

In *Yasapala v. Wickremasinghe*, the question was whether the right to form and join a trade union included a right to strike. The petitioner pointed out that Section 2 of the Trade Union Ordinance recognised the a right to strike, and as such it should also be recognised as a fundamental right, or at least part of the right to form and join a trade union recognised by Article 14 (1) (d). The Supreme Court held that a right to strike was not a fundamental right.

In the Supreme Court determination on the constitutionality of the *Essential Public Services Bill*, the court held that while in some countries a right to strike has been recognised as a legal right, in Sri Lanka, such a right cannot be regarded as a fundamental right recognised by the constitution, although it may be regarded as a common law right.

In *Weeratunga v. Attorney General*, the Supreme Court held that the right to form and join a trade union did not mean that an officer of a trade union could not be transferred out of the location in which the branch of the trade union of which he is a member is situated. However, in *De Alwis v. Gunawardene*, the Supreme Court gave a more broader interpretation to the phrase 'form and join' and held that such a right to be meaningfully exercised, it must not only literally mean 'form' or 'join' but also the continuance of such membership and to freely engage in lawful trade union activity.

Freedom of lawful occupation

Article 14 (1) (g) guarantees to all citizens the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise. This freedom is subject to wide restrictions as set out in Articles 15 (5) and (7), including in respect of required qualifications and licenses to exercise the right, as well as the interests of the national economy and the interests of the state in carrying on any economic activity.

In *Perera v. Jayawickrema*, the petitioner argued that his compulsory retirement from public service deprived him of his fundamental right to lawful occupation as a surveyor. The Supreme Court disagreed, and held that the right was a general right which was not affected in the petitioner's case to practice his profession as a surveyor, and that Article

14 (1) (g) did not mean the right to a particular designation of employment or job.

In *Abeywardena v. Inspector General of Police*, it was held that only a *lawful occupation* is protected by Article 14 (1) (g). If the occupation or business is illegal, then there would be no protection under the provision.

Freedom of movement and residence

Article 14 (1) (h) guarantees to every citizen the freedom of movement and choosing his residence within Sri Lanka. This right can be restricted in the interests of national economy (Article 15 (6)) and national security and other considerations set out in Article 15 (7).

In a public interest application supported by the Centre for Policy Alternatives (CPA), in *Thavaneethan v. Dayananda Dissanayake*, (also known as the *Batticaloa Voters' Case*) voters resident in the areas controlled by the Liberation Tigers of Tamil Eelam (LTTE) were prevented from coming into government-controlled areas to vote at the general elections of 5th December 2001 by the security forces. It was contended by the security forces that they were acting under powers conferred by the Prevention of Terrorism Act (PTA). The Supreme Court rejected this argument and held that the PTA did not grant powers of the nature asserted by the security forces. Consequently the voters' freedom of movement had been violated.

Chapter 3

How to enforce human rights

When states accept a human rights instrument, they usually sign a convention and must then take steps to ratify it through their domestic procedures. Signature means that they accept the instrument and intend to become bound by it. They become legally bound when the convention or other instrument enters into force, following ratification. Internal legislation is then required to implement the new obligations. However, in the constitutions of some countries international human rights conventions take precedence over domestic law, so that judges who are well informed and trained in human rights legislation can override domestic laws in conflict with the country's international obligations.

When they do sign up to a convention, states may enter a reservation (which may interpret or limit a clause), derogate from some clauses (i.e. they allow themselves to suspend them) or, in special circumstances, they may suspend a convention for a period of time. However, this is not just a matter of signed treaties. The core human rights conventions - known collectively as the International Bill of Human Rights - are now held to be part of customary international law. States cannot escape from the most fundamental rights, which apply at all times and in whatever circumstances. and cannot excuse torture or crimes against humanity.

The main responsibility for upholding human rights in a country lies with the state. It must take legislative and executive action to carry out what it has promised to do, and to ensure that citizens understand and follow human rights rules.

Where internal legislation has incorporated a human rights treaty into national law, or where a general human rights law has been passed, then the primary responsibility for enforcing human rights lies with the courts. Where human rights standards have been accepted into law these should take precedence if laws appear to be in conflict.

However, domestic judges often have little or no training in human rights law and legislation to follow up human rights agreements may be patchy. Enforcement by domestic courts within many countries is therefore problematic, especially if the citizens of that country are poorly informed about the law and their rights.

Where internal legal systems have been exhausted, it is open for a case to be taken to an international court, if the State recognises the jurisdiction of the court. If the Court rules that a State has broken its human rights obligations it will be expected to alter its domestic legislation to comply, or overrule the domestic laws which contradict international obligations.

International Court of Justice

The International Court of Justice at The Hague is the judicial organ of the United Nations, established by its Charter and made up of 15 independent judges elected by the General Assembly and the Security Council. It is not a human rights court, although its rulings can be based on the UN Charter and therefore impact on human rights. Only states can be parties in cases before the court. Neither individuals nor NGOs can take cases to the court, whose main function is to settle border disputes and other disagreements between states about their international obligations.

From time to time, the court has taken decisions, in either an adjudicator or in an advisory capacity, on questions regarding the existence or protection of human rights. The court's deliberations on these issues are of considerable importance, since they play a significant role in defining international obligations. However, not only is the court inaccessible to ordinary citizens, but even when a state lays a complaint before it, the procedure can seem painfully slow.

International Criminal Court

There have been calls for an international body to deal with crimes against humanity since World War I. Lawyers studied the feasibility of an International Criminal Court following the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, but progress was blocked, because some states refused to agree to international courts having any jurisdiction over their citizens.

The establishment of International Criminal Tribunals for the Former Yugoslavia (in 1993) and Rwanda (1994) revived the idea. It was finally agreed in Rome in June and July 1998, when 120 nations voted in favour of a permanent International Criminal Court. This has the power to investigate and bring to justice individuals who commit the most serious crimes of concern to the international community, such as genocide, war crimes and crimes against humanity.

However, the United States, China and some other countries voted against the move. The US claims the court infringes its right to sovereignty, and it has concluded bilateral agreements with many states granting immunity to US citizens from applications to the court. These agreements cast doubt over the ability of the court to deal fairly with the most serious allegations when citizens from smaller and weaker countries will have to face the court, while those who act on behalf of the US may not. The US says that it will try cases involving its own citizens itself.

The treaty came into force on July 1, 2002, and the court can only hear cases that occur after that date. As of July 2007, 105 countries had ratified the agreement.

The court is a permanent institution based at The Hague in the Netherlands with 18 judges elected by an Assembly of State Nations made up of states that sign the Statute. The prosecutor can initiate actions, as well as act at the request of states or the UN Security Council. The court is designed to be complementary to national judicial systems and will not act where someone is already subject to a proper trial in an independent state. It would prefer trials to be carried out within states but will act where this is not happening.

The court has the power to investigate and punish the most serious crimes of concern to the international community: genocide, crimes against humanity, war crimes and aggression. Crimes against humanity include torture, rape, sexual slavery, enforced prostitution, enforced disappearances, apartheid and forcible transfer of populations as well as murder, extermination, enslavement and imprisonment, when any of these offences are part of a widespread or systematic attack on a civilian population.

The International Covenant on Civil and Political Rights

A critically important method of human rights protection that is assuming more and more significance for the enforcement of international human rights standards domestically are the provisions of the ICCPR concerning enforcement. What supervision and enforcement procedures are available under the ICCPR, and how effective are they?

A key feature of the ICCPR as one of the three instruments constituting the International Bill of Rights is not only that it sets out a list of substantive rights in universal and mostly concrete terms, but also that it provides for supervision and monitoring the observance of these rights in the form of procedural obligations for States Parties and by the role envisaged for the Treaty Body, the Human Rights Committee. This feature of the ICCPR is significant in that it brought the Rule of Law ideal as close to reality as seemed possible within the international legal system in the age before the special international tribunals and the International Criminal Court.

There are three principal mechanisms by which the Human Rights Committee is given competence to supervise States in respect of their treaty obligations: (a) the reporting procedure (Article 40); (b) Inter-State communications (Article 41 and 42); and the provision in the First Optional Protocol for individual communications.

It is also to be noted that the general obligations imposed upon States Parties in Part II (Articles 2 – 5) are a significant accountability mechanism in that it requires explicit commitments to respect, protect and promote civil and political rights, including through the provision of effective remedies, and extending the protection of the Covenant to *all individuals* within the territorial jurisdiction of a State Party irrespective of his or her citizenship status or rights. Moreover, the Committee is more generous than most national or supranational human rights regimes in respect of admissibility criteria.

Finally, it is arguable that the requirement, used imaginatively by the Committee since 1981, to issue General Comments can also be regarded as a positive mechanism of ensuring greater compliance. General Comments, at least notionally, are useful as interpretative guides to States Parties, promote certainty regarding the scope of substantive rights and limitations, and give guidance as to procedure.

Revolutionary as these provisions for the enforcement and supervision of the Covenant may seem, there are significant obstacles and problems in their operation. The Human Rights Committee is not a judicial body that is empowered to execute judgments and punish defaulters, and as such, its *modus operandi* is very much in the realm of 'soft law' and the moral force of its mandate. Moreover, the Statist paradigm in which the Covenant is obviously located has also foreclosed certain options that could buttress a more robust human rights regime. Most notably, this relates to the role of national and international civil society and NGOs, which have a critical role in human rights monitoring, reporting and independent verification; but which under the present framework have no formal recognition. Likewise, it does not appear that the UN specialised agencies have also any notable role within the ICCPR framework, admittedly limited as it may seem.

Correspondingly, States in which human rights protection is weakest have the most disappointing record of compliance with the Committee's views. The reporting obligations also have a disappointing record, with many States providing late and incomplete reports. Perhaps unsurprisingly, the inter-state communication provision has never been used. In the case of individual communications, although more and more States are acceding to the Optional Protocol, it has been the case that the Committee's views have a habit of being ignored or generating hostility in States in which human rights concerns are most acute (see observations on the case of *Singarasa v. Attorney General* and the Sri Lankan situation above). The effect of the Committee's reports, General Comments, and Rules of Procedure do not also seem to have had a demonstrable impact on States meeting their treaty obligations. In the view of many commentators, the Committee has also been hampered by insufficient institutional support and resources.

On the other hand, the Human Rights Committee has built a solid reputation for independence, expertise, fairness and impartiality as a rules-based and adjudicative decision-making body, in contradistinction to most other international bodies which operate under the dictates and dynamics of international politics and diplomacy. Ironically, it appears that it is this very positive feature that makes it unable to exert the kind of political pressure or harness the media spotlight in the furtherance of human rights protection within States.

The Human Rights Committee

The rules relating to the establishment, membership requirements, composition, ensuring regional representation, quorum and enactment of internal rules of procedure, remuneration, and a detailed framework for elections to the Human Rights Committee, as well as the roles within this schema of the Secretary General of the United Nation and of States Parties are set out in Part IV (Articles 28 – 30) of the ICCPR.

The several competences of the Committee are to be found in Articles 40 (State Parties' reporting obligations and basic procedure), Articles 41 and 42 (Inter-State communications and the role of the Committee including conciliation) and in the First Optional Protocol (individual communications).

The Reporting Procedure

The reporting obligation is the main instrument of supervision in the ICCPR, and is compulsory for all States Parties. There are three kinds of reports: (a) Initial Reports; (b) Periodic Reports; and (c) Supplemental Reports.

Under Article 40 (1) and (2), a State Party's initial report must be submitted within one year of accession to the Covenant, describing the measures it has adopted to give effect to the rights established in the Covenant, and must also include reference to any constraints in giving effect to same. The Committee has decided in terms of Article 40 (1) (b) that periodic reports are to be submitted every five years by States. In exceptional cases, it may also call for special reports, and in others, supplemental reports in order clarify or seek fuller information. The Committee has also issued guidelines regarding the form, content and procedure for the submission of these reports. In terms of Article 40 (4), the Committee is required to study the State report and transmit its reports along with general comments to the State Party and to the UN Economic and Social Council (ECOSOC). The Committee provides the State Party an opportunity to introduce its report and answer questions (including questions relating to follow up measures from previous reporting cycles) prior to drafting and adopting its views on the State report.

It has been pointed out that this approach of the Committee to the reporting procedure has engendered a more constructive relationship with State Parties. It seems to have encouraged States to not only to

meet their obligations in respect of timely submission, but also enhanced the quality and completeness of their reports, as well as the importance they place in responding to the Committee's invitations to present and clarify such reports.

However, there are several criticisms of the reporting procedure that have emerged over the years. Some of the more trenchant of these relate to the neutral and general nature of the Committee's annual reports (Article 45), precluding the opportunity to make State-specific recommendations and comments; the formal exclusion of journalists and NGOs, and the limited role played by the specialised agencies; and, in the light of the Committee's inability to independently enforce its views where necessary, the absence of any higher (political) body that can ensure compliance.

Most of these criticisms are valid ones. They occasion an appraisal of the reporting mechanism in the light of present circumstances. While the framework set out for reporting may have been ground-breaking at the time of drafting of the ICCPR, the subsequent consolidation of the ICCPR as evidenced by the growing body of the Committee's jurisprudence, the increasing acceptance by States of the universality of the rights set out in the Covenant, and the ever-increasing number of States wishing to accede to not only the Covenant, but also to the relatively more intrusive Optional Protocols suggest that a more robust reporting capacity for the Committee is now not only desirable, but also possible.

Likewise, there appears to be no continued justification that civil society is not given a more formal role to play in the reporting process. The international system is less State-centric now than in the 1960s, and civil society (of which journalists and the media are a fundamental part) and empowered citizens play an increasingly prominent role in the participatory democratic governance paradigms on the ascendancy across the globe. In the context of the developing world, where international protection of human rights is perhaps most needed, the increasing recognition given to human rights benchmarks and civil society participation in development assistance models, would also suggest that access of NGOs to the Committee is in consonance with emerging trends.

It is also obvious that the Committee is best-placed to perform an adjudicatory function within international human rights system. However, this also means that it cannot engage in an advocacy role for its own views, without damaging its impartiality. In this context, it is undeniable that the political and diplomatic follow through of the Committee's reports be undertaken by a different body (e.g., Office of the High Commissioner for Human Rights; Human Rights Council).

Inter-State Communications

Articles 41 and 42 set out the rules in regard to inter-state communication in considerable detail, whereby States recognising this specific competence of the Human Rights Committee are able to communicate to each other regarding concerns they have about a State's compliance with obligations under the Covenant. If the States Parties themselves cannot arrive, within set timelines, to a settlement on a communication at first instance, then the Committee provides its good offices in order to resolve the dispute. If this too fails, then there is provision for an *ad hoc* conciliation commission to attempt to resolve the matter amicably.

There are several structural as well as political limitations to this schema. Of the former, the activation of the procedure requires a declaratory acceptance of the Committee's competence in this respect (not automatic upon accession to the ICCPR), and the Committee nor the conciliation commission is entitled to decide the dispute. They may only suggest non-binding recommendations and good offices.

It is very hard to imagine within the political dynamics of the international legal system, how such a framework could be useful, particularly one that is as convoluted and non-imperative as this. It is also remarkable for being contemplated in the era of bi-polar international context of the 1960s. It is hardly surprising that the mechanism has never been used. Perhaps with the growing importance of human rights as a principle of international law and practice, there may be a future role for this mechanism, but admittedly, even now this is a remote possibility.

Individual Communications

This is by far the most innovative mechanism in the ICCPR framework for human rights protection, enabling individuals to directly petition the Human Rights Committee upon exhaustion of domestic avenues. This mechanism has been widely availed of by individuals, and is a

significant element of the future development of the regime of international human rights protection. However, this right is only available to individuals in States that have acceded to the First Optional Protocol. The Protocol, which is in the form of a separate treaty, sets out the rules regarding who may apply and under what circumstances. In brief, any individual claiming to be a victim of a violation of any right set forth in the Covenant may communicate a written complaint to the Committee, subject to having exhausted all domestic remedies. In addition to the latter, there are several other admissibility constraints including those relating to standing, although in many respects, the regime is liberal and inclusive.

The relevant State Party has an opportunity to respond to the allegations on both admissibility and merits. It may also inform the Committee regarding any remedial measures that have been taken subsequent to the communication. The Committee takes into account the information given by both the complainant and the State Party in arriving at its views.

Several concerns expressed by commentators regarding the Committee's procedure in respect to expeditiousness and efficiency have now been adopted, with the result that all communications are now vetted by the Committee member serving as the Special Rapporteur on New Communications (having been screened by the Secretariat of the Office of the United Nations High Commissioner for Human Rights before). It then goes to the Working Group on New Communications where admissibility is decided by consensus. If there is no consensus at this stage, the matter is decided by the full Committee.

An increasing number of States have in the last one and half decades acceded to the Optional Protocol, indicating on surface a positive trend in human rights protection worldwide. Unfortunately, the reality is somewhat different with many States failing to take active measures to give effect to the Committee's views, routinely ignoring adverse findings, and in some cases displaying outright hostility.

The fundamental weakness as any number of commentators point out, is that the Committee's views are legally non-binding, carrying only the force of moral suasion and some political influence. The Committee has attempted to secure some follow up through the designation of a Special Rapporteur for this purpose, mandated, among other things, to

conduct ongoing dialogues with States Parties on compliance as well as making on-site visits. These initiatives have, however, not produced any dramatic results, and have also been hampered by lack of resources considerations.

Summary of the role and effectiveness of human rights protection under the ICCPR mechanisms

The ICCPR and the First Optional Protocol are salutary instruments of an important segment of human rights, and indeed for some institutional arrangement for their protection and enforcement. They are important, both for their substance as well as their symbolism in terms of universal commitment to certain basic values relating to human dignity.

While substantial impediments to their implementation and the realisation in tangible terms of the rights they espouse remain, including major structural obstacles inherent to the international legal system which continues to be dominated by the nation-state paradigm, it is to be observed that the global human rights movement is on an upward trend. The receptivity of States to these realities is reflected in the increasing number of States acceding to the Covenant and the Protocols.

Nothing turns on the question whether such behaviour is motivated by strategic considerations or principled commitments – formal accession provides an appropriate complementarity for the adjudicative, norms-based and politically-neutral approach of the Human Rights Committee, provided that an institutional support structure for political and diplomatic follow through is developed.

Chapter 4

What human rights instruments say about journalism

The Universal Declaration of Human Rights and the ICCPR both layout the right to freedom of expression in Article 19. The Declaration says it most simply:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers.”

These clauses do not give any special rights to journalists or journalism, except by implication. The right is not to publish, but to freedom of expression. The rights belong not especially to journalists but to all members of the public. Journalists have the same right to freedom of expression as held by other people. However, journalists have a special role to deliver rights for other people. Journalists are facilitators in helping people to achieve their right to free expression.

Limitations on freedom of expression

Article 29 (2) of the Declaration says:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Article 19 of the ICCPR says in its final part (summarised):

The International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals. *Article 19*

The European Convention on Human Rights

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” *Article 10*

The exercise of freedom of expression carries special duties and responsibilities. It may therefore be subject to certain restrictions but only where provided for by law and where necessary for: the respect of the rights or reputations of others; the protection of national security or of public order, or of public health or morals.

How far does this allow states to restrict the right to freedom of expression? The Human Rights Committee, which oversees and monitors the ICCPR, said (General Comment No 10) that the right to hold opinions cannot be restricted. Only the right to freedom of expression can be restricted, and only under limited circumstances. It also said that no restrictions may be imposed that may jeopardise the right itself. Many national supreme or constitutional courts have stated that freedom of expression and opinion are fundamental rights and essential to democracy or the guaranteeing of other fundamental rights.

The Human Rights Committee has explained under what circumstances limitations could apply to the freedom of expression. In summary, limitations are permitted in order to:

- Protect people against inaccurate and offensive statements.
- Protect people's privacy in certain cases.
- Allow the State to protect its security.
- Prevent hate journalism especially that which promotes racism, or hatred against other nationalities or religions.
- Prevent propaganda for war.

The final three of these could be said broadly to be "to protect the public interest" although this phrase is often abused. Journalists operate within a national legal framework that interprets these principles. Decisions by national courts are liable to challenge at international courts.

Sri Lanka's Constitution recognises freedom of speech in Article 14 (1) (a). However, legal analysts say the ICCPR's Article 19 is broader in scope because it is explicit about the freedom to hold opinions without interference, and any restriction on freedom of expression must be justified by necessity.

In late 2007, Parliament passed the International Covenant on Civil and Political Rights Act No. 56 of 2007 (also known as the ICCPR Act). This

was presumably meant to cover those rights of the ICCPR, which in the view of the Government, were not covered by the Constitution or other Sri Lankan laws. In reality, however, the ICCPR Act is a disappointing measure that does not substantially add to what the Constitution establishes, and which do not conform to the standards of human rights protection ensured by the ICCPR.

The ICCPR Act contains only four main substantive rights-conferring provisions in sections 2, 4, 5 and 6: *viz.*, the right to be recognised as a person before the law; entitlements of alleged offenders to legal assistance, interpreter and safeguard against self-incrimination; certain rights of the child; and right of access to State benefits, respectively. These provisions are formulated in terms substantially and significantly different from the corresponding provisions of the ICCPR.

Section 4 corresponds to the ICCPR provisions of Article 14 (2), (3), (5), and (7) but without Article 14 (3) (c), which establishes a minimum guarantee to be tried without undue delay in criminal trials; or Article 14 (1), (4), and (6), which includes the presumption of innocence in criminal trials and investigations. These omissions are presumably for the reason that the issues they concern are addressed by other Sri Lankan constitutional and statutory provisions.

This approach results in a considerable divergence of standards of human rights protection as between domestic Sri Lankan law and the ICCPR. For example, the presumption of innocence until proved guilty according to law is expressed as an absolute right in Article 14 (2) ICCPR, whereas in the apposite Article 13 (5) of the Sri Lankan Constitution, the presumption is subject to a proviso that the burden of proving particular facts may by law be placed on an accused, and moreover, Article 15 (1) permits the presumption to be overturned by law including emergency regulations in the interests of national security.

Section 6 corresponds with Article 25 ICCPR but does not mention the prohibition on racial discrimination or unreasonable restrictions that must govern the right to participate in public affairs either directly or through freely elected representatives, and to access services provided by the State to the public. Section 6 (2) states that the expression 'conduct of public affairs' shall not include the conduct of any affairs which are entrusted exclusively to any particular authority by or under any law, which is not a curtailment contemplated by Article 25 of the ICCPR.

Crucially and inexplicably, section 6 does not incorporate Article 25 (b).

The Government's position on freedom of expression is implied in its failure to address a decision of the Supreme Court in 2006. In the Singarasa Case, the court ruled that the right of individuals to access the Human Rights Committee in Geneva (which in turn oversees implementation of the ICCPR) was unconstitutional. Previously, prominent journalists and editors had exercised this right (recognised by the Government since 1998) to obtain redress in freedom of expression matters.

In Europe, the European Convention on Human Rights lists in Article 10 (2) legitimate restrictions on freedom of expression as:

- Those that are in the public interest (national security, territorial integrity, public safety, prevention of disorder or crime, protection of health and morals).
- Competing individual rights (protection of reputation or information received in confidence).
- The authority and impartiality of judges.

There is a four-part test for deciding whether a restriction on freedom of expression is legitimate:

- Is the restriction provided by law?
- Is the restriction as stated in the law sufficiently clear?
- Does the restriction serve one of the limited purposes mentioned in the text (e.g. protection of public order)?
- Is the restriction necessary in a democratic society?

The European Convention applies the principle of proportionality. In other words, restrictions must:

- Be sufficiently precisely prescribed by law for citizens to act on.
- Be genuinely aimed at achieving one of the grounds mentioned above.
- Be necessary in a democratic society; reflect a pressing social need.
- Be proportionate to the legitimate aim pursued.

- Be justified by the public interest.
- Not be too broad.

Hate speech

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 20, ICCPR

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Hate speech is usually regarded as material that demonises a nation, ethnic group or other social groups in such a way that it is likely to lead to violence and put lives at risk. Racist material is outlawed in many countries and there have been many discussions about making hate speech a criminal offence.

Journalists need to set out to inform in a way that can empower communities, rather than adding to a sense of confusion and hopelessness through bias, prejudice and insensitivity. Without the knowledge and power that comes with information, communities in conflict are easy prey for political manipulation.

In Sri Lanka, there are many cases of media inciting hate in the context of ongoing war. There are many examples where clashes have either deliberately been instigated by one side to provide a cover for their own violence, or where the original incident sparking a conflict had nothing to do with either side's ethnicity, but rather economic factors. Similarly in the genocidal wars in the former Yugoslavia and Rwanda, a key driver toward conflict was that media defined people according to their ethnicity or religion, often using trigger words to make certain groups feared and hated. A news report that reduces such important issues to purely "ethnic" events is inaccurate and can have dangerous consequences.

Words that fuel conflict



In Sri Lanka and the former Yugoslavia, journalists and editors have not been prosecuted although they may have played a role in creating public support for, or acceptance of, what are now seen as war crimes. In Rwanda, however, four media executives were indicted on charges of inciting genocide in 1994. Hassan Ngeze, former editor of the Rwandan newspaper *Kangura*, was sentenced to life imprisonment by the International Criminal Tribunal for Rwanda in 2003 on charges of conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crimes against humanity. According to the indictment *Kangura* was the best-known example of government-sponsored hate propaganda.

Hassan Ngeze pleaded not guilty and said that freedom of expression had been put on trial. He argued that the prosecutor had quoted selectively from his newspaper. Some argue that the organs had virtually ceased to be media in any real sense and had become weapons of war. The same can be said of many media outlets in the former Yugoslavia where individuals and ethnic groups were targeted in such a way that violence was inevitable.

It is also possible to use temperate language to promote intolerance and ethnic discord. Media outlets resort relatively rarely to the extremes of hate speech that make a direct appeal to violence. But journalists need to avoid “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility”. This can appear much more respectable than ruffian calls for violence.

Racism in the media

The following is a headline that appeared on page three of a Sinhala newspaper: “Girl bought as domestic help sold to playboys for four years – Suspected Muslim couple remanded.”

The headline gave a religious element to what should have been a straight-forward report, thereby distorting the subject and directing a sense of blame and accusation toward an entire religious group, instead of two individuals.

The reference in the headline to the religion of the accused couple immediately points to racial prejudice. But what is the relationship between the abuse of the girl and the ethnicity or religion of the accused?

The culture of the Sinhala media is that ethnicity is often related to alleged offences when a person of a minority ethnic group is accused of an offence.

However, the Code of Ethics of Sri Lanka's Editors' Guild states, "The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or to any physical or mental illness or disability".

Hate speech is not just an issue in times of war. Displaced peoples, refugees and asylum seekers are often depersonalised in the media and presented as a group to be feared and rejected. This kind of reporting portrays ethnic groups as mutually incompatible. Media outlets often use individual cases of crime to present a paradigm of one group as criminal and another group as victims.

Journalists generally do not favour laws that inhibit the right to freedom of expression, even where writers and broadcasters express strong views that may be unpopular. That, after all, is one test of a free media. Journalists therefore have a strong interest in self-regulation, through codes of conduct that are enforced, to take on those who promote racial hatred. Where there is a strong professional body of opinion that acts as a watchdog against assumptions of ethnic superiority, it is more difficult for "intolerance speech" to become the mainstream in the media and for "intolerance speech" to turn into "hate speech". Effective self-regulation can also ensure that restrictions on inciting national, racial or religious hatred do not become an excuse for censorship.

The IFJ supports self-regulation within the media rather than legislation, as experience has shown that hate speech laws, although well meant, can be used to silence media on a range of issues. Journalists need to develop a very clear position on how to deal with and end ethnically divisive news coverage. This cannot be done by granting greater powers to states to censor or to ban media. It can be done by promoting journalism that sees people's ethnicity as just one component of their identity, and that there are great differences among individuals of the same ethnicity. Quality journalism that investigates diversity will usually blow apart the myths about ethnicity that fuel conflict. If more was written and broadcast about ethnicity and identity as positive factors in the life of a community, greater understanding might be achieved.

Journalists, defamation and privacy

Journalists have to be aware of national legislation that protects people's rights to privacy and their right not to have their reputation unfairly damaged. Such legislation must accord with the principles outlined in Article 17 of the ICCPR, which says:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The IFJ and press freedom bodies say that this protection is properly observed by giving members of the public a right to sue in a civil court for publication of allegations that are untrue and damaging. Journalists should never be successfully sued for what they can show to be true, and where journalists do defame someone the appropriate penalty is a fine, never imprisonment. Moreover fines should reflect the seriousness of the offence and ability to pay. Fines should not be used to shut down media and should not be used to prevent publication. Journalists have a duty of care for what they write and publish and the damages imposed on untrue and defamatory publications can reflect the degree of recklessness on the part of the journalists, taking into account for example such things as whether the person defamed was given an opportunity to rebut allegations.

Article 17 gives everyone an equal right to protection from unlawful interference and unlawful attacks. However, in many countries politicians take for themselves a right to greater protection, handing out heavy punishments to journalists or media who criticise them, or protecting themselves through laws which ban "insult to the state". Human rights instruments do not support such laws or rules. Indeed they contravene Article 3 of the ICCPR, which says:

"The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

The IFJ promotes the involvement of journalists in self-regulatory bodies, such as a properly constituted Press Council, that are free from state control and that can hear complaints and uphold standards. However,

cases can also be brought to try to close down publications by imposing huge fines. Official attempts to punish journalists are also often linked to attempts to cover up improper conduct by politicians or officials. Journalists need to be able to rely on a defence that publication is in the public interest.

Protection of sources

To function effectively, journalists need sources - people who tell us things, often at great risk to themselves. Journalists need to be able to protect the identity of those sources. This ability is put at risk by national courts and by government departments that seek to deter and punish those who leak official information.

In several worrying cases even in Europe, national courts continue to threaten journalists, while anti-terrorist laws extended police powers to intercept phone calls and emails. Police raids on the homes and workplaces of journalists have become commonplace.

Journalists do not all agree on whether a court order to reveal a source can ever be justified - if, for example, lives are at risk. Some argue that no rights are absolute and that protection of sources cannot exist in a vacuum. Others say that journalists have a duty not to break a promise given to a source, unless the source gives them permission to do so.

There is no special right for journalists to protect sources. The right, so far as it exists, is implicit in the right to freedom of expression. Protection of sources is therefore not a privilege for journalists but a right for the ordinary people who may become a source for a journalist. In Europe, the European Court of Human Rights has repeatedly said that journalists should only be ordered to reveal sources in exceptional circumstances. In effect, the court has become a powerful defender of media freedom, although it has never given journalists an absolute right to protect their sources.

Journalists giving evidence in court

Closely connected with the protection of sources is the question of whether journalists should give evidence about what they learn while working as journalists. If they do, they will inevitably be asked not only about what they published but also about how they came to know about what they published. An apparently simple question resolves into two

separate questions. Should journalists give evidence in court? Should journalists be compelled to give evidence in court?

A journalist may have evidence of something or be a witness to events incidental to his or her work, just like any other citizen. There would seem to be no problem with journalists giving evidence in such cases, in the interests of justice. Where a journalist observes events or receives information as part of the job, things become more complicated.

Journalists collect information to use as part of, or to support, their reports. As noted above, journalists should never be seen as an arm of the police or the state and it is highly undesirable for journalists routinely to give evidence about what they discover.

Journalists are often present at demonstrations or riots, where there is conflict between a crowd and the police or security forces. The ability of journalists to do this job rests on a kind of tacit approval by the security forces and by the demonstrators that the media will not be attacked. This often breaks down, resulting in attacks on photographers and reporters by one or both sides.

News teams covering these events are at much greater risk if demonstrators believe that they will give evidence in court against them, and that their film will be handed over to police. This puts journalists in danger. The IFJ has suggested that freelance journalists and news organisations resist handing over film, and even place their material abroad, outside the jurisdiction of their national courts, in advance of any official request.

What is true for riots and demonstrations is even more applicable during war. Journalists' lives are particularly at risk when someone has carried out a brutal act that could be classified as a war crime and fears that a journalist will report on it. Journalists are expected to support "their side" and keep quiet about human rights abuses. It may not even be possible for a journalist to remove themselves from the danger area to be able to file their report. But as soon as they are able to do so, journalists have a responsibility to report on what they have seen. The example of the refusal of the United States to permit its personnel to give evidence to the International Criminal Court over allegations of human rights abuses in Iraq, as well as the limited information made available about

“Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention, unless it is justifiable by an overriding requirement in the public interest.

“Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected”.

European Court of Human Rights, March 1996

the treatment of prisoners at Guantanamo Bay, underlined the critical importance of journalists reporting on what they see.

Ethics of giving evidence

Journalists have a right to decide for themselves whether to give evidence in a court.

In 2002, the International Criminal Tribunal for the former Yugoslavia subpoenaed Jonathan Randall, a former reporter for *The Washington Post*, to give evidence about what he had already reported. Randall at first agreed to make a statement but later refused on ethical grounds.

In December 2002, the tribunal upheld his appeal against its own ruling, saying that to compel journalists could have “a significant impact upon their ability to obtain information”. The tribunal did not rule out compulsion in future cases where the evidence was essential and where there was no other way of obtaining it. This does not preclude journalists from giving evidence if they believe they should do so.

Serbian journalists Dejan Anastasijevic and Jovan Dulovic gave evidence in October 2002 to the same tribunal about events in Croatia and Bosnia in 1991 and 1992.

Anastasijevic agreed in 1999, when Slobodan Milosevic was President of the Federal Republic of Yugoslavia and then indicted for war crimes. “I did not come to cover the war in Yugoslavia because of a sense of adventure or because I wanted to be a war correspondent. The war came to me and I believed it was my duty to contribute and to shed a light on the events that took place in my own country,” Anastasijevic said.

“The second thing I wanted to do was to break the ice. The International Tribunal is still very unpopular in Serbia, even more unpopular than NATO. I wanted to prove it was possible for citizens of Serbia to come and talk about the crimes. After I did that, more Serbian witnesses came and spoke without protection.”

In 1991, Dulovic was a correspondent for the pro-Milosevic *Politika Ekspres* and had access to Serbian forces in Croatia. He interviewed people who had apparently taken part in killings in Vukovar. He had

no ethical dilemma when he was asked in 1996 to testify. "I went to The Hague and spent three days talking to the tribunal. This was based on my notes but also on what I saw, because I saw things that just get imprinted on my mind and stay for a very long time," he said.

"No one ever forced me to testify. On the contrary. Even if someone tried to damn me for testifying I would still have found a way to do it, because I feel that war criminals need to be prosecuted. I have no doubt that there were also crimes from the other side in the war, but I could only give evidence of what was seen by my own eyes."

Chapter 5

Human rights reporting

Whatever path a reporter sets out on, however, the task is to get away from the language of declarations and charters and to relate human rights to people's everyday lives. Human rights conventions are not about the conference chambers in which they were debated. They are about the people who need them to go about their lives in safety and without fear. Reporting on them is the job of every reporter, not just political or diplomatic reporters.

Journalists will, of course, report the speeches of government ministers about human rights. But this has little value unless journalists test the speeches by assessing how the rights are implemented.

Governments and other powerful groups never declare that it is their policy to infringe people's human rights. They sometimes justify what they do by suggesting that if people exercise certain rights, then this will lead to communal conflict, or a breakdown in law and order, of divisiveness, or sedition. When they do this, they dehumanise people by presenting them as stereotypes, or by labelling them as subversives, or disrupters.

Journalists have a duty to show the human effect of these infringements on people's basic rights. People pay attention to reporting that reflects the reality of their lives and that looks at the world through their eyes. By writing and talking about people, a journalist helps to present their humanity and bring human rights issues to life. To achieve this, journalists need to incorporate human rights principles into their everyday work in a way that makes these rights dynamic. Although journalists do need some knowledge of human rights principles, in the main a human rights perspective comes from spending time with people and representing them in the media.

If, for example, the media is preoccupied only with what powerful people think and say, and politics is exclusively covered as the preserve

of politicians, then ordinary people's human rights can resemble a side-show. If, however, politicians are interviewed in the context of reports that show the effects of their decisions on people's lives and that give a voice to the people whose lives have been affected, then they will have to justify what they do in a human rights context. Moreover, by giving equal and fair coverage to the governed and those who govern, the media is itself delivering on people's right to freedom of expression and the right to know.

Journalists need a capacity to look at conflict and problems from more than one perspective, and to explain the viewpoints of different participants. Media should never make some people the "object" of their report without being prepared also to look at the story from the perspective of those people. Journalism that divides the world into "good" and "bad", or "us" and "them", promotes the rights of one group over the rights of another. This is poor journalism because it shows a situation only from one viewpoint.

Reporting on human rights is also not only about highlighting injustice and abuses. People are not passive objects of human rights, but active participants in achieving them. A reporter who writes about street children setting up self-help organisations to promote their safety, health and education is writing about children achieving human rights. Women in rural areas who set up cooperatives, while making arrangements to care for each other's children, are improving human rights for themselves and their children. Communities comprising various ethnic groups who find ways to live in harmony should be cause for celebrating human rights. Through genuine success stories, the media can help to build the self-confidence of communities to take action on their own behalf.

Making human rights a reality requires checks on people in power and a well-informed population. People in positions of authority should, in a democracy, protect our rights. In practice, checks and watchdogs are needed to prevent them becoming agents of human rights abuses. Among those watchdogs are specialist civil society organisations and the media, which has the dual role of exposing human rights abuses and of informing ordinary people about their rights so that they are in a position to assert them. The media plays a crucial role in raising people's awareness of their rights so that each individual knows that she or he has rights equal to those of other people. They also need to

understand that other people - even people they do not like or regard as enemies - have equal rights with them.

Good practice check list

- Are the people you write about safe?
- Do they have life, liberty and security of person?
- Are people arrested without cause and imprisoned without trial and the protection of the courts? Do you report these cases?
- Do women have the freedom to marry whom they wish (and not to marry when they do not wish to do so)?
- Do minorities have the right to worship according to their religion?
- Do people have access to a reasonable standard of living? If not, why not?
- Do children have the rights to grow up free from hunger, disease and fear as outlined in the Convention on the Rights of the Child?
- Is the education to which children are entitled worth having? Is it equally available to girls and boys? Who is unable to go to school? Why?
- Do people with disabilities have the opportunity to work? Is this a right, or charity?
- What are the major human rights issues facing people in your country? How are these addressed by your news organisation?
- Are you free to suggest ideas in the newsroom to investigate or chronicle human rights abuses?
- How can you raise the profile of human rights issues in your news organisation?
- When human rights are reported in your organisation, is it always in relation to a few well known individuals?
- Are human rights abuses perpetrated only by governments? What other organisations or groups abuse human rights in your country and community?
- Are you reporting human rights successes as well as abuses?
- If majority cultural values dictate what people may and may not do, can minority cultural human rights be protected?
- How would you approach a story about the human rights of homosexuals?

- Who are the most reliable sources on human rights issues in your country?
- Can you and your colleagues compile a contact sheet of human rights experts and sources who can help to check and verify stories?
- Do these sources cover the full range of human rights, including state-sponsored terror, the rights of women, the rights of children, and the rights of disabled people?

The following sections deal with some of the ways in which human rights reporting can be applied in relation to several topics.

Police and military

The police service, military and other state agencies should be accountable and media scrutiny is one of the main methods of accountability. This means that these services should be open and willing to answer media inquiries. There should be a clear understanding of who in authority is permitted to talk to the media, and a swift response to media inquiries. If there is a police or military press office, then it should have some standards about how long it will take to answer inquiries.

Police and military services may initiate publicity by releasing information about their operations. Some media do not dispute the statements of the police or military. But police and military versions of events may be challenged, for example in court, and should therefore always be attributed and not reported as fact.

In all reporting of police and security operations it is important to distinguish between someone who is “helping police”, someone who has been arrested, and someone who has been charged with an offence. Only when someone is charged are they formally accused, and even in this case there is no presumption of guilt. The presumption of innocence until proven guilty applies to the media as much as to the courts.

In some countries, police give film to the media that was shot by the police. This creates a dilemma for news editors who are usually short of dramatic photos or film. It should always be remembered that such film gives the viewpoint of the police, and may have been edited to delete evidence of any improper action by police. If such film is used it

should be clearly marked and introduced as “police film”. It should never become the usual method of reporting on crime or war.

Journalists should also take care if they are allowed to film or observe a police or military operation that they do not damage the rights of those being arrested or interviewed or otherwise targeted. Pressure is often put on media not to criticise the police and the military. However, an inquiring and critical media is not a threat to good security. The evidence is that closed police and armed forces become a law unto themselves, and are more likely to abuse the rights of suspects and others, or to become involved in corruption. Police and military forces that accept the right of the media to ask questions are publicly accountable.

Equally, allegations of police or military malpractice should be investigated carefully. Authorities should be permitted the right to reply to allegations against them. These cases should be followed up. Was an inquiry held? What did it find? Was an officer disciplined? This is perhaps particularly important if allegations are made by members of a minority ethnic group. This is not because they have greater rights than other people but because they may be less likely to achieve satisfaction if malpractice did take place. The watchdog role of the media is critical. But it should not be assumed that the police or military are guilty, and they too should have a right of reply.

Opening up the police and military to public scrutiny means that reporters should be able to spend time at police and military training sessions, and should be able to interview recruits about why they want to join, and about their attitudes to the public. The media needs to pay attention to any special forces or quasi-paramilitary police forces. To whom are they answerable? How are they accountable? What powers do they have? How are those powers being used or abused?

Police reporters have a difficult job. They need to become close to the police and to get to know the police culture and ways of working, to develop contacts who will give them information. But they also need to remain independent. It is advisable for senior editors to rotate staff or give them breaks from their usual beats to ensure that they do not end up as spokespeople for the people on whom they are reporting. This is the case for all specialist reporters.

People in detention

People who have been arrested often disappear into a system that is not open for public inspection. Many cases of mistreatment happen during or soon after arrest, before a prisoner is even properly in the system. Criticism or questioning of police may not be popular, as there is a natural resentment toward “soft” treatment for prisoners. However, rights for arrested people are a protection for all citizens - since in police states, where these rights do not exist, anyone can be arrested and no one can defend their rights. It is often useful to ask the question, “How would you expect your daughter or son to be treated if she or he was arrested?”

Journalists need to know how Article 9 of the ICCPR has been incorporated into national legislation. Journalists must be able to find out who is in custody, whether they have been charged, where they are being held and in what conditions. Journalists should also be able to discover where and when a prisoner is going to appear before a court and, except in exceptional cases, have the right to observe and report on the hearing. There should be a system of giving media notice of court hearings and who is appearing, and this list should not be altered at short notice, for example, to protect someone important from media coverage. Media should monitor and publish any delays in bringing people before a court.

In addition journalists should be able to report on the conditions in which detained people are kept. Those who are detained should be kept separately from those who have been convicted. In practice this can lead to some prisoners being kept in worse conditions than others, because jail houses and prisons may not have sufficient space. Children under 18 should always be kept separately from adults, and their conditions should be particularly monitored. Sometimes what is said to be a separate facility is just a cell around the corner from the adult cells.

National laws may entrust inspection of detention facilities to a special civil servant or official. The reports that they make should be public and reported. In addition, NGOs may be given rights of access to detention facilities. Their reports should be publicised. Where a prisoner is not convicted and held on remand for a long period and where the circumstances are controversial, journalists should press to be allowed to see or interview the prisoner. Rules vary between countries, but

The International Covenant on Civil and Political Rights

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such I procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that Court may decide without delay on the awfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to Compensation *Article 9*

The International Covenant on Civil and Political Rights

1. All persons deprived of their liberty shall be treated with *humanity* and with respect for the inherent dignity of *the* human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons *and* shall be subject to separate treatment appropriate to their status as unconvicted persons. (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall / comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 10

prisoners on remand should be able to consult their lawyers and have outside visitors. These contacts can become a valuable source of information for journalists where someone in custody wants their arrest or the details of their detention to become more widely known.

Courts

Court reports makes up a considerable chunk of the content of many newspapers and broadcasters. Crime sells and people like to read about it. However, a court reporter should not simply be a retailer of moral tales to make the public shudder. At the same time as reporters record the content of trials, they must also be watching the process. Is this a fair and public hearing by a competent, independent and impartial tribunal? Is the person before the court equal to all others, or are they treated as inferior because they are inarticulate or because of their ethnicity, or as superior because they are a powerful politician or because they are rich? Is the defendant given the presumption of innocence? Has the trial gone ahead without undue delay? If the state has provided a lawyer for the defendant, is the lawyer up to the job? If the defendant or witnesses are from a minority ethnic group, is the case conducted in a language they understand?

Primary responsibility for protecting people's rights lies with a democratic justice system. But journalists provide an independent scrutineer on the performance of the courts and judges. Court reporters need to have daily access to the court, and to be able to cite, and write about, the rights of defendants and witnesses.

As with other human rights, journalists do not have any special privileges. Courts should normally be open to the press and public. When they are closed they are usually closed to both.

Article 14 of the ICCPR allows matrimonial disputes and cases about the future care of children to be conducted in private. Other possible reasons for excluding the press and public are reasons of morals; public order or national security in a democratic society; when the interest of the private lives of the parties so requires; or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Morality is rarely quoted as a reason for closing courts. Privacy is often a reason for excluding reporting of divorce cases and other cases

involving the care of children. The two most contentious issues are public order or national security and where publicity would “prejudice the interests of justice”. Journalists should be ready to challenge closures for these reasons. Some delay in reporting may be considered reasonable if two trials are being conducted one after the other, and reporting of the first trial might prejudice a jury hearing the second. This might happen for example where one person is being tried for two different robberies, or where one person has admitted and another has denied an offence for which they are jointly charged. That is no reason for closing the court and reporting should be freely allowed when the second case is finished. Even in these circumstances there should only be a delay when it is clearly necessary in the interests of justice, the delay should be as short as possible and the media should be able to challenge any such order. Media should be especially sensitive to ensure that the order is not being misused and that the interests of defendants are properly protected. Media should cover the case fully, even though their reports may be delayed.

Public order and national security are often quoted as reasons to restrict reporting, rarely with justification. States often want to make official material a secret, but the test should be far tougher than this. There may be cases where the identity of witnesses has to be withheld for their safety, or where details of some evidence may be given in private, but these should be challenged and tested by journalists. Even more limited measures such as giving evidence anonymously from behind a screen should be used only when strictly necessary, as this damages the rights of the defendant to open justice. In practice this is often used as an administrative convenience, because, for example, undercover police officers or special forces do not want their names to be known. However, the interests of defendants dictate that they should know who is making allegations against them and have the right to question that witness. Protection given to witnesses should never damage the second, and only restrict the first when absolutely necessary.

Journalists and media need access to a special procedure to challenge the ruling of a judge to close a court or to withhold evidence, or to withhold the name of a witness, and that challenge should be quickly heard by a higher court. In this respect the media does seek an extra right that the public does not have - the right to be heard as to why closure of the court is against the interests of free and fair reporting.

Where no appeal is granted, journalists should be prepared to make their voices heard.

How the ICCPR defines a fair trial

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country

International Covenant on Civil and Political Rights Article 14

Journalists also have to consider whether in their reporting they themselves might damage the principles of fairness and justice. Sometimes, from pressure of time, journalists are sent to cover the opening of trials but do not sit through the whole process. The defence case may get a passing mention or no mention at all. This is unacceptable practice. If a trial is worth reporting then ways have to be found to follow it through to the end.

There is also a question about what it is proper to print while a trial is in process.

Journalists need to discuss the best system for their local situation. However, the interests of justice should be upheld. Journalists do not seek freedom to publish as a means of damaging the rights of defendants or people seeking justice in court. Fair reporting is part of a fair system of justice, even though journalists must remain completely independent of the courts.

Journalists should look into what training judges are given, how judges are recruited, how they guard themselves against bias, the extent of their ethnic awareness, their knowledge of human rights legislation and instruments, and their attitude to defendants and to police.

Reporting on children

Media and children

The CRC defines children as young people up to the age of 18.

Most countries extend adult rights to young people at a variety of ages, including the right to marry, the right to vote, and the right to join the armed forces, although this may contravene the principles of the CRC.

In Asia, many children are forced into adulthood from a young age to support their family. Due to circumstances beyond their choosing, many children are compelled to make money for their family through exploitative or abusive work, including prostitution.

As young people mature physically they become more autonomous and expect to take more decisions for themselves.

Journalists, like all adults, should respect young people and give them opportunities to express themselves and have their opinions and experiences used and valued.

At the same time, journalists must recognise that a young person may not be as confident as she or he looks. To exploit a young person's vulnerability is to violate their rights.

Journalists should consider whether even older teenagers properly understand how information gathered in interviews is to be used and whether they can give informed consent.

The onus is on media institutions and journalists to show that they act ethically and properly in their dealings with children and young people. Young people must be properly informed about why they are being filmed or asked questions. They must understand the implications of any agreement to cooperate with a journalist.

Media professionals must understand it would be an abuse of a young person's right to exploit their vulnerability.

Journalists must seek and receive permission from an appropriate adult, where a child or young person cannot give informed consent and yet it is imperative that their story be aired.

Much of the CRC and its two Optional Protocols are about measures to protect children. Yet, despite the global support for the CRC, children's rights are grossly abused in several ways, through labour, abuse, exploitation and war, among other things.

For example, the exploitation of children for labour and for sex is a problem across the world. Police forces have been urged to work with agencies of other countries to combat the trafficking of children for exploitative purposes and to act against adults who travel to locations where they believe they can easily sexually exploit a child. Journalists too should be prepared to work with counterparts in other countries to put together an overview of what is happening and to investigate the situation of children who are trafficked or otherwise exploited. They should not, however, overlook the need to investigate how people in their own community abuse and exploit children.

One defining characteristic of children is their relative lack of power. Their rights are absolute in theory but conditional on adult behaviour in practice. The media has an important role in examining how the rights of children are abused and in highlighting shortcomings in a system of

protection. From the point of view of the media, one of the most important rights is Article 12 of the CRC.

“Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.”

This implies that children should be visible in the media, not only as victims or problems, but also as young people who hold views and opinions and who are entitled to express them. The CRC sees the role of mass media as positive. Article 17 states:

“... recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health.”

If journalists do one thing to improve the rights of children it should be to give them a voice, through special programmes or publications and within mainstream programming and publications. The need to bring children into a greater range of media coverage is not just to do with traditional issues related to children. Economics correspondents can relate fiscal changes to the impact on services for children. Sports reporters can focus on the opportunities for young people. Media, fashion and show-biz reporters may investigate whether marketing targeted at adolescent girls puts them at risk.

Children also have a role as young journalists seeking out the views of other young people and helping to publish them.

Respect for independent journalism is an essential condition for a media culture of openness about children and their rights. All journalists need to be confident that they can uphold ethical standards and protect confidential sources of information. The right to freedom of expression is paramount but it has to be balanced against other important rights, including the rights of a child to freedom from fear and exploitation. As in all forms of self-regulation, effectiveness depends upon the

professional confidence of journalists, their knowledge of the issues, and the conditions in which they work. Guidelines give journalists a basis for challenging improper use of their material or distortions added during the editing process and help those who direct the work of other journalists. Guidelines can educate members of the public about how journalists approach their work, and allow journalists to defend their decisions in public.

While many journalists subscribe to codes of conduct, many people working in the media industry tend to work by instinct rather than rules laid out in such codes. However, reporting on children requires precise protocols if their human rights are to be protected. Such guidelines will help children to see that journalists take their issues and views seriously and ensure that all those who work in the media are serious about safeguarding their rights. It is important for journalists to remember that when children come in contact with the media, they are not always capable of making informed decisions. There is no equality between the journalist, photographer or programme-maker and a child, and where there is an imbalance of power there is the potential for exploitation. Journalists who take these guidelines seriously will protect children and protect themselves.

The IFJ's code of practice for working on children's issues are intended to maintain awareness among journalists and media institutions of a child's human rights and the media's obligation not to abuse them. The IFJ code's preamble says journalists should strive to maintain the highest standards of ethical conduct: Strive for standards of excellence in terms of accuracy and sensitivity, and give children, where possible, the right of access to media to express their own opinions without inducement of any kind. When journalists' associations and unions draw up their own codes of professional practice they should also consider emphasising positive measures. For example, guidelines could suggest "journalists seek out the views of children on all relevant issues and help them to gain an audience for those views" and "journalists shall strive to understand the world through the eyes of the child".

UNICEF has a set of principles for journalists to use as guidelines for working with children. Journalists should know that the dignity and rights of every child are to be respected in every circumstance. In interviewing and reporting on children, special attention is to be paid to each child's right to privacy and confidentiality, to have their opinions

heard, to participate in decisions affecting them and to be protected from harm and retribution, including the potential of harm and retribution. The best interests of each child are to be protected over any other consideration including over advocacy for children's issues and the promotion of children's rights. When trying to determine the best interests of a child, due weight must be given to a child's right to have their views taken into account, in accordance with their age and maturity. Those closest to the child's situation and best able to assess it are to be consulted about the political, social and cultural ramifications of any reportage. Do not publish a story or an image which might put a child, their siblings or peers at risk even when identities are changed, obscured or not used.

IFJ code of practice

Four IFJ guidelines are cautionary:

1. Consider carefully the consequences of publication of any material concerning children and minimise harm to children.
2. Ensure independent verification of information provided by children and take special care to ensure that verification takes place without putting a child informant at risk.
3. Use fair, open and straightforward methods of obtaining pictures and, where possible, obtain them with the knowledge and consent of children or a responsible adult, guardian or carer.
4. Verify the credentials of any organisation purporting to speak for or represent the interests of children.

Other guidelines urge journalists to avoid damaging practices:

1. Avoid programming and publication of images which intrude upon the media space of children with information which is damaging to them.
2. Avoid the use of stereotypes and sensational presentation.

3. Guard against visually or otherwise identifying children unless it is demonstrably in the public interest.
4. Avoid the use of sexualised images of children.
5. Do not make payments to children for material involving the welfare of children or to parents or guardians of children unless it is demonstrably in the interests of the child.

In highlighting abuses against children, the media has an important duty to ensure that the rights of affected children are not further damaged. When interviewing young children, journalists should always seek permission from parents, guardians, carers, schools or someone acting in the place of a parent or guardian. A responsible adult should be present during an interview with younger children. This protects the child and also the reporter. However, the reporter should always interview the child, not the adult, and treat what they say with respect.

As children get older it is more appropriate that they are consulted themselves. However, if they are under 18, parental consent may be needed. Journalists who are writing about children who live or work on the street may not find a suitable adult to consult. In such cases they should try to work with an NGO that works with such children. In other cases, such as reporting on child labour, it may be that the adults who are “in charge” of a child are the ones who are abusing and exploiting them. Again it may be possible to work with an NGO.

All guidelines regarding reporting on children take a tough line on naming or portraying children without permission. Media should never name or publish pictures of children who have been abused or exploited. However, it is common in Sri Lanka for media coverage to identify children, including those in difficult circumstances, presumably without regard for their rights and welfare, according to the CPA survey of journalists and civil society representatives.

Journalists need to understand that if they “expose” sexual exploitation of a child by naming the affected child and revealing their identity through photographs, the child’s situation could be made worse. They may suffer punishment at the hands of their exploiter and may also have to contend with the prejudice and intolerance of other people in their community. There are tough choices here for a newsroom, since the interests of a child may require withholding elements of a story

(such as pictures and a name). On other occasions even getting permission is not enough. For example, adolescents may agree to be interviewed or filmed without being fully aware of the possible consequences of the decision. Journalists should advise them of any potential harmful effects, and not take advantage of a child's inexperience.

There may be circumstances where "asking permission" is impossible and the human rights of a child are best served by journalistic intervention. However, this should happen only after a discussion in the newsroom. The presumption should be that the media can find an adult to work with who will protect the child's interests. Children in the worst of situations also have the right not to see insensitive and clumsy media intervention make their situation even worse.

Be aware of the potential for a child's rights to be damaged after a reporter returns to the newsroom and editors try to make a story more sensational. The journalist who conducted the interview should make it clear that she or he has given undertakings of good practice. The front-line journalist is the ethical guardian of his or her story and needs to fight for those ethics in the newsroom.

Tips for interviewing children

1. Do not do an interview alone. Ensure that the child has a relative or guardian with them.
2. Make sure the interviewee is comfortable. Put yourself at the level of the child. Get the child to relax with the TV camera etc. This may take time.
3. Make sure the child knows you are a reporter and that what they say might be published.
4. Ask your questions in a gentle and accepting way and do not make judgmental comments.
5. If asking about traumatic events go at the pace of the child.
6. Ask questions more than one way to establish a clear picture of the facts. Children rarely lie but may paint themselves in a passive role.

7. Take the child seriously, never patronise.
8. Do not go on for too long. Finish before the child is worn out.
9. Finish on an upbeat note. Make the child feel good about themselves.
10. You have a duty of care to the child to make sure they are not put in danger by any published report.

Women's rights

The status of women and fulfilment of their rights can be measured by assessing several areas of concern such as women's access to education, women's wages in comparison with men's wages, the number of women in senior positions in the private and public sectors, a woman's right to agree to marry or to decide for herself whom she will marry and to choose how many children she may wish to have, and the extent of violence committed against women and girl children through family violence, sexual violence and sexual harassment. In countries of South Asia, the status of women may also be measured by looking at the impacts of social and cultural attitudes toward girl children, as measured by the ratio of surviving boys against surviving girls.

The image of women in a society is culturally embedded but it is also media-driven. There are some specific ways in which media can abuse women's rights and where practice can be quickly changed. For example, it is unacceptable to reveal the name or publish a photograph of a victim of a sexual assault unless the victim (who may also be male) has freely agreed to wave anonymity. The names of victims should be protected in court hearings about rape or sexual assault. There is also a case for withholding the name of suspects accused of rape or sexual assault until such time as they are convicted.

The rights and perspective of women are commonly overlooked in media reporting of emergency and conflict situations, except to depict women as victims. In Sri Lanka, for example, both women and men lost their loved ones, their livelihoods and their homes as a result of the 2004 Indian Ocean tsunami. However, media reports that focus on the views of men, commonly as community leaders, help to entrench discrimination because they may overlook that women too must have a say on how to rebuild their communities and reconstruct their livelihoods. In the case of the tsunami, gender-blind reconstruction

efforts regarding rebuilding houses and issuing property titles had the effect of undermining customary matrilineal and bilateral property rights laws. This in turn negatively impacts on women's rights and power within their communities. An inquiring media should be alert to such discrimination.

Reporting on women in emergency situations

In Sri Lanka, a conflict journalism workshop assessed the way in which gender blindness affects reporting about communities confronting crisis situations, including the country's ongoing civil war and the 2004 tsunami.

Colombo University's Neloufer de Mel pointed out how the media failed to address the ways in which women may have different needs and perspectives than men in such situations.

In the case of reporting on the tsunami aftermath, reports about women in particular focused on sexual harassment and rape, which resulted in better security measures for women living in makeshift camps.

However, issues such as the involvement of women in camp committees, their privacy, security and special needs (including for separate bathing facilities, for underwear and sanitary napkins) were not widely reported. Silence on these issues meant gender awareness was not high among many groups participating in the relief effort.

"In the way it was reported, the conditions that kept the women as victims and men as agents were hardly highlighted. The result folded into a stereotypical scripting of the women as helpless, the male as survivor," Professor de Mel said.

To get the full story, journalists need to include a wide range of women's perspectives in their stories, especially those who are often silenced, such as ethnic minorities.

An example of the minimum standards, principles and actions needed to underpin gender equity in media are outlined in a Charter of Gender Equity in Media and Journalism adopted at a Gender Equity in Media Summit in Colombo, Sri Lanka, in November 2006. The charter outlines a practical programme of action to support the achievement of gender equality in media workplaces, journalists' organisations and the media.

The participants at the summit strongly urged all journalists, their associations, private and public media institutions and specially constituted commissions to adopt the principles outlined in the charter.

Charter of Gender Equity in Media and Journalism

Fundamental Principles

Achievement of equality throughout society requires the media to promote and protect gender equality, both within the working environment and in a balanced representation of women within media output. The media has a responsibility to encourage open debate and inform society as a trigger for breaking down the limitations of stereotypes. Gender equity in the media workplace is central to any discussion about gender equality in media. All journalists and media staff, regardless of gender, have the right to expect equal access and no discrimination in their work (recruitment, salaries, professional assignments and opportunities for advancement).

Equality of opportunity

Public and private media must uphold the principles of gender equity in the media workplace by committing to the following: Affirmative action to encourage increased participation of women in the media; special attention to ensure the inclusion of women belonging to minority or marginalised groups; the use of transparent and unbiased merit-based recruitment and promotion procedures; at least a one-third representation of women at all levels; clear anti-discrimination policies that encourage selection of women for decision-making positions; an end to job segregation, including traditional allocations of jobs and stories; equal pay for work of equal value; policies and clear guidelines on sexual harassment accompanied by disciplinary procedures for inappropriate behaviour; and policies to limit the use of insecure employment practices for those doing freelance, casual and contract work.

Equal rights for journalists as parents

Media houses and journalists' organisations must address the under-representation of women both in journalism generally and in senior decision-making roles within media institutions and organisations by promoting flexible working hours that accommodate family

commitments; adequate maternity and paternity leave in keeping with international standards; and the availability of nursing rooms and child-care services at the workplace.

Portrayal of women in media

The media should avoid the depiction of girls and women as sexual commodities. Journalists and editors should also consciously decide not to reinforce traditionally unfavourable images or perceptions of women and girls, but rather promote a balanced, non-stereotyped portrayal of women and girls and their multiple roles within society. Journalists and media institutions should make special efforts to ensure a diverse range of gender perspectives are included in all news reports, including politics, defence, economics and conflict.

Gender equity in unions and associations.

Journalists' organisations recognise they also have a responsibility to adopt gender equality policies and to take up the concerns of women, including by encouraging media houses to develop policies and proposals to promote gender equality in the workplace.

*Adapted from Charter of Gender Equity in Media and Journalism
Gender Equity in Media Summit, Colombo, November 2006*

Ethnic minorities, internally displaced peoples and refugees

Coverage of minority ethnic groups is often hostile, sensationalist or completely absent from majority media. In part this issue was covered in the previous section on hate speech, but minority ethnic groups can also simply disappear from the media and not be regarded as an audience.

One way to improve coverage of minority ethnic groups and issues is to recruit media staff from a diverse pool so that newsrooms reflect more accurately the ethnic composition of populations. There is a limit to the extent to which even the best journalists can understand the perspective of people who live differently to them. Diversity of media staff will present a more open and accessible media. In addition, where language is a barrier to news gathering and accurate first-hand reporting, encouraging multilingual journalists and teaming reporters of different

languages on certain stories will build trust and give access to other language communities. The audience can then identify with at least some of the journalists and is more likely to trust the content. It is less likely that a media outlet will be labelled as only serving the interests of one ethnic group. If ethnic diversity is reflected in reality, in senior positions as well as junior ones, it will genuinely change the way that news is reported.

Journalists and their editors have ultimate control in their choice of words and phrases used to describe events and issues. Journalists must never use racial or ethnic slurs and need to acknowledge any unconscious assumptions about other ethnic and religious groups. Yet in Sri Lanka, for example, it is common for a Tamil suspected of any crime to be labelled a “terrorist”, while a Sinhalese would be given the benefit of the doubt. Definitions of majority and minority are often twisted to fit a certain argument – “minority” in the Sinhala media can undermine the legitimacy of other communities. Conversely, the use of the term “majority” in the Tamil media to represent the Sinhalese community may not reflect the diversity of opinions and political ideologies present.

Whoever is in the newsroom, the job of the journalist is to challenge stereotypical views and open up coverage to people from minority ethnic groups. This does not simply mean “balancing” stories full of accusations with denials, but reporting on the lives of people in minority communities so that they see and recognise themselves in the media. It also means broadening the range of contacts, so that media avoid relying only on a few spokespeople. Part of the process of dehumanising a minority ethnic group is quoting only their most extreme representatives.

Get the facts straight

Where there is a dispute or violence, the job of the journalist is to report what happened and to try to find out the cause, but it should not be assumed that all disputes are ethnically driven.

In October 2002, all mainstream media in Sri Lanka, apart from the Tamil press, reported that a Muslim youth had been abducted by the LTTE and that a ransom had been paid for his release. A large-scale ethnic disturbance then erupted in Muslim-dominated Akkaraipattu, in Ampara District, as Muslim groups blocked roads, tyres were set on

fire and shops were forced to close. The situation escalated into near anarchy.

After the situation had been out of control for three days, the boy returned voluntarily. He admitted that he told a friend to say he had been abducted and that a ransom should be paid, so that he could use the money to go abroad.

At no stage did the media question the original story, although the LTTE denied the abduction. In this case, the media played a specific role in fuelling a violent ethnic conflict, without verifying facts or sources. Once the facts had emerged – not because of the media’s investigation, but because of the boy’s confession – there was no apology or retraction of the false claims.

This kind of situation demonstrates the media’s responsibility to report the truth, and how failure to do so can result in increased tension, violence and racial vilification.

In a workshop in Sri Lanka’s ethnically diverse Ampara, where clashes are common and suspicion and fear prevail, journalists debated the importance of understanding the impact of their journalism. They discussed how this story could have been better reported. Reporting had initially put the story in a framework of ethnic tension. They understood that journalists often have a choice about how they report. Headlines can be about killing or about peace efforts.

Minority ethnic groups comprise women, men and children with many different viewpoints and beliefs. The contacts between journalists and members of the group should reflect this. It is not just good journalism, but good economics as well. Many media outlets shut themselves off from minority ethnic groups and could increase their audiences if they broadened their appeal.

Internally displaced peoples (IDPs) and refugees are often the most abused of minority communities, as they arrive in large numbers in a region or country, fleeing violence and repression. They are visible as a group, and have no natural protection. They are usually housed in poor areas where they may be vulnerable to resentment from people who have only a little more than they do. Journalists cannot heal divisions in societies or undo the damage done to IDPs and refugees. But, in writing

about IDPs, refugees and their neighbours, journalists can reflect the multiple perspectives involved and try to show that most families want the same things: to live in security, peace and decent conditions.

Reporting on disadvantaged and minority groups in Sri Lanka

In the CPA survey, journalists and civil society representatives had quite different views about local coverage of disadvantaged and minority groups.

Almost 100 per cent of civil society respondents thought the coverage was very poor. Their views were similar with regard to gender issues and children's rights. Across the board, children, women and people in disadvantaged groups were not seen to be given a voice and nor was information made available in media reports about relevant organisations and assistance.

However, almost three-quarters of journalists interviewed felt their institutions generally gave people from diverse religious groups and minorities a voice or an opportunity to speak to the media. At the same time, however, many of the journalists thought the coverage of disadvantaged groups and minorities was sensational and used stereotypes, while a smaller group thought the coverage was derogatory.

Both groups thought official and unofficial government interference played a significant role in promoting stereotypes that negatively affected accurate and impartial reporting.

People with disabilities

People with disabilities often disappear from the media, essentially ignored by society as they are forced to beg on the streets or are hidden away in inhumane institutions. People with disabilities are often regarded as lesser human beings, at worst to be mistreated, and at best to be pitied and patronised.

People with disabilities are people first and they have full human rights. This does not just mean having the right to live in humane conditions. It means having a say in their future and being permitted to give voice to their views in a way that is heard. Most should be able to live ordinary lives in the community, and they should have choices. The future must,

so far as possible, lie in staying with their families, going to ordinary schools and having a life in the community. Many people with disabilities work, marry, have children and lead fulfilling lives.

Disabled people have stories to tell. Journalists should help to tell these stories. In doing so, journalists and media institutions need to be careful not to present people with disabilities as victims or pitiful sufferers. Giving people with disabilities a voice and letting them speak for themselves is the best way to prevent discriminatory coverage.

General and specialist reporters

All general news reporters need to be sensitised to human rights issues so that they can integrate them into their work. The same is true for other specialist writers and reporters. For example, a health reporter may investigate the balance between the right of an individual to keep the result of an HIV test confidential, and the right of a sexual partner to be informed. An education reporter may investigate the extent to which girls and boys are treated differently in their access to education. A business reporter should consider the environmental impact of a new factory on nearby communities. A labour reporter will investigate the conditions under which people are working, and assess whether workers are under the age of 18. A sports reporter may investigate whether children have equal access to sports facilities, what happens when the right of a woman to take part in sport offends a cultural code, or whether young football players are encouraged to sign contracts that later curb their freedom. A fashion reporter may usually write about colours and clothes, but they should also be interested in the connection between fashion and self-image, and the use of child labour to produce fashion garments.

A human rights agenda sharpens the work of every journalist. Once reporters are sensitised to a human rights agenda, they make connections and ask questions which might not otherwise be asked.

Reporting on emergencies

During natural disasters and emergencies, the perspective of human rights reporting is crucial. A CPA report in the wake of the 2004 tsunami in Sri Lanka examined the ways in which the news broadcasts of the state-controlled Sri Lanka Rupavahini Corporation (SLRC) covered all aspects of the disaster between January 1 and 7, 2005.

CPA monitored news categories including national reconstruction, government intervention, foreign aid, victims of the tsunami, collective participation in rebuilding, distribution of relief assistance and children affected by the tsunami. SLRC coverage of government intervention was found to be the most frequent, followed by reports on the national reconstruction process and foreign aid. Meanwhile, coverage of the victims, distribution of relief assistance and affected children was surprisingly minimal.

Findings indicated that coverage of the national reconstruction totalled about 46 minutes over the week, while coverage of the tsunami victims totalled about seven minutes.

The report concluded that the SLRC coverage of the tsunami promoted the image of the Government while not allocating adequate time to those affected by the tsunami to voice their needs. Furthermore, the report found that despite the relatively high level of devastation and destruction in Northern and Eastern Sri Lanka, the SLRC accorded these areas low coverage when compared with that afforded to southern Sri Lanka.

With this in mind, journalists should consider the way in which the tsunami's impacts on war and peace were quite different in different environments. Amnesty International draws attention to the fact that in the year following the tsunami, Sri Lanka experienced an increase in violence associated with the conflict, amid growing insecurity in the country's North and East that undermined the 2002 ceasefire agreement. Yet in war-torn Aceh in Indonesia, a process of negotiation led to a peace agreement. What was the role of media coverage in these contrasting examples, and would a human rights approach affect outcomes?

The CPA report indicates that Sri Lanka's state media failed to examine the way in which the tsunami impacted upon the day-to-day lives of people affected by the disaster. It shows how important it is for journalists from all media, whether private or public, to focus on human rights and the "human element" as an essential means of contextualising the issue for audiences and of consequently motivating the general public to support the relief effort.

Reporting on wars and conflicts

War, by definition, infringes the most fundamental of human rights – the right to life. Reporting during conflicts means reporting in a situation where human rights are already being destroyed. In such times the state and irregular forces assume extra powers and often suspend civil rights. Journalists can be personally at risk and operating in an environment where rights are not recognised and criticism is not tolerated, as is common in Sri Lanka. Wars with divided civilian populations destroy the right to live in freedom and without fear, and create refugee populations who lose all their property, their right to move freely and their right to homes, family lives and material possessions.

Different journalists are also in very different circumstances. The international reporter embedded with US troops in Iraq and provincial journalist reporting on war within his or her own city or region have different priorities, expectations and necessities. One journalist goes to seek out a war; others find that the war has come to them. It is difficult to write about reporting with a human rights perspective during conflict, without recognising that there are many different conflicts and many different journalists.

War reporting is beyond the scope of this handbook, although it is clear that a sober assessment is needed of what happens to objectivity and balance in the reporting of war, whether it be Iraq or Sri Lanka. Journalists in Sri Lanka who attend training courses to be told how to report fairly on conflict in their own country may watch in bemusement when US media outlets promote patriotic coverage of US involvement in wars.

“Whose side are you on?” is a question often asked of journalists, sometimes at the barrel of a gun. In all wars, patriots and nationalists make terrible journalists. Patriots do not question the version of events put out by their generals. They discount civilian casualties on the other side, either as fabrications, or as accidents or as something inflicted by the enemy on themselves. They portray their own side in a noble light, even if that nobility consists of air strikes on terrified people. Of course, a reporter embedded with soldiers will come to care about those troops and to see the conflict through their eyes, just as a reporter living in a community will care far more about the fate of their neighbours than of the nameless forces on the other side.

But reporters can remain aware that one human life has the same value as another. That all sides mourn their dead equally. That when a mother loses a son, or a son loses a sister, there is an equality of grief. And if individual reporters are in no position to show a war from two sides, then the media institutions for which they work have far greater responsibility and resources to ensure coverage is balanced. As soon as journalists become supporters of a war, then their public loses its right to information with the necessary degree of detachment and scepticism. They generally lose sight also of the reasons for the conflict, as the news is overtaken by daily battle reports (often containing highly inaccurate information) and casualty counts. Journalists also lose sight of historical perspective, as highlighted by a small but significant proportion of the journalists surveyed in Sri Lanka, who said they did not have sufficient knowledge of the root causes of the country's long conflict.

Patriots make terrible journalists

The media has a responsibility to report critically on policies and actions of those in power, especially in a time of war. In Sri Lanka, however, journalists who question government propaganda and who report on corruption, gross lapses in security and the human rights of victims of war may be named as "traitors", "pariahs" and supporters of the LTTE.

In one example in early January 2008, the commander of the Sri Lankan Army, Major General Sarath Fonseka, labelled sections of the media and journalists as "traitors". He told the state-controlled Sinhala daily *Dinamina* that media "treachery" was a major problem for the military in its fight against the LTTE.

"The biggest obstacle is the unpatriotic media. I am not blaming all journalists. I know 99 percent of media and journalists are patriotic and doing their jobs properly. But unfortunately, we have a small number of traitors among the journalists. They are the biggest obstacle. All other obstacles we can surmount," he was quoted as saying.

The Free Media Movement (FMM) raised concerns that Fonseka's comments were an open warrant to incite hate and harm against journalists.

In the CPA survey, more than half the journalists - most of whom file regular reports on Sri Lanka's conflict - thought the language used in the coverage of the peace process and conflict was analytical and

balanced. Yet more than three-quarters of the journalists interviewed thought the media was biased. The journalists generally thought the problem with bias was due mainly to commercial considerations and, to a lesser extent, safety considerations, the political interests of editors and media owners, and a lack of training standards. Most blamed problems with accuracy, balance and fairness on official and unofficial censorship applied by the Government, the army and the LTTE. But while they noted that the quality of information provided by state institutions was limited or biased, the journalists generally said they still depended on such sources, notably the police, the army and the Government. Few used ordinary people as sources in conflict and peace reporting.

Meanwhile, a high proportion of the civil society respondents disagreed that coverage of the conflict was balanced and analytical, and many believed the media had not taken adequate steps to redress this. They highlighted self-censorship by the media, as well as government censorship, as key contributing factors to unbalanced coverage.

From a human rights perspective, reporting on war should also entail providing objective information that facilitates conflict-resolution and peace-making by allowing for an understanding of the views of all actors and groups. Respondents to the CPA survey generally agreed. Yet while very few of the journalists surveyed would claim to be patriotic citizens or defenders of the liberation struggle, equally few saw themselves as defenders of human rights, even as many claimed to be independent defenders of democracy. The implication is that journalists in Sri Lanka need clarification on the distinction between adopting a human rights perspective in their reporting of conflict and taking a biased perspective that is unbalanced and unfair.

The Geneva Conventions

The Geneva Conventions demand respect for human beings in time of armed conflict, and that includes respect for the human rights of journalists, who are classified as civilians entitled to protection from violence, threats, murder, imprisonment and torture under Article 79 of the Additional Protocol to the Geneva Convention. These legally binding treaties date from 1949 and have been ratified or acceded to by most countries. They form part of international humanitarian law. Violation makes a soldier or militia member guilty of a war crime. Journalists need to know and to assert these rights. The International

Committee of the Red Cross (ICRC) says that states must care for friends and enemies alike; respect every human being, his or her honour, family rights, religious convictions and the special rights of the child; and prohibit inhuman or degrading treatment, the taking of hostages, mass extermination, torture, summary executions, deportations, pillage and wanton destruction of property.

The US imprisonment at Guantanamo Bay of detainees captured abroad and accused of terrorist activities poses new and very serious challenges to the human rights of those captured in or after a battle. The camp at Guantanamo Bay is designed to avoid bringing detainees under the jurisdiction of US courts. The US has said it is applying the principles of the Geneva Conventions. However, the Guantanamo prisoners generally have been detained without charge or trial, and do not have access to lawyers of their choice. Moreover, the detainees are not regarded as prisoners of war, on the grounds that they were not part of a recognised army. In these cases, international human rights law should apply, which gives prisoners the right to be formally charged, informed of their rights and permitted access to legal counsel.

Protection for wounded combatants, prisoners of war and civilians

The first two of the Geneva Conventions cover the treatment of wounded and sick members of the armed forces and medical personnel on the battlefield and at sea. The third Convention covers prisoners of war. All three refer to journalists only in the case of accredited war correspondents. The fourth Geneva Convention covers the rights of civilians in enemy or occupied territory. Of most significance is Article 3, which applies to all the Conventions, and says:

- 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. The following acts are prohibited at any time and in any place with respect to the above-mentioned persons:**
 - a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**

- b) Taking of hostages;
 - c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
2. The wounded and sick shall be collected and cared for.

Journalists are civilians too

Journalists must be protected as civilians. Protocol 1 to the Geneva Conventions (which came into force in 1978) says in Article 79:

- 1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.
- 2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4A 4) of the Third Convention.
- 3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he/she resides or in which the news medium employing him/her is located, shall attest to his/her status as a journalist.

Protocol 2 extends the Geneva Conventions to large-scale civil conflicts between the armed forces of a state and dissident armed forces or other organised armed groups on its territory. However, it excludes from the Conventions .

“Situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

Article 4 of Protocol 2 describes how parties must extend humane treatment to civilians:

- 1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.**
- 2. The following acts against these persons are and shall remain prohibited at any time and in any place whatsoever:**
 - a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any corporal punishment;**
 - b) Collective punishments;**
 - c) Taking of hostages;**
 - d) Acts of terrorism;**
 - e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;**
 - f) Slavery and the slave trade in all their forms;**
 - g) Pillage;**
 - h) Threats to commit any of the foregoing acts.**

Working with NGOs

Journalists often work with NGOs that specialise in human rights or in defending the rights of certain groups within the community. However, in the case of Sri Lanka, the CPA survey highlighted that journalists commonly felt the quality of the information provided by NGOs and UN agencies working on minority and human rights issues was limited, if not biased. There is clearly a distrust between journalists and NGOs that needs to be resolved.

The relationship between the media and sources in civil society needs to develop on a professional basis, just as relationships with the police, the military and politicians need to be professional. Civil society organisations can provide access and are therefore invaluable. There should, however, be a degree of distance between the media and the organisations, and a recognition that their reports can also be fallible. Journalists need to respect the relationship, by making clear agreements in advance about any ground rules for interviewing people and using film or other materials. Any agreements made should be kept, and therefore these agreements should be approved at the level of editors and producers, not just by the reporter. If television or newspapers use film shot by NGOs where no reporter was present, these should be attributed in the same way as film shot by the police would be attributed.

Positive coverage of human rights achievements

Many people may not be well informed about their human rights, even the rights that are incorporated into national legislation. Journalists have a role in promoting human rights, so that their audiences better understand what they are and how to achieve them. Reporting human rights success stories is one way to do this while still keeping the focus on real people rather than on paper resolutions.

The core message is that journalists should recognise that every person has human rights and treat them accordingly. Journalists need to be independent of politicians or special interest groups, and have a sufficient degree of detachment for their reports to be credible and reliable. Journalists need codes of practice and the means to enforce them. Journalists also need trade unions to defend their own rights. Part of being a professional is that one can stand up for their own rights. Without that ability, journalists will not be in a position to defend the rights of other people in their communities.

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