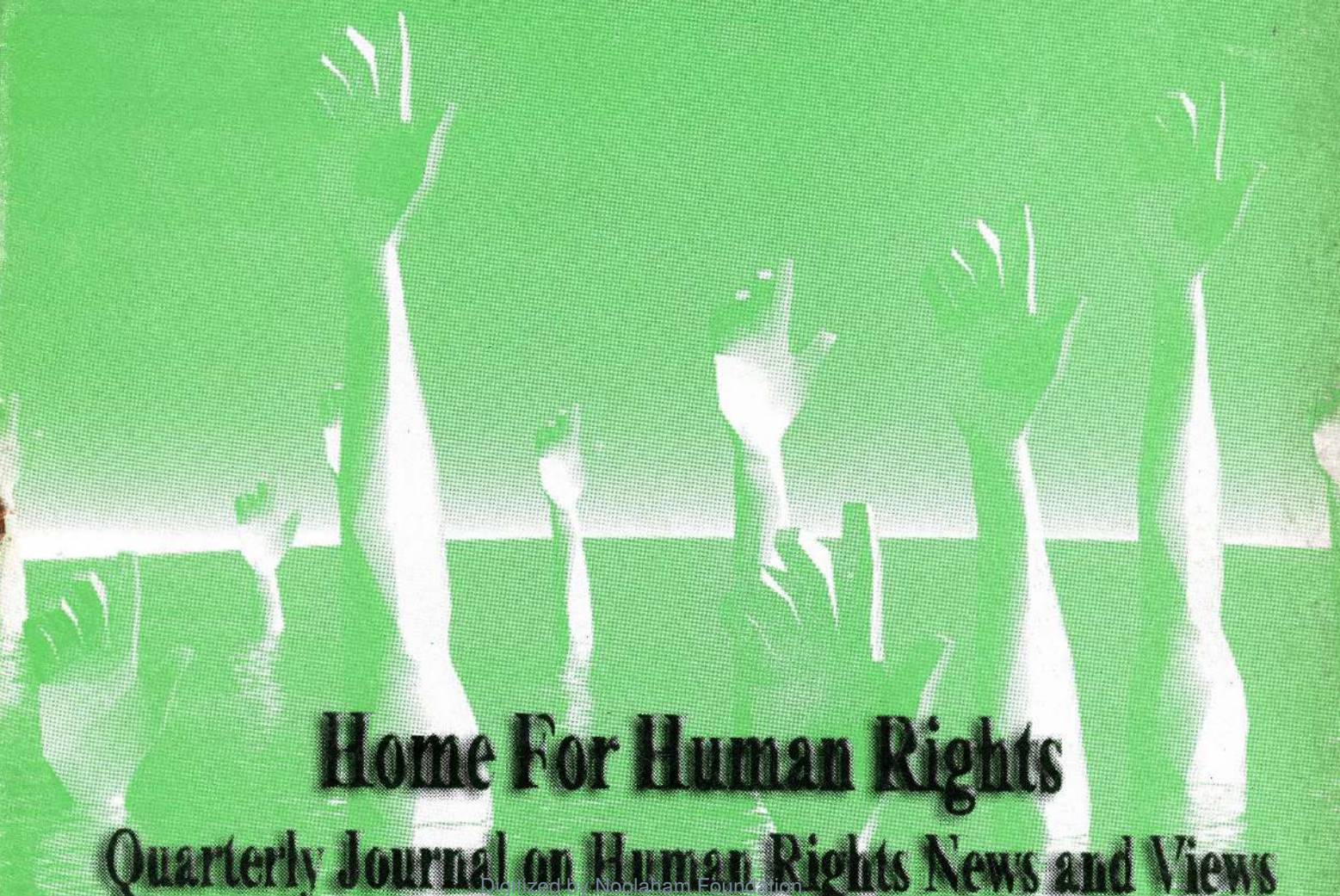
BEYOND THE WALL

January - March 2003



Home For Human Rights

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BEYOND THE WALL

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The views expressed in the articles in this volume are those of their authors and do not necessarily reflect the views of the editorial board.

Beyond The Wall *welcomes contributions from those involved or interested in human rights. The subject matter is restricted to news, views and academic papers on human rights issues. In addition to papers and articles, we will welcome critical comments and letters to the editorial board.*

All correspondence should be addressed to: ***Beyond The Wall, C/O Home for Human Rights, 14, Pentreve Gardens, Colombo 3, Sri Lanka***

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Home for Human Rights,

14, Pentreve Gardens,
Colombo 3, Sri Lanka

EDITORIAL

Taking High Security Zones to the International Criminal Court

Will the peace process in Sri Lanka come to a standstill on the question of high security zones (HSZs)? The security forces are adamant against compromising on the question of dismantling these zones. It has created a knotty problem for those who wish to resettle in their own homes and lands that lie within these areas, some of which were handed down from generation to generation.

It poses a problem to fishermen too who were once plying their trade off the coast of the peninsula now encompassed by the HSZ. The restrictions have reduced some of them to penury relieved only by miserable handouts that the government and indulgent NGOs are prepared to offer.

After evicting civilians from the Jaffna peninsula, the government declared HSZs through a government gazette notification. They consisted of 69 grama sevaka *divisions.*

The HSZ around Palali in northern Jaffna causes much concern in the peninsula. This area, known as Vallikamam North is nearly 58 square kilometers in extent. This area could be termed the backbone of Jaffna's economy because of its agricultural and fishing potential. It is highly fertile and known as the red soil belt in the peninsula and renowned for its vegetable and fruit production. Nearly 21,000 families consisting approximately of 68,000 persons have been displaced from here and debarred from entering their lands and homes.

This area is also a part of the cultural and religious heritage of the Jaffna Tamils, with more than 30 temples sacred to the Hindu population of Jaffna and others coming within the zone. There was clamour to make Keerimalai that falls within the HSZ, a sacred area for the Hindus, as the Dalada Maligawa in Kandy, or the area surrounding sacred Bo tree in Anurdhapura are for the Buddhists. Thousands of devotees used to travel to this place annually to perform rites and rituals to satisfy their religious aspirations. But the government and security forces are yet to grant this request.

More than 20 prominent schools within the zone are closed preventing students from pursuing their studies. The schools have been shifted to far off places causing inconvenience and hardship to students and staff.

The directive principles and fundamental duties (Chapter six of the Constitution of Sri Lanka) enjoin the Sri Lankan State to establish an environment for the full realization of the fundamental rights and freedom of all persons. The act of depriving people of Valigamam North of their basic rights – the right to food, shelter and livelihood – is in contravention of Section 27 (2) (C) of this chapter that guarantees the realization of an adequate standard of living for all citizens. Though the directive principles are unenforceable by law, the state's action in establishing and now refusing to dismantle the HSZs are a violation of these directive principles.

The Constitution goes on to guarantee, in Section 14 (h) of the chapter on fundamental rights, persons their freedom to choose their residence and the freedom of movement, both which are violated by the HSZs.

Experience of similar restrictions worldwide has led to the framing of international standards, laws and covenants, which show up in stark clarity violations the Sri Lankan government is guilty of in refusing to dismantle HSZs.

It will be appropriate to cite a report from the Permanent Observer for Palestine to the United Nations High Commission for Human Rights, "The Israeli military occupation forces have surrounded and occupied a number of Palestinian controlled areas, using heavy artillery, tanks, troops carriers, bulldozers and helicopters, causing vast destruction to Palestinian, and killing and wounding scores of Palestinian civilians.

"Furthermore, Israel is persisting in its policy of extrajudicial executions and assassination of Palestinian personalities. All of which constitute flagrant breaches of the principles of human rights, particularly the right to life, and grave violations of the principles of international humanitarian law and international law.

"This Israeli aggression, represented by the Israeli military incursion into Palestinian towns and villages, together with its consequences represented by imposing severe collective punishment with the aim of pushing Palestinians towards a humanitarian crisis and starvation, willful killing of civilians, house demolition, shelling of schools, mosques, churches and hospitals with artillery fire, is still going on to this day."

The establishment of the HSZs leading to coercion and forced displacement of civilian populations and the destruction of their properties also amounts to a total denial of fundamental rights guaranteed under articles of the Universal Declaration of Human Rights and articles of the Covenant on Civil and Political Rights.

Further, the Rome Statute of the International Criminal Court declares that deportation or forcible transfer of populations without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitute a crime against humanity.

In the light of the above, it might be opportune to give earnest consideration as to whether international human rights and judicial bodies should not be lobbied on HSZs in Sri Lanka's northeast as constituting a crime against humanity.

Security and normalisation battle on HSZ resettlement

"...Everything cannot be handed over to the LTTE as long as there is a threat from them. The LTTE asks for land even from Palali ... People in the south are more interested in peace than those in the north. Because most in the south lost their children, fathers and mothers and husbands due to the war."

January

Resettlement and high security zones

The issue of high security zones (HSZs), resettlement of refugees and the related phenomenon of LTTE disarmament figured prominently in January. In December 2002 Jaffna security forces commander Major General Sarath Fonseka who was asked to prepare an internal memorandum on civilian resettlement in the HSZs, came up with a plan where resettlement was contingent upon the LTTE surrendering its heavy weapons.

Tamil response to this was that Fonseka had no business to comment on political matters. The LTTE angrily rejected conditions imposed by the Fonseka memo because decommissioning weapons could not be considered at a stage of the negotiations where inhabitants of the areas now transformed into the HSZs were displaced people who had to be resettled if normalcy was to be restored in the northeast.

The army commander Lieutenant General Lionel Balagalle said, "...Everything cannot be handed over to the LTTE as long as there is a threat from them. The LTTE asks for land even from Palali ... People in the south are more interested in peace than those in the north. Because most in the south lost their children, fathers and mothers and husbands due to the war."

Despite these differences of opinion, the fourth round of talks between the LTTE and the government ended successfully with an agreement the World Bank would be the custodian of funds for the rehabilitation of the northeast. An accelerated resettlement plan for the northeast was agreed upon where resettlement outside the HSZs would precede the resettlement within the zones. However, this was modified when the TNA said this plan was not necessarily where resettlement outside the zones would be completed before resettlement inside could commence. They would be done simultaneously.

The government also began talks with the LTTE through Rehabilitation Minister Jayalath Jayewardene on bringing back refugees especially in South India. There are 85,000 Tamil refugees in South India.

Meanwhile, an organisation consisting of Buddhist monks handed over a petition to President Chandrka Kumaratunga requesting her to assist in resettling displaced Sinhala people in the northeast. The organisation stated that 36,519 from the Jaffna District, 17,903 from the Batticaloa District, 51,699 from the Trincomalee District, 13,002 from the Mannar District and 11,643 from Vavuniya District had been displaced due to the war.

During a meeting on the Sub-committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) on 16 January, the government and the LTTE discussed plans on resettling Muslims in the areas of the northeast from where they were displaced. It was agreed a concept paper in this regard would be prepared.

While debate about resettlement in the HSZ raged, there were conflicting reports of the private property under the control of the security forces and the government. The Consortium of Humanitarian Agencies – Jaffna said the security forces were in occupation of 4000 houses. It went on to state 82,922 unemployed and 110,601 underemployed in Jaffna.

LTTE reveals fate of MIAs

In what turned out to be an eye opener for sections of Sri Lankans the LTTE's chief negotiator, Dr. Anton Balasingham, told the Sri Lanka government delegation at the fourth round of talks in Thailand that President Kumaratunga and former Deputy Defence Minister Anuruddha Ratwatte had refused to accept bodies of soldiers killed in action because it would be politically damaging for the government. This had resulted in a large number of those killed officially listed as missing in action (MIA). They were subsequently buried by the LTTE. In the wake of these revelations the Association of Parents of MIAs called upon the government to probe the veracity of this statement.

Though never official, there have been allegations – especially after the fall of the Sri Lanka army's Mullaithivu camp – that the government had not shown any concern about bodies lying within the overrun camp though the LTTE had indicated through the ICRC it was willing to transfer the corpses as per the rules of war.

Meanwhile, associations representing the interests of MIAs have flourished in Colombo and elsewhere in a glare of publicity and generous endowments. They have maintained the LTTE keeps many POWs and have been lobbying the government to have them released.

February

The Bellamy visit and children in armed conflict

The issue of children affected by conflict took centre stage in early February with the visit of Carol Ballamy, executive director of UNICEFF. She met with government and LTTE representatives to discuss problems pertaining to children in the south as well as those in the northeast.

The Virakesari newspaper quoting a report released by UNICEF said 35000 children in the northeast had

Contd. on page 7.

Transforming the plantation economy to meet future challenges – a policy note

The slow process of social and economic change in the plantation sector despite its takeover by private managements in the 1990s coupled with dwindling profit from tea export, is prompting scholars to look at the hitherto neglected social and economic rights of plantation workers in relation to increasing productivity.

By C. Suriyakumaran*

A. BACKGROUND

1. The economic, labour and social implications of the plantation industry have come sharply to the fore of late, as is usual with such issues, due to the near crises situations to which the industry has been brought in one or other of the foregoing three facets.[1]

2. As for the issues, in the quarters that have addressed these problems, they may be said to come under one or more of the following: namely, that mono-crop cultivation was no more viable; that the foreseeable price scenario was one of a fall in prices; that there could be increase in out migration of estate labour; that the 'plantation' as basis for its traditional social institutions had run its course.

3. i) Certainly, there has been almost no comprehensive look at the multi-faceted economic and social needs of the plantations as they are now.

ii) Equally, there has been large-scale unawareness, or silent denial that the pioneer plantation economics of the colonial era had indeed devised systems for their own needs, albeit from their colonial base and pre-20th century social premises.

iii) Apart from the major switch from coffee to tea in the early years, this sector devised and deployed productive organisational modes for their success and sustenance.

(a) One of them was the draconian system of indentured labour.

(b) The other was the innovative system for the circumstances as then, under which one foreman (not an adequate word really to describe the gang head called 'kangany') was totally accountable for the supply, stability and productivity of the labour.

(c) A third, not directly within the plantation industry, was the system called 'guarantee shroff banking,' under which the monopoly 'white' banks, vital for plantations but not economic if relying on them alone, placed their funds under the sole dispensation and responsibility of these indigenous heads of the banks' cash department, who then lent out to the expanding local business communities.

(d) At the base, was the (colonial) private sector, primarily as joint stock holding managerial organisations, through all stages of the industry's development, production and expansion.

(e) Finally, a forward-looking mutually inter-active institutionalised research base serving the entire industry remained a prominent contribution to both ongoing and upcoming needs for technological efficiency.

4. It is a reflection on everything we have around us today that except for the banking system, hardly anything has materially changed from this predominantly anachronistic system. The colonial type capital ownership has given way to others, while these have themselves been under scrutiny by the institutionalised research base, apparently in better need of support and use.

Perhaps, it must be considered a surprise that the system has continued to serve, and indeed a greater surprise that it had not collapsed earlier.

5. Clearly, dynamism and vision are required, indeed with focus on a wider vision than we have so far, on all relevant facets. These facets (of three 'knowns' and one 'unknown') are:

i) a vast land area (which can be classified and quantified),

ii) a uni-product base,

iii) a resident labour force,

iv) total absence of any meaningful form of local government as means of economic, social, and political expression (minimal increases so far in medical, educational and housing facilities notwithstanding).

6. a) It would appear that many remedies have been suggested from time to time, some on production, and others on structures, others yet on social transformations, and even on break-up of the plantations into small holdings (desperate as this may seem, and in any case not quite tested even elsewhere).

b) In buttressing these, varied views have been advanced, from non-interference, to colloquy between government, employer and labour, or direct governmental intervention.

7. Pursuit of them has not so far revealed much dynamic forward thinking, nor addressed the basic managerial questions of devising new modes to replace the colonial patterns and structures on which this economy has essentially run.[2]

B. APPROACH

1. Clearly, it would be too facetious, if not dangerous, to 'throw the baby out with the bath water,' by seeking to down

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grade tea within the economy in the name of changing from mono-culture to an undefined, diverse culture.

2. Nor is a secular trend, of fall in tea prices something which we may assume away right now, especially given that international data on beverage consumption patterns, population increases, its ratios and dispersals, do not necessarily assure this pessimism.

3. Similarly, a drastic change, to 'cure the headache by changing the pillow,' by converting the estates into small holdings, could well be a high risk venture by itself, especially given some of the infrastructural and crop maintenance aspects of tea (distinct from the negligence of the present managements after privatisation).

It is understood, of course, that certain needs of scale economics, for example, of collecting tealeaf from smallholdings and their factory processing, can be undertaken under smallholding systems.

4. Nor may tourism, forestry, be of more than marginal impact, given the scale of the problem and physical scope for those ventures in the areas as available now. (Alternative, supplementary economic initiatives lie elsewhere, to which this Note comes below).

5. The out migration of estate labour, particularly the youth, is a general phenomenon natural in all activities and in all economies.

A facet we may note is that this is even healthy perhaps, given its potential over the supply of captive resident labour through multiplying of the population on the spot.

* * *

6. What is fundamental in the long term, and of benefit to both plantation and labour is a three-pronged approach that would,

(a) let youth, as may, leave their estates (for work elsewhere);

(b) nurture a labour 'supply base' for tea ;

(c) create new economic foundations for the resident labour as local, self-reliant communities – aware of and, in time, able to serve both.

7. For these, the need would be to introduce and to confer upon this population (men, women and children as families) the spirit and sense of being local communities, social entities and owners/heirs or custodians of their local areas – of land and resources contained within their local areas.

8. The concept is nothing more than of the most earnest and enduring human organisational parallel – the village, and the village area. Historically, the village has been the only 'organic unit' in any body politic.

9. Given the right vision and knowledge from the so-called governmental and employer leaders, and a knowledge-based programme instituting the transformation of estate labour settlements into geographically identifiable local areas, with complete local powers to run their services – social, educational, medical, infrastructural, agro-industrial – there should, within a foreseeable period, be the following:

(a) robust communities, with developing pride in their own areas;

(b) relatively high capacity for enhancement of not only social and welfare needs, but of pure micro-economic developmental avenues of significant interest and volume;

(c) pride in their local areas, with determination to treat them as their base, and therefore not set to thin out or disappear, as now feared;

(d) concurrent interest in their tea plantations, as essential adjuncts to their higher income expectations, welfare and prosperity.

10. The transformation would mean simply that the labour service for tea would now be from family members who are resident in their local community areas, and not labour recruited for and living in 'lines' with no prospect, save that of plucking tea when possible and therefore, with every reason to find new pastures when possible.

11. Certainly, it would also be a healthy challenge to the tea industry management to update themselves – their own organisation, planning, technology, research and co-ordination, and relations.

12. While it is not possible to detail here, a cursory non-formal study has given credence to a view that the levels of the additional micro-production possibilities in such community areas could register a straight GDP increase, sufficient to match the GDP equivalent of their wage incomes as estates labourers.

13. The new posited activities mentioned, range from already known vegetable growing, to innovative home dairying, a fascinating range of mini-mechanised, and other, industrial production categories (not detailed in this Note).

Certainly, a gestation period is assumed, which may be anything from two to five years, perhaps slightly more, and of course varying for the different categories.

14. Their implications for welfare – economic and social – are obvious. Nor would this new income be at all disincentive from pursuing standard wage labour incomes, save that bargaining powers may be more equitably apportioned between the estate management and labour.

In classical experience, stagnant incomes create stagnant mental perceptions of attainable incomes, while experience of attaining new incomes lifts perceptions of desired (own and family) incomes. (It means also that labour for tea will continue to be a desired constituent).

15. Among the results is an interesting one, which national policy makers could sit up and look at. This is,

(a) that the new development could begin to account for surprisingly notable contributions to the country's total GDP;

(b) that government will be enhanced by a democratic mode where it never existed;

(c) that, hitherto poor governmental or employer

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interventions on social and human problems – including of women – would be handled at grassroots level, under new economic bases, with better results.

16. (i) Neither nationalization, a recent adventure, nor the new privatisation can by themselves be an answer to the needs and issues raised above.

(ii) What had been required is professional, in-depth vision, with leadership from all sides, and a re-oriented social organisational and political pattern.

(iii) This note is an introduction to these needs, the matters that must be addressed, and the new steps that must be taken. Given the foregoing, and a joint effort, much may be achieved.

Endnotes

*C. Suriyakumaran is visiting professor, London School of Economics and Political Science

i) Among the earliest CRDS publications under its 'Monographs Series' was "The Plantation Communities and the Provincial Council System," by Prof. Bertram Bastiampillai (1991).

ii) A project outline has been on the CRDS Programme Profiles since 1995

Security... *Contd. from page 4*

been killed during the war, which is half the total unofficial casualty figure. The report further said that during the last 10 years the number of premature deaths due to malnutrition has increased. More than 30,000 school going children had abandoned their studies due to povert Twenty five percent of the children in the northeast had lost their parents due to displacement. 1200 children were handicapped while 9200 children go for labour work and 6900 children have got married.

Bellamy's main 'concern' – something that had been carefully orchestrated by local and international political forces – was the LTTE's child recruitment. After talks with the Tigers, Bellamy said her organisation was prepared to offer support for 'transit centres' to be set up by the LTTE for children who had joined the organisation, as well as for unaccompanied children. She also said that the LTTE agreed that UNICEF would have access to the transit centres and the parents and families could report any cases of child recruitment to UNICEF offices.

Bellamy said that the release of the 350 children by the LTTE since November 2001 was an encouraging and positive outcome in the demobilisation and reintegration of children taking part in the armed conflict.

Still on HSZs...

The debate over removing restrictions to resettle within the HSZ continued into February with the interim report of Indian defence expert and former senior Indian army officer Lieutenant General Satish Nambiar expected to uphold the position of the Sri Lanka army and unfavourable to the Tamils. Sri Lanka Monitoring Mission (SLMM) chief General Trond Furuhovde who met Nambiar on 3 February reiterated that dismantling of the HSZ for resettlement and cultivation would change the balance of power between the security forces and the LTTE. The SLMM chief also said that in the implementation of the ceasefire agreement, normalisation should be linked to the balance of power and the balance of forces, which is the basis of the agreement, and disturbing that balance would disturb the ceasefire agreement.

Nambiar releasing his report on 5 February said the security of the armed forces should not be undermined when steps are taken on dismantling the high security zones (HSZs) in the North. He emphasized the importance of the HSZs for the protection of civilians. This, he said, should be taken into account in the process of the resettling civilians. He also highlighted that human rights should be protected when action is taken on the HSZs in Jaffna.

ICRC to help tracing MIAs

Direct fallout of the talks between the government and LTTE in Thailand in January was a request to the ICRC to be involved in tracing missing MIAs. This links up with the ICRC's international mission where it will be involved in the same thing. ICRC said that since 1990, the families of 20,000 missing Sri Lankan combatants and civilians have requested the organisation to assist them to trace the whereabouts of their loved ones. ICRC spokesman Sukumar Rockwood said that 1100 such complaints are still unresolved. The ICRC is now working on the remaining requests in an attempt to trace the missing persons.

March

Kalutara deatainees fast

The 87 Tamil detainees at the Kalutara Prisons began a hunger strike on 2 February demanding their immediate release or to transfer their cases that were pending to their home towns. By the 12th, 24 prisoners in critical stage and another five are reported to have fainted. The prisoners also threatened to abandon drinking water and medical treatment from the 15th if their demands were not met.

Jaffna District Tamil National Alliance MP, A. Vinayagamoorthy during his visit to the Kalutara prison on the 12th, assured the detainees that he would look into the request made by them to transfer them to prisons in heir respective areas.

So far the Attorney General Department as stated earlier examined around 90 cases out of 144 filed against LTTE suspects, and agreed to release five detainees

Detainees abandoned their fast after an assurance given by Vinayagamoorthy that their matter would be expeditiously attended to.

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Army and Muslims desecrate Tamil village, Veeramunai

By. K. N. Tharmalingam

Veeramunai was set on fire. Lives and properties were destroyed. A community of farmers at Veeramunai, prosperous from birth, became paupers in a matter of minutes after the fire.

"... for my father's faith
I suffered chains and courted death;
That my father perished at the stake
For tenets he could not forsake;
And, for the same his lineal race
In darkness found a dwelling place..."
–Lord Byron

The above stanza, quoted from the Prisoner of Chillon reflects appropriately the miseries of a race – the Tamils – trapped between state terrorism and the non-Tamil communities inhabiting the Amparai District.

Of the Tamil villages in the Amparai District that were victim to violence unleashed by the Sri Lankan armed forces, the police, home guards and armed civilians, the village of Veeramunai, perhaps, suffered the most. In the final stages, even their civilian non-Tamil neighbours joined in attacks against the Tamils. The state of course failed to uphold the often-quoted constitutional safeguards available to its citizens. The Universal Declaration of Human Rights did not help the Tamils either.

To comprehend the nature of the excesses committed on Veeramunai, a little peep into the history of the region would be an advantage.

Veeramunai is described as the ancient capital of Nandeniya, or, 'Naadhu-kaadu.' The Monograph of Batticaloa says Naadhu-kaadu was once very fertile country that turned into jungle in the course of time. A 'naadhu' (fertile land) becomes 'kaadu' (jungle) and vice versa when fortunes change.

Nandeniya had a pre-eminent place in the history of the east coast where human settlement is believed to have begun nearly 3000 years ago as revealed in the Mattakalappu Manmiyam.

In the concatenation of events as recorded in the history of the Eastern Province, Mattakalappu Manmiyam lends support to the theory that human occupation began in Sri Lanka in much earlier times than recorded in the Pali chronicle Mahavamsa. Nandeniya, according to Mattakalappu Manmiyam, appears to have been a centre of much human activity as early as Kali Era 800.

From what is evident from the Mattakalppu Manmiyam, one is unable to resist the conclusion that a community governed by a matriarchal system (claming kinship through women), existed in the Eastern Province, and Veeramunai was the centre of much activity. The people there were divided according to caste and the leading castes were the Chetty-Vellala Kudy and the Seerpathar Kudy.

The present Veeramunai – a small portion of the extensive Nandeniya – is situated near the lake called Kalappu and now forms the areas of a grama sevaka division within the Sammanthurai Pattu. The region had earlier been known as Veera-munai to identify a place where a warrior clan lived, which fought for the tribe.

During Portuguese times the entire east coast of the present Amparai District was known as Mattakalappu (Batticaloa) and under the rule of three vanniahs. In the beginning of the 20th century, the entire region was divided into four divisions called 'pattus:' Karavahu Pattu-Nindoor Pattu, Sammanthurai-Naadhu Kaadhu Pattu, Akkaraipattu and Panama Pattu and these divisions were under the charge of C. Chetty Tambiah, C. D. Kadramapody and Nilamai Chinnatamby.

Veeramunai lies three miles west of Karativu adjoining the present Sammanthurai village. To the north is Sorrikalmunai, while to the south and west are lush, green paddy fields.

Sammanthurai derives its name from 'Sampan,' the vessel, and 'Sammankaran' who were Mohammedans from India who came to Batticaloa during the Portuguese period. When the Portuguese dominated the Western Province, General Constantine de Sa ordered Muslims inhabiting that part of the country to leave. On expulsion orders, the Muslims went to King Senarat of Kandy and sought permission to settle in his capital.

The king persuaded the Muslims to go and live among the Tamils in Batticaloa (Mattakalappu). The Tamils assured the Muslims who had suffered discrimination under the insolent Portuguese of protection as well as hospitality. The Tamils, who had received the 'pattanis' as soldiers, accepted the Muslims who were expelled from Portuguese territory.

With the passage of time the two communities established enduring friendship, mutual trust and goodwill and the Muslims succeeded in creating prosperous townships such as Kalmunai, Kattankudy, Sammanthurai, Akkaraipattu, Pottuvil, Eravur and Valaichenai centred round Tamil hamlets where trade was a matter of primacy. The Muslims who were traders when they first settled in the east later took to agriculture and industry and eventually to law, engineering, education, medicine and leadership in politics by aligning with the Federal Party. In the early years of independence, the Sammanthurai Muslim division and Veeramunai Tamil division constituted the local authority called Sammanthurai town council. In 1954 Latiff of Sammanthurai was elected chairman of the council and Manickam of Veeramunai became the vice-chairman.

A private dispute between Manickam and the Muslim village headman Seenithamby Viddan arose during the festive week of the Tamil New Year in 1954. Veeramunai was set on fire. Lives and properties were destroyed. A community of farmers at Veeramunai, prosperous from birth, became paupers in a matter of minutes after the fire. For the first time in the history of the district, people were driven into the adjoining jungles to save themselves from the fury of sections of the Muslim community, which had turned against them. There were of course Muslims who shed tears at the misery of the Tamils and provided relief lavishly.

Many who fled shook the dust of Veeramunai from their feet and opted never to return. They developed into smiling new villages in the jungles where they had sought refuge. The villages now known as New Town, Ganapathipuram and Veeracholai are some of these jungle-turned-villages. The residents of the new villages sold their properties in Veeramunai to Muslims and part of Veeramunai thus passed into Muslim hands. The few who returned to Veeramunai began a new chapter in their lives. Since their homes were destroyed together with their possessions, they had a penurious start. But time healed the scars of violence.

Amidst the challenges of the emerging order, with militancy of the Jihad and SLMC on the one hand, and the Tamil groups – TELO, EPRLF, PLOTE and LTTE – on the other, Muslims and Tamils at Sammanthurai and Veeramunai continued to exist side by side despite strains in their relationship until 1990, when a spate of violent incidents was to flare up.

The armed forces arrived at the Tamil villages of Sammanthurai Pattu in the third week of June 1990. It was explained the military was sent to destroy the 'enemy.' When innocent Tamils were killed and their homes looted and burnt it was understood who the 'enemy' was.

A resident of Ganapathipuram, who was a witness said, "When the army entered the limits of Malwattai, the soldiers shot people at sight, while houses were looted and burnt. We, on hearing gunshots and seeing flames rising from burning homes, fled with our family to save the women and children. We reached the Veeramunai kovil on foot and found people from other villages had arrived at the kovil earlier. Subsequently, people from Amparai, Mallikaitivu and Sammanthurai Tamil division joined us."

A resident from Veeramunai said, "We found the soldiers were creating a climate of terror. People were picked up from their homes, on the road and their paddy fields. To escape from possible arrest and death, we went to the kovil that was made a refugee camp. I am aware that persons in the employment of the government on their way to work were seized, killed and burnt at a place called Aandhi junction."

While Tamil civilians suffered death, a government news bulletin said the state was at a war with terrorists and not against the Tamils.

Contrary to the Geneva Convention (1949) declaring, "Neither civilian persons or properties shall be the object of attack," the armed forces going on the rampage in 1990 were a reminder of the state's brutality. Article 3 of the Universal Declaration of Human Rights proclaims to the world, "Everyone has the right to life, liberty and security of person," but the army went on a killing spree, destroying lives and properties, which were later justified as necessary. It was also a violation of Article six of the International Covenant on Civil and Political Rights (ICCPR) that states, "Every human being has an inherent right to life."

From the remarks made by the late General Ranjan Wijeratne, the then deputy minister of defence, targeting civilian life and property at Veeramunai appears to have been given official sanction. When he visited Tirukovil, he told me that he continued to receive enquiries from the United Nations Working Group on Enforced and Involuntary Disappearances and Amnesty International about alleged enforced involuntary disappearances from Veeramunai. "I throw their letters into the wastepaper basket and collect the foreign postage stamps," he said.

The operation of the army at Veeramunai was described by a mother who said, "On 20 June (1990) at 2.00 p.m. a number of army vehicles drove into the Veeramunai temple, where thousands of people (Tamils) had taken refuge. The soldiers made an announcement through the loudspeakers requiring all males over the age of 15 to assemble in the temple courtyard. People were agitated since the refugees had left their homes because of fear of the soldiers who had gone on a killing spree there. One by one the men went out into the open space opposite the temple and stood. Women were the most disturbed and stood watching.

"The soldiers entered the temple and examined the inner sanctum to ascertain whether anyone was hiding inside. They found none and began to inspect the youths standing opposite the temple. Of the number surveyed, the soldiers began picking some youths and able-bodied children and got them to board a CTB bus they had brought. The women went before the soldiers and asked them what they were trying to do. One of the officers said they were being taken for questioning and would be released after interrogation. The women pleaded with the soldiers stating that their children were never associated with any form of terrorism and that every one picked up by the army was an innocent youth. The soldiers ignored the tears of the women and started to leave the temple premises with the youths.

"We fell in front of the vehicles and worshiped the soldiers to leave our boys. The officer who led the raid spoke harshly to us wailing women that he would order his men to shoot every man and women who was obstructing. The women fearing the worst, retreated and the army carried away our children. A few returned later – battered and bruised, following severe torture."

A youth who had a narrow escape from sure death after arrest, made the following statement. He said, "I was one among those arrested on 20 June from the Veeramunai temple. The soldiers having picked up a number of young men, who were refugees at the kovil, took us to the Sammanthurai Al-Marjan Muslim school where we were beaten severely without any reason. The soldiers first attacked us with gun butts and thereafter kicked us and boxed our faces.

"The young men picked up at the refugee camp were later paraded before a fair, fat youthful stranger. When I was produced before him, he said "No," and I was taken aside. I found that the stranger saying "Yes" to most of the young men produced before him that evening. The people to whom he said, 'Yes' were taken into another building. Those who were taken aside on the pronouncement of 'No,' were produced before another officer who made a speech in Tamil. I was in no mood to grasp what he said. The torture I had suffered a little while before had robbed me of my strength and vitality. I could hardly keep standing as I was assaulted by around 15 men simultaneously.

"The officer told us to get back to the kovil from where we were picked up. The others who were separated from us, we learnt were carried to a place called Malaikadu – a rocky place in shrub jungle – in army trucks and killed. Of the many picked up from the refugee camp at the kovil, only around 20 returned.

"We learnt that half burnt human bodies were rotting at Malaikadu and the Muslims, unable to bear the stench of decomposing human flesh, carried several tractor loads of paddy husks to cover the rotting bodies and burnt them."

Sixty-nine persons, all civilian youths, disappeared from Veeramunai kovil, In spite of the numerous complaints made to authorities about the illegal arrests and subsequent disappearances, the state did not take

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"We learnt that half burnt human bodies were rotting at Malaikadu and the Muslims, unable to bear the stench of decomposing human flesh, carried several tractor loads of paddy husks to cover the rotting bodies and burnt them."

How voluntary are confessions made by PTA suspects?

The principal question for decision in this appeal is whether a trial Judge may presume that a voluntary confession is true and convict the accused despite the absence of any independent supporting evidence."

Beyond the Wall *has, in its previous two issues, pointed out how the state could convict innocent men and women using provisions under the Prevention of Terrorism Act (PTA) allowing the admissibility of confessions as evidence. The state has resorted to the simple device of torturing suspects and extracting confessions from them under duress to the effect that they had committed various crimes punishable under the PTA.*

Once confession is obtained from the suspect it has to be established as evidence before court. There are various advantages the prosecution enjoys in this respect, such as the onus of disproving that his/her confession had been obtained through inducement or duress lies with the accused person. But more insidious is the provision under the PTA permitting a confession without any other corroborating evidence to convict accused persons.

Nagamani Theivendran vs. The Attorney General *is basically about admissibility of confession without corroborative evidence, revolving around the question of whether the confession was voluntary or not.*

Legal action initiated by the State in the High Court (H.C. Colombo No. 7807/96) went up through the Court of Appeal (this time with Nagamani Theivendran as appellant) to the Supreme Court.

The High Court and Court of Appeal held the confession was voluntary and could be used as evidence even in the absence of corroborative evidence. The matter came up before in appeal before judges F. N. D. Jayasuriya and P. H. K. Kulatileka (C.A. No. 137/97) and was argued and decided on 28 March 1999.

Justice Jayasuriya stated in his judgment with Justice Kulatileka agreeing, "Thus the learned trial Judge (in the High Court) had come to a firm finding that the Accused did make a statement before the ASP Ratnayake and in the absence of any vitiating factors referred to by the Accused at the voire dire held before the trial Judge, learned trial Judge has correctly held that the confession is voluntary in terms of the provisions of the Prevention of Terrorism Act."

However, Nagamani Theivendran appealed again, this time to the Supreme Court (S.C.Appeal No: 65/2000). The case came up before a three-man bench comprising judges Ameer Ismail, Mark Fernando and C. Wigneswaran. It was argued on 24 May and 6 June 2002 and decided 16 October 2002.

The Supreme Court overturned the High Court judgment, which called to question the admissibility of confessions as evidence without establishing whether those confessions are actually voluntary. The three judges wrote separate judgments.

Justice Ismail said, "It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. However, before it can be acted upon, it must satisfy the tests of voluntariness, truth and sufficiency. It must be shown that it was made voluntarily and that it was true and sufficient to constitute a confession."

Justice Fernando in his judgment stated, "The principal question for decision in this appeal is whether a trial Judge may presume that a voluntary confession is true and convict the accused despite the absence of any independent supporting evidence."

Justic Wigneswaran raised three important issues "Are contents of a confession obtained in terms of the provisions of Act No. 48 of 1979 solely sufficient to convict an Accused? Does a presumption operate that an accused would not make a self-incriminating statement unless it was true? When Act No. 48 of 1979 refers to 'special categories of persons' against whom offences under it may be committed (i.e. specified persons), could the identity of such specified persons be established solely through the confession?"

Beyond the Wall *has reproduced the Court of Appeal judgment of Justice Jayasuriya and the Supreme Court judgments of Justices Ismail and Fernando. The judgment of Justice Wigneswaran will be included in the June 2003 edition of the journal. Certain portions of the original version are in Sinhala and for the convenience of readers have been translated into English. The translated portions are in italics.*

Court of Appeal judgment of F.N.D. Jayasuriya with P. H. K. Kulatileka agreein

F.N.D. Jayasuriya, J

We have heard learned Counsel for the Accused-Appellant and the learned Senior State Counsel. At the inception learned Counsel for the Appellant strongly objected to the adoption in evidence of a certified photocopy of the confession. Once we adverted the attention of learned Counsel for the Appellant to the provisions of Section 2 of the Proof of Public Documents Ordinance, which only required a party to a proceeding to produce certified copy of a public document without producing the original public document. Learned Counsel accepted the implications arising out of the provision of proof of the Public Documents Ordinance and did not stress this point any further.

The prosecution in this case moved to mark a part of the confession made by the Accused to the Assistant Superintendent of Police, Mr. Ratnayake, which confession has been eventually marked as P1G and the contents of the confession are reproduced at page 258 of the record. When one peruses this confession it is evident that the Accused in making his statement had referred to the central point of this dispute, which is a struggle with the "Fight with the Army for a state of Tamil Eelam." This reference has induced the

trial Judge to hold that the reference in P1G to the "Army" is a reference to the Sri Lanka Army. At the voire dire, three witnesses have given evidence for the prosecution, including ASP Ratnayake, the person who acted as Translator – Police Sergeant, Ansar P.C. and the person who typed out the alleged confession made by the Accused – P.S. Premasiri.

The learned Judge had the benefit of the demeanor and deportment of the witnesses and as Justice Collin Thome pointed out in Jagathsena Vs Bandaranayake on the issue of credibility the all-important factor is the demeanour and deportment of the witnesses. The Accused had given evidence and he has denied making a statement and signing the statement before ASP, Ratnayake. However, the accused has stated that he placed his signature to certain documents; because he was given the promise and undertaking that he would be released. The question arises whether his evidence relates to the original statement made by the Accused to a Police Officer below the rank of an ASP or to the statement made before the ASP. Learned Judge who had the benefit of the demeanour and deportment of the witnesses has accepted the evidence of the prosecution witnesses and disbelieved the Accused on this point. It was elicited in evidence that the Accused after his arrest was kept at the Criminal Detection Bureau premises and the Accused's complaint is that at that time he was subject to certain assaults but thereafter after obtaining a detention order, the Accused was kept in custody at the Detention Camp managed and supervised by the Criminal Detection Bureau. During the time of the detention, the Accused has stated that he had not been subjected to any violence or assaults or any undue influence. Thereafter the Accused was produced on 18.08.95 before ASP Ratnayake, who on hearing that the Accused wished to make a voluntary statement had explained the implications of making such a statement and had advised him, but he had persisted in making it as it was a perfectly voluntary statement. Thereafter after giving the Accused a spatium deliberandi, he was later produced before the ASP again on 19.08.1995, on which day he made the confession, which has been subsequently marked as P1G. The Accused's version that he never made a statement before the ASP and he had never signed a statement before the ASP has been disbelieved by the trial Judge who had the benefit of the demeanor and deportment of the witnesses. Thus the learned trial Judge had come to a firm finding that the Accused did make a statement before the ASP Ratnayake and in the absence of any vitiating factors referred to by the Accused at the voire dire held before the trial Judge, learned trial Judge has correctly held that the confession is voluntary in terms of the provisions of the Prevention of Terrorism Act. The burden of making it appear that the impugned confession was caused by an inducement threat or promise lay on the Accused. Quite contrary to the provisions prevailing at general law, learned trial Judge has held in the absence of vitiating elements placed qua evidence by the Accused in the High Court that the Accused had failed to establish the burden that rested on him in terms of the provisions of Prevention of Terrorism Act.

We now advert to the trial proper where issue in regard to the weight, the testimonial trustworthiness, and the truth of the confession arises for consideration. Vide decision in King Vs. Ranhamy 42 NLR – Judgment of Justice Soertsz. On this issue we have to be guided by general principles of the Law of Evidence pertaining in particular to the Law of Admissions. There is a presumption that a person would *not* make an admission against his interests unless it is true. The law of evidence admits admissions, which are hearsay Evidence although there is no possibility of cross-examination. However the author of the admission is in the other party to the proceedings. Thus there cannot be a complaint in regard to the absence of the cross-examination by other party to the proceedings. It is always open to the other party to come on stand, give evidence and establish that the contents of the confession are false and untrue. For this cogent reason the law of evidence presumes that the contents of the confession are true and there is also a guarantee of testimonial trustworthiness attaching to the contents of the confession. Vide Judgment of the C.A. in Attorney – General Vs. Nallaratnam – C.A. 208/95 H.C. Colombo 6825/94 – C.A. Minutes dated 12.12.98 where these principles and propositions were examined very incisively and reference was made to Author – Best on the Law of Evidence. Thus, there is a guarantee of testimonial trustworthiness and truth, and a presumption is operating that the contents of the confession are true. This presumption could be rebutted by the accused by adducing evidence. The Accused at the trial (after the voire dire) has given evidence. Learned Senior State Counsel submits that in his effort to rebut this presumption and the guarantee of testimonial trustworthiness, learned Counsel, who appeared for the Accused has put questions in examination-in-chief violating the provisions of the Evidence Ordinance and also general principles pertaining to law of evidence. He has strenuously argued that questions put by the Counsel, in examination-in-chief at page 261 in an attempt to lead rebutting evidence are all misconceived and in violation of Section 143(1)(b) of the Evidence Ordinance. Section 143(1) states that the question must not assume that facts have been proved, which have not been proved, or that particular answers had been given contrary to fact. Section 143 is dealing with questions, which Taylor describes as misleading questions. Vide Taylor on evidence 11th Edition.

Thus, there is a guarantee of testimonial trustworthiness and truth, and a presumption is operating that the contents of the confession are true. This presumption could be rebutted by the accused by adducing evidence.

Learned Senior State Counsel also complains that further misleading questions have been put by the learned Counsel for the Accused in his attempt to rebut the presumption of truth attaching to the contents of the confession. The question has been put in the following terms:

Q: Did you say in the confession that you went with Maniam to join the LTTE?

A: Yes - it is not correct; not accepting

This question has been founded on the contents of the confession. Learned Senior State Counsel points out nowhere in the confession has the Accused stated that he went with a person called "Maniam" to join the LTTE. Thus it is a clear misleading question put on a wrong assumption of fact. Thus the answer elicited by such a question is worthless and of no weight. The next question put by the learned Counsel for the Accused at the trial assumed that the Accused gave lessons in commando training and army training. This question is put in the very teeth of law of evidence in the utmost vague terms. There is no reference in the confession to the Accused giving commando training to others. Therefore, this is also a question put on a wrong assumption of fact. Learned Senior State Counsel complains and refers to the next question whether the Accused stated in his confession that they attacked the Thelippan and Kattuwan army camps together with others.

The confession does not refer to any such fact. The confession refers to the fact that when the soldiers were marching to the

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Children: innocent victims of others' conflicts

By S. Selvakunapalan

There is no rationale from the standpoint of child rights to make a distinction in the application of this provision between national forces and armed groups. If a child is recruited to wage armed warfare for any purpose (direct or indirect involvement) it is dangerous for the child physically, mentally and emotionally

Children, conflict and international law

Armed conflicts are going on in different parts of the world due to various reasons. Most of these armed conflicts are within states and not between states. Children are innocent and ignorant of the causes and consequence of these armed conflicts, which may be occurring in the areas where they reside. This however might not prevent them from being caught up in such conflicts not merely as bystanders, but also as targets.

Garca Machel, in the UN report on the Impact of Armed Conflict on Children, (1996) states: "More and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality."

Children are recruited to become participants in armed conflicts by force, or they join voluntarily. However, whether recruitment is voluntary or by coercion is not the issue. Article 37 of the Convention on the Rights of the Child that came into operation in 1989 prohibits children under the age of 15 from involving directly or indirectly in armed conflicts. Thereafter two optional protocols were also added.

In 2000, the UN General Assembly adopted an Optional Protocol to the Convention on the Rights of the Child, which banned the involvement of children below 18 years from direct participation in hostilities and from compulsory recruitment to the armed forces. The Optional Protocol came into force on 12 February 2002. Up to date, 97 countries have signed and 14 countries have ratified this protocol. Articles 1 and 2 of the Optional Protocol read as follows:

Article 1: "State parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities."

Article 2: "States parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces."

Further, provisions in the Optional Protocol require that state parties not only prohibit any involvement of children in armed conflicts, but that they also criminalize the recruitment of children by armed groups. By this protocol, all state parties agreed to take necessary steps to remove or terminate recruitment of child soldiers and to rehabilitate and reintegrate them into the society. This action paves the way for the prevention of child soldiers in the future, and furthermore, promotes co-operation in the rehabilitation and social integration of already recruited child soldiers.

Article 3.3 of the protocol reads: "States Parties that permit voluntary recruitment into their national armed forces of persons under the age of 18 years shall maintain safeguards to ensure as a minimum that:

(a) such recruitment is genuinely voluntary;

(b) such recruitment is carried out with the informed consent of the person's parents or legal guardians;

(c) such persons are fully informed of the duties involved in such military service; and

(d) such persons provide reliable proof of age prior to acceptance into national military service."

International law discriminates between state and non-state parties

Only state parties can recruit children (between the age of 15 and 18) to the national armed forces, subject to the conditions above-mentioned. But any armed group, which is fighting against the national forces, should not recruit or use any child to their organization. Article 4 reads that:

"1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices."

There is no rationale from the standpoint of child rights to make a distinction in the application of this provision between national forces and armed groups. If a child is recruited to wage armed warfare for any purpose (direct or indirect involvement) it is dangerous for the child physically, mentally and emotionally. Therefore, involvement of children in armed conflicts should be totally abolished without any discrimination.

Article 3 of the CRC, Worst Forms of Child Labour Convention, 1999, states as follows: "For the purposes of this Convention, the term the 'worst forms of child labour' comprises: (a) all forms of slavery or practices

similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict." By this provision children under the age of 18 years are prohibited from compulsory recruitment or use in armed conflicts. But the provision fails to make any mention of the minimum age for voluntary recruitment in armed conflict.

Similarly, the Optional Protocol to the Convention on the Rights of the Child does not mention the age applicable for recruitment to the national armed forces. Internationally, the Convention of the Rights of the Child prevents the recruitment of the children below the age of 15 years into the armed forces.

Article 38 (3) of the Convention of the Rights of the Child reads as follows: "States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest."

In Sri Lanka, there is no specific provision in law to ban the involvement of children in armed conflicts other than provisions in the National Child Protection Authority Act, No. 50 of 1998. Section 39 of the National Child Protection Authority Act defines the expression 'child abuse' as follows: "...and includes the involvement of a child in armed conflict which is likely to endanger the child's life or is likely to harm such child physically or emotionally."

In an armed conflict there are so many support activities that could be carried out by a child of less than 18 years. In those circumstances, in Sri Lanka, a child can be employed in armed conflict without prejudice or harm to the physical or emotional aspect of the child. The provisions under the Employment of Women, Young Persons and Children Act however prohibit any children under the age of 14 years to engage in any kind of labour.

The second Optional Protocol to the Convention of the Rights of the Child is in relation to child pornography and child prostitution. The President of United States of America said at the October 2002 White House Conference on Missing, Exploited and Runaway Children "In every region of the world, children can be vulnerable ... not just here at home, children everywhere. Each year about a million girls and boys are trafficked for commercial exploitation and forced labour. Such trafficking is nothing less than a mode of slavery, an unspeakable and unforgivable crime against the most vulnerable members of the global society. All these dangers put children at risk. All dangers demand action to protect our children from harm."

In Sri Lanka amendments to the Penal Code No. 22 of 1995 and No. 28 of 1998 created new offences and also enhanced the punishments of the offences in this connection.

Reasons for child recruitment

Most children who are recruited are seized deliberately from the street and orphanages. Such children are very poor and not of an age to decide their future freely. In certain circumstances, children are willing to join any armed groups or national armed forces voluntarily. There are those who join out of fear or poverty, or to achieve some protection from violence surrounding them. When they join the armed groups or national armed forces, they are assured of getting regular meals and clothing. But they are unaware of the real danger they that lies ahead of them.

They usually start with support activities. Boys in particular are used as carriers of arms and small bombs and are sent to collect weapons after attacks on enemies' camps. Girls are used for cooking. Children are usually capable of doing any kind of work without any fear of discrimination. Unlike in the past, today there are a number of light weapons, which can be operated and assembled by even a child of 10 years.

Those weapons are very powerful and lethal. When children carry weapons, they are also liable to hallucinate that they are leaders and wielders of power and weapons gives them the liberty to do whatever they like. Today, the international community has taken steps to ban the production of light arms. UNO has already taken this problem into account to solve by way of bringing a protocol.

Children obey orders given by superiors without a question. They do not realize the dangers that lie by either executing those orders or flouting them. In Sri Lanka, the Liberation Tigers of Tamil Eelam (LTTE) is accused of recruiting children for armed conflict. After LTTE joined the peace process, it has released children who came to join to the organization to their parents. Even the Government of Sri Lanka has been accused of the same crime.

Impact of exploitation

Warfare injures children in two ways: the physical and emotional wounds children experience when they are active participants in armed warfare, and the other the direct and indirect consequences when they are the target. Recruitment of child soldiers creates physical and emotional wounds and finally leads to the destruction of the child's world of innocence. Many child soldiers have the misfortune to witness murder, rape and horrifying acts of violence.

The mind of the child who witnesses such horrifying scenes would be different from that of the child in a stable family and community. Such a child, who is mentally traumatized, should be handled very carefully to help reunite with the community. Second, children are also deliberately killed as part of systematic genocide. Some are killed accidentally and are conveniently termed 'terrorists' killed in combat. Landmines disable children when their natural curiosity leads them to investigate strange objects and they are unable to read warning signs of the presence of such objects in areas where they are buried.

Under certain circumstances people are forced to flee

Those weapons are very powerful and lethal. When children carry weapons, they are also liable to hallucinate that they are leaders and wielders of power and weapons gives them the liberty to do whatever they like

to neighbouring countries as refugees, or are displaced within their own. Children lose their opportunity for education and other facilities essential to their development into adulthood.

The emotional fallout of prolonged exposure to war continues for a very long period. Some children are separated from their parents while others lose theirs. Article 9 of the Convention of the Rights of the Child stresses, "States Parties shall ensure that a child shall not be separated from his or her parents against their will." Separation or death of parents causes breakdown of the family support system.

It will greatly affect physical, social and educational development of the child. Further, it leads the child to lose confidence in people and the government. He or she feels that there is no law and order in the country. That has been cited as one of the important reasons for the escalation of general crime in Sri Lanka.

It will greatly affect physical, social and educational development of the child. Further, it leads the child to lose confidence in people and the government. He or she feels that there is no law and order in the country.

Interruption of education also diverts the mind of child in dangerous ways. During an on-going armed conflict, children are at risk of rape, sexual exploitation, prostitution and other forms of abuses. Due to the continuing armed conflict and exploitation, there is disruption of food supply, destruction of heath services, water supply and sanitation. Hence children, who are among the most vulnerable group, will be affected the most and will suffer malnutrition, stunting and diseases.

In Sri Lanka, due to armed conflict extending over a period of two decades, children, especially those in the northern and eastern parts of the island have been affected in numerous ways. They are absorbed into the armed conflict as direct participants. The population, which is in areas under LTTE control, cannot get regular food supply and medical facilities. Today, however, an improvement has been seen because of the peace process.

Preventive measures

Armed conflicts are now very common all over the world. Therefore, it is the duty of every person is to control destruction of the next generation. The media too has to be vigilant in relation to sensitive matters. In every event, a 'reasonable man' theory should be applied. If there is a publication or programme, which is harmful to the minds of children, it should be prevented from being consumed.

However, education should continue and the leisure time available for the child should be utilized for development of the child. Such education should promote and protect the child from any type of abuse. Above all, parents' love and care should be available for children. If any child is separated from his or her parents, proper custody must be available to the child. In this case, institutional custody is not an alternative for the child. Institutional custody should be only the final remedy. Children, including young persons, should be trained to involve in community services, which promote and protect personal development.

In Sri Lanka, children have been killed and injured by aerial bombardment. In certain instances, school children have sexually been abused and murdered. This type of behaviour by the national armed forces may cause or provoke student population at large and to join the LTTE. To prevent this type of behaviour the national armed forces should be educated in human rights and discipline.

Types of rehabilitation

Some children who take part in armed conflict are affected directly and others are affected in indirect ways. Children who are involved in armed conflict directly should be reunited with their family or society.

They should be physically as well as emotionally rehabilitated to overcome the traumatic experiences they suffered during war. They must be admitted to educational centres for rehabilitation.

This type of education should not have the strict rules and regulations of conventional education and should be very flexible. The education should prevent the children from recalling the past and may be used as a preventive measure, as well as a rehabilitation method.

As discussed earlier, special attention should be paid to internally displaced children. They are affected in every way such as by lack of education, sufficient food, clothing and shelter. These situations may make them as criminals or compel them to indulge in illegal activities or in organized crime for survival.

Hence, preference should be given to the children of those who are internally displaced in the rehabilitation process. Effective projects should be put forward to clear landmines in the areas where children are present – especially schools and children's parks – to prevent children from becoming disabled, while special awareness programmes should be conducted for adults and children in relation to landmines.

It should be the duty of community workers to provide long-term support children need. They should not be neglected by society in which they are living. If their problems are not taken into account in the long term, it will be a threat to national security and the national economy. In Sri Lanka, there are many children who have been displaced from the northern and eastern parts of the island and living refugees' camps.

They do not have any proper facilities for education nor do they get sufficient food or clothing. They are involved in child labour and some of them beg for a living. These are offences in this country. But the laws in relation to this are only in the statute books and not implemented in practice. Nor has the government taken any measures to rehabilitate these children by way of continuous or long-term projects.

References

Machel G., United Nations Report on the Impact of Armed Conflict on Children, (1996).

Ballamy Carol, Children are war's greatest victims

Wars Against Children, United Nations Report for Action to Protect Children from Armed Conflict.

Bloodshed if Tamils pursue armed rebellion for self-determination

The International League for the Rights and Liberation of Peoples (LIDLIP) that has permanent representation in the United Nations, prepared an oral statement on Sri Lanka for the 59th sessions of the UN Human Rights Commission on item five on the Agenda – The right of peoples to self determination and its application to peoples under colonial or alien domination or foreign occupation.

Francis Xavier, director, Home for Human Rights, was associated with LIDLIP in the statement's drafting.

Below is the full text of the statement:

The Sri Lanka Tamils and the right to self-determination

For the second time the International League for the Rights and Liberation of Peoples (LIDLIP) is happy to take the floor under this item on a positive note since peace seems to be in sight in Sri Lanka.

After numerous official reports, after years of LIDLIP's and other NGOs' intervention, after two resolutions on Sri Lanka, one in the Sub Commission and the other in the Commission in 1987, deploring the massive human rights' violations in Sri Lanka, committed mainly by the security forces, it was quite encouraging to see the birth of the Memorandum of Understanding and the cease-fire that was entered into in February 2002 which put an end to 19 years of cruel war.

We welcome today its continuation and commend both parties, the LTTE leaders on the one side and the Prime Minister and his cabinet on the other for the efforts made and their commitment to search (for) a just solution through negotiation and peaceful means. We particularly appreciate Norway's crucial and very positive role as facilitator of the peace negotiations. Let us underline also that at long last the present peace process has made it possible for the Sri Lankan Tamils to be recognised as a people with its own distinct culture, its own territory and group identity, and thus endowed with the right to self-determination.

Despite decades of collective discrimination, including pogroms and massacres, amounting to institutionalised racism, the LTTE entered the negotiating process explicitly seeking a solution for its people and asking for full regional autonomy under the federal system of government within the confines of the existing State. However, there is no certainty as to a successful outcome given the opposition shown by the president and by some elements in the opposition adding to the sabotaging attitude of the army, particularly the navy.

To mention only one of the last incidents, the Sri Lankan naval forces sank a merchant Tamil ship, alleged to be carrying arms. The fact occurred in international waters beyond the jurisdiction of the Sri Lankan Navy and in this respect Maj. Gen. Tryggve Tellefsen, head of the Sri Lankan Monitoring Mission, said that the authority of the Sri Lanka Navy did not extend into international waters and added that he would use his good offices to resolve the situation. However we consider it highly promising that despite this setback LTTE leaders and the cabinet of ministers met in a dialogue in Japan last week to pursue further peace talks.

Another cause for concern in the peace process is the question of the resettlement of refugees and internally displaced persons that were forced to abandon their houses and fertile lands under the pretext of security. In point of fact the resettlement process seems to be encountering major obstacles, at least in the North East region of Sri Lanka. Even after one year of cease-fire more than a hundred thousands are denied by the security forces the right to return to their lands and start cultivating again. This is tantamount to deny them the right to shelter and food. It is also rumoured that the president would be in agreement with the security forces in depriving these people of their right to return to their homes and lands.

Against this background, it is imperative that the international community throws its weight and exerts pressure on the opposing sectors and actors so as to come to a just and equitable solution based on a large-scale autonomy. [T]ime has come also to learn once again to distinguish between terrorists and liberation movements, and to de-proscribe the LTTE, taking into account that without this and without a global monitoring on any possible provocative act and/or gesture, the odds are that the present ceasefire will only be an interlude, that the bloodshed will be renewed, and the Tamils will be forced to actively pursue their claim to self-determination once again through the use of arms.

The International League for the Rights and Liberation of Peoples (LIDLIP) appeals to the Commission to support the efforts of the LTTE leaders and to commend and congratulate the Prime Minister and his Cabinet on the bold step undertaken to settle such a complex problem peacefully under the principle of self-determination, as envisaged under Article I of the Covenant on Civil and Political Rights.

It is our sincere hope that a positive signal may come from this Commission, either in the form of resolution or a President's statement, that will provide a meaningful contribution to the ongoing peace process in Sri Lanka so that arms be silent forever in this region.

Taking into account that without this and without a global monitoring on any possible provocative act and/or gesture, the odds are that the present ceasefire will only be an interlude, that the bloodshed will be renewed, and the Tamils will be forced to actively pursue their claim to self-determination once again through the use of arms.

Disappearances in Jaffna and their social implications

By Dhanaluxmi Robinson

The number of youngsters disappearing in every part of the Northern Province is on the increase. According to the 1999 report of the Human Rights Commission, about 350 persons have disappeared until now. The list of the disappeared includes individuals as diverse as school children, university students, government servants and housewives.

The Presidential Commission on Involuntary Disappearances began sittings to probe into allegations through inquiries. The public underwent much hardship to make representations to the commission but did not obtain any relief. In the end people were disgusted and merely said, "We do not want an inquiry, but we simply want to know whether our relatives are alive or not."

Disappearance in Jaffna continues today as an unending story. We interviewed the Jaffna Human Rights Commission coordinator S. Sritharan who said, "Disappearances are not only due to political factors, but to social factors too."

It is common knowledge that disappearances occur for security and political reasons. If there is a confrontation between the Tigers and the security forces for instance, civilians are arrested on suspicion or by citing security reasons. But arrests have occurred for the following reasons too: family quarrels, land disputes, marriage quarrels, when petitions are sent to authorities due to private quarrels, or when someone mentions under torture the name of an innocent person to avoid further agony.

A general inquiry makes it evident that in Jaffna today, being a Tamil is sufficient reason to be arrested. For an example, a captain in the army was shot dead in Collumbuthurai. Five persons from that area were arrested over the incident. A few days later the forces knew, that a lieutenant committed the crime. But the suspects, all Tamils, despite their innocence being automatically established, were detained for three weeks.

Arrests occur irrespective of the age or gender. If anyone has problems with neighbours or bears a grudge, he/she will lodge a complaint with the army after which the army will arrest and detain the person concerned. Messages are sent to the army in various ways, as for example "... so-and-so has connection with terrorism," or "he is an LTTE supporter," or "he has fed and looked after LTTE members."

The security forces arrest suspects without checking details during cordon and search operations. Such arrests continue as a matter of routine. Troublemakers who write petitions to the army do not pause to think about the terror caused to arrestee's spouse or family, and burden it will be them. Their aim is only vengeance.

Family is a social institution. When a man and a woman become husband and wife they go on to form this institution. Their children or adopted children are members of the family. The sense of responsibility towards the group is much greater within the family than in any other institution. In ancient Jaffna there was the extended family system. There was close co-operation between the family members. This bond was much stronger in Jaffna than in any other area. Even today, this system continues to be influential in most areas except in urban environments.

In such a cohesive outfit if the head of the household (breadwinner) or his son who plays the role of breadwinner, wife, siblings or relatives are arrested or disappear the pain of mind it causes is much more than in more loosely structured organisations. Members of the family lose their sense of bearing and grief stricken people go to kovils and observe vigils to solve their problems.

Disappearance causes not merely by economic problems but also social problems. For example, if they arrest a breadwinner, who is usually male (husband, son, brother), the family alls into impecunious circumstances. And they have to depend for help from their relatives. Children are pulled out of school due to poverty. Others send their children to an orphanage hoping they could pursue their education. Some live expecting others' help. Most of the people are living with sorrow daily not knowing whether their relatives are alive or dead.

In Tamil society, widows are not allowed to attend auspicious events. Hence women of the arrested husbands have a conflict whether they can wear kunguma pottu *or* thali, *which are adornments symbolising marriage on a woman's person, for auspicious functions. I was disturbed by a mother's statement "society spoke ill of me when my husband disappeared," and cried continuously. Widows in general who realise others cannot resolve their problems harbour similar sentiments.*

Further, disappearances deal a big blow to love affairs. Young people begin relationships with the hope of marriage, but it is cut short if one of the partners – usually the male – figures in an involuntary disappearance. It leaves the girl in a dilemma as to whether to get married to someone else or wait hoping her paramour returns.

Further, social conventions dictate women get married only once. In such contexts disappearances create deep social and psychological problems where if the spouse of a disappeared person gets married, she fears that if the "disappeared" person

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I was disturbed by a mother's statement "society spoke ill of me when my husband disappeared," and cried continuously. Widows in general who realise others cannot resolve their problems harbour similar sentiments.

Sri Lanka paints word pictures at UN human rights forum

In March this year, the Government submitted to the United Nations Human Rights Committee its fourth and fifth reports on the implementation of the International Covenant on Civil and Political Rights in Sri Lanka. The reports cover the period 1991 to 2002. The third report was submitted to the UN Human Rights Committee in 1994.

The reports are the government's official submission on the performance of the state (the period 1991-2002 spans the administration of three governments) in implementing the ICCPR. The report is structured by breaking it up into the various rights enshrined in the ICCPR and how well the state has ensured these rights are upheld.

The following is a selective compilation of parts of the report that was submitted before the Human Rights Committee. There has been no attempt to make the compilation exhaustive, but to show up how well the Sri Lankan state uses language, and ideals enshrined in the law (but not necessarily practiced) to paint pictures at international forums that are in shameless violation of prevailing realities.

Article 2 - Human Rights Mechanisms

Executive or Administrative Action

Article 17 of the Constitution of Sri Lanka speaks in terms of infringement of fundamental rights by "executive or administrative" action. Although the Constitution specifically rules out judicial and legislative action from the scope of Article 17, it does not provide a precise definition as what constitutes an 'executive or administrative' action. Therefore, it has been left to the courts to provide such a definition.

Even though judicial action has been left out of the scope of Article 17, courts have held that this immunity does not extend to instances where a judicial officer has no discretion.

In Joseph Perera v Attorney General, the petitioners were detained under Emergency Regulation 24 (1)(b) which stipulated "where any person is suspected or accused of having committed the offence of causing or attempting to cause death, such person shall not be released on bail until the conclusion of his trial." Hence the emergency regulations prevented a magistrate from granting bail to a suspect charged under them. The petitioners were arrested on 26th June 1986 and detained in Police custody till 15th July 1986, on which date they were produced before the Magistrate who remanded them. They were released on bail only on the 7th of August 1986 even though the police had completed their investigations by 15th July 1986 and had not come up with any material evidence to incriminate the petitioners. The Supreme Court held that the detention from July 15 to August 07 was illegal even though it was on the order of the magistrate. L.H. de Alwis J stated "Even though the last order of remand was made by the Magistrate, it was not in exercise of his judicial discretion, since he had none under the Emergency Regulations."

The question whether every act of a State officer would constitute "executive or administrative" was raised in Thadchanamoothi v Attorney General and others. The facts of the case were as follows: Three police officers were alleged to have tortured the petitioner. However, their superior officer had stated specifically that such alleged unlawful actions were never authorised by him or by his superior officers. It was contended on behalf of the State that an act done by a State functionary would not constitute State action unless it is done within the scope of the powers given to him. Thus if it is an unlawful act or an act considered ultra vires, it would not be considered State action.

On this question, Wanasundera J, along with Thamotheram and Ismail JJ agreeing, was inclined to adopt with suitable modifications, the principles laid down by the European Court of Human Rights in Ireland v United Kingdom and the Greek case. Both these cases predicated the appropriation of state liability upon the existence of 'administrative practice' countenancing human rights violations. In other words, the existence of a practice, which although unlawful under the law has been adopted or tolerated by its officials or agents and did not just constitute an isolated act or acts in breach of the Convention, is required (sic). Hence, there should be a repetition of the act in numerous occasions so as to express a general situation.

Nevertheless it is not essential to establish such a pattern of acts that they should have occurred in the same place or attributable to the agents of the same police or military authority or that the victims belonged to the same political category. The incidents could have either occurred in several places or at the hands of distinct authorities or in the alternative, the victims could have been persons of varying political affiliations.

The principal that manifests the existence of an administrative practice is the tolerance by superior authorities of illegal acts carried out by subordinate officers. In other words, the superiors of those immediately responsible for such acts though cognisant of such activities take no action to punish or prevent their repetition. Alternatively, that higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation into the truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied.

In this instance, Wanasundera J. held that there was no such "administrative practice" adopted or tolerated by the executive or the administration in Sri Lanka. The existence of an on-going police investigation into the alleged incident at the time the petition was filed seemed to have influenced

Alternatively, that higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation into the truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied

the judiciary in negating the prevalence of such an "administrative practice".

Although once again the Supreme Court declined to affirm the existence of an "administrative practice" in Velmurugu V Attorney General and others, Wanasundera J who gave majority judgement appeared to have reconsidered the view he took in Thadchanamoorthy (supra). He was now inclined to the view that whilst the State should be held strictly liable for any acts of its high officials, in the case of subordinate officers, the State should be liable not only for all acts done under the colour of the office, i.e. within the scope of their authority, expressed or implied, but also for such acts that may be ultra vires and even in disregard of a prohibition or special directions, provided that they are done in the furtherance or supposed furtherance of their authority or done at least with the intention of benefiting the state.

A clear decision on the question under discussion was reached in Maridas v Attorney General and another. The petitioner complained that the second respondent illegally arrested him. However, the second respondent filed an affidavit from one Sub-inspector Godagama in which that particular individual stated that it was he who arrested the petitioner. It was held that the State was liable for the petitioner's arrest by Godagama even though he was not cited as a respondent. The State was directed to pay compensation accordingly.

In Mohamed Fiaz v. Attorney General and others the concept of state liability for fundamental rights violations was expanded to encapsulate, violations arising through "State inaction". The court also held that the responsibility for violation of fundamental rights would extend to a respondent who has no Executive status but is proved to be guilty of impropriety, connivance or any such conduct with the Executive in wrongful acts in violation of fundamental rights. It was also stated in this case that the act of a private individual would be executive if such act is done with the authority of the Executive. In other words, proof of State acquiescence in an act of a third party violating fundamental rights would come within the definition of executive or administrative action. Hence if the law enforcement authorities permit a climate of impunity to prevail due to the dereliction of their duty in protecting an individual's fundamental rights, the fundamental rights jurisdiction of the Supreme Court could be invoked to seek redress.

The Supreme Court's decision in Sumith Jayantha Dias v Reggie Ranathunga, Deputy Minister of Transport and others, is an illustration of the efficacy of this remedy.

The facts of this case are as follows. The petitioner led an electronic news gathering team of the Independent Television Network (ITN) to film a programme named "Vimasuma". The Team travelled in a van belonging to the ITN. They carried with them the necessary equipment including a valuable camera. The ITN logo was fixed prominently on the van used by them and on the camera. During their return to Colombo after conducting the programme, the petitioner observed at Miriswatte junction a burning lorry on the road with a crowd gathered around it. The petitioner and his team commenced filming that event with the camera and other equipment when they were interrupted by the first respondent, a deputy minister who arrived in an Intercooler Pajero accompanied by some other vehicles and several other persons including the second respondent (a Peoples' Alliance Pradeshiya Sabha member), the fourth respondent (a Peoples' Alliance supporter) and the fifth respondent (a police sergeant). The first respondent demanded that the petitioner give him the tape alleging that the petitioner had filmed the 1st respondent and the Intercooler Pajero. As it later transpired, the 1st respondent has thought that the television team was from TNL, a private television channel perceived by the government as being biased towards the opposition. The first respondent had also thought that the petitioner was attempting to make a film involving him with the burning of the lorry.

The 1st respondent was seated in the OIC's (Officer-in-Charge) chair and questioned the petitioner regarding the tape whilst a uniformed police officer stood by. The petitioner explained that he was working for the ITN, whereupon the 1st respondent suggested an amicable settlement

The respondent attempted to seize the camera, but the petitioner resisted whereupon on the instigation of the first respondent, the 5th respondent and others put him on the ground and assaulted him; next the 2nd, 3rd and the 5th respondents lifted the petitioner and put him into a police jeep. He was again assaulted by the 5th respondent inside the jeep and made to hand over his shirt, ITN identity card and the wallet containing Rs. 3,700 to a police officer. At the Gampha police station the petitioner's shirt and the identity card were returned but when he asked for his money the 6th respondent, a police sergeant, abused him in obscene language. The 1st respondent was seated in the OIC's (Officer-in-Charge) chair and questioned the petitioner regarding the tape whilst a uniformed police officer stood by. The petitioner explained that he was working for the ITN, whereupon the 1st respondent suggested an amicable settlement. The petitioner was released next day after six and half-hours of detention. Further, the petitioner received hospital treatment for his injuries, which he alleged, were sustained during the alleged assault. The injuries were consistent with assault.

Justice A. de Z. Gunawardana who delivered the judgement on behalf of the rest of the bench, in holding that the petitioner's fundamental rights were violated, had the following to say: "Although the 1st respondent was not acting in his official capacity as a Deputy Minister, and although the actions of the 2nd and 3rd respondents did not per se amount to "executive action", the 5th respondent participated in the attempt to seize the petitioner's camera and tape, in the assault on him, and his arrest. Other Police officers were present, and did nothing to check the assailants, to arrest them, or even to record their statements; instead they assisted in the arrest and even permitted the 1st respondent to question the petitioner while sitting in the chair of the officer-in –charge. What would otherwise have been the purely private act of the 1st to 3rd respondent was transformed into executive action by reason of the approval, connivance, acquiescence, participation and inaction of the 5th respondent and other police officers.

The One-Month Rule

Article 126(3) stipulates when an individual alleges that his or her fundamental rights or language right has been infringed or is about to be infringed by the executive or administrative action, he or she must apply to the Supreme Court within one month upon the alleged infringement.

The Supreme Court, in the case of Jayawardena v Attorney-General, ruled that in the case of where the

allegation is that of an imminent infringement of fundamental rights, the time bar begins from the instance where the complainant had cognisance of the fact of the imminent infringement.

However, courts in interpreting the above provision have taken a liberal view. In Edirisuriya v. Navarathnam and Navasivayam v Gunawardena, the Supreme Court held that the time bar on petitioning was not a mandatory one but rather a discretionary one, therefore if the petitioner provides an adequate excuse for the delay in filing the petition it would not become operative.

Permanent Inter-Ministerial Standing Committee on Human Rights Issues

A Permanent Inter-Ministerial Standing Committee on Human Rights Issues was established on the 20th of November 2000, with the Minister of Foreign Affairs as its Chairperson. In addition to the Chairperson, the membership of the Committee comprises of the Deputy Minister of Foreign Affairs (presently known as Minister Assisting Foreign Affairs), the Attorney General, the Solicitor General, Secretaries to the Ministries of Defence, Foreign Affairs, Justice and the three Service Commanders of the Armed Forces and the Inspector General of Police. It has been entrusted with the mandate to consider issues and incidents relating to human rights violations and to take policy decisions in this regard. In addition, the Standing Committee is also mandated to oversee the gathering of information and evidence relating to incidents and cases that have a human rights sensitivity and ensuring the fulfillment of obligations, including reporting obligations cast upon Sri Lanka, by virtue of being a party to several International Human Rights Instruments.

The Standing Committee meets once a month to monitor, supervise and take policy decisions. In order ensure efficacy in fulfilling its mandate, the Standing Committee established the Inter-Ministerial Working Group on Human Rights. The Inter-Ministerial Working Group (IMWG), co-chaired by the Secretary to the Ministry of Defence and the Secretary to the Ministry of Foreign Affairs, was establishment to implement the decisions taken by the Standing Committee. It meets once a fortnight. One of the important tasks undertaken by this Committee is the supervision of the conduct of criminal investigations into allegations of human rights violations emanating through various United Nations human rights monitoring mechanisms.

The Anti-Harassment Committee

The Government of Sri Lanka, aware of the possibility of harassment and violation of human rights that could take place at check points and barricades, which have been necessitated because of the vulnerability of human life and property to terrorist attacks, reinforced the already existing constitutional and legal provisions that prevent arbitrary arrest and detention and protect the privacy and human dignity of individuals, by creating administrative mechanisms with proactive mandates of preventing harassment and protecting human rights.

Unlike legal remedies which are exclusively complaint based, and the deterrent is contingent upon reactive action, administrative mechanisms not only provide redress to complaints but also act as watch dogs via review mechanisms in ensuring both legal as well as institutional safeguards aimed at the protection and promotion of human rights are not transgressed by the relevant officials and institutions in the performance of their duties.

Prior to the election of the present United National Front Government, the Presidential Anti-Harassment Committee and the National Human Rights Commission were the principal administrative mechanisms established by the government that promote and protect human rights. In order to ensure its continued efficacy both in terms of results and public perception, the new United National Front Government caused a change in the nomenclature and membership of The Presidential Committee on Unlawful Arrests and Harassment.

A new Committee under the chairmanship of the Minister of Interior, with a specific mandate to examine allegations of harassment of Tamil people, both in the past and the present was established. Other members of the Committee are as follows: Hon. P. Chandrasekaran, M.P., Minister of Estate Infrastructure; Mr. Mano Ganeshan, M.P./Colombo; Mr. R. Radhakrishan, M.P./ National List; Mr. Austin Fernando, Secretary, Ministry of Defense; Mr. M.N. Junaid, Secretary, Ministry of Interior; Mr. Bernard Goonethilleke, Director General, Secretariat for Co-ordination of the Peace Process and Special Assistant to the Prime Minister; Mr. Jeyaratnam, Secretary, Ministry of Rehabilitation, Resettlement and Refugees; Mr. K. Parameswaran, Secretary, Ministry of Hindu Affiairs; General Rohan Dalluwatte, Chief of Defense Staff; Lt. Gen. L. P. Balagalle, Commander, Sri Lanka Army; Air Marshal. J Weerakkody, Commander, Sri Lanka Air force; Mr. K. Paramalingham, Senior Assistant Secretary, Ministry of Hindu Affairs.

The Committee held its inaugural meeting on the 11th of January 2002, at the Ministry of Defense. At this meeting the following decisions were taken:

1. The check points in the up-country areas be limited to two points one along the main Nuwara Eliya/ Kandy road and the other in Pitawala, Ginigathhena.

2. Decision was taken to relax the rules concerning the registration at police stations of Tamils who come to Colombo from the Northern and Eastern provinces. The requirement to register at a police station was done away with.

3. The police were directed to take the necessary steps to minimize the waiting time for a pass to travel to Colombo from Vavuniya.

4. An undertaking was given by Gen. Daluwatte that school buildings and other public places of worship in the North and East currently housing security force personnel would be evacuated by February 2002.

5. The Secretary to the Ministry of Interior undertook to direct the Commissioner-General of Prisons to afford facilities to relatives and parents of detainees under the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979 (PTA), currently housed in prisons, to make regular visits to the detainees.

6. It was decided that all detainees currently held in the Magazine prison and Boosa camp be transferred to the

An undertaking was given by Gen. Daluwatte that school buildings and other public places of worship in the North and East currently housing security force personnel would be evacuated by February 2002

Kaluthara prison.

The new government has taken a policy decision to remove all checkpoints and barricades in the city of Colombo and minimize the number of checkpoints and roadblocks that exist in other parts of the country. In addition, it has been decided to phase out the system of issuing passes that existed in Vavuniya, in order to facilitate the free movement of people and goods from un-cleared to the cleared areas. The government has also taken steps to ease the restrictions on fishing in the sea off the coast of the Northern and Eastern Provinces and it is also examining the feasibility of re-opening the main land route to Jaffna (Jaffna- Kandy Road).

The Presidential Committee on Unlawful Arrests and Harassment (July 1998-November 2001)

This committee was initially set up under the auspices of the Ministry of Justice, Constitutional Affairs and National Integration in July 1998 on a directive of the President. It was reconstituted under aegis of the Ministry of Justice in February 2001.

Membership

The Committee, which met under the chairmanship of Minister of Justice, comprised of ten members. Emphasis was made in making appointments to this committee to ensure that all nationalities in the Sri Lankan polity are represented. The membership of the Committee was as follows:

1. Hon. Prof. G. L. Peiris, Minister of Constitutional Affairs and Industrial Development

2. Hon. Batty Weerakoone, Minister of Justice (chairman)

3. Hon. S. B. Dissanayake, Minister of Samurdhi, Rural Development, Parliamentary Affairs and Up-Country Development

4. Hon. Lakshman Kadirgamar, Minister of Foreign Affairs

5. Hon. Douglas Devananda, Minister of Development, Rehabilitation and Reconstruction of the North and Tamil Affairs of the North and East

6. Mr. Lakshman Jayakody, Deputy Chairman of the National Development Council

7. Mr. M. M. Zuhair, Legal Consultant of the Ministry of Aviation and AirPort Development.

8. Mr. R. Sambanthan, Tamil United Liberation Front

9. Mr. R. Yogarajan, Ceylon Workers Congress

10. Mr. R. Sidarathan, People's Liberation Organisation for Tamil Ealam

In order to strengthen the functioning of the Committee, Mr. Lakshman Jayakody was appointed as the 'coordinator.'

· *Areas of Representation*

The Committee looked into representations made by persons harassed or not dealt with according to law and took steps to grant them relief.

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The Committee entertained complaints and allegations of harassment such as:

1. The Arrest of persons under the Prevention of Terrorism Act (PTA) or Emergency Regulations (ER), illegally without adopting due procedure.

2. The abuse of PTA and ER to detain individuals

3. Prolonged periods of detention and the delay in bringing them to trial.

4. Harassment by Police and Armed Service personnel at the time of arrest and/ or at checking at checkpoints and in special operations.

Since the Committee had a wide mandate it entertained any type of complaint it deemed fit to be further looked into.

· *Infrastructure*

There were two administrative units functioning under the purview of the Committee. One unit functioned in the Ministry of Justice and employed a lawyer on a full time basis. This was intended to provide individuals an opportunity to call over at this unit and hand over their complaints to this lawyer personally. The lawyer was authorized to grant immediate relief if there was a possibility of doing so.

The other unit was the Police unit, comprising of police officers under the supervision of a senior Deputy Inspector General of Police. It functioned in a separate office and was headed by a Senior Superintendent of Police. He was assisted by eight other police officers. Its role was to function as the investigative arm of the Committee.

· *Meetings*

In order to facilitate the expeditious granting of relief to the complaints received, the Committee met, once a week on Monday. The meetings were attended by officials of the Ministry of Justice, Police Department (Terrorism Investigation Division, Criminal Investigation Department) and the three armed forces. In addition, the Committee was empowered to summon before its presence any official it deemed necessary to carry out its mandate.

· *The Role of the Attorney General's Department*

If any problems were encountered during the course of the investigations, the assistance of the Attorney General's Department was solicited by the Committee. In such an instance an official from the Attorney General's department was assigned to review the action taken and to give his opinion on any additional steps that need to be taken to ensure the successful prosecution of offenders. Further, the Committee closely monitored the cases where police had forwarded notes of investigation (IBE) to the Attorney General's Department, in order to bring about an expeditious conclusion to the cases.

· *Measures Taken by the Committee to Mitigate Hardships*

The Committee did not restrict its functions only to

providing relief to aggrieved individuals who complained to the Committee. It also adopted several measures to ameliorate the problems encountered by the general public, due to various actions taken by the armed forces. Some of them were:

1. Meeting with police and the armed forces whenever necessary to review the systems operated by them.

2. The supply of Fax machines to Police divisions island wide, in order to enable the Police divisions to instantaneously provide comprehensive information on the individuals detained under the Emergency Regulations or under the PTA.

3. Taking immediate action in instances of violent mass harassment.

4. Issuing of instruction to the Police Department to adopt a uniform and simplified system of registration of persons from at all police stations.

5. Visits by the Chairman to prisons to inquire after the welfare of the detainees.

Although the Terms of Reference to the committee referred only to matters concerning arrest and harassment, the Committee enhanced the scope of the terms to encompass other hardships faced by civilians in the present security situation.

Human Rights Commission of Sri Lanka

The Human Rights Commission (HRC) of Sri Lanka, which was established by the Government in March 1997[1], is vested with monitoring, investigative and advisory powers in relation to human rights. It has been set up as a permanent national statutory institution to investigate any infringement or imminent infringement of a fundamental right declared and recognised by the Constitution, to grant appropriate relief. The powers of the Commission are wider than those of the Supreme Court, and complement the existing national framework for the protection of human rights. Unlike under the Constitution there are no time limits for filing a complaint before the HRC. Further, the Commission does not insist on procedural formalities in the presentation of complaints or petitions. This obviates the necessity of obtaining professional legal services in forwarding of a grievance to the Commission.

The membership of the Commission consists of five members, reflective of the ethnic configuration of the Sri Lankan polity. The enabling legislation requires that the membership of the Commission should consists of three Sinhalese, one Tamil and one Muslim and when appointments are made to the Commission by the President, it should be done on the recommendation of the Prime Minister, in consultation with the Speaker and the Leader of the Opposition.

The mandate of the Human Rights Commission is two fold: Broadly, it has:

A monitoring and an investigatory role -

The investigation of grievances arising from actions of the State which are of executive or administrative in nature; this consists of direct complaints and, in a broad sense, fundamental rights cases referred to the Commission by the Supreme Court.

An advisory role: This covers a broad spectrum, which includes (a) the review of procedures to ensure compliance with the constitutional guarantees of fundamental rights; (b) advising the government in formulating legislation and administrative procedures for the furtherance of fundamental rights and ensuring that legislation existing and proposed, conforms to international human rights norms and Sri Lanka's obligations under treaties and other international instruments; (c) promoting awareness of, and providing education in relation to human rights

According to Section 15(3) of the Act, where an investigation conducted by the Commission discloses an infringement of a fundamental right, the Commission may recommend to the relevant authorities, that prosecution or other suitable action be taken against the person or persons found to be infringing fundamental rights. Alternatively, it may refer the matter to any court having jurisdiction to hear and determine such matter. It also can order the reimbursement of the expenditure incurred by the complainant in bringing the petition before the Commission. Further, the Commission is empowered to take preventive measures in order to ensure there is no repetition of violations of fundamental rights.

The HRC has also been specifically vested with the power to monitor the welfare of detained persons. It is therefore authorised to visit places of detention frequently. In order to facilitate this function, all arrests and detention under the Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA) must be reported to the Commission within 48 hours of arrest. Wilful failure to report an arrest or detention will attract penal sanctions under the HRC Act. This provision has been reinforced by the Presidential directive issued to the armed forces on the 7th of September 1997, which are identical to those issued under the regulations establishing the Human Rights Task Force (HRTF).

The Commission has ten regional offices headed by co-ordinators and two sub units staffed by investigating officers. In addition, the Human Rights Commission has set up a 24-hour hotline to enable the public to bring to the notice of the Commission any violations of fundamental rights. The Commission conducts monthly meetings with representatives of the three Service Commanders and the Inspector General of Police, and officers who have been nominated to liaise with the Commission in order to facilitate the functioning of the hotline.

Article 3- Right to Equality

Institutional Mechanisms for the Advancement of Women

· *Constitutional Guarantees*

In order to give a justiciable safeguard against gender discrimination, Article 12 (2) of the Constitution provides that "no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds."

In order to facilitate this function, all arrests and detention under the Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA) must be reported to the Commission within 48 hours of arrest.

Any person arrested under Section 6 can only be kept in custody for a period not exceeding seventy two hours, unless a detention order under this section has been made in respect of such person, be produced before a Magistrate before the expiry of such period

Further, Article 12 (3) by stating "no person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion", seeks to extend the protection against gender discrimination to the realm of acts done by private individuals. These provisions are reinforced by the Directive Principles of State Policy and Fundamental Duties, which enunciates the duty of the state to ensure the equality of opportunity to citizens regardless of race, religion, language, caste, sex and political opinion.

· *Women's Charter*

In March 1993, the Government of Sri Lanka adopted the Women's Charter. It was envisaged that this declaratory document would provide a normative framework for the internalisation of the values enumerated in the United Nations Convention on the Elimination of All forms of Discrimination against Women (CEDAW). The Women's Charter was an outcome of a lengthy consultative process in which the governmental as well as non-governmental agencies participated. Emphasis was made in ensuring that the heterogeneous nature of Sri Lankan society was reflected in the participants of the process that drafted the Charter.

Part I of the Charter vests specific obligations on the State vis-à-vis obligations undertaken upon the ratification of the CEDAW convention. These could be categorised into the following broad areas: Political and civil rights, Rights within the family, Right to education and training, Right to health care and nutrition,

Right to protection from social discrimination, Right to protection from gender based violence.

Since the provisions of the Women's Charter are not instruments, steps have been taken to enact legislation incorporating its provisions. The draft legislation prepared for this purpose has already received assent of the Cabinet of Ministers.

Removal of Discrimination against Women

The National Committee on Women was instrumental in the formulation of a gender sensitive set of guidelines in the issue of visas to foreign spouses, in place of the previously discriminatory guidelines. It also played a catalytic role in the engendering of legislation that abrogated legislation that discriminate against women.

· Violence against Women

The National Committee on Women has established a Centre for Gender Complaints (CGC). It receives, on an average, 100 complaints a month. Remedial action in respect of these complaints are instituted either via referral to the parties concerned or by legal counselling or alternatively through the procurement of legal aid. The National Committee on Women as part of its awareness campaign has produced advertisements to deter the perpetration of sexual harassment, to be telecast on television. It is envisaged that these adverts will continue to be telecast on a long-term basis.

Women and Armed Conflict

The National Committee on Women conducted two forum discussions on women displaced by the armed conflict in the North and East. Consequently, recommendations were made to the Presidential Secretariat for engendering of relief and rehabilitation measures. These recommendations also highlighted the unnecessary and costly duplication of such activities by the government as well as Foreign Agencies.

Articles 4 and 5- Human Rights During Emergency

Prevention of Terrorism (Temporary Provisions) Act No. 4 of 1979.

This Act commonly referred to as the "PTA", was intended to make temporary provisions for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organisation or body of persons within or outside Sri Lanka. The Preamble of the Act states (inter alia):

"Public order in Sri Lanka continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers and witnesses to such acts, and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to state property and other acts involving actual or threatened coercion, intimidation and violence."

Part I of the Act details the offences and penalties under it. Part II, which makes provision for the investigation of offences, provides in section 6 for the powers of the police to: (a) Arrest any person, (b) Enter and search any premises, (c) Stop and search any individual or any vehicle, vessel train or aircraft and (d) Seize any document or thing, connected with or reasonably suspected of being connected with or concerned in any unlawful activity.

Any person arrested under Section 6 can only be kept in custody for a period not exceeding seventy two hours, unless a detention order under this section has been made in respect of such person, be produced before a Magistrate before the expiry of such period. The Magistrate must, on application made in writing for this purpose by a police officer not below the rank of Superintendent, make an order that such a person be remanded until the conclusion of his or her trial (s. 7(1)).

Part III of the Act provides for detention and restriction orders. Section 9 of this part provides that where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such a person be detained for a period not exceeding three months in the first instance, in such a place and conditions as may be determined by the Minister. Any such detention order may be extended from time to time for a period not exceeding three moths at a time. The aggregate period of such detentions cannot,

however, exceed a period of eighteen months (s 9(1)). These detention and restriction orders are final and cannot be called in question in any court or tribunal by way of writ or otherwise[2].

Part IV of the Act pertains to the conduct of trials of suspects detained under PTA. Section 15 of the Act, as amended by Act No. 22 of 1988, provides that every offender who commits an offence under the Act is triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury or before the High Court at Bar by three Judges without a jury, as may be decided by the Chief Justice.

Measures taken to prevent the involuntary or enforced removals of persons

Several initiatives have been taken to investigate allegations of involuntary removals and disappearances. Prior to this a Presidential Commission of Inquiry into Involuntary Removal of Persons (PCIIRP) had been appointed in 1991. However, its mandate was limited to the investigation of complaints of disappearances that was alleged to have taken place after the 11th of January 1991. Given that most allegations of enforced removals made by Local and International NGOs related to the period before 1991, particularly to the period 1988 to 1990, it was perceived only as a specious exercise.

Hence, in 1995 the government appointed 3 Regional Commissions of Inquiry (commonly referred to as the three zonal Commissions), to inquiry into and report on alleged disappearances that occurred during the period 1st January 1988 to 31st December 1990. The Three Commissions were established to cover the three principal geographical regions in the southern parts of the country. It was entrusted with a mandate to inquire in to allegations of disappearances, so as to ascertain: (1)The veracity of the allegations, (2) To provide compensation and relief to families of the victims in proven cases of disappearances, (3) To identify and punish the perpetrators of the crime of causing disappearances.

At the expiry of the timeframe (13.11.94-03.10.97) stipulated in their terms of reference, the Commissions concluded that approximately, 16,800 persons had disappeared during the period under reference.

Unfortunately, in the course of their inquiries the Commissions were unable to enquire in to all the complaints of enforced removals they had received. Hence a single Commission of Inquiry known as the All Island Presidential Commission on Disappearances was appointed by the government on the 30th of 1998 with a mandate to inquire into and report on these remaining complaints.

Nevertheless, of a total of 16,800 alleged disappearances, in respect of the 1,681 cases, the zonal commissions were of the opinion that, there was evidence indicative of the identities of those responsible for the relevant involuntary removal of persons and their subsequent disappearances. Therefore, acting on the recommendation made by the Commissions, the government decided to institute criminal proceedings against the perpetrators.

In order to facilitate this process in November 1997, a separate unit in the Police Department was established, named the "Disappearances Investigations Unit" (DIU). This unit was mandated to conduct criminal investigations into these 1,681 cases. Congruent to the DIU, a separate unit was established in the Attorney General's Department in July 1998, named the "Missing Persons Commissions" (MPC Unit). The task of this Unit was to consider the institution of criminal proceedings against perpetrators.

The Disappearances Investigation Unit (DIU) as of 31st of December 2000, completed conducting criminal investigations into 1,175 cases out of the 1681 cases referred to above.

Similarly, the Missing Persons Commissions Unit of the Attorney General's Department, which has received Notes of Investigations relating to these 1,175 cases, has taken the under mentioned action.

Nature of the Action Taken

1 Indicted in the High Courts (number of cases) 262

2 Non Summary action instituted in the Magisterial Court (number of cases) 86

3 Total number of Security Force's personnel against whom Criminal Action has been instituted 597

4 Discharged due to want or absence of evidence 423

5 DIU advised to cause further investigations 323

(Position as at 31st December 2001)

So far criminal proceedings have been instituted against 597 personnel attached to the Police and the Armed Forces. The cases have been filed in the High Courts and the Magisterial Courts, and they are now proceeding.

The "All Island Commission of Inquiry", also concluded inquiries in August 2000. It reported that a further 10,400 persons had disappeared during the relevant period. Hence action was taken to amend the official statistical records pertaining to enforced or involuntarily removed persons to reflect these new findings. With this new addition the total number of persons who had disappeared during the period 1988-90 currently remains approximately at, 27,200. The entire process pertaining to the conduct of criminal investigations and the filing of criminal cases is still continuing.

Meanwhile, consequent to a decision taken at the Inter-Ministerial Working Group on Human Rights Issues, the Disappearance Investigation Unit (DIU) of the Police Department was recently mandated with the task of conducting criminal investigations into more recent alleged disappearances. As a priority task, the DIU recorded the statement of 190 complaints, out of total of a 378 reported disappearances. It is expected that upon the completion of the relevant investigations, the Notes of Investigation will be forwarded to the Missing Persons Unit of the Attorney General's Department, for the consideration of the institution of criminal proceedings.

· Compensation paid to the families of the 'disappeared'

In order to fulfil one of the recommendations of the 'zonal'

With this new addition the total number of persons who had disappeared during the period 1988-90 currently remains approximately at, 27,200. The entire process pertaining to the conduct of criminal investigations and the filing of criminal cases is still continuing

Commissions, the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) has been paying compensation to those families of disappeared and issuing death certificates since August 1995. As of 30.05.2001 a total of Rs.555, 517,200 had been paid as compensation to the families of 16,324 victims.

· Cases of disappeared reported by the UN Working Group.

Around 12,000 cases of enforced or involuntary disappearances had been reported to the Government of Sri Lanka by the UN Working Group on Enforced or Involuntary Disappearances in Geneva for clarification. On a Cabinet decision dated 24. 002. 1999, a Special Unit was established within the REPPIA, on a temporary basis, for a period of one year, for this purpose. Since this unit could not fulfil its given mandate within one year, its mandate was subsequently extended for a further two years. By October 2001, it had fulfilled its mandate by the payment of compensation and the issuing of death certificates to the families of individuals considered as enforced or involuntarily disappeared. From a total of 11,881 cases referred by the UN working group 267 were found to be repetitions. In respect of the remaining clarified cases it is envisaged that criminal proceedings would be instituted against the perpetrators in the near future where they are clearly identifiable.

The BOI concluded that 378 persons had disappeared in the Jaffna Peninsula, in 1996. The Disappearances Investigations Unit (DIU) is currently conducting criminal investigations into the relevant disappearances.

The success of this unit in working towards the fulfilment of its given mandate is reflected by the commendation it received for its work from Mr.Diegoe Garcia-Sayan, the Chairman of the United Nations Working Group on Enforced or Involuntary Disappearances.

· Disappearances in Jaffna, 1996

A Board of Investigation (BOI) of the Ministry of Defence was established in November 1996, consequent to the receipt of complaints alleging that individuals were missing after being arrested by the security forces personnel in the North. The BOI conducted its investigations independent of inquiries normally conducted within the services.

The Board processed lists of names of persons alleged to have disappeared. These lists were received from a number of sources such as, the Presidential Secretariat, Amnesty International, UN Working Group on Disappearances, ICRC, Members of Parliament, the Chairman of RRAN, Association of Guardian of Persons Arrested and later Disappeared, the Government Agent of Jaffna and also directly from family members of Missing Persons. The BOI concluded that 378 persons had disappeared in the Jaffna Peninsula, in 1996. The Disappearances Investigations Unit (DIU) is currently conducting criminal investigations into the relevant disappearances. It is envisaged at the conclusion of these investigations that the Missing Persons Unit of the Attorney General's Department would be able to make a decision on the institution of criminal proceedings.

In addition to the above measures, the President issued the following instructions to the security forces in order to prevent the occurrence of enforced or involuntary disappearances.

- No person shall be arrested or detained under any ERs or the PTA except in accordance with the law and proper procedure and by a person who is authorised by law to make such arrest or order such detention.

- At or about the time of arrest or if it is not possible in the circumstances, immediately thereafter:

I. The person making the arrest must identify himself to the person arrested or any relative or friend of such person upon inquiry being made, by name and rank

II. Every person arrested or detained must be informed of the reason for arrest.

III. The person making the arrest or detention shall issue to the spouse, father or mother or any other close relative, a document in a form specified by the Secretary, Ministry of Defence, acknowledging the fact of the arrest. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained also be specified. It shall be the duty of the holder of such document to return the same to or produce the same before, the appropriate authority when the person so arrested is released from custody.

In an instance where any person is taken into custody and is not possible to issue a document set out above, it shall be the duty of the arresting officer, if such officer is a police officer, to make an entry in the Information book giving reasons as to why it is not possible to so issue a document. If the arresting officer is a member of the armed forces it is the duty of such an individual to report the reasons why it is not possible to issue to the officer in charge of the Police of the Police Station, whose duty it shall be to make entry such fact with reason in the Information Book.

IV. The person arrested should be afforded a means of communicating with a relative or friend to ensure that his/ her whereabouts are known to the family.

- When a child under 12 years or a woman is sought to be arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning. As far as possible a child or woman should be placed in the custody of a woman's unit of the armed forces or the Police or in the custody of another woman military or Police Officer.

- A statement of a person arrested or detained should be recorded in the language of

that person's choice and should, thereafter, be asked to sign the statement. A person who desires to make a statement in his or her own handwriting should be permitted to do so.

- The members of the HRC should be permitted access to the persons arrested or detained and should be permitted to enter at any time at any place of detention, Police station or any other place of detention, in which such person is detained in custody or confined.

- Every officer, who makes an arrest or detention as the case may be, shall forthwith

- and in any case not later than 48 hours from the time of such arrest or detention,

- inform the HRC or any person specially authorised by the HRC, of such arrest or

- detention and the place at which the person so arrested or detained is being held

- in custody.

Article 7-Prevention of Torture

· Supreme Court of Sri Lanka

Article 11 of the Constitution of Sri Lanka provides that no person shall be subject to cruel, inhuman or degrading treatment or punishment. Embodying the precept of non-derogation of the freedom from torture as enunciated in Article 7 of the ICCPR, the Sri Lankan Constitution has enshrined the freedom from torture as an absolute right. It does not permit any restrictions to be imposed on it by law, except after approval by the people at a referendum.

The Supreme Court defining the scope of Article 11 of the Constitution has stated that torture, cruel, inhuman or degrading treatment or punishment may take many forms, both psychological and physical. Further, there must be an assessment of the acts or conduct complained of, which satisfies the Court that they fall within the ambit of the article. Accordingly, having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a petition endeavouring to discharge his burden of proving that he was subject to torture or cruel, inhuman or degrading treatment or punishment. The court in a recent decision recognised custodial rape as amounting to torture.

· Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act of No.22 of 1994.

The Government of Sri Lanka in order to re-affirm its unequivocal commitment towards the protection of the freedom from torture deposited the instruments of ratification in 1994 for the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[3]. Subsequently, the Parliament of Sri Lanka passed legislation embodying the provisions of the CAT. This legislation colloquially referred to as the "CAT Act" deems the perpetration of torture as a criminal offence attracting a mandatory minimum prison term of seven years but not exceeding ten years, plus a fine not less than Rs.10, 000 but not exceeding Rs.50, 000. Section 12 of the CAT act defines torture in the following manner:

" Any act which causes severe pain whether, physical or mental to any other person, for the purpose of: (i) obtaining from such person or a third person any information or confession, (ii) punishing such person for any act which he or a third person has committed or is suspected of having committed, (iii) intimidating or coercing such person or third person.

This legislation also amended the extradition law to provide for an "extradite or prosecute" regime as envisaged in the Convention. So far ten individuals have been convicted for transgressing the provisions of the CAT Act.

· The establishment of an effective mechanism for the criminal prosecution of public officials committing acts of torture

The Government, cognisant of the fact that permeation of a deterrent effect against the committing acts of torture is contingent upon the existence of efficacious investigatorary mechanism dedicated to the prosecution of perpetrators, assigned the conduct of criminal investigations into allegations of torture to the Criminal Investigation Department of the Police (CID). Concomitantly a special unit named the " Prosecution of Torture Perpetrators Unit (PTP Unit)" was established in the Attorney General's Department to function symbiotically with the CID in the prosecution of torturers. While the relevant branch of the CID is headed by an Assistant Superintendent of Police and comes under the direct purview of the Deputy Inspector General in charge of the CID, the PTP unit is headed by a Deputy Solicitor General and a Senior State Counsel and comes under the direct supervision of the Attorney General and the Solicitor General. The PTP consists of Seven State Counsels.

The principal task of the PTP unit is to ensure the successful conviction of perpetrators of torture. The process utilised by the PTP Unit in implementing this task can be described as follows:

On the completion of the criminal investigation, the CID submits to the PTP unit the corresponding notes of investigations. The initial duty of the Unit is to consider the institution of criminal proceedings against the alleged perpetrators of torture. In doing so, consideration is given to the availability of material disclosing the commission of offences, adequacy of such material, their reliability and admissibility in court. Consequent to a decision being taken to indict the alleged perpetrators of torture, the CID is advised to cause the arrest of the suspect(s) and produce the suspect(s) before a Magistrate. Thereafter, the indictment is prepared and forwarded to the relevant High Court. It is customary that a State Counsel representing the Attorney General leads the prosecution of such a case.

In addition to the above, the PTP Unit monitors the progress and advises on the conduct of investigations of the CID pertaining to allegations of torture. The CID is duty bound to report the progress of investigations on the perpetration of torture to the PTP Unit, in order that this information may be periodically recorded in a computerised database maintained by this Unit.

· Issuing of precise instructions to the members of the security forcers in order to deter the perpetration of torture

Since it was perceived as a necessity that fresh instructions should be issued as a matter of priority delineating the government's policy pertaining to freedom from torture, on the 14th of January 2001, the Inspector General of Police under his name addressed an official circular to all Offers-in-Charge of police divisions (holding the rank of Senior Superintendent of Police) in the entire country and to Officers-in-Charge of specialised divisions (such as the Terrorism Investigation Division, Criminal Investigation Department, Police Narcotic Bureau, etc.), on the need to ensure that, under no circumstance should torture be perpetrated or there could be acquiescence in its perpetration.

The circular cast a duty upon Officers-in-Charge of Divisions and Specialised Units, to sensitise all police officers under their command on the necessity of

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preventing torture. In order to manifest the government's immitigable commitment in implementing its zero-tolerance policy on the perpetration of torture, the circular not only detailed penal sanctions the perpetration of torture would attract but also alluded to the fact that the Attorney General had already instituted criminal proceedings against persons found responsible for committing acts of torture. The circular also stated that it was the personal responsibility of all Officers-in-Charge of divisions to ensure that subordinate Police Officers desist from engaging any cruel, inhuman, degrading or torturous act.

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Further, on a direction by the Secretary to the Minister of Defence (MOD), the Inspector General of Police appointed a Senior Deputy Inspector General of Police (DIG) to supervise and co-ordinate all investigations into allegations of human rights abuses and to oversee the implementation of preventive measures adopted in respect of human rights violations. This DIG has undertaken a series of unannounced visits to detention centres giving priority to ones situated in the North and East.

Subsequent to the issuing of the circular by the IGP, a comprehensive audit was carried out to ascertain whether all the Officers-in-Charge of Police Divisions and Specialised Units had adhered to the requirement of circular germane to the instructions issued to subordinate officers on the prevention of acts of torture. Official reports as well as unofficial information received from divisions and specialised units, reveal that, by the end of February 2001, all Police Officers attached to the Sri Lanka Police Department had received specific instructions on the need to totally desist from indulging in any form of torture. The compliance to these regulations are subject to continuous monitoring by the Senior Deputy Inspector General of Police by the way of unannounced visits to Police stations. Investigations and inquiries into any allegations of violation of these regulations are also conducted under the supervision of this Senior Deputy Inspector General of Police.

In addition the Sri Lanka Army has established special units named "Human Rights Cells" with a mandate in ensuring the adherence of military personnel particularly those serving in operational areas to international human rights norms in the discharge of their duty. Further a separate directorate under the purview of a Brigadier was established at the Army headquarters with a remit to ensure the compliance of the Army to international human rights norms in the performance of its duties. In addition, standing orders have been issued by the Commander of the Army, stipulating procedure to be adhered in the arresting, questioning and the detention of suspects. Emphasis was made in ensuring that these orders complied with human rights norms and domestic legal requirements. Hence they strictly prohibit the perpetration of torture or the infliction of other cruel, inhuman or degrading treatment.

· The establishment of a process that ensures the judicial supervision of places of detention

Consequent to a recommendation made by the Inter-Ministerial Working Group on Human Rights, on 6th of April 2001, the President promulgated amendments to the Emergency Regulations, that inter-alia empowered Magistrates to visit places of detention situated within their respective jurisdiction. Such visits may be conducted without prior intimation. The new regulations cast a duty on Magistrates to conduct such visits at least once a month. In order to make the process relating to detention transparent, the new regulations require Officers-in-Charge of detention facilities, to submit to Magistrates a list once in 14 days, containing the names of suspects detained in their respective detention centres. The list so tendered has to be exhibited in a Notice Board located in the respective Magistrates' Courts. These new regulations further require suspects arrested under the Emergency Regulations to be produced before a magistrate as soon as possible but not longer than 14 days after the arrest.

· The development of a central register for detainees in all parts of the country

A twenty-four hour telephone hotline has been established in the premises to assist relatives of the detainees, in obtaining accurate information pertaining to the detention such as their whereabouts, the nature and circumstances of the detention etc, expeditiously. Police personnel fluent in all three languages- Sinhala, Tamil and English, staff this facility. The telephone number of this hotline is 01-386061. This facility now enables family members of persons believed to have been arrested to ascertain (a) whether in fact such a person has been arrested and if so (b) identity of the arresting authority and (c) place of detention.

In order to enhance the efficacy of this telephone hotline, a computerised Central Police Registry (CPR) under the purview of the Senior Inspector General of Police (Human Rights) has been established. This registry contains current and accurate information pertaining to all arrests and detentions of suspects under the Emergency Regulations and the PTA. It is located at the Police Headquarters.

Police internal departmental regulations now require all arresting officers to notify the personnel operating the CPR of arrest of suspects within six hours of such arrest.

· Human rights education for the armed forces

Human rights education forms part of the training of all law enforcement officers, members of the armed forces and prison officers. This training includes lectures on the fundamental rights guaranteed by the Constitution, international norms on human rights, law of criminal procedure, the rights of a citizen and the duties and obligations of law enforcement officers. Demonstrations and visual aids reinforce these lectures. Seminars and discussions are also held during various stages of the officers' career.

Human rights education was introduced into police training in the early 1980s. It is now a subject of instruction in the Sri Lanka Police training school where basic training is provided for new recruits, and at the Police Higher Training Institute where promotional and refresher courses are provided and at Divisional Training Centers where in-service training is provided. Officers

are questioned on aspects of human rights at all examinations. In 1997, all OICs, ASPs, DIGs and SPs underwent a special two-day training programme on international norms on human rights.

As a matter of policy the Government is committed to ensuring that all service personnel are properly instructed and trained to respect and observe standards of human rights and humanitarian law, so that their powers are not used arbitrarily or excessively and that weapons are not used indiscriminately. While the Law of War and Humanitarian Law have been part of the education and training of the armed forces, the scope and content of these programmes are being revised with emphasis on understanding and practice. These programmes have been initiated to inculcate in the security forces the necessity of treating human rights laws and norms as apotheosises in the discharge of their duties.

A separate Directorate at Army Headquarters to deal exclusively with International Humanitarian Law was established in 1997. The role and tasks of the Directorate include overseeing implementation of IHL and the Law of War by the armed forces, planning and implementing a dissemination programme on a regular basis for all ranks in operational areas and in training institutions. It also includes, working out syllabuses for IHL and the Laws of War to be taught to Army personnel ranging from recruit to Captain level. This is for the purpose of introducing these as compulsory subjects at promotion examinations. In order to ensure that every soldier has an intimate knowledge of human rights laws, it now forms part of the syllabus of every training programme of the Sri Lanka Army. In 2001, the mandate of this directorate was broadened to include the subject of Human Rights.

Further, human rights and humanitarian law forms a large component of the syllabuses in the training programmes conducted both at the recruitment level and advance levels in the Air force and Navy. Moreover, personnel in these services are required to demonstrate an intimate knowledge of domestic and international human rights laws and norms, as a pre-requisite to obtain promotions. It is also mandatory for all personnel belong to these services, serving in operational areas to undergo training programmes conducted by the Human Rights Commission, on the practical application of Human Rights laws in the discharge of their duties.

The Government has also benefited from the assistance received from non-governmental organisations in conducting human rights awareness programmes for the armed forces, the police and other public servants.

The ICRC began conducting disseminating seminars aimed at promoting the awareness and understanding of International Humanitarian Law among the armed forces in Sri Lanka in 1986. Since the establishment of an ICRC delegation in Sri Lanka in 1990 these programmes have continued and expanded to include law enforcement officers, members of special task forces, para-military units, public servants and Sri Lanka Red Cross workers. Regular courses and lectures are held for all levels of armed forces personnel in training centres and in operational areas. Approximately 35,000 persons have participated in these disseminating seminars since June 1993 and 25,000 armed forces personnel have been among this number. In March 1997, the ICRC conducted a week-long seminar on Humanitarian law for 10 army majors and 15 captains. It is expected that these officers will be sent in teams to training centres and operational areas to disseminate this knowledge.

The ICRC has also printed booklets in English, Sinhala and Tamil on the Law of War and manuals of instructions, which have been distributed to the forces. It also sponsors members of the armed forces to participate in international or regional seminars on humanitarian law.

The Centre for the Study of Human Rights of the University of Colombo, in June 1993 launched a programme to provide human rights education for the armed forces and the police with a view to sensitising those groups to the value of human rights and to point out the limits of their powers. Subsequent to preliminary discussions with Directors of Training of the armed forces and police, two introductory seminars/workshops were conducted for a group of 31 new ASP's and 7 naval officers respectively.

In 1995 steps were taken to supplement the training of three specific target groups, i.e. the policy makers, the trainers and recruit levels of the Armed Forces and the Police. A training manual has been compiled covering human rights standards and court cases for the trainers and a handbook for the recruits. The training manual was formally presented to trainers in the Armed forces and the Police in March 1995, at a one- day workshop held in Colombo.

1 The enabling act and the annual report of the Human Rights Commission for the year is attached as annexure 2

2 In spite of this provision which seeks to restrict judicial control over the issuing of these orders, the court sought to re-assert its authority through interpreting the powers of the minister under S9 of the PTA, congruous with the right to the freedom from arbitrary detention. In Jayasinghe v Samarawickrama, Kulathunge J, holding that the Minister had signed the detention order mechanically at the request of the police without giving his mind to the preconditions imposed on him by S9 when doing so, said: "If such arrest is challenged, they should justify their conduct objectively by means of sufficient evidence".

3 In Abasin Banda v. Gunaratne (1995) 1 SLR 244, at pp-256-257 Amersinghe J., noted that under Article 2.1 of the UN Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment, which entered into force in Sri Lanka with effect from 2nd April, 1994 requires the state to take "effective legislative, administrative and judicial or other measures to prevent torture". The learned judge also quoted Articles 10, 11, 12, 13 and 16 of the Convention.

(To be continued)

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How voluntary... *Contd. from page11*

villages that they were attacked; there is no reference whatsoever to attack on the Thelippan and Kattuwan army camps. These are also questions put without a foundation of fact without diligence. They are put in violation of the law of evidence. These questions disclosed to us that the Counsel should also be on trial before a professional committee in regard to his professional conduct. Thus, we discern that in seeking to rebut the guarantee of testimonial trustworthiness and the presumption of truth, learned Counsel for the Accused at the trial has grievously erred and not done justice to the case of the Accused. In the circumstances the inescapable conclusion the Court could arrive at is that he has failed to rebut the aforesaid presumptions and guarantee of truth. In these circumstances, we up hold the findings and convictions reached by the trial Judge.

However, we observe having regard to the submission adduced in the appeal that the Accused has been arrested on 27.06.1995 and that he has been on remand since that date to the present date. The Accused was convicted on 23.06.1997 and has been on remand since that date. In these circumstances, we direct and order that the term of eight years imprisonment imposed on the accused do operate and take effect from 27.06.1995, which is a merciful measure having regard to the fact that the Accused has subsequently severed his connections with the Terrorist Organization and has attempted to secure employment at a barber saloon. Subject to this direction the appeal is considered and dismissed. The findings, conviction and sentence are affirmed.

Judgments of justices Ameer Ismail and Mark Fernando, Supreme Court of Sri Lanka

ISMAIL, J

The charge in the indictment against accused-appellant-appellant ("The appellant") was that he did between 01.01.93 and 30.04.93, at Kattuwan, with Neil and others unknown to the prosecution, attacked 'specified persons,' to wit, members of the armed forces, an offence punishable under Section 2(2)(1) read with Section 2(1) (a) of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 10 of 1982, Act No. 22 of 1988 and Section 32 of the Penal Code.

"Specified person" means and includes "any member of the armed forces, police force or any other forces charged with the maintenance of public order" in terms of Section 31(1)(g) of the Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979.

The sole item of evidence against the appellant was his confession made on 19.8.1995 to ASP Ratnayake, which was admitted after a voir-dire inquiry in terms of section 16(1) of the Prevention of Terrorism Act. Extracts from it marked P1A to P1G were specifically referred to and relied upon to prove the charge. The sworn English translation of the entirety of that part of the statement from which the said extracts were taken set out below show the context in which they were made.

"Accordingly I told LTTE Cadres that I like to join the LTTE and asked them whether they could enroll me as well. Accordingly in March 1992 one of them took me to Maniamtottam in Ariyalai. I was taken by him to a training site near a training camp. – (P1A) *One Neelas was in charge of that place. He got all details from me, kept me there for about 15 days and then took me to Maniamtottam and handed me over to one Selvarajah Master.* I learnt that a large number of youths numbering about 160 were there to undergo training. After giving instructions for about three days they commenced giving me military training. All the youths were separated into groups of 15 and were given training. In the course of training we were taught how to operate, dismantle and assemble SLR and AK81 guns. We were also taught about the working of a hand bomb, and how to attack with them. Selvarajah Master gave training in arms and in physical exercises. Sivalingam Master gave training in fir arms. Thamil Maran Master gave lectures on politics – (P1B) Banu Anna gave us the idea that we must fight with the Security forces to win a state of Eelam. -(P1C) *Instead of my real name, I was assigned the name 'Columbus.' One Gaddafi was in charge of the group of 15 to which I belonged. He issued us with LTTE uniform, arms and a capsule of cyanide each and took us to Urumpirai where we were assigned duties. We were stationed there for about three months. After staying there for about three months* one Banu Anna took 45 of us to Colombuthurai in the latter part of 1992 to give us Commando training, Rattnam Master gave us training for about a month as to how we should attack the enemy. – (P1D). *About 15 days later Banu Anna took all of us to a place called Vimankamam and told us that* There was an army camp some distance away from Tellipalai. He wanted us to do sentry duties at this place. About 5 days after we commenced sentry duties Banu Anna told us that the army was trying to move into the village and asked us to get ready to fight against them. – (P1E) About 30 of us advanced under the leadership of Banu Anna. Clash occurred during day time. We ambushed on the rank and attack the army advancing towards our village- (P1F) *They also fired back. At one stage three persons who were with me died. I did not receive injuries.* Twenty days after this clash we clashed with the army at Kuttuwan under the leadership of Neil Anna. Four of our cadres including Gaddafi died in that clash . I learnt that 5 Army personnel also had died. Thereafter I did not go for any attack".- (P1G)

The appellant gave evidence and denied making this statement to ASP Ratnayke and placing his signature before him. However, the High Court has held that the appellant did make the statement and that he had failed to discharge the burden on him to show that it was obtained by any inducement, threat or promise.

The appellant was convicted of the said charge after trial on 27.6.96 and was sentenced to a term of eight years imprisonment.

The Court of Appeal affirmed the conviction of the appellant and dismissed his appeal by its judgment dated 23.8.1999, subject to a direction that the term of eight years imprisonment should take effect from 27.6.95 which was the date of his arrest.

However, the High Court has held that the appellant did make the statement and that he had failed to discharge the burden on him to show that it was obtained by any inducement, threat or promise

The Court of Appeal, having affirmed the finding that the confession was made voluntarily by the appellant held, inter alia, as follows: "We now advert to the trial proper where issue in regard to the weight, the testimonial trustworthiness, and the truth of the confession arises for consideration. Vide decision in King v Ranhamy, 42 NLR – Judgment of Justice Soertsz. On this issue we have to be guided by general principles of the Law of Evidence pertaining in particular to the Law of Admissions. There is a presumption that a person would not make an admission against his interests unless it is true. The law of evidence admits admissions, which are hearsay evidence although there is no possibility of cross-examination. However, the author of the admission is the other party to the proceedings. Thus, there cannot be a complaint in regard to the absence of cross-examination by the other party to proceedings. It is always open to the other party to come on stand, give evidence and establish that the contents of the confession are false and untrue. For this cogent reason the law of evidence presumes that the contents of the confession are true and there is also a guarantee of testimonial trustworthiness attaching to the contents of the confession. Vide judgment of the C.A. in Attorney General v. Nallaratnam – CA208/95, HC Colombo 6825/94 – C.A. Minutes dated 12.12.98 where these principles and propositions were examined very incisively and reference was made to Author – Best on the Law of Evidence. Thus there is a guarantee of testimonial trustworthiness and truth and a presumption is operating that the contents of the confession are true. This presumption could be rebutted by the accused by adducing evidence."

The appellant was granted leave to appeal by this Court on 13.11.2000 on the question of law as to whether the Court of Appeal was in error in assuming that there is a presumption that the author of the statement would not make an admission against his interest unless it were true.

The Court of Appeal in the course of its judgment while dealing with the confession set out the General principle that "there is a presumption that a person would not make an admission against his interest unless it were true." It referred to its earlier judgment in CA208/95 – C.A. Minutes of 12.12.98 where it set out this proposition fully as follows: Besides, as convincingly set out by Best on Evidence there is a guarantee of testimonial trustworthiness and truth of its contents in admitting admissions against its maker. It is for the aforesaid reasons that admissions and confessions are rendered relevant and admissible against their maker. Thus there is a presumption and guarantee of testimonial trustworthiness and truth in law in regard to the contents of a confession."

This presumption has been referred to and dealt with in several texts on the law of evidence. Monir on the Law of Evidence (1967 ed.) at page 72 states, "A confession is received in evidence on the presumption that no person will voluntarily make a statement which is against his interest, unless it be true."

Best on the Law of Evidence (12th ed.) at page 158 sets this out as follows: "On the other hand, universal experience testifies that as men consult their own interests and seek their own advantage, whatever they say or admit against their interest or advantage may with tolerable safety be taken to be true as against them at least until the contrary appears."

A consideration which arises when a confession is voluntary is that, "A confession is admissible against the maker because there is a guarantee of credibility in that the statement is made voluntarily against the interest of the maker." – Coomaraswamy on the Law of Evidence at page 395.

It is clear that the guarantee of credibility of this medium of proof is the fact that the statement is made voluntarily against the interest of the person making it. The Court of Appeal has therefore not erred in setting out the presumption that a person would not make an admission against his interests unless it were true.

Learned Counsel for the appellant submitted that the High Court erred in finding the accused guilty on the basis of the contents of the confession as it was in evidence that the relevant authorities made no attempt to ascertain the truth of its contents; that the evidence did not satisfy the criteria of common intention; and, that the confession did not suffice to establish the charge since it contained hearsay evidence in relation to the consequent deaths of 'specified persons'.

In the circumstances he urged us to consider additionally the questions of law as to whether the Court of Appeal has erred in holding that the sole evidence in the nature of a confession revealed an attack on "specified persons" and whether it was sufficient to establish the charge without further independent evidence.

The relevant extract from the confession upon which the charge in the indictment was based is P1G, the original in Sinhala and the sworn translation of it are as follows: "Twenty days after this clash we clashed with the army at Kattuwan under the leadership of Neil Anna. Four of our cadres including Gaddafi died in that clash. I learnt that 5 Army personnel also had died."

Admittedly no investigations were carried out in respect of any of the incidents referred to in the above extract. There was no evidence that during the period between 1st January '93 and 30th April '93 there was an attack on 'specified persons' at Kattuwan or that any member of the armed forces was killed in such an attack.

It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. However, before it can be acted upon, it must satisfy the tests of voluntariness, truth and sufficiency. It must be shown that it was made voluntarily and that it was true and sufficient to constitute a confession.

In Shankaria v State of Rajastan, AIR 1978 SC 1248, it was held that the Court must apply a double test; (1) whether the confession was perfectly voluntary? (2) if so, whether it is true and trustworthy.

Chagla CJ in L.S. Raju and others v The State of Mysore, AIR 1953 Bombay 297, stated: "The confession of an accused is undoubtedly a strong piece of evidence against the accused himself, provided it is voluntary and the Court is satisfied that it is true".

Hegde CJ in Jai Singh and another v The State, AIR 1967 Delhi 14, stressed that "the mere fact that the confession in question appears to have been voluntarily made is not sufficient to rely on the same; the Court must go further and see whether the fact stated therein can be accepted as true".

In Shankaria v State of Rajastan, AIR 1978 SC 1248, it was held that the Court must apply a double test; (1) whether the confession was perfectly voluntary? (2) if so, whether it is true and trustworthy.

The principal question for decision in this appeal is whether a trial Judge may presume that a voluntary confession is true and convict the accused despite the absence of any independent supporting evidence

As the admissibility of the confession was not sought to be challenged before us, it would be necessary to ascertain only the second question as to whether the facts stated therein can be accepted as true and reliable. The period commencing from January '93 to the end of April '93 is stipulated as the date of the committing of the offence. On a scrutiny of the confession it appears that the period of time referred to therein is indefinite and does not tally with the period specified in the charge. The extract from the confession P1B refers to the "latter part of 1992" as the period when the appellant was taken to Columbuthurai for training with 45 others, where they were given training for a period of about "a month." Fifteen days later they were taken to Vimankamam. Five days thereafter they commenced sentry duties and later attacked the army "during the daytime" during which there was an exchange of fire and three persons who were with him had died. It was twenty days thereafter that the attack referred to in the indictment took place at Kattuwan.

It is apparent that the incident at Kattuwan referred to in the indictment took place after the lapse of the following periods of time after the latter part of 1992: "a month," "15 days," "5days" and a further period of yet another "20 days." The period of time given in the confession during which the attack took place is inconsistent with the period specified in the charge. Although the appellant has stated that there was an exchange of fire during the previous attack on the army advancing towards the village (P1F), no details have been given of the "clash under the leadership of Neil Anna" at Kattuwan. There is no mention of the nature of the attack and about the number of persons who participated in it although there is a reference made to four of them who died including Gaddafi. Although it is not relevant to the charge, he has also made no mention of the source from which he learnt that five army personnel had died in that attack.

In regard to judging the reliability of a confession or for that matter any substantial piece of evidence, Sakaria J. in Shankaria v The State of Rajasthan (supra) said that there is no rigid cannon of universal application. He stated further as follows: "Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court could carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

In the absence of any other evidence the prosecution has sought to rely only on the confession of the appellant, which was recorded on 19.8.1995, about seven weeks after his arrest. The confession itself dealt with his activities in the LTTE group three years previously in the year 1992. The confession is vague, indefinite and devoid of material particulars and in the absence of any other evidence, it cannot be relied upon, even if true, as being sufficient and trustworthy to form the basis of a conviction on the charge against him.

The Court of Appeal has erred in affirming the conviction of the appellant based solely upon the contents of the confession. The conviction of the appellant is therefore set aside. The appeal is allowed.

Fernando, J

The principal question for decision in this appeal is whether a trial Judge may presume that a voluntary confession is true and convict the accused despite the absence of any independent supporting evidence. I have had the advantage of seeing the judgment of my brother Ismail, J. with whose reasoning and conclusion I agree. I wish, however, to set out in full my reasons for holding that a presumption of truth does attach to a confession.

The Accused–Appellant–Appellant ('the Appellant') was convicted by the High Court sitting without a jury, of an offence under section 2(1)(a), read with section 2(2)(i), of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as amended (the "PTA"), solely on his confession. Although the voluntariness of that confession had been disputed (on the basis that he did not make or sign that confession, but was induced to place his signature to certain documents by the promise that he would be released), the learned High Court Judge, after inquiry, held that the confession was voluntary. That finding was not challenged on appeal to this Court, and accordingly this appeal must be determined on the basis that the confession was voluntary.

The learned High Court Judge held that prima facie the facts set out in the confession were credible and were not outside the bounds of probability. The Court of Appeal held that according to the general principles of the law of evidence, "there is a presumption that a person would not make an admission against his interests unless it is true;" that "the law of evidence presumes that the contents of the confession are true and there is also a guarantee of testimonial trustworthiness attaching to the contents of the confession;" and that "this presumption could be rebutted by the accused by giving evidence..."

The Appellant sought special leave to appeal to this Court on three questions: "Did the Court of Appeal err in law in holding: –

· That the evidence in the nature of a confession revealed an attack on "specified persons;"

· That the "presumption" operates that the author of a statement would not make an admission against himself unless it is true;

· That the contents of the confession in itself are sufficient to establish the truth of its contents, and that the prosecution was not required to establish such-truth of contents by independent evidence."

This Court granted special leave only on the second question, formulated in slightly different terms: "Whether the Court of Appeal was in error in assuming that there is a presumption that the author of a statement would not make an admission against his interest unless it were true."

At the hearing of this appeal, Mr. Kodagoda, SSC, agreed with Dr. Fernando, Counsel for the Appellant, that three questions usually arise in regard to a confession: whether it was voluntary, in which event only it would be admissible; whether it was **true**; and whether it was sufficient to establish the charges.

Dr. Fernando contended that a trial Judge could not convict on a voluntary confession alone; that he could not be satisfied that such confession was true unless there was other evidence, which confirmed – if not corroborated – some portion of the confession. He cited several Indian decisions:

Shankaria v State of Rajasthan, AIR 1978 SC 1248, Sarwan Singh v State of Punjab, AIR 1957 SC 637, Ram Singh v State of Uttar Pradesh, AIR 1967 SC 152, Jai Singh v The State, AIR 1967 Delhi 14, Raju v State of Mysore, AIR 1953 Bombay 297, as well as Woodroffe & Amir Ali, Evidence 15th ed, pp 840-846, and Fields, Evidence, 11th ed, pp 1436-1440.

Mr. Kodagoda submitted that evidence had to be weighed and not counted; that no particular number of witness was required to prove a particular fact; and that to require evidence in addition to a confession would be contrary to section 134 of the Evidence Ordinance. In support of his contention that a conviction could properly be based on a confession alone, he cited R v Wilegoda, (1957) 60 NLR 246, Karunaratne v The State, (1975) 78 NLR 413, Ratan Gond v State of Bihar, AIR 1959 SC 18, Union of India v Maqsood Ahamed, AIR 1963 Bombay 50, Bahaj Singh v Jai Singh, AIR 1929 Lahore 318 Ajith Prasad v Nandini Satpathi, AIR 1975 Orissa 184, Best on Evidence, 12th ed, p 458, and Wills on Evidence, 3rd ed, p 154,

He further submitted that there were three categories of presumptions: irrebuttable presumptions, which the Court was obliged to draw, and which could not be rebutted; rebuttable presumptions, which the Court was obliged to draw, but which could be rebutted by evidence; and rebuttable presumptions which the Court was entitled, in its discretion, to draw and which if drawn, could be rebutted by evidence. It was his position that a presumption of truthfulness could be drawn upon proof of the fact that a confession was voluntary, and that this was a presumption of the third kind.

In order to determine the evidentiary value of a confession once admitted, and whether there is such a presumption, the relationship between the admissibility of confessions and their truthfulness must be examined.

The rule against hearsay has been clearly and authoritatively laid down in Subramaniam v Public Prosecutor, [1956] 1 WLR 965, 969: "Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made." [emphasis added]

Thus the evidence of the witness who testifies that the accused made a confession to him is hearsay in as much as the object of that evidence is to establish truth of that confession. The principal reason for the exclusion of hearsay evidence is the difficulty of testing the truthfulness of such evidence. One explanation was given in Teper v R, [1952] AC 480, 486:

"...It is not the best evidence, and it is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken by another witness cannot be tested by cross-examination and the light which his demeanour would throw on his testimony is lost."

However, the Evidence Ordinance, exceptionally, admits several types of hearsay evidence, including admissions and confessions – subject to clearly defined conditions. The rationale of these exceptions to the hearsay rule is that the circumstances are such that doubts and uncertainties as to truthfulness have been dispelled by a countervailing assurance or guarantee of truthfulness or trustworthiness- which has been explained thus: "What a party himself admits to be true, may reasonably be presumed to be so" (Slatterie v Pooley, (1840) 6 M & W 664); "..... it is on the guarantee of truth based on a man's conscious statement of a fact, even though it be to his own hindrance', that the whole theory of admissibility depends" (Ward v Pitt & Co [1913] 2 KB 130,138); "The guarantee of credibility [of a confession] is the fact that the statement is made voluntarily against the interest of the person making it ...the voluntary confession of the party in interest is reckoned the best evidence" (Wills on Evidence 3rd ed., pp. 154): "Universal experience testifies that, as men consult their own interests, and seek their own advantage, whatever they say or admit against their interest or advantage may, with tolerable safety, be taken to be true against them, at least until the contrary appears" (Best on Evidence, 12th ed, p 453); "As Erle, J, said in R v Baldry, (1852) 2 Den 430, when a confession is well proved it is the best evidence that can be produced" (Cross on Evidence, 3rd ed, p 447).

Thus the purpose of leading evidence of a confession is to prove the truth of its contents. The reason why evidence of a confession is admitted is because the circumstances attach to it a "guarantee" of truthfulness – which makes it safe to act upon that confession. If, then, it is to prove its truth that the Court admits a voluntary confession, it simply cannot be that immediately upon its admission in evidence a voluntary confession is stripped of its "guarantee" and a burden is cast on the prosecution to establish the truth of the contents of the confession afresh, by other evidence. Such a result would be anomalous and inconsistent: that the "guarantee" of truth and credibility which made it safe to admit a voluntary confession (at times described as " the best evidence" or "the highest and most satisfactory proof of guilt") becomes of no avail no sooner that confession is admitted in evidence.

The impugned findings of the Court of Appeal in this case were thus no more than a paraphrase of what was said in the cases and by the authors cited in this judgment – and many more besides. The High Court was entitled after due consideration, though not bound, to "take as true" what the Appellant had admitted, against his interest, there being no evidence to the contrary.

I must turn now to other decisions. There is an old decision of this Court, which, unfortunately, was neither cited nor discussed in the oral and written submissions. In The King v Sidda (1918) 20 NLR 190, it was held that there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars; that confessions, whether judicial or extra-judicial, are evidence against the person making them, so long as they are not irrelevant under the provisions of sections 24 to 26 of the Evidence Ordinance, and like all other relevant evidence are sufficient on which to base a conviction even if uncorroborated by other proof; and that this was the law in England too (citing Taylor on Evidence, sections 866-868). As far as I am aware that is the only local decision on this point, and while it has been referred to in Wittensleger v Appuhamy, (1937) 39 NLR 93, it has never been overruled or doubted – and unless there are very good reasons I would hesitate to do so now. The two Sri Lankan decisions cited by Mr. Kodagoda

The reason why evidence of a confession is admitted is because the circumstances attach to it a "guarantee" of *truthfulness* – which makes it safe to act upon that confession

are not of much assistance.

The English law, as stated in R v Sullivan (1887) 16 Cox CC 347, is that an extra judicial confession by a person accused of a crime is sufficient in law to sustain a conviction although uncorroborated.

"Now the admissibility and effect of confessions was considered by the twelve judges in the year 1791, in Rex v Lambe, (2 Leach's Crown Case 554)...and their opinion was... 'confessions of guilt made by a prisoner to any persons at any moment of time, and at any place... are, at common law, admissible in evidence, as the highest and most satisfactory proof of guilt, because it is fairly presumed that no man would make such a confession against himself if the facts confessed were not true'...

"A confession is admitted under an exception to the rule against hearsay, and it is therefore admissible as truth of its contents. Such evidence, if unambiguous, is itself sufficient to support a conviction"

the words I have read represent the opinion of the entire English bench. They contain no qualification of the facts, which constitute the corpus delicti, or require independent evidence of such facts as a condition precedent to the admissibility of the confession, and no distinction is drawn between the admissibility and the sufficiency in law of the confessions. Had the judges deemed a confession insufficient in law to maintain a conviction, they could hardly have described it as 'the highest and most satisfactory proof'" [emphasis added]

Sullivan continues to be cited as authority in the textbooks for the propositions that: "A confession is admitted under an exception to the rule against hearsay, and it is therefore admissible as truth of its contents. Such evidence, if unambiguous, is itself sufficient to support a conviction" (Phipson on Evidence, 15th ed, para 31-02); and "[Confessions] may constitute the sole, though sufficient, evidence in support of a civil judgment, or even a conviction for crime" (Cross & Tapper on Evidence, 8th ed., p 643) [emphasis added].

The Royal Commission on Criminal Justice (1993, Cmd 2263) did not recommend that supporting evidence was essential, but only that there should be a judicial warning to the jury that great care is needed before convicting on the basis of a confession alone (Commonwealth Law Bulletin, 1993, Volume 19 page 1023).

Another decision not cited to us was McKay v The King, [1935] 54 CLR 1 where the High Court of Australia, citing Sullivan, rejected the contention that there must always be either independent evidence, besides the confession, that the acts charged were in fact done, or other evidence tending to show that the confession was probably true.

The Commonwealth Law Bulletin refers to two later Australian decisions. In Carr v The Queen, [1988] 165 CLR 314, it was re-iterated that there was no rule of practice that in every case where the sole or substantial evidence against the accused was disputed, unsigned and uncorroborated confession the judge must direct the jury that it would be dangerous for them to act upon it; however, in the circumstances of that case, the majority held that the jury had not been sufficiently warned about the use of the confession. In McKinney v The Queen, [1991] 171 CLR 468, the majority in effect changed the law by laying down a rule of practice to be applicable in the future: that whenever police evidence of a confession allegedly made by an accused is disputed and its making is not reliably corroborated, the jury should be warned that it may be dangerous to act upon it.

However, neither of those decisions diluted or doubted the principle that a conviction upon an uncorroborated confession is lawful and proper. As to whether it is mandatory to give the jury a warning, there is a sharp difference of opinion – which, however, is irrelevant to the case of a trial without a jury. I must add that in McKinney there were several items of evidence, which cast doubt on whether a confession had in fact been made, and cried out for a warning.

I must refer to three English decision discussed by my brother Wigneswaran, J. As stated by him, R v Warickshall, (1783) 1 Leach 263, decided only that the contents of an inadmissible confession cannot be used to prove facts, even though such facts were discovered in consequence thereof: that decision has little relevance to the probative value of an admissible voluntary confession. Dillon v R. [1982] AC 484, held that the presumption of the regularity of official acts does not extend to an inference that a person in police custody had been lawfully taken into custody: the limits of that presumption have no bearing on the extent of the presumption of truthfulness. Finally S. v. S., [1972] AC 24, dealt with the evidentiary value of the presumption of legitimacy where there was evidence (even though weak) to the contrary; it was held that where the evidence was evenly balanced the presumption would prevail: a fortiori, where as in this case there is no evidence, the presumption will operate.

There remain for consideration the Indian decisions. According to Woodroffe and Amir Ali, "a person may be convicted on his own uncorroborated confession" (14th ed., pp 591; 15th ed., pp 723), and – "the law does not require that the confession of an accused person should be corroborated before it is acted upon' (14th ed., pp 722, 15th ed, p 867). However, while in the 14th edition (p 724) it was stated that "usually and as a matter of caution courts insist that there should be some material corroboration to an extra-judicial confession made by the accused which connects the accused with the crime", in the 15th edition (p 869) it is stated that "there is neither any rule of law nor of prudence that extra-judicial confession cannot be relied on unless corroborated by some other credible evidence" (citing U.P. v Anthony. AIR 1985SC 48).

In Shankaria v State of Rajasthan, AIR 1978 SC 1248, it was held that if a confession is voluntary, "the Court must, before acting upon the confession, reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method, which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the [test of truth]." In that case there was other evidence, which supported the confession. Ram Singh v State of U.P., AIR 1967 SC 152, and Jai Singh v The

State, Air 1967 Delhi 14, were similar.

In Ratan Gond v State of Bihar, AIR 1959 SC 18, 22, it was observed that "usually and as a matter of caution, courts require some material corroboration to such a confessional statement, corroboration which connects the accused person with the crime in question, and the real question which falls for decision in the present case is if the circumstances proved against the appellant afford sufficient corroboration to the confessional statement of the appellant."

In Sarwan Singh v State of Punjab, AIR 1957 SC 637, 643, it was held that "in law it would be open to the Court to convict [an accused] on [his] confession though he has retracted [it] at a later stage. Nevertheless usually Courts' require some corroboration to the confessional statement before convicting an accused person on such statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case." The Supreme Court found that the confession was not voluntary, and that there was other evidence (including medical evidence), which showed that material points in the confession were not true. It was in that context that the Court observed, "Indeed after having found that the confession was voluntary it appears to have been assumed by the learned Judges that the confession was true, and that, in our opinion, is another infirmity in the conclusion reached by the High Court."

In all those cases, besides the confession, there was other evidence – which, naturally, could not be ignored. Observations as to whether there could have been a conviction upon a confession alone were perhaps no more than obiter.

There are several other cases where the Indian Supreme Court ruled that the law did not imperatively require corroboration: "if corroboration is required, it is only by way of abundant caution; if the Court believes the witnesses before whom the confession is made, and it is satisfied that the confession was voluntary, then in such case a conviction can be founded on such evidence alone" (Maghar Singh v State of Punjab, AIR 1975 SC 1320, 1323); the "law does not require that the evidence of an extra-judicial confession should in all cases be corroborated" (Piara Singh v State of Punjab, AIR 1977 SC 2274, 2278); although extra-judicial confessions have been considered to be weak evidence, there is no rule of law or prudence that they cannot be acted upon unless corroborated (State of U.P. v Anthony, AIR 1985 SC 48, 57).

Raju v State of Mysore, AIR 1953 Bombay 297, is not relevant as it dealt with the need for corroboration of a confession when relied on against a co-accused.

In my view the Indian decisions support the position that, as a matter of law, where there is no evidence besides a voluntary confession (even though it be extra-judicial), the Court may convict the accused on that confession alone if after scrutiny of the confession the Court is satisfied, beyond reasonable doubt, that it is true. I therefore do not agree with my brother Wigneswaran, J, that a confession (whether under the PTA or any other statute) is not solely sufficient to convict an accused, and that there must be corroborative evidence to prove the events mentioned therein. Where there is other evidence the Court cannot convict on the confession alone: it must examine the confession in the light of the other evidence, and may convict only if satisfied, beyond reasonable doubt, as to the truth of the confession.

I therefore see no reason whatever to disagree with The King v Sidda. I must add that, in deciding whether or not to depart from an 80-year-old precedent on a question likely to have arisen in many other jurisdictions, particularly in the Commonwealth, it would have been of great assistance to know the current trend of judicial opinion in those jurisdictions. However, the facilities for quick and comprehensive access to judicial decisions elsewhere are not available to me.

I hold that upon proof that a confession is voluntary, there is a discretionary rebuttable presumption of truthfulness, and accordingly the question on which special leave was granted must be answered in the negative.

The learned High Court Judge held that the facts set out in the confession were credible and were not outside the bounds of probability. However, she failed in one respect to consider whether the facts set out in the confession were sufficient to establish the charge beyond reasonable doubt.

The confession contain details of the activities of the Appellant after he joined the LTTE in March 1992, and mentions an attack on the army at Kattuwan. Dr. Fernando submitted that although the Appellant's confession referred to his active participation in attacks on the army near Vimankamam and at Kattuwan, there was no independent proof that such attacks did actually take place, and that such attacks were on army personnel (and not merely on persons dressed in army uniforms). For the reasons already stated, the learned High Court Judge was not obliged to require independent proof of the facts admitted in the confession that there was an attack at Kattuwan, and that the attack was on army personnel.

The Court of Appeal did not err in law in holding that the confession revealed an attack on "specified persons," and the refusal of special leave to appeal on that question was proper.

However, the learned High Court Judge was obliged to consider whether the confession was sufficient to establish beyond reasonable doubt that the attack at Kattuwan took place during the period covered by the charge, viz. between 1st January and 30th April 1993. The confession does not contain an unambiguous admission on that point, and, as my brother Ismail, J, has shown, an analysis of the time periods mentioned in the confession makes it likely that any attack was before that period. I therefore agree with Ismail, J, that the conviction cannot stand, and that the appeal must be allowed.

In conclusion, I must state that my own experience compels me to disagree with the general observations of my brother Wigneswaran, J, in regard to the approach to the grant of special leave to appeal. As for the question of the voluntariness of the confession, leave to appeal was neither sought nor granted, and that question was not argued in appeal. I do not think that we should now attempt either to review that evidence on our own or to lay down general principles governing the determination of the voluntariness of a confession.

(To be continued)

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Army and Muslims ... *Contd. from page 9*

any meaningful steps to identify the perpetrators or to hold an inquiry into the complaints.

If the army was acting under provisions of the Emergency Regulations, they could have arrested only those who had committed an offence under ER and not innocent people. And at any rate they should not have been summarily executed.

The distressing events at the Veeramunai kovil made the refugees very depressed. Eight days after the first raid, on the 29 June, the army made a similar raid on the temple at Veeramunai. Having surrounded the temple and school they ordered the men to line up at the temple courtyard. The women wept and wailed; fell at the feet at the feet of the soldiers pleading the LTTE had not infiltrated the refugee camp. But the army, regardless of their entreaties carried away 60 men in a CTB bus to Kondawattuwan army camp.

The protagonists of the crimes against the Tamils gloated over the powerlessness of the peoples' representatives to protect the unfortunate community

The day following the second raid, the late General Ranjan Wijeratne made another hurried trip to the Amparai District, this time to Sammanthurai, accompanied by the service chiefs and police. The only Tamil member of parliament, who was representing the Tamil constituency, whom the people of Veeramunai supported at the parliamentary elections held the previous year was also present. About 125 women whose children, spouses were among the disappeared attempted to meet the deputy minister to complain about the raids on their camp, abduction of their children, and the failure of the army to follow established procedures of arrest and to know about the fate of their loved ones taken into custody from refugee camp.

The women could not meet the deputy minister without the intervention of the MP on their behalf. The women approached the Tamil MP but were very disappointed when the MP was reluctant to take up their cause. Thus a good opportunity went by default. The protagonists of the crimes against the Tamils gloated over the powerlessness of the peoples' representatives to protect the unfortunate community.

Everyone felt depressed, frustrated and helpless. Some families from Malwattai, New Town and Veeramunai thought their proximity to Sammanthurai village and Kondawatuwan army camp was a threat to their security and that they could save their children from arrest if they moved to Karativu. They left Veeramunai and found accommodation at Karativu Maha Vidyalaya refugee camp. On the 4 July, two days after they were relocated at Karativu, the armed forces raided the refugee camp and carried away 11 youths. They were never seen again. The mothers who thought that they could save their children by change of location from Veeramunai to Kraitivu found to their bitter dismay that Tamils were not safe anywhere. They returned to Veeramunai after losing 11 young men.

The army from Kondawattuwan headquarters made a fourth raid on Veeramunai camp in the much-dreaded 'white van' without number plates. It was on a warm day at noon when four persons who were resting under the shade of a tree near the camp.

The army raided the Veeramunai camp once again on the 10 July and took away another 11 youths as the women wailed and wept. None of the persons were seen again.

Eight women left Veeramunai refugee camp on the 16 July to inspect the homes they had abandoned a month ago consequent to the army entering the area. The women never returned, but there was evidence to show that the army at Malwattai seized them.

On the 26 July the army raided the Veeramunai kovil once again and carried away several youths. Once again the government failed to account for all those whom the army took into its custody.

Records maintained at HHR reveal carried away 32 teenagers, of who 23 were school going and nine school dropouts on that particular day. Nothing was ever heard of them.

Eight highly qualified schoolteachers from Veeramunai also disappeared after being taken into custody by the Sri Lanka army. The army picked them up on the road while they were journeying with their families, including little children, according to statements recorded. No action was taken on the complaints made and the police too could be considered as aiding and betting the enforced disappearances.

Speaking about disappearances of school children, one is reminded of a similar occurrence at Embilipitiya in 1989 during the height of the JVP insurrection of the late 1980s. Political leaders, the press, human rights activists and even members of parliament brought intense pressure to bear on the government on the disappearance of 32 school children and those responsible for the abduction were brought before the law. However, when the disappearance of schoolchildren at Veeramunai was reported together with eight teachers, the state took no action, nor did civil society. Apart from discrimination, it goes to prove that an arm of the state, which should provide safety and security to the citizens, engaged in acts of genocide.

The second raid made with a white van on Veeramunai camp was on 22 July, where the police and home guards allegedly carried away Jayenthiran (20) N. Wigneswaran (36) and N. Kopalan, father of five.

The raids forced inmates of the refugee camp to be confined like prisoners for the sake of security. They could not go out and any person who ventured out paid the price with death. Several more disappeared (presumably killed) in July 1990. On 26 July, Arumugam Kandasamy (23) disappeared. On 29 July Sinnathurai Kaalikutty (47) and Masilamany Dharmalingam (43) who went to inspect their houses disappeared. Kaathamuthu Shanmuganathan (41) who visited his home was found dead inside with gunshot injuries. Maruthanis Selvarasa (42), a farmer, Thangarasa Kaneshan (22), a farmer, Arumugam Theiveindran (34), a carpenter and a father of three and Alagiah Siva (34), a farmer, disappeared on 8 August after the army took them into custody.

On the 11 August 18 persons, including four women and one child went along Chavalakade road to Navithanvelly to collect food. The soldiers, police and home guards seized them, while they were going through Chavalakade. The 18 were attacked with knives, dismembered and burnt inside the temple at Chavalakade. The home guards are accused of desecrating the place of worship.

On the 12 August, around 10 o'clock in the forenoon, an armed gang, carrying guns, knives, swords and crowbars broke into the refugee camps in the kovil and school and began attacking the inmates. One group opened fire at a section of the camp's inmates that included women and children, while another group attacked other refugees with knives and swords. The refugees told me they

never anticipated such brutality from the Muslims of Sammanthurai. When victims were felled by gun and sword, the injured and the others raised cries rather than fight back. Despite the sounds of gunshots and cries of the hapless, the police did not respond.

Females A. Sinnapillai (50), A. Valliammah (52) A. Shubashini (17), a GCE student; males U. Nadarajah (5), K. Vellayan (7), both children, S. Manickam (35), R. Mylvaganam (50) K. Sivalingam (48) and Tambimuthu Sinthathurai (52), a VIP of the area who was also the chief trustee of the temple were among those killed on that fateful day.

The refugees allege (and there is strong evidence to corroborate this) that the law enforcement authorities and other government officers were biased favourably towards the attackers and did not respond to the cries of alarm from the refugees. It took nearly half to one hour for the STF to arrive at the scene of the tragedy. The witnesses named the persons who attacked the refugees killing 10 and injuring several. However the police have failed to take appropriate action up to now.

The injured were rushed to the Sammanthurai hospital but the hospital refused to admit them on the grounds the injured were Tamils and the perpetrators Muslims. When Sammanthurai hospital refused to admit the injured, despite imminent danger to their lives, a risk was taken by the relatives of the wounded to have the victims admitted to the Amparai hospital. Of the seven admitted to that hospital, three injured persons disappeared from the hospital wards, apparently with the connivance of the armed forces. When stories surfaced that the injured had been abducted and burnt alive in the Amparai cemetery, the remaining four sensing the danger to their lives fled from the hospital stealthily at night and reached Veeramunai. The injured who disappeared from the Amparai hospital include Kandiah Nadarajah of Malwattai, and Vallipuram Kandasamy of Veeramunai. The Department of Health failed to inquire into the involuntary disappearances of the three injured persons.

The dead were buried and the people of Veeramunai, Malwattai, Mallikaitivu, New Town, Ganapathipuram, Walathapitty, and Sammanthurai were taken to Tambiluvil in STF trucks and a refugee camp was established for the displaced at the Tambiluvil Madhya Maha Vidiyalayam. The STF based at Tirukovil provided food and medicine to the affected people until the government issued them dry-rations.

Tamils of Veeramunai were expelled from their homes. They lost their houses, their possessions, their livelihood, their children and their breadwinners. In the course of expelling the Tamils from Veeramunai, 600 houses were destroyed; an estimated 1352 houses were destroyed in the neighbouring villages. The people of Veeramunai were thus forced to leave the village where their forefathers founded a kingdom and a capital 3000 years before.

In his 'The theory of Force' spelt out in 1080, Pope Gregory VII describes, "The subjugation of the weaker by the stronger through wars... brings power to the triumphant. Kings and Lords, ignorant of God, by arrogance, rapine, perfidy, slaughter, by every crime with every devil ... have contrived to rule over their fellowmen."

By arrogance, rapine, perfidy and slaughter did government forces and the Muslims of the area contrive to impose hegemony over their Tamil brethren in Veeramunai, while slowly and systematically destroying the livelihoods and homes of those unfortunate people, which are the bases of civilised community, for a second time in the space of 40 years.

A woman who lost her son told me, "We left our home in Malwattai to save our skins. But the hope of our life is lost, our home is lost and our goods looted by the army. We have actually lost everything."

The injured were rushed to the Sammanthurai hospital but the hospital refused to admit them on the grounds the injured were Tamils and the perpetrators Muslims

Disappearances ... *Contd. from page 16*

were to return later, a host of new problems will be created. Hence women left behind thus are confused.

Further, if after suspected disappearance of a man his wife were to marry again for her own and her children's security and maintenance, the amalgamation of already large families create new problems. If a mother of six marries a married man with two children, there will have to be sufficient income to feed eight mouths.

Families without breadwinners, children craving to see their fathers, anxious parents wish to see their children, young wives to see their husbands are all united in suffering. They go to various army camps (Gnanams, Palali, Kankesanthurai etc) participate in demonstrations or send memoranda to various authorities.

Some parents sell their land, houses and jewellery in order to raise money for the release of their loved ones. But even after that there is no solution and their efforts are not rewarded. The Association for the Welfare of the Disappeared and the Human Rights Commission have taken various steps in this regard. They have contacted authorities in the south, met senior military officers of Jaffna and sent memoranda to national as well as international organisations. There were two hunger strikes: one on 9 September in front of the Kandasamy temple, Jaffna and other on 21 September in front of the Jaffna Cathedral. But all to no avail. People are wondering as to what they should do next.

The government, subject to pressure from the international community and realising it had an obligation to answer for the disappearances, appointed a Commission consisting of high ranking army officers to inquire into this matter. The Commission then distributed printed questionnaires with set questions. Only these questions were answered. This commission also did not address the sufferings of the widows or those of the parents who had lost their children. The more affluent sent letters to former minister Douglas Devananda and to the president of the republic, while others even met the President personally to lodge complaints, but all to no avail. They had not received any response.

In the past we did not know the following details: who arrested the disappeared person? when? where? who was in charge of the arrests? The Human Rights Commission now has to be informed of any arrests and the arresting authority must give a receipt acknowledging the arrest to the next of kin. From this receipt we can obtain the details of the arrest. Hence if a person is killed after the arrest the arresting authority will be held responsible. This procedure has reduced the number of deaths in custody. Similarly when the Human Rights coordinators take food and letters to the detainees when they visit police lockups to see to the welfare of prisoners and offer advice or information to the family members of detainees. This has given consolation to the family members to some extent.