



# BEYOND THE WALL

September - December 2002

A black and white photograph of several hands raised in the air, emerging from a body of water. The hands are in various positions, some open, some with fingers spread, symbolizing protest, solidarity, or a call for justice.

**Home For Human Rights**  
**Quarterly Journal on Human Rights News and Views**

# BEYOND THE WALL

## Quarterly Journal

September – December 2002 Vol. I No. 2

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***

**Editorial Board:**

*I. F. Xavier*

*J. S. Tissainayagam B. N. Thamboo*

*Sherine Xavier*

### Contents

Do not forget the past in building the futur.....	Page 3
Enforced disappearances in the Amparai District.....	Page 4
Estate Tamils: unending exploitation .....	Page 7
HRC crippled without powers of enforcement .....	Page 9
Displacement from Valikamam North – a crime against humanity.....	Page 13
Eighty-one bodies in wake of IPKF assault on Jaffna Hospital .....	page 17
Sathasivam Sanjeevan speaks from the grave .....	Page 18
“Barbaric, savage, inhuman” .....	Page 20
Impact of armed conflict on children in Sri Lanka.....	Page 26

***Home for Human Rights,***

*14, Pentreve Gardens,  
Colombo 3, Sri Lanka*

## EDITORIAL

# Do not forget the past in building the future

Contemporary history is often a painful reminder of people, leaders and states, like the Bourbons of old, failing to learn from the past. This disregard or ignorance of historical events and their interpretation has repeatedly triggered wars, brutality and crimes against humanity. Those who fought to create the United Nations strived hard to give people universally acceptable principles and standards to avoid the scourge of war, armed conflict, civil strife and insurgencies. This desire is echoed in the preamble of the United Nations charter:

*...to save succeeding generations from the scourge of war....and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom... And to practice tolerance and live together in peace, with one another as good neighbors...*

This is repeated in the Universal Declaration of Human Rights and other United Nations instruments:

*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

*Whereas disregard and contempt for Human Rights have resulted in barbarous acts which have outraged the conscience of mankind...*

In Sri Lanka the last two decades saw people becoming victims of extra-judicial killings, massacres, ethnic cleansing, systematic torture and crimes against humanity, which amount to genocide.

Now that there is a glimpse of peace with a ceasefire in force, we often hear from many quarters the words, "Let us forget the past; let's bury the events and episodes of the past; let us live and turn our eyes to the future."

The truth is that this simplistic proposition comes from the mouths of those who want to hide something. They do not appreciate the fruits of peace as a good in itself, but as a smokescreen, which will blur or conceal

their crimes and misdemeanors. Those who speak of 'peace' without strengthening human rights buttress this position. An acceptable bill of rights can only evolve if the past violation of human rights in a state are studied and the factors that caused them – human, structural and institutional – are remedied by telling the truth out in the open.

Unless the truth is told there will be no reconciliation. The truth has to be the foundation of reconciliation. The victims say, the truth has to be brought out, criminals must be held responsible and their accomplices must be forced to confess their guilt and show repentance. The Truth Commissions in South Africa was one instance where reconciliation was furthered by encouraging public repentance, which was awarded as punishment for past sins.

Let us start with one instance. Let an impartial commission be instituted to investigate the disappearance in Jaffna in 1995 and 1996. This will shed light on the alleged Chemmani mass burials. The burials came to public attention only through the confessions of persons convicted in the rape and murder of Krishanthi Kumaraswamy. But they were never pursued with the intention of taking the investigation wherever it led. Instead, the state contrived every means of concealing the truth from the public, even going to the point of using the Human Rights Commission to appoint a sub-committee to help it unearth the events that led to the disappearances in Jaffna in 1995-1996.

But this is not good enough. A full-fledged, impartial investigation by a competent commission has to be held with an acceptable international human rights institution present during the fact-finding as well as in the report- preparing stages. Unless the horrendous past such as the Jaffna disappearances are probed this phenomenon will recur, which augurs a bleak future.

Or in the alternative, let us build a monument at the entrance to Jaffna town – at Chemmani – inscribing the names and particulars of those who disappeared and also the names of those in the chain of command in the army and police who were in charge of security in Jaffna during this period.

# Enforced disappearances in the Amparai District

By K. M. Tharmalingam

**T**his is a brief description on how a decision taken by the government in June 1990 to give full freedom of action to the security forces to hunt down the LTTE, resulted in the disappearance and deaths of Tamils in the Amparai District.

Jaffna. I followed them. They were put in a bus and the soldiers told me that I need not have to worry as the boys would be released within three days from the Karaitivu army camp.

“Our attempts to communicate with the children, or, with the officer-in-charge of the camp were unsuccessful. We could not enter the camp. Since the children did not return, we decided to make another attempt to meet the OIC and if possible to get the children through the payment of a bribe to the soldiers. The mothers and spouses of the arrested persons decided to go to Karaitivu army camp on the 11 July.

“Fourteen days after the abduction, on 11 July, around 10.15 a.m., I left home with about one hundred people including my neighbour Shanmuganathan and his wife Pushparanee. They carried gold jewellery and cash to be exchanged for the release of the boys. As there were no buses, we walked to Kalmunai and reached the Kalmunai junction near Wesley College around 10.30 a.m. Just then, a contingent of soldiers from the Sri Lanka Army of about fifty arrived there in vehicles. They enquired from us as to who we were and what was our mission.

“We explained to the commander of the contingent who we were and the purpose of our visit. The soldiers examined our national identity cards and (the commander) spoke to someone over his walkie-talkie. Thereafter, the men were separated from the women. As the soldiers were engaged with us, another group of men and women from the Muslim community arrived there. The men were dressed in sarongs and women had their heads covered. The commander of the contingent enquired from them whether they were Tamils. When they answered that they were Muslims going to the market, they were asked to wait separately.

“The Tamil women were asked to squat on the edge of the road facing Murugan Stores which remained closed. The men were asked to form into groups of six and wait. The Muslims were later asked to proceed.

“The soldiers communicated again over their walkie-talkies and asked the women to walk in one direction to be transported to Karaitivu army camp. The men were asked to walk towards the Police Station Road and remain behind the premises of the Colombo Stores. The soldiers led us into the backyard of Colombo Stores and asked us to enter six by six giving enough time to record information. I was the 18<sup>th</sup> person, the last in the third group. As I approached the building into which 17 others had entered, I saw a soldier hiding behind the door that led inside. When my turn came, a soldier standing near the door directed me to enter the building. I stepped cautiously into the building through the

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The philosopher John Locke held that the purpose of government is the preservation of the lives, liberties and estates of people. This article examines, whether, in the light of this, the actions of the Sri Lanka government in the Amparai District could be said to have preserved the ‘lives, liberties and estates’ of the Tamil people who are citizens of this country.

Only when a government protects the rights and privileges of its subjects, the citizens, could they enjoy the right to personal security, and freedom from arbitrariness. It is only then citizens enjoy a peaceful life uninterrupted by illegal imprisonment or restraint. It is the right to personal safety that ensures a person freedom from arbitrary arrest, imprisonment, or injury.

From the recorded statements made by affected persons it is evident that those upon whom the power of search and arrest (without warrant) was delegated, were those who committed large scale violation of human rights. And, either out of their ignorance of or indifference to human rights law, humanitarian law, the law of war and the norms of civilized life, they engaged in murder, arson and robbery that caused the disappearances of several hundreds of men, women and children. Those who managed to reach home after detention admitted that they suffered torture and inhuman, degrading treatment from their captors, who were members of the armed forces.

Testimony of witness Marcandu Shanmugam (50 years in 1990): “I live at Pandiruppu, Kalmunai. The *kola kottiya* (meaning the security forces in mufti) abducted nearly 500 men from my village during a series of raids in June–July 1990.

“On 27 June, 1990 at 7.00 a.m. when people were getting ready to go to work and the children to school, the younger of my two sons, Manoranjan, (16), was preparing to go to school too.

“Soldiers walked into my home, looked at everyone and ordered my younger son to join them. I, together with the other members of the family, pleaded with them to spare my son. Our appeals were of no avail. My son was abducted and I did not see him again.

“The soldiers also took away three young men from the house of my neighbour Mr. Shanmuganathan, - a medical laboratory technician, attached to the Batticaloa Teaching Hospital. Of the three, one was his only son, the other was his sister’s son from Jaffna, and another his cousin, also from

entrance where the soldier was hiding.

"With instinctive caution, I stepped inside. The soldier hiding behind the door hurled a sword aimed at my neck. I ducked but the sword struck my neck. I fell instantly, face downwards and pretended to be dead. Blood gushed out of my injury and the soldier took it for granted that he had killed me.

"I was in terrible pain and I found persons who entered the building before me dead with their necks slashed. Men who came after me suffered the same fate and those who did not die with one cut were beaten to death. When all were done to death, the soldiers brought fuel in plastic cans, poured it over the dead bodies and lit a fire. Smoke engulfed the building and the soldiers could not stay. My left leg got burnt and I waited until all the noise was over.

"When all soldiers left, I crawled out of the building into the premises of a Catholic Church from where I entered the Bank of Ceylon premises which was also deserted. I managed to reach Fatima College, from where I obtained assistance to reach Kallar. I stayed at Kallar for several months, getting treatment for the injuries from the sword and the fire. Men and women – a little less than one hundred – who went with me to Kalmunai in the hope of securing the release of their dear ones had all disappeared with bundles of cash and jewellery they carried with them to obtain the release of the arrested persons. Whether the women suffered death, or, what happened to them remains an unsolved mystery and I heard stray dogs starved of food were seen carrying partly-burnt organs of the human body, mostly parts of limbs."

This massacre of the innocent occurred at Kalmunai 10 days after the *Sunday Times* published a photograph of a soldier standing in front of a Buddhist temple with a caption reading: "Defender of the faith." But, in the Amparai District the soldiers never displayed any faith. Neither did they show compassion nor a sense of duty to protect the people.

Of the many thousands who disappeared, another reported case is that of a 53-year-old schoolteacher Kumaraswamy Kanapathipillai, an accomplished writer, who wrote poetry under the pseudonym 'Pandooriyan.'

Pandooriyan had two sons studying at the Maruthamunai Al-Manar Vidyalaya, in the GCE (A/L) form. They were arrested in a search operation and the father was taken away on 3 July 1990 around 10.30 p.m. rudely awoken from his sleep, after his priceless possession of books were consigned to the fire. Father and sons did not return home – they disappeared. Pandooriyan's wife suffered a nervous breakdown.

The reported arrest and disappearance of Kanapathipillai Arunachalam, (46), together with his three sons, Arunachalam Prabhakaran, (23), Arunachalam Sudhakaran, (20), and Arunachalam Paskaran (16) – the last two being students – on the 21 June, 1990 from their home and the plunder of a large stock of goods held in Arunachalam's wholesale depot at No. 66, R K M School Road, Kalmunai makes it crystal clear the soldiers who went to Kalmunai not only took orders from their commanders, but also had a vested interest to liquidate Tamils engaged in trade, business,

industry and education.

Arunachalam's disappearance together with his children was the result of ill will and envy due to his success as a wholesaler dealer. Although the arrests were reported to the brigadier at Kondawattuwan army camp, the police, Member of Parliament A. R. Mansoor and to Chandrika Kumaratunga in 1994 when she took steps after assuming office as President to set up commissions of inquiry on disappearances, nothing happened. This is another example of the government failing to preserve lives, liberties and the estates of its citizens in the Amparai District.

Narayanapillai Nagarajah was a leading educationist at Kalmunai. He was the principal of a school. His two sons, Thiruchenthooan and Thiruchandiran were students at Carmel Fatima, an important school in the area, who were abducted by the armed forces. The younger one - Thiruchandiran - was abducted around noon on 21 June 1990 from home, while the elder was abducted when on his way to the temple. Their mother died of grief over the disappearance of the two children.

Several persons were picked up from their homes, some while at lunch and many while preparing to eat. Some were taken into custody while on their way to schools or places of work. And, among those arrested were public servants – teachers, clerks, a postmaster, *grama niladharis*, private medical practitioners, technicians, fishermen, farmers, dairymen, washer-men and school children. Most of the disappearances in Amparai went unreported.

*The Island* on 1 November 1990 carried a front-page account of headless corpses washed ashore on the beaches in Thirukovil and Akkaraipattu. In one incident, 23 farmers harvesting paddy at Neethai in Akkaraipattu on 23 August 1990 disappeared. Two other farmers, Kanapathipillai Thavarajah alias Sundaramoorthy (28) and Thamotherampillai Thangarajah (34) were taken into custody at Sagamam on 16 May 1991. Both disappeared.

Persons while travelling – in buses, on motorcycles and bicycles – suffered arrest and disappeared. On one instance M. Kathiravelupillai, a *grama niladhari* who was to retire in December 1990 on reaching his 60<sup>th</sup> year, disappeared with his aged wife, his nieces and nephews and grandchildren as young as two years. They were travelling to Colombo in a CTB bus, on the 26 November 1990. The security forces manning the Malwattai – Walathapitty checkpoint arrested them. The driver of the bus who reported the arrest of the passengers disappeared too from the Amparai bus-stand later.

Hundreds of fisherman who were fishing in the lagoons disappeared, as did shepherds who went to tend their cattle in the pastures.

Sorrikalmunai in the Sammanthurai electorate is an entirely Christian village of about 3000 Catholics. Rev. Fr. Selvarajah was a tower of strength to the communities around the several villages in the area. Not only non-Christian Tamils even Muslims benefited from his devoted service. In July 1990, Rev. Fr. Selvarajah disappeared while travelling on a motorcycle.

When the people realized that the citizens could no longer enjoy the right of personal security and freedom from arbitrary arrests and disappearances, they took refuge in the Church. The armed forces with home guards even raided the church at

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midnight and carried away hundreds of men. Even women were not spared but returned with torn clothes as a result of molestation.

There is a heart-rending story of A. Kanapathipillai of Tiruvalluwar Road, Pandiruppu, who had three sons, Yogarajah (28), Kiruparatnam (26) and Jeyakumar (23). They were all handloom weavers working for a Muslim entrepreneur. They were arrested while going for work on 27 June 1990 and disappeared. Both Kanapathipillai and his wife died of grief.

Veeramunai was a Tamil village that suffered from inhuman and brutal attacks when hundreds of men, women and children disappeared. One hundred and fifty-seven persons were reported lost.

Pottuvil was another Tamil village where hundreds were hunted down. In Lahugala Farm a traditional Tamil village where 30 Tamil families resided, the armed forces aided by Sinhala youth took into custody 16 males including government servants on 16 June 1990; they never returned. A complaint was made to the police, but nothing ever came of it.

These human rights violations took place as the army advanced towards Thirukovil through Pandiruppu, Kalmunai, Karativu, Malwattai, Chavalakade, Veeramunai and Sorikalmunai causing the Tamil civilians to flee these villages. They arrived at Akkaraipattu with stories of military atrocities against an unarmed population who were unconnected to any form of violence. They also said the militants had packed and gone from camps in places like Thirukovil long before the army began its march.

Hearing this, Tamils in Akkaraipattu decided to reach places of safety. Some went into the jungles, while others went to Kolavil, Panamkadu, and the middle-class in the employment of the government went to Alayadivembu where the Thirunavukkarasu Vidyalyayam was made a refugee camp. So were the schools at Kolavil and Panamkadu. The families living around the Roman Catholic church called the Church of Our Lady of Good Health opted to occupy the church under the care of Rev. Fr. Noel, whom even the non-Christians held in great reverence.

Relationships between the Tamils and the Muslims in Akkaraipattu had always been very cordial until the Tamil National Army (TNA) constituting primarily of EPRLF cadres who were trained by the IPKF began to operate in the area. The relationship became strained and the SLA opted to live among the Muslims. Their plan was to use the Muslims against the Tamils. They succeeded.

The Tamils in the refugee camps were easy targets and on 24 June 1990 an army contingent entered the refugees camp established in the Catholic Church in Akkaraipattu and arrested all the males including children below 18 years who were students. Parish Priest Rev. Fr. Noel spoke to the commander of the contingent about the students under his care who were arrested, but was severely reprimanded for interfering in military duty.

The soldiers went as far as warning him of the consequences he would face if he dared to speak on behalf of anyone taken into custody. Among those students taken away by the army from the church was a very young boy, Kanthakumar Kanesharatnam, (17), studying in the GCE (A/L) forms described by teachers as a pleasant and bright student. Thirteen

students were picked up from the church and none were found again. Parents later became depressed when all their efforts to trace the children proved futile.

On the morning of 25 June around 6.00 a.m. the army moved into Alayadivembu Vidyalyayam refugee camp where the middle-class families were living. The army took into custody several prominent individuals including Narayanan Sathyanathan, a popular high school teacher of chemistry and physics, Velupillai Theivanayagam, a *grama niladhari* in the Division, K. Perinparajah, the postmaster and S. Perinparajah, an accountant from the firm A&I Limited. Forty-three persons were marched to the army camp in the Muslim quarter of Akkaraipattu. They were later seen being taken in a bus bound to the Kondawattuwan army headquarters, Amparai. Thereafter, 23 more persons were picked up from Kolavil, and 26 from homes in Akkaraipattu. They were never heard of again.

The families from Chenaikudiruppu decided to escape army arrest and went to one of the refugee camps at Kallar. Thirty-five persons were rounded up and taken away from that camp and none returned. The 35 included students.

Thus the army moved from one village to another killing and systematically destroying property. Tamils found on the highways, in their homes, in the temples, in the bazaar or refugee camps were picked up and led through the streets to the army camp. Persons taken into custody were detained there in the most humiliating conditions. Their relatives and friends were not permitted to visit the arrested.

Many of these places of detention were unauthorized and the military and the police had no right to hold detainees there. However, with the draconian Prevention of Terrorism Act (PTA) in operation and the military and STF enjoying immunity from punishment there were no steps taken to check their atrocities.

While discussing disappearances in the Amparai District, one cannot ignore the several disappearances that occurred during 1984–1990 period. The first disappearance in the district occurred at a place called Thandiyadi in 1985 when the assistant priest of the Pillaiyar kovil was taken into custody by the STF based in the Batticaloa District. Six persons were taken by the STF, and none of them ever returned. Two other important persons taken included a technician called Theivanayagam who had gone to see his wife who had delivered a baby. The other was an industrialist S. Sangarapillai. This was but precursor to numerous other disappearances in Thandiyadi.

Seventeen years ago the arrest of young men at Naatpattimunai was a sensational occurrence. What is more, international opinion as well as leading lawyers in the country fought to save the public spirited Rev. Fr. Paul Nallanayagam who reported the abduction and killing of innocent youths.

It is an inescapable conclusion from the above that despite international human rights law providing governments legally binding obligations towards its subjects, the Government of Sri Lanka through its security forces attempted to destroy the Tamil community in Amparai District. In other words, the Sri Lankan state took steps to wipe out its own citizens on the basis of their ethnicity.

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# Estate Tamils: a tale of unending exploitation

By A. Sarveswaran

**T**his paper is neither an in-depth study of the issues relating to the employment of Tamils born in the hill country, nor a critical analysis of the a w relating to their employment. This paper is to trigger some thoughts relating to standards and conditions of their employment so as to protect them from further exploitation and to ensure for them just and fair conditions of work.

## Introduction

The British rulers opened coffee and tea plantations in the hill country of the then Ceylon during the middle of the 19<sup>th</sup> century. They were not able to persuade indigenous Sinhala labour to work on these plantations – they had to bring Tamils from South India. Hard work and sacrifice by the indentured labour from South India converted forests into income-generating plantations. Their descendants too toiled under difficult conditions on the same soil. A small number of them have however moved away from the plantations to other sectors seeking greener pastures.

These people are known 'Sri Lankan Tamils of Indian origin.' Their composition is little more than 5.0% of the total population of the country. Their numbers in official statistics have been declining however, due to repatriation, drop in population growth and because many of them register not as 'Sri Lankan Tamils of Indian origin' but as 'Sri Lankan Tamils.'

These Tamils born in the hill country are subject to many forms of exploitation arising from their socio-economic circumstances. Issues relating to their employment are considered in this paper. Some of these issues are invariably applicable to employees from other parts of the country as well.

## Constitutional rights

Article 14(1) of the Constitution guarantees to the citizen of Sri Lanka trade union rights and other allied rights and also the freedom to engage by himself/herself or in association with others, in any lawful occupation, profession, trade, business or enterprise. There are many thousands of Tamils born in the hill country who are not citizens of Sri Lanka. Therefore, they cannot enjoy the rights guaranteed by the Constitution to the citizens of the country.

## Inequality in employment

Tamils of Indian origin are denied equality in employment though Sri Lanka ratified in 1998 the ILO Convention on

Discrimination (Employment and Occupation) of 1958. However, employees in the public sector and semi-public sector have the fundamental right to seek redress against discrimination by petitioning the Supreme Court against inequality of employment. However, equality and non-discrimination in employment is not positively guaranteed to the employees in the private sector. Employees in the private sector do not have any effective and positive legal avenues to seek redress against discrimination in employment.

Tamils born in the hill country are also subject to discrimination in the equality of access to employment both in the public and private sectors. When they are discriminated against on grounds of ethnicity, because they are citizens by registration and not by descent, due to their place of birth, or on any other grounds, they do not have any effective and positive legal avenues for redress.

## Mobility of employees

Although the non-possession of a national identity card is not an offence, the possession of an identity card has become a necessary requisite for security reasons. Many thousands of Tamil employees born in the hill country do not possess a national identity card for various reasons.

Non-possession of a national identity card is a major hindrance to the mobility of employees. Therefore, Tamil employees who do not possess national identity cards are prevented from leaving the hill country to seek employment in other parts of the country, especially in Colombo and other major towns.

Until the Thundu Prohibition Ordinance was enacted in 1921, the *thundu* system restricted the mobility of the employees born in the hill country. Presently, the identity card system restricts the mobility of thousands of employees hailing from the same area from bettering their prospects.

## Estate workers

Special legislation was enacted with regard to estate workers during the colonial era. Such legislation and most of the general labour legislation are applicable to the employment of estate workers. However, concepts of just and equitable employment present in modern law are not incorporated into the provisions of the special legislation relating to estate workers. Furthermore, most of the provisions in the special legislation have become obsolete.

Sri Lanka is a member of the International Labour Organization (ILO) and has ratified most of the core Conventions of that body and the Plantation Convention of

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1958. Most of the provisions of the special legislation relating to estate workers were enacted before the establishment of the I.L.O. It is imperative that the special legislation should be repealed and be substituted by a single legislation, which incorporates ILO standards and the just and equitable concepts of modern employment law.

Monthly wages are not paid to estate workers. They are paid on daily basis. This has become an issue in the estate sector. Inadequate accommodation and poor healthcare are also concerns of estate workers.

A vibrant trade unionism is necessary to assert the collective rights of the estate workers. There are many trade unions rooted in the estate sector. However, allegations are levelled against them for being over-politicised and not being united on common issues of the workers.

### Shop employees

The *per centum* of the Indian Tamils employed in shops all over the country is very high relative to their community's ratio to the total population of Sri Lanka. One of the main reasons for managers to employ Tamils born in the hill country is because they are gullible and easily exploited. Many shop employees engage in work for long hours without overtime payment, neither are they entitled to weekly holidays. EPF and ETF contributions are also not remitted in the name of many shop employees. In some shops, children within the prohibited age for employment, which is under 14 years, are employed. Females employed in some shops are subject to sexual harassment by their employers, co-workers or customers.

### Domestic aids

The *per centum* of the Indian Tamils employed as domestic aids is very high in comparison to their community's ratio to Sri Lanka's total population. Domestic aids are employed as cooks, helpers, maids, gardeners, watchers and chauffeurs. Domestic aids are perhaps the most exploited group of workers in Sri Lanka. There is no legislation to protect their rights. They are engaged in work for long hours. They are paid very low wages, which are determined according to the whims and fancies of their employers. Overtime payment is not given them. Most of them work without weekly leave or any other leave. Domestic aids are not entitled to EPF and ETF payments.

Many domestics are subject to physical and psychological torture. In some cases they are subject to sexual harassment as well. Many children under the permissible age of employment are also employed as fulltime domestics. In some cases, the children are handed over to the employers or middlemen by their parents for a matter of few hundred rupees.

Although the domestics have right to make an application to a labour tribunal for compensation against unjust termination they do not seek relief from the tribunals due to a lack of awareness of their rights and for socio-economic reasons.

### Temporary employees and casual

### employees

Types of employment are not necessarily types of exploitation. But they are in the employment of many Tamils born in the hill country. They are employed as temporary or casual employees in various sectors although the nature of their employment is actually permanent. Employers are able to terminate their services unilaterally by resorting to these modes of employment.

The labour courts established under the Industrial Disputes Act have power to award just and equitable relief notwithstanding anything to the contrary if there is a violation in any contract of employment. Therefore, labour courts have power to award relief to employees when the employers unjustly terminate their services by resorting to unethical methods. However, due to a lack of awareness, employees who are labelled as temporary or casual do not resort to legal relief when their services are unjustly terminated.

Employees in the informal sector are generally non-unionised and are therefore more vulnerable to exploitation due to the abuse and evasion of statutory obligations by their employers, than those working in the formal sector.

### Sexual harassment

Female employees who work in the estates and tea factories are subject to different forms of sexual harassment. In the estates, their supervisors harass the female workers by making sexually coloured reprimands, remarks, requests and jokes, and gestures associated with sexuality.

The female employees in the factories are subject to verbal and physical sexual harassments by their supervisors and co-workers.

Children employed in different sectors and domestic aids are also subject to various forms of sexual abuses and harassment.

### Child labour

Although many measures have been taken to prevent child labour, it is an undeniable fact that child labour is an issue of concern in Sri Lanka. Employment of a child below the age of 14 in any sector, including the plantations, is an offence in this country. Children above the age of 14 too cannot be indiscriminately employed as there are statutory restrictions for the employment of children between the ages of 14 and 18 in accordance with their age. However, children are employed in street trades, eating houses, shops, garages, tanneries and homes disregarding these statutory restrictions. Children thus employed are subject to physical as well as psychological torture and sexual abuse.

Tamil children born in the hill country constitute a high *per centum* of child labour in relation to their population in the country. It is said that the 'employment agents' in the hill country, mostly from the same community, recruit children for employment in other parts of Sri Lanka.

### Social stigma and indignity

Indignity of employment is another excruciating experience Tamil employees born in the hill country have to undergo. Most of those from the hill country are generally employed

*Cont. on page 12*

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# HRC crippled without powers of enforcement

By BNThamboo

*"Chartered in 1996 under potent legislation, the Human Rights Commission of Sri-Lanka (HRC) failed to meet expectations during its initial three-year mandate. The operations of the HRC were ineffectual, hampered by internal division and administrative lethargy. This period of "toothless" weakness extended into the beginnings of the next commission. However, since last year's meeting of the Asia Pacific Forum of National Human Rights Institutions in September 2001 in Colombo, the HRC has shown noticeable improvement in its strategic vision, although practical problems remain in abundance."*

The above criticism appeared in an article National Human Rights Commission of Sri-Lanka: jettisoning an Unproductive Past," in the volume National Human Rights Institutions in Asia Pacific Region, a report of the Alternate NGO Consultation on the Seventh Asia Pacific Regional Workshop on National Human Rights Institutions, published by Asia Pacific Human Rights Network (APHRN) (November 2002).

The Human Rights Commission of Sri-Lanka (the Commission) is subject to criticism like the above from many quarters in civil society. Reasons for such criticism are based on Commission's failure to use the powers vested in it by the Human Rights Commission of Sri-Lanka Act No 21 of 1996 (the Act) under which it was established. Apart from this, certain provisions of the Act itself is a barrier for the effective function of the Commission.

Guidelines for the National Human Rights Institutions are spelt out in the principles relating to the status and functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles). The United Nations Commission on Human Rights endorsed these principles in 1992. The General Assembly of the United Nations by its resolution A/RES/48/134 of 20th December 1993 adopted these principles

## Establishment of the Commission

As mentioned above the Commission was established under the Act, and the Commission started to function from 1997. The Preamble of the Act declares that this is an Act is to provide for the establishment of the Human Rights Commission of Sri-Lanka to set out powers and functions of such a Commission and to provide for matters connected therewith or incidental thereto.

The Act is divided into four parts. Part I of the act deals with the establishment of the Human Rights Commission of Sri-Lanka, while Part II, Part III and Part IV deal with powers of investigation of the Commission, the staff of the Commission and other general matters related to the Commission respectively.

## Background of the Commission.

Before the establishment of the Commission there were institutions established to safeguard fundamental rights. The Human Rights Task Force (HRTF) and the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights were the predecessors to the Commission. The HRTF was established in accordance to an Emergency Regulations and functioned until it was taken over by the Commission.

The Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights was established in 1986 in accordance with the Commission for the Elimination of Discrimination and Monitoring Fundamental Rights Regulations of 1986. The Chairman of the Sri-Lanka Foundation proclaimed these Regulations on 17 June 1986 under and by virtue of powers vested on the Foundation by Section 19 of the Sri-Lanka Foundation Law No 31 of 1973. The main object of the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights is to work towards the elimination of unlawful discrimination and to monitor the observance of fundamental rights. For this purpose it was vested with powers to study and investigate alleged discriminatory acts and to prepare a report on them. Among these three institutions, the Human Rights Commission of Sri-Lanka is the most powerful, vested with wide range of powers and established by an Act of Parliament.

## Appointing members of the Commission

The President appoints members to the Commission under [Section 3(2)] on the recommendation of the Constitutional Council. While the Constitutional Council recommends persons suitable to be appointed as members of the Commission, the final decision of appointment will be the President's, who is a member of a political party. One of the members so appointed shall be nominated by the President to be the chairman of the Commission [section 3(4)] a member of the Commission shall hold office for a period of three years [section 3(5)]

Until the establishment of the Constitutional Council the majority political party or parties appoint the members of the Commission. [proviso to section 2(2)] Now as the minority parties are represented in the Constitutional

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Council the interests of the minority communities will reflect in the Council's selection [section 2(2)] of members to be recommended to the president for appointment as members to the Commission. The first batch of such members based on the recommendation of the Constitutional Council will be appointed to the Commission from year 2003.

### Act fails to guarantee independence

South African Human Rights Commission Act No 54 of 1994 (Section 4) deals with independence and impartiality of the Human Rights Commission of South Africa. Section 4(1) states that a member of the Commission or a member of the staff of the Commission shall serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favor, bias or prejudice and subject only to the Constitution and Law. Section 4(2) states that no organ of the state or anybody may interfere, hinder or obstruct the Commission and Section 4(3) states that all organs of the state shall afford the Commission such assistance as may be reasonably required for the protection of the independence impartiality and dignity of the Commission. Failure to comply with sections 4(2) and 4(3) are offences and punishable with fine or imprisonment for a period of six months under Section 18 of the South African Human Rights Commission Act. Such provisions are not included in the Human Rights Commission of Sri-Lanka Act and should be introduced to protect the independence of the Commission, and the independent function of its members.

Further the Constitution of the Republic of South Africa, Act 200 of 1993, Article 115 provides for the establishment and appointment of the Human Rights Commission of South Africa. According to Article 115(3) the president shall appoint a person to the Commission who is nominated by a joint committee of the houses of parliament composed of one member from each party represented in parliament and willing to participate in the committee, and approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 percent of the members present and voting at a joint meeting. The members of the Commission from among their number shall as often as it becomes necessary elect chairperson and deputy chairperson of the Commission. This system of appointment will pave way for an effective and impartial function of the Commission.

Another concern raised about the Human Rights Commission of Sri-Lanka is the member's involvement in their own profession during the period they serve as members. This may question the effectiveness of the Commission. Provision should be included in the Act to temporally release a member appointed to the Commission from his employment to serve as a full time member of the Commission and once his term expired he should be reinstated in his previous job. In the Human Rights Commission Act 2053(1997) of Nepal, Section 4, Chapter 2 states that the Chairperson or member of the Commission shall not be entitled to carry on professional business as long as he/she holds office in the Commission.

### Powers of the Commission

Powers of the Commission are listed in Section 10, 11, 12, and 14 of the Act. These sections provides a broad range of powers to the Commission including the power to inquire and investigate complaints related to fundamental rights and provide resolution by mediation or conciliation. Provide advice and assist the government in formulating legislative and administrative directives, make recommendation to the government regarding measures to ensure national laws and administrative practices are in accordance to international human rights norms, make recommendations to the government in the need to subscribe to international treaties, and promote human rights education and awareness. Apart from this, by virtue of powers vested on the Commission under Section 14 of the Act the Commission may on its own motion or on a complaint made to it, investigate an allegation of infringement or imminent infringement of fundamental rights. Further the Commission can inquire and report to the Supreme Court on any matter that the Supreme Court refers to the Commission arising in during the hearing of an application (Section 12).

The Act under which the Commission was established conflicts with certain provisions of the Paris Principles. The mandate given to the Commission by the Act in relation to its investigative powers is to act only in respect of the rights guaranteed by Chapter III of the Constitution of Sri-Lanka as fundamental rights and restricted to the administrative or executive actions of the state. Chapter III of the Constitution guarantees only a few rights as fundamental rights. Sri-Lanka is a party to several international human rights instruments and by becoming a party to these instruments Sri-Lanka is expected to implement the provision of these instruments. Therefore, the Commission can be entrusted with the power of investigation even in respect of the rights guaranteed in instruments to which Sri-Lanka is a party. This will be inline with the Paris Principles which state that a national human rights institution shall be given as broad a mandate as possible which shall be clearly set forth in a constitutional or legislative text specifying it's composition and it's spare of competence.

For the more effective function of the Commission, it should be strengthened in Provincial Level Section 11(b) of the Act, which provides for the appointment of Provincial Sub-committees of the Commission. The Commission can delegate such powers to the provincial sub-committees. No such appointments have been made until now.

### Recommendations of the Commission

A serious concern about the Commission's functioning is regarding its recommendations. The Commission after investigating a complaint may make recommendations under Section 15 (3) and (4) of the Act. The Commission can make such recommendations after an investigation, if the investigation discloses infringement or imminent infringement of fundamental rights. However, what the complainant can do with this recommendation remains a question, as the Commission does not have the powers of enforcement.

*Another concern raised about the Human Rights Commission of Sri-Lanka is the member's involvement in their own profession during the period they serve as members. This may question the effectiveness of the Commission.*

Even the previous bodies established to monitor fundamental rights violations in Sri Lanka faced the same plight. Paragraph 2 of the Regulations of the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights laid down powers of the said Commission to study, investigate and to hold public hearing on the alleged discriminatory acts and to prepare reports thereon. The Commission could receive, investigate and endeavour to relieve by mediation or such other means as it specified in the regulations, discriminatory acts, but no provision in the regulations provides for enforcement. The Secretary Ministry of Public Administration issued a Public Administration Circular No 25/95 of 19 July 1995 to give certain validity to the decisions of the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights. By this circular the secretary requested, all ministry secretaries, heads of departments and heads of corporations and statutory boards to make representations to the Commission in respect of matters pertaining to their institutions in a responsible manner and comply with the decisions of the Commission.

The Ministry of Public Administration has, up to now, issued no such circular requesting the implementation of the recommendations of the Commission. Issuance of such a circular may make the recommendation of the Commission meaningful to a certain extent. The effective way to implement the recommendation of the Commission is to amend the Act, and provisions for implementation of recommendations should be included in the Act.

Issuances of binding decisions are a requirement under Paris Principles. According to the Principles, the function is entrusted to a national human rights institution based on seeking an amicable settlement through conciliation, or within the limits prescribed by law through binding decisions, or where necessary on the basis of confidentiality along with other action that can be taken. The Human Rights Commission under the Act has no power to make decision but only make recommendations. According to available statistics, concerned parties implement most of the recommendations of the Commission. The Act stipulates only the following mechanism in respect of its recommendation. According to Section 15(7) of the Act the Commission can require any authority or person to whom a recommendation is addressed to submit a report within such period the action is taken, or proposes to take to give effect to such recommendation and it shall be duty of every such person to report to the Commission accordingly. If a person fails to report to the Commission, the Commission shall make a full report of the facts to the President of the Republic who shall cause a copy of such report to be placed before Parliament [Section 15(8)]. The Act fails to stipulate the action that can be taken by the President or by the Parliament in such an event. Provisions may be included in the Act enabling the President or the minister in charge of the institution to whom the recommendation was addressed to issue directives for the implementation of such recommendations.

The Human Rights Commission Act No. 54 of 1994 of the South African Human Rights Commission Section 7(2) states that all organs of state shall afford the Commission such assistance as may be reasonably required for effective exercising of its powers and performance of its duties and functions and a person who fails to afford the Commission

such necessary assistance shall be guilty of an offence under Section 18(i) of the Act. Further Article 116(3) of the Constitution of Republic of South Africa Act 200 of 1993 states that the Commission shall be competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of fundamental rights. If after investigation the Commission is of the opinion that there is substance in any complaint made to it shall in so far as it is able to do so assist the complainant and other persons adversely affected thereby to secure redress, and where it is necessary for that purpose to do so it may arrange for or to provide financial assistance to enable proceedings to be taken to a competent Court for the necessary relief, or may direct a complainant to appropriate forum. Similarly, provisions can be introduced in the Act enabling the Human Rights Commission of Sri Lanka to give binding effect to its recommendation.

**Power of inquiry and investigation**

The Supreme Court may refer a matter arising in the course of a hearing of an application made to the Supreme Court under Article 126 of the Constitution to the Commission for inquiry and report (Section 12). The Commission shall inquire and report to the Supreme Court on the matters referred to it. Further, the Commission may investigate an allegation of an infringement or immanent infringement of a fundamental right of person or group of persons on its own motion, or on a complaint made to it by an aggrieved party (Section 14). After its establishment the Commission investigated several such issues on its own motion as well as based on the complaints received by the Commission. According to statistics available, the number of investigations pending before the commission at present is approximately 6000.

In practice the Commission inquire into matters referred to it by the Supreme Court by a member of the Commission. A member of the Commission carries out even the investigations under Section 14 of the Act. At present, certain other officers of the Commission are allowed to carryout investigation as the Commission delegates its powers to such officers under Section 24 of the Act.

The above practice of inquiry by the Commission was disputed in the Supreme Court in Jayasinghe and others Vs R S Jayaratne, Secretary Ministry of Public Administration and others [(1999) 2 SLR 385], and the Supreme Court held that "Section 2 of the Act establishes the Commission as a body Corporate, which "shall" consist of five members. It would appear that the Commission must act through all its members, because the Act makes provision neither for a quorum nor for the delegation of the powers of the Commission to one or more of its members. Section 7 only enables the Commission to act notwithstanding a vacancy or a defect in the appointment of a member. The purpose of a reference under Section 12 was thus to enable this Court to obtain the benefit of the collective wisdom of all the members of the Commission and not just its notes of investigation." This judgement gave validity only to inquires that held before the commission (Before all its members)

This judgement made particular reference to inquire under Section 12 of the Act. The same principle may apply to the investigation into alleged immanent infringement or infringement of fundamental rights of the Commission, under Section 14 of the Act, as Section 14 of the Act empowers

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*The Commission  
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decision but only  
make  
recommendations.*

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*To achieve this, the Commission can, apart from the funding provided by the government, be allowed to raise finances independently.*

only 'the Commission' to investigate allegation of infringement or imminent infringement of fundamental rights. No such inquiry or investigations of the Commission are held before all its members. It is difficult for all the members to sit together at the same time and place to hear inquiry or investigation. Soon after the above-mentioned judgment the then Chairman of the Commission suspended hearing inquires referred to the Commission by the Supreme Court. Therefore amending the Act to make way to hold inquires by one member of the Commission is essential. Although three years have lapsed from the date of the judgment no action has been taken by concerned parties to ratify this situation or to amend the Act accordingly.

Section 2 of the Act states that "There shall be established a commission which shall be called and known as Human Rights Commission of Sri-Lanka. The Commission is a body corporate and shall consist of five members. Therefore the Commission means all its members. The Act should be amended to specify a quorum for such inquires or investigations.

### **The fund of the Commission**

The other important issue that matters to the Commission is the Fund of the Commission. Section 29 of the Act provides that the state shall provide the Commission with adequate funds to enable the Commission to discharge the functions assigned to it by the Act. Funding plays an important role in the independence of the Commission. The state by controlling the funds can interfere with the functions of the Commission.

To safeguard the independence of the Commission funding should be in accordance to the Paris Principles. Paragraph 2 of Part B of the Paris Principle states that the

national institution shall have an infrastructure which is suited to the smooth conduct of its activities in particular adequate funding. The purpose of this funding should be to enable the Commission to have it's own staff and premises in order to be independent of the government and not be subject to financial control which might affect its independence. To achieve this, the Commission can, apart from the funding provided by the government, be allowed to raise finances independently. To overcome this situation the Act may be amended to allow the Commission to raise funds independently from donor agencies, provided that the Auditor General is empowered to audit the accounts.

Such authority to raise funds independently is vested on the Human Rights Commission of Nepal. Section 7 of the Human Rights Commission Act of Nepal 2053 (1997), which deals with the financial arrangements of the Commission. Section 7(1) states that the Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its function. Accounts of the Commission shall be audited by the Auditor General states Section 7(5). The amount of financial assistance received can be expended in accordance with the terms agreed upon between the donor agency and the Nepal Human Rights Commission according to section 7(3).

### **Conclusion**

In order to make the Human Rights Commission of Sri-Lanka a more effective, more independent and impartial institution, it is necessary in the light of the above to strengthen the powers and functions of the Commission by providing greater strength. This may be achieved by amending the Act after considering of above facts.

## **Tamils of Indian... Cont. from page 8**

in work that may be defined as 'low-level' employment. The perception and social stigma attached to such employment leads them to be treated in a degrading manner that amounts to discrimination. The equivalent Tamil words for the word 'he' are '*avan*' and '*avar*.' Generally, the professionals and the so-called 'high-level' employees irrespective of their age are called by the word '*avar*' whereas the employees in the so-called 'low-level' employment are called by the word '*avan*.' There are many other such words, which stigmatise those against whom they are used.

Employees doing so-called 'low-level' work do not enjoy a dignified status in employment nor in the eyes of society. This status is inconsistent with human rights norms that guarantee equal treatment. The mind-set with regard to social stigma has been changing in Sri Lanka. The pace of the change however is slow in comparison to most of the countries in the west.

### **Role of non-governmental organisations (NGOs)**

Very few NGOs are concerned with the rights of the Tamil employees born and living in the hill country.

NGOs play an important role in preparing workers to assert their rights and in creating awareness by educating employees and sensitising them about their rights. Some methods available to NGOs for this purpose are conducting seminars and workshops, publishing handbooks and handbills on workers' rights and airing television and radio programmes on the same subject. It is also useful to have a hotline to provide legal advice to all employees. The NGOs could also provide legal aid to employees who are taking legal action against their employers. It should be stressed that when NGOs educate employees about their rights they should also emphasise the obligation of employees towards their employers by discharging their services faithfully and meritoriously, which is the other side of the same coin.

### **Conclusion**

Some of the issues focused above are common to all employees irrespective of their place of birth and work. However, the employees born in the hill country constitute high *per centum* of exploited workers in proportion to their ratio to the total population.

# Displacement from Valikamam North - a crime against humanity

By V.S. Ganeshalingam

*Home for Human Rights (HHR) made submissions to three UN bodies on behalf of 20,917 families, consisting of 67,930 persons, who, from 1983 onwards, have been forcibly evicted by the state from their homes in Valikamam North Division. HHR forwarded its submissions to the UN Sub Commission on the Promotion and Protection of Human Rights, the UN Special Rapporteur on the right to Adequate Housing and the Representative of the Secretary-General on IDPs on 5 October 2002.*

## Information concerning the author of the communication

This submission is made by the human rights organization, Home for Human Right, based in Colombo, Sri Lanka on behalf of families of internally displaced persons. Home for Human Rights is a non-governmental organization actively involved since 1977 in the promotion and protection of human rights and renders a wide range of services to the victims of violations of rights including utilization of both domestic and international mechanisms in seeking redress for victims of violation of rights. Its mandate includes documentation and dissemination of information on violation of rights.

## State concerned

The State concerned is the Democratic Socialist Republic of Sri Lanka, which has acceded to a number of international conventions, including the international Covenant on Civil and Political Rights (ICCPR) on 11 June 1980 (entry into force on 11 September 1980) and the First Optional Protocol to the ICCPR on 3 October 1997 (entry into force on 3 January 1998), the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 11 June 1980, the Convention Against All Forms of Racial Discrimination (CERD) on 18 February 1982, the Convention Against All Forms of Discrimination against Women (CEDAW) on 5 October 1981, and the Convention on the Rights of the Child on 12 July 1991.

## The facts

This submission is made on behalf of 20,917 families, consisting of 67,930 persons, who have been forcibly evicted by the State by coercive means, from their homes in the Divisional Secretary's Division of Valikamam North in the District of Jaffna in the Northern Province of Sri Lanka (hereinafter referred to as Valikamam North Division), over a period of almost 10 years, commencing from 1983, without grounds permitted under international law and who have been subjected to gross human rights violations and continue to suffer from severe deprivation, hardship and discrimination as a consequence of their displacement as described in the

following sections. The State continues to deny them their right to return and to resettle. Their displacement and dispossession is a collective punishment to suppress a section of a people.

## Background

Prior to 1983, Valikamam North Division had a population of 83,618 individuals, or 25,351 families, all of whom were of Tamil ethnic origin; the majority were Hindus and the remainder Christians. Tamils had lived for centuries in this Division, which was considered to be a traditional Tamil area. About 60% of the population were farmers, and another 30% were fishermen, while the remainder were employed in white-collar jobs, industries etc.

The Division comprised a land area of 58.5 square kilometers of highly fertile red soil, which was considered to be one of the most highly productive areas in the country in terms of yield and income. Cultivation was as follows:

Paddy land	830 Acres 03 Rood 35 perches
High land	436 A 01 R 35P
Fruit Cultivation	173 A

As there are no rivers in the Division, paddy cultivation depends on rainwater, and highland and fruit cultivation was carried out with water from wells drawn by traditional methods or pumped mechanically by means of water pumps. The construction of wells was very expensive.

On the North, the Division is bounded by the sea. Those living in the coastal belt were dependent on fishing. The catch was fairly high and there were regular deliveries of fish to Colombo. At the time of displacement of the population, there were well over 90 mechanized boats and two sailing ships used by the fishermen.

There were 30 Hindu temples, seven churches and 20 schools, one district hospital with wards and a cancer treatment unit, an NGO-run cancer home and a home for the visually handicapped, a Catholic seminary, a state-run cement factory and another which was privately run, a few small scale industries such as metal crushers and business establishments sufficient to cater to the needs of the population.

Also located within the Division was a civilian airport at Palali, which had been converted into an air force base cum camp with a large military camp, one of the biggest in Sri Lanka, and a harbour with an army camp at Kankesanthurai

## Evictions

Problems arose during the early part of 1983, when the Government commenced working on a hidden agenda of

*This submission is made on behalf of 20,917 families, consisting of 67,930 persons, who have been forcibly evicted by the State by coercive means, over a period of almost ten years, without grounds permitted under international law and who have been subjected to gross human rights violations*

expanding the army camps at Palali and Kankesanthurai by systematically evicting those living around the said camps by constant shelling, mostly during the night hours and by imposing a ban on fishing. For the purpose of this submission, the forcible eviction is divided into two phases.

### Phase I

The first phase commenced in 1983 and continued until July 1987, when the Indian Peace Keeping Forces (IPKF) arrived in Jaffna. During this period, the constant shelling and air raids on the villages on all four sides of the army camps resulted in the entire population being evicted and the army camps expanding. Approximately 430 acres were taken from the people in this fashion without due process of law.

From July 1987 to April 1990, the IPKF was in control of the area. During this period a few of the evicted families returned to their original homes but they were again forced out during the second phase of evictions, as detailed below:

### Phase II

The second phase of forcible eviction started in 1990, following the withdrawal of the IPKF and continued until 1993. During this period, the remainder of the population in the Valikamam North Division was forcibly evicted, again by constant shelling and air raids on the villages on all four sides of the camp, and by the end of 1993 the eviction was complete.

### Declaration of High Security Zone

In 1996 when the government regained control in Jaffna, it permitted resettlement in about 12 villages located on the southern periphery of this Division. At the same time it declared the area comprising of 30 villages within the Division to be part of a High Security Zone and thereby denied the inhabitants of these areas the right to return or to resettle in those villages

### Acquisition of the lands of the displaced

To aggravate matters, the Government by a gazette notification issued dated 8 June 1999, made a declaration under Section 5 of the Land Acquisition Act that 397 allotments of land totalling about 261,736 hectares in the High Security Zone was needed "for a public purpose and will be acquired under the provisions of that Act"

### Eviction by coercive means

The eviction was carried out in a manner that violated the right to life, dignity, liberty and security of the population in that it was by indiscriminate shelling with heavy artillery into the villages from both the above said camps and firing from helicopters, mostly during the night. As a result, 25,351 families inclusive of children, the old and feeble fled in panic to safety with whatever they could take with them. This resulted in a mass exodus of the entire population, and killings, accompanied by the demolition of houses, schools, churches, and the hospital. After the eviction was complete, the army moved in to occupy the deserted villages. They occupied the lands and premises, ransacked the houses, schools and places of worship and took over whatever they wanted and either destroyed or burned what remained.

No notice of the army operation was given and the people were taken totally by surprise. The army moved with bulldozers, to raze to the ground all dwellings, except the houses they required for their own use, and put up bunkers and defence lines. They then opened new roads through formerly thickly populated areas and avoided using the existing roadways for fear of landmines. As this Division was fairly economically developed, every family had a house of its own, built entirely with their own savings. More than 75% percent of these houses were built with cement and mortar.

### Extent of damage

Even though the eviction commenced in 1983 and was completed in 1993, the Government has never made any attempt to date to assess the damage caused by these evictions in terms of loss of lives and property. Even the media, which were occasionally taken to the North on government-guided tours, did not have access to this area and the government's activities here have not been published. However, according to NGO reports, during the first phase well over 400 individuals were killed. No reliable figures are available as to the loss of lives during the second phase.

Figures for displacement, as collected by the local administration, are as follows:

	No. of Families	No. of Family members
Total population in Valikamam North Division, prior to 1983	25,351	83,618
Total number that stands evicted	20,917	67,930
Total now living outside High Security within the said Division	4,434	15,688

The total land area of 58.5 square kilometres consisting of paddy highland and fruit cultivation lands remains abandoned. Out of estimated number 25,000 houses built with cement and mortar 75% have been damaged and are now not suitable for dwelling. The temple courtyards and schools premises were converted into army barracks or training grounds, and other institutions mentioned above are now damaged or in ruins.

The displaced have been denied the right to return to their lands in violation of international human rights and humanitarian law and for the last decade they have lived as IDPs, mostly in other divisions within the district; some in southern Sri Lanka and some as refugees in other countries.

The agenda of successive governments has been to marginalize Tamil resistance by weakening them economically through deprivation and at the same time by expanding the two army camps that are in the heartland of Tamil resistance.

Those of the displaced of the low income group who

*The second phase of forcible eviction started in 1990. During this period, the remainder of the population in the Valikamam North Division was forcibly evicted, again by constant shelling and air raids on the villages on all four sides of the camp.*

managed to live elsewhere within the District of Jaffna, either in state-run welfare centres or with friends and relatives, survived on the meagre dry rations provided by the state and on the basic facilities provided by humanitarian agencies, mostly international. Their children who wanted to continue their education found accommodation in schools in the areas in which they lived, but which were terribly overcrowded and where they had no choice but to sit on the floor and study. Considerable numbers don't attend school at all due to the problems caused by displacement. Humanitarian agencies report considerable malnutrition among the displaced children.

Those of the displaced who live within the District of Jaffna whose monthly income exceeds Rs.1500 and those who live outside the said District irrespective of their income are discriminated against in that they are not entitled to receive any assistance, unlike the IDPs who live within the District. Further, the government has drawn a distinction between Tamil IDPs and Muslims evicted from the Jaffna District and now living as IDPs in the Puttalam District and in southern Sri Lanka, by providing them with assistance.

Another interesting distinction is that these Muslims have not been permitted to register as voters in the area in which they have lived for the last decade as IDPs but continue to be enlisted in the voters' register in the Jaffna District and vote for candidates who contest in Jaffna. But as far as the Tamils are concerned, even though there is no legal prohibition, administratively it has been made difficult for Tamils displaced from the north to be registered as voters in the south. Even though they are citizens of the country they are denied the right to vote because of the fact of their displacement.

### Resettlement and compensation schemes

Under the Emergency Regulations which came into force on 4 January 1996, the President established an authority called the Resettlement and Rehabilitation Authority of the North (RRAN) to assist in the resettlement and rehabilitation of persons displaced in the Northern Province and to repair and to reconstruct their damaged houses and public utilities, and to assist in the recommencement of economic cultural activities etc.

However, this same Authority had turned down requests for resettlement on the grounds that this Division had been declared a High Security Zone, where resettlement is not permitted, and had also denied access to the IDPs to commence economic or other activities.

This Authority had formulated as essentially arbitrary, unrealistic and discriminatory scheme for the payment of compensation for the damaged houses. The compensation does not constitute even 25 percent of the damage assessed and is not sufficient to repair or reconstruct the damaged structures. Furthermore, the scheme does not provide for any compensation for loss of income derived from land use. Under the scheme

public servants and state corporations employees whose houses were destroyed are entitled to a maximum compensation of Rs.150,000 whereas others are only entitled to a maximum of Rs.100,000 or 20% of the damage, whichever is less. Even under this scheme it is only a few influential public servants and corporation employees who have received any payment.

In any event, none of the displaced persons applied for compensation for their lands, instead they chose to make public that they wanted the return of their lands, which is more than a commodity and are sacred to them.

### Alleged violation of human rights

It is submitted that as described above, the forced displacement by coercive means, the destruction and/or appropriation of the property and possessions left by the displaced as a form of collective punishment, continued denial of the right to return to their lands and resettle in their original places and the failure to provide appropriate compensation for the loss of property and possessions and redress for victims of violation constitute, flagrant breaches of the principles of the human rights, particularly the right to life, and grave violations of the principles of international humanitarian law and international law.

Furthermore, as confirmed by the Rome Statute of the International Criminal Court, deportation or forcible transfer of populations without grounds permitted under international law, in the form of forced displacement by expulsion or their coercive means from the area in which the persons concerned are lawfully present, constitute a crime against humanity. (See article 7(1) (d) and (2) (d) of the Rome Statute). The Human Rights Committee has held that 'the legitimate right to derogate from Article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures' - vide ICCPR General Comments 29.

### Relief sought

To request the State Party

- a) to adhere to its international human rights and humanitarian legal obligations;
- b) to apply and adhere to the 'UN Guiding Principles on Internal Displacement';
- c) to permit resettlement and withdraw all impediments for settlement;
- d) to pay compensation for damages caused to dwellings and properties; and redress for victims of violations of human rights;
- e) in the interim to ensure that all IDPs are guaranteed their full range of civil and political, and economic, social and cultural rights in accordance with the State's international obligations; in particular that everyone is guaranteed an adequate standard of living including food, clothing, housing, medical care and social services

*This Authority had formulated as essentially arbitrary, unrealistic and discriminatory scheme for the payment of compensation for the damaged houses. The compensation does not constitute even 25 percent of the damage assessed and is not sufficient to repair or reconstruct the damaged structures*

The eviction of the people of Vaikamam North, the forcible takeover of their lands and the declaration of the High Security Zone violate a number of international human rights instruments such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against All Forms of Racial Discrimination (CERD) and Convention on the Rights of the Child (CRC)

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

### Articles of the UDHR violated

Art 3	right to life, liberty and security of person
Art 7	right to equal protection of the law
Art 8	right to an effective remedy
Art 13	right to freedom of movement and residence
Art 17(1)	right to own property
Art 17(2)	right not to be arbitrarily deprived of property
Art 21	right to take part in the government of the country
Art 23	right to work
Art 25	right to an adequate standard of living including food, clothing, housing, medical care and social services

### Articles of the ICCPR violated

Art 2 (1)	to take steps to respect and ensure ICCPR rights
Art (2)	to take measures to give effect to the rights recognized
Art (3)	to ensure an effective remedy
Art 6	right to life
Art 12(1)	right of movement and freedom to choose residence
Art 17	right to privacy, family and home
Art 18(1)&(3)	freedom to manifest religion (UN HRC General Comment No. 22 (48))
Art 25	right to elections
Art 26	equal protection of the law
Art 27	minority rights

### Articles of the ICESCR violated

Art 2 (2)	non-discrimination
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Art 6 (1) right to work including the opportunity to gain a living by work

Art 10 protection of the family

Art 11 right to adequate standard of living

Art 12 right to health

Art 13 right to education

Articles of the CERD violated

Art 5 right to equality before the law

Art 6 to assure effective protection and remedies

### Articles of the CRC violated

Art 6 right to life

Art 9 right for a child not to be separated from parents

Art 19 protect the child from physical and mental violence

Art 20 deprivation of family environment

Art 27 right to adequate standard of living

Art 28 right to education

### Others

UN Commission on Human Rights Resolution 1993/77 on 'Forced Evictions' CESCR, General Comment No. 7 (1997) on "Forced Evictions"

CESCR, General Comment No 4 (1991 on "Adequate Housing."

Sub-Commission on the Protection and Promotion of Human Rights Resolution 1998/9 on Forced Evictions.

Guiding Principles on Internal Displacement (UN Doc E/ CN.4/1998/53/add.2).

General Assembly Resolution 56/164 on the 'The protection of and assistance to internally displaced persons'.

UN Commission on Human Rights Resolution 2002/56 on 'Internally Displaced Persons.'



# Eighty-one bodies in wake of IPKF assault on Jaffna Hospital

**T**he intervening years have blurred the memory of the dark days of the Indian army's occupation of Sri Lanka's northeast. The carnage and destruction of the last 12 years – especially what was unleashed by the People's Alliance (PA) government while pursuing 'war for peace' – seem to make the atrocities perpetrated by the Indian Peace Keeping Forces (IPKF) during its nearly three year stay (July 1987 – March 1990) appear comparatively less bloody and oppressive.

Except of course to those who lost their lives or were maimed or robbed by the Indian army.

*Beyond the Wall* focuses in this issue on a massacre that occurred at Jaffna Hospital, with the details from the archives of the Home for Human Rights (HHR), which serve as a reminder of what the Tamils suffered in the hands of those who apparently came to save them from the military onslaught of the Sri Lanka Army.

The IPKF occupied the Jaffna Teaching Hospital around 4.00 p.m. on Deepavali day, October 21, 1987 after the formal commencement of hostilities between the LTTE and the Indian army. The IPKF went on a killing spree on the pretext it was rounding up LTTE rebels. Fifty bodies were found on the premises of the hospital – 20 of the staff and 30 from among the patients, visitors and bystanders – with gunshot and grenade or shell blast injuries.

Their colleagues identified all the 20 bodies of the hospital staff. Of the 30 non-staff victims, 11 were identified by the relatives of the dead or by their identity cards, while 19 were not identified either by relatives or through identity papers. Some of the bodies were beyond identification due to severe disfigurement caused by gunshot injuries or grenade or shell explosions. Though the staff identified some of the 19 persons as patients no positive identification could be established because identity cards were not available, nor were bed head tickets, which had disappeared during the disturbances.

Similarly, there were no facilities to take photographs or to collect the belongings of the unidentified dead, which could have helped relatives to identify the bodies later. The belongings that had survived the attack were packed and taken over by Captain Bist of the Headquarters Camp, Jaffna Fort.

In addition to the bodies of the 20 staff and 30 others who were found to bear gunshot or blast injuries, 19

other bodies were recovered which were those of patients who died in wards due to the lack of adequate surgical care. This included failure to operate immediately in cases of emergency as well as bleeding due to damage to the operating theatre caused by shelling. Power failure caused by the shelling led to the malfunctioning of the blood bank and ventilators. The cause of death of three persons is unknown because laboratory facilities were unavailable for investigation.

A further 12 bodies found in the mortuary were unidentified because they had putrefied by the time the staff was in a position to take steps to identify them.

Therefore 81 bodies were lying in and around the Jaffna Teaching Hospital – 20 bodies of the hospital staff, 30 patients, bystanders and visitors whose corpses bore marks of violence, 19 who lost their life due to improper surgical and post-operative care and 12 bodies found in the mortuary.

The insidious hand of the IPKF was not only seen in that it ordered shelling and small arms fire to be directed at a hospital, which is a civilian facility that receives special protection under the Geneva Conventions, but also in the way senior officers including doctors ordered the disposal of bodies.

The 81 bodies were burnt without a post-mortem or inquest on 23 October on the orders of the IPKF's Brigadier Brar under the direct supervision of Captain Bist. Dr. Kanagarajah and Dr. Banari, both doctors attached to the IPKF, actively participated in the exercise.

Thus ends the sordid tale of the Indian army's assault on the Jaffna Teaching Hospital. The IPKF continued to occupy the area and terrorise not only patients who came for treatment but also people of the locality through constant cordon and search operations and indiscriminate shelling and small arms fire. The terror was only heightened by other forms of harassment such as assault, arrest and robbery in connivance with alleged lawless cadres of the EPRLF. The EPRLF was the principle party forming the provincial government in the Northeast and was openly supportive of the IPKF presence and the Indo-Lanka Accord.

On 25 October 2002 the staff of the Jaffna Teaching Hospital commemorated the 15<sup>th</sup> anniversary of the tragic events of Deepavali day 1987. Deputy Director of the hospital Dr. Ganeshamoorthy garlanded the portraits of the members of the hospital's staff who lost their lives, which was followed by the lighting of an eternal flame for each of the victims as Hindu thevarams and Christian hymns were sung.

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# Sathasivam Sanjeevan speaks from the grave

By. V.S. Ganeshalingam

*Two policemen got hold of him and dashed him against an electricity post. He had pain in the hips, (was) unable to eat, (had a swelling on his neck, (had) injuries on his hips and blood oozing from his shoulders.*

**T**he tragic case of Sathasivam Sanjeevan is a stark portrayal of the inability of the Sri Lankan State to protect its Tamil citizens from illegal detention and torture leading to custodial death. The case raises many fundamental questions. Not only does it point to the state intervening as an instrument of oppression by allowing torture and murder to be carried out by the police, but also its role as the protector of errant officers from the law. Though Sathasivam Sanjeevan, an 18-year-old, was tortured and killed, the state and the attorney general failed to take action against his killers.

In the wake of exhausting all options of seeking legal remedy domestically, the case has now been referred by the Home for Human Rights (HHR) to a UN human rights body for redress.

The submission to the UN human rights body follows with few editorial changes.

Sathasivam Sanjeevan an 18 year old, Tamil, Hindu and a G.C.E. Ordinary Level student of Wesley College, Kalmunai (residing with his parents at 253/B1, 1<sup>st</sup> Division, Pandiruppu, Kalmunai, Eastern Province) (hereinafter referred to as the victim) left his residence on a push bicycle on 13 October 1998 never to return home.

On inquiries made from the people of the area the parents came to know that their son while cycling along Telecom road in Kalmunai was taken into custody by the Police around 5 p.m. on that date. Since it was already 7 p.m. they could not make inquiries at the local police station - Kalmunai. On the following day 14<sup>th</sup>, the Kalmunai Police who were on a cordon and search operation of the village informed the father by about 9 a.m. the arrest (of Sathasivam Sanjeevan) and detention by the Kalmunai Police.

On 14 October 1998 after the cordon and search operation (was) over, his father went to the Police (but) was refused permission to visit the victim and therefore sought the assistance of an attorney-at-law and visited him with the attorney-at-law at the police station. His father having observed that the victim was unable to walk or raise his hand or talk freely, inquired as to what happened and he (Sathasivam Sanjeevan) related as follows:

Two policemen got hold of him and dashed him against an electricity post. He had pain in the hips, (was) unable to eat, (had a) swelling on his neck, (had) injuries on his hips and blood oozing from his shoulders. He was not taken before a doctor. (His) father gave (Sathasivam Sanjeevan) soda water to drink and he told (his father) he (was) unable to drink.

Then the father came out and inquired from the Police how

these injuries occurred. They told him that he would be released after an inquiry. Then again his father visited the victim on the 15<sup>th</sup> by 5 p.m. with his wife and another relation. He (Sathasivam Sanjeevan) told them that he was taken to a hospital on the 14<sup>th</sup> night for treatment. Victim pleaded with them (police) to (be) released. On the 16<sup>th</sup> morning he (victim's father) went to the police station again but could not see his son. On the evening his father received a note from Kalmunai Police sent through a woman asking him to come to Ampara Police immediately and that his son is to be taken to Badulla police station.

On the following day, 17<sup>th</sup>, by about 10 a.m. his father went to Ampara Hospital in a lorry. Sammanthurai Police who arrived there after some time asked him to go and see his son's body in the hospital mortuary.

Father saw the dead body (with) stitches on (his) tongue and his body cut open from the chest to the stomach and stitched. He was informed by the Police that the postmortem and the inquest were over, and to take charge of the body, but that he should not take it to his village and should bury it in Ampara. On his pleading that he had brought the lorry to take the body they permitted him to take the body to Kalmunai. He was further informed to come to Kalmunai Magistrate Court on 22 October 1998.

However, no inquiry was held on that date and he was not informed of the next date.

(This is taken from the evidence given by the father at the magisterial inquiry into the death held on 26 November, 1998).

On 16 October 1998 OIC Samanthurai Police filed a report in case No. 13455 Magistrate Court of Kalmunai, which states as follows:

On 15.10.1998 while the said Sanjeevan was being taken from Kalmunai Police Station to Ampara police station by:

U.P.P. Weerasekara	OIC Crime Investigation
Jalia	Police constable
Wijewardana	Police constable
Rohana	Police constable
Kulasuriya	Police constable
Periyantha	Police constable
Luxman	Police constable
Jeyalath	Police constable

in police jeep Registration No. 55 - 9327 for investigation at Ampara (when) by about 9 p.m. at Veddi Vadi some LTTE suspects fired at the vehicle, at this firing police officers Jalia,

Priyantha and the suspect Sanjeevan got injured and were admitted to Ampara hospital. Sanjeevan passed away and the other two are getting treatment in Ward No. 08. There was damage to vehicle.

He requested the Court to order inquest and postmortem, which was allowed.

A.S.M.A Razak Acting Magistrate, Kalmunai, had the inquest after visiting the scene on 16 October 1998.

In his report to Court on "Scene visit and inquest" he states as follows:

"(On) either side of the road there are paddy lands. The width of the tarred road is 52 meters. A channel/ditch runs 62 meters from the edge of the road on the East where any one standing could not be seen. In other words, one can take cover (in) the ditch. The ditch was dry. This is a small plot of high land where the attacking party was hiding and a few yards away on the East, there was cultivable land but no crops standing on (it) and it was dry."

I viewed the following injuries on the body:

- a) Shot injury on the left elbow;
- b) Shot injury on the right shoulder - entry;
- c) Shot injury on the right arm, - exit
- d) right - side hip - shot injury - exit
- e) Shot injury on right - wrist and two fingers.

No injuries other than these on his body.

I order D.M.O. District Hospital, Ampara to hold postmortem on the body of S. Sanjeevan and to submit a report to the Magistrate's Court, Kalmunai.

I also order to release the body either to next of kin or to I.C.R.C, in the event they refuse to accept bury it on State expense.

Call for further Report on 21 October 1998.

A.S.M. A. Razak, J.P.U.M.  
Acting Magistrate, Kalmunai.

On 16 October 1998 Dr. A.N.D. Bandara DMO of Ampara held the postmortem. His report states of following injuries:

- gut at the lower abdomen injured;
- bladder injured;
- right side femoral entry and vein injured;
- right side pelvic bone fractured;

Cause of death and other relevant opinion:

"I am of the opinion that the cause of death is due to shock following severe bleeding through pelvic blood vessels after firearm injury."

His report was significantly silent as to whether the injuries were inflicted before or after death (there is provision in the medical report form for this).

The Magistrate's inquiry commenced on 21 October 1998 (not on 22/10 as informed to the father) and Kalmunai Police headquarters OIC led the evidence of Weerasekara Muthasalange Prethcepkkumar Weerasingha, Sub Inspector OIC, Security Coordinating Unit, Ampara who headed the police team that took Sanjeevan from Kalmunai to Ampara Police on 14/10 during which the said Sanjeevan was killed. Since the postmortem report was not received by Court, the inquiry was postponed to 29 October 1998 and again postponed for 12 October 1998 for the same reason

The parents of Sanjeevan had no notice of the inquiry (and) neither they nor any lawyer appeared on 21 and 29 October before Magistrate.

The father of the victim having come to know that the case (was) to come up on 12 November 1998 contacted Home for Human Rights for legal assistance whose lawyers appeared on 12 November 1998 and moved Court to cite witnesses. Janap Gafur of the Samanthurai Police informing Court that since Kalmunai Headquarters Police conducted the investigations their presence (was) necessary, the inquiry was postponed on 26 November 1998.

On 26 November 1998 lawyers attached to HHR led the evidence of the father of the victim and one of his aunts Parathese Manohari who had visited the victim at the police station on 14/10. Both have described in detail the nature and extent of the torture inflicted on the victim.

HHR lawyers submitted to the Courts that according to the postmortem report and the evidence led, there (was) evidence to show that the victim was ill-treated, tortured and was killed and moved Court to have the body exhumed and sent to JMO Batticaloa for examination, in term of 3731 (2) of the Criminal Procedure Code.

The learned Magistrate having considered this application ordered the exhumation of the body. The exhumation was done on 27 November 1998 in the presence of Acting Magistrate A.S.M.A. Razak and was sent to JMO, Batticaloa Teaching Hospital.

JMO Batticaloa submitted his report to Court according to which he had identified nine ante-mortem injuries. According to his report the cause of death and the relevant opinion is as follows:

"There were four gun shot injuries on his body and the reason for his death (was) due to hemorrhage caused by gun shot injury

Other ante-mortem injuries found on his body would have been caused by blunt weapon etc.

The circular and semi-circular contusions found on the neck might have been due to application of fingers.

Before he was shot most probably he had received these blunt weapon injuries."

On 21 October 1999 the learned Magistrate held that Sanjeevan had been subjected to torture and died of bleeding caused by gun shot injuries. He further held that it (was) homicide. He also ordered OIC Sammanthurai to send the case for further investigations by Criminal Investigation Department of the Police and to arrest the suspect and produce (him) before Court.

**HHR lawyers  
submitted to the  
Courts that  
according to the  
postmortem report  
and the evidence  
led, there was  
enough to show  
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the Criminal  
Procedure Code.**

**Cont. on page 25**

# “Barbaric, savage and inhuman”

**Y**ogalingam Vijitha of Paruthiyadaippu, Kayts was the victim of torture and inhuman and degrading treatment while she was in the custody of the Negombo police and the Terrorist Investigation Division (TID) in Colombo. A fundamental rights petition was filed in the Supreme Court of Sri Lanka by Home for Human Rights (HHR) citing nine respondents including officers from the Negombo police and the TID. The matter was argued on 24 August 2001 and decided on 23 August 2002.

In his judgement Justice D. P. S. Gunasekera with Justices Mark Fernando and Ameer Ismail agreeing, echoed Justice Athukorala in *Sudath Silva Vs Kodituwakku* case who observed “the facts of this case has revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting and offend one’s sense of human decency and dignity particularly at the present time when every endeavour is being made to promote and protect human rights.”

Justice Gunasekera held that the 1<sup>st</sup> to 5<sup>th</sup> and 9<sup>th</sup> respondents had violated the petitioner’s fundamental rights guaranteed under Article 11 of the Constitution and ordered that Rs.250000 be paid as compensation and costs to the petitioner out of which Rs.150000 be paid personally by the 1<sup>st</sup>, 3<sup>rd</sup> and 9<sup>th</sup> respondents in equal shares and the balance Rs.100000 by the State.

The judge also directed the attorney general to take steps under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 against the respondents and any others who were responsible for the acts of torture perpetrated on Yogalingam Vijitha.

Attorneys-at-law V.S. Ganeshalingam and V. Yogeswaran from HHR appeared for the petitioner.

The judgment is reproduced below:

## GUNASEKERA J.

The Petitioner seeks relief from this Court for the alleged infringement of her Fundamental Rights secured by Articles 11, 13(1) and 13 (2) of the Constitution.

The facts relating to this application are as follows:

The petitioner is a 27-year-old woman from Kayts whose family had got displaced in 1990 and was living in Jaffna. Since she got displaced again in 1995 due to military operations in Jaffna she had moved into Kilinochchi. The petitioner’s mother had gone abroad for employment in 1989 whereupon the petitioner’s father had deserted the family. Whilst at Kilinochchi the petitioner had worked as a volunteer primary teacher at the Sivapathakalaiyakkam Government School for a short period. When she was in Kilinochchi one of her aunts had arranged a marriage for her and had requested her to come to Negombo. Then she had come to Negombo on 23.01.2000 and had been staying with her aunt at No. 47, Sylvester Road, Negombo. On 9.2.2000 as arranged by her aunt the marriage was registered at Vavuniya between her and one Thurairatnam Maheswaran alias Babu who is named as 8<sup>th</sup> respondent in this

application. She had continued to stay with her aunt in Negombo. Subsequently she had learnt that her husband was a married man with two children and therefore she had refused to go through the customary Hindu marriage and to live with him as husband and wife. The 8<sup>th</sup> respondent on hearing her refusal to live with him as husband and wife had started harass her and threatened her to go through with the customary marriage ceremony. Out of fear that the 8<sup>th</sup> respondent might harm her, she had left Negombo for Trincomalee on or about 7.4.2000 and had taken refuge at her sister’s house at 46/2, Linganagar, Trincomalee. Whilst at Trincomalee the 8<sup>th</sup> respondent had given her several telephone calls and threatened her that unless she returns to Negombo and lives with him that he would use his influence with the Negombo Police and have her arrested as a member of the LITE suicide squad and have her tortured.

### Assaulted by Negombo Police

On 21.6.2000 when she was at the People’s Bank, Trincomalee at about 11 a.m. a person called Sekar whom she had known as a friend of the 8<sup>th</sup> respondent had come to the Bank and had requested her to come out. As she came out of the Bank a group of policemen in civilian clothes headed by Wijesekara, the 1<sup>st</sup> respondent, Reserve Sub Inspector had arrested her and handcuffed her and put her into a private Elf van that was parked there. Inside the van one of the occupants had told her that they had come from the Negombo Police Station to arrest her in connection with some information given against her by the 8<sup>th</sup> respondent. Inside the van she had found her brother also handcuffed. The van had been driven to her brother’s residence at Trincomalee and the Police Officers had ransacked her brother’s house and searched everywhere. Thereafter, the van, along with the petitioner and Sekar and the policemen had been driven to Negombo. They had arrived at Negombo at 6.30 p.m. and she had been put into a garage handcuffed and had been kept there till about 10 p.m. Whilst she was inside the garage the police had accused her of being a LITE suicide bomber and had assaulted her with a club on her knees, chest, abdomen and back, which caused her unbearable pain. After assaulting her she had been put into a cell at the Negombo Police Station and had been detained there till 26.6.2000 on a Detention Order R2, issued by Daya Jayasundera, D.I.G. Western Province, (Northern Range) under Regulation 19 (2) of the Emergency Regulation for 90 days. Whilst in detention between 21.6.2000 and 26.6.2000 she had been subjected to torture. The petitioner alleges that her ear studs had been removed and slapped with force. Her face had been covered with a shopping bag containing chilli powder mixed in petrol, which led her to suffocate. On one occasion she had been asked to remove all her clothes except her underwear and the brassier and her face had been covered with shopping bag containing petrol and chilli powder after which she had experienced a burning sensation all over her body. She had been asked to lie flat on a table and whilst four policemen were holding her, pressed to the table, four other policemen had pricked paper pins under the nails of the fingers and toes. She had been assaulted with a club and wires and when she fell down she had been trampled with boots. On another occasion she had been hung and whilst she was hanging had been assaulted with a club all over her body.

Whilst she was inside the garage the police had accused her of being a LITE suicide bomber and had assaulted her with a club on her knees, chest, abdomen and back, which caused her unbearable pain.

On or about 25.6.2000 the policemen who were torturing her had asked her to place her signature on some statements prepared by them and when she refused to sign, one policeman had shown a plantain flower soaked in chilli powder and had said that it would be introduced into her vagina unless she signed the papers. When she refused to sign she had been asked to remove her blouse and cover her eyes with it and had been asked to lie on a table. Whilst she was lying down on the table four policemen had held her hands and held her legs apart and the plantain flower had been inserted by force into her vagina and had been pulled in and out for about 15 minutes. She had experienced tremendous pain and a burning sensation. She had become unconscious and after a few minutes she had been asked to lie on the table till about 9.30 p.m. After some time some sheets of paper typed in Sinhala had been brought by them and she had been asked to place her signature on them. Being unable to bear the torture she had signed them. The contents of the documents she signed had neither been read nor explained to her. After sometimes she had been put into a cell with strict instructions that she should not wash her genital region. When she was crying in pain inside the cell one policeman on duty had shown mercy on her and by about midnight had been permitted to use the toilet. The acts of torture meted out to her as set out above has affected her physically and psychologically and her matrimonial prospects had been shattered as a result of the mental and physical trauma that she had undergone at the hands of the police. She states that she is suffering from depression, loss of sleep, loss of appetite, loss of concentration, fear and nervousness.

### Tortured by TID

On 26.8.2000 a police officer from the Terrorist Investigation Division had visited her at the Negombo Police Station and she had pleaded with him to remove her from the Negombo Police Station and thereupon she had been transferred to the Terrorist Investigation Division, Colombo where she was detained till 20.9.2000. She states that whilst in detention at the Terrorist Investigation Division too that she was mercilessly assaulted by Sub inspector Saman Karunaratne, the 3<sup>rd</sup> respondent, who had forced her to write in Tamil what was dictated to her which included several admissions that she was a member of the LTTE. Whilst in detention at the Terrorist Investigation Division she had started bleeding and had been taken to the National Hospital on 11 days and treated. On 21.7.2000 she had been produced before the Colombo Magistrate under the Emergency Regulations. In Court when she attempted to inform the Magistrate regarding the acts of torture meted out to her Sergeant Wijeratne of the Terrorist Investigation Division who was beside her had prevented her from complaining to the Magistrate, and she had been taken back to the Terrorist Investigation Division.

On 21.7.2000 she had been taken from the T.I.D to the Vavuniya 'pass office' by the 3<sup>rd</sup> respondent and Superintendent of Police Gamini Dissanayake of the T.I.D. and a bundle of applications made by Tamil persons for passes to travel to Colombo had been placed before her and she had been asked to identify the members of the LTTE. When she failed to identify any one, she had been mercilessly assaulted by S.I. Karunaratne the 3<sup>rd</sup> respondent, in the presence of S. P. Dissanayake who advised her to pick some application to avoid getting assaulted further.

On 21.9.2000 she had been produced before the Colombo Magistrate with strict instructions that she should not attempt to

speak to the Magistrate and she had been remanded under Section 7 (2) of the Prevention of Terrorism act and had been taken to the Negombo Remand Prison. On 23.10.2000 she had been produced before the Colombo Magistrate and upon an application made by her attorney at law the learned Magistrate had ordered the judicial medical officer, (Colombo North) to examine her and submit a report to Court whereupon she had been admitted to the Ragama Government Hospital and had been warded for three days. At the Ragama Government Hospital she had been examined by an Assistant Judicial Medical Officer, a Consultant psychiatrist, a Consultant Obstetrician and Gynecologist and by a Consultant Radiologist. The report of Dr. Chandrapalan the Assistant Judicial Medical Officer, Teaching Hospital, Colombo North (Ragama) had been produced.

### Identified through newspaper

The petitioner further states that whilst she was in the remand prison at Negombo that she had come across a Tamil daily newspaper of the 18<sup>th</sup> of January 2001 in which a photograph of some police officers of the Negombo Police Station who had recovered some articles from a group of robbers alleged to be headed by a person in the garb of Buddhist Monk had appeared. She states that in that photograph she identified the policeman who had inserted the plantain flower into her vagina at the Negombo Police Station when she was being tortured. A copy of the scanned photograph with the encircled picture of the officer has been marked as 'P1'. When this application was taken up for support in Court learned Counsel appearing for the petitioner had prayed for an Order directing the 2<sup>nd</sup> Respondent (Headquarter's Inspector) of the Negombo Police Station to submit to Court the name and address of the police officer whose photograph is encircled in 'P1' and the name and address of the police officers who arrested the petitioner at Trincomalee on 21.6.2000. Accordingly this court had directed the 2<sup>nd</sup> and 5<sup>th</sup> respondents viz, the H.Q.I. of the Negombo police station and the I.G.P. to submit affidavits to this Court in regard to the identity of the officer who is encircled in the photograph 'P1'.

The H.Q.I. of the Negombo Police Station had forwarded an affidavit dated 17.4.2001 through the director of the Police Legal Division to this Court in which he has identified the officer who is encircled in the photograph 'P1' as Police Inspector Solanga Aratchchige Mudith Nishantha, who is working under him as an inspector in the Special Intelligence Detection Branch of the Negombo Police Station. After the receipt of the affidavit of the 2<sup>nd</sup> respondent identifying the officer whose photograph is encircled in the document produced as 'P1' the learned Counsel for the petitioner had by a motion made an application to obtain an order from the Court to have the said Police Inspector Solanga Aratchchige Mudith Nishantha added as a respondent to this application. On 18.5.2001 the said motion had been supported and the Court permitted the petitioner to add the aforesaid Police Inspector S.A.M. Nishantha as the 9<sup>th</sup> respondent in this application and notice was directed to be issued on him to file his objections.

The notice issued on the 8<sup>th</sup> Respondent had been returned undelivered with an endorsement "unable to deliver without a number". By a motion dated 4.7.2001 the petitioner had submitted that she is unable to ascertain the address of the 8<sup>th</sup> respondent and therefore under the circumstances that she does not wish to proceed against the 8<sup>th</sup> respondent.

Only the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 9<sup>th</sup> respondents have filed their objections. The 1<sup>st</sup>, 2<sup>nd</sup> and 9<sup>th</sup> respondents by way of a preliminary objection have stated that the petitioner's application that was filed

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*On 21.9.2000 she  
had been produced  
before the Colombo  
Magistrate with  
strict instructions  
that she should not  
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she had been  
remanded under  
Section 7 (2) of the  
Prevention of  
Terrorism act and  
had been taken to  
the Negombo  
Remand Prison.*

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Though the application was filed only on 7.1.88 more than one month after the alleged infringement took place on 1.12.87. It was held that "yet being a remand prisoner the petitioner's lack of access to a Lawyer and his hospitalization from 2.12.87 in remand prison till his release on 11.12.87 must be taken into account".

on 19<sup>th</sup> March 2001 is out of time since the petitioner had been visited by an Attorney-at-Law Mr. C. Ganesharajah on 14<sup>th</sup> September 2000 when she was detained at the T.I.D. of the Criminal Investigation Department and therefore the application should have been filed within one month of 14<sup>th</sup> September 2000. The 3<sup>rd</sup> respondent who has raised the same objection however, has taken up the position that on her own admission in paragraph 24 of the petition and 25 of the affidavit the petitioner has taken up the position that she was represented by an Attorney-at-Law when she was produced before the Magistrate on 25.10.2000 and the application should have been filed within one month from that day.

In the counter affidavit of the petitioner she has stated that although an attorney-at-law visited her when she was in detention that she could not communicate with him freely or give instructions, for the reason that the officers of the Terrorist Investigation Division had warned her not to complain to him about the treatment meted out to her and that if she does so that she will be further tortured. Further that the communication with the attorney-at-law took place in the presence of four police officers, and although an attorney-at-law appeared for her when she was produced in Court on 23.10.2000 a complaint of torture was made by way of an affidavit to the Magistrate who whereupon made a direction to the judicial medical officer to examine her. It was submitted by the learned Counsel for the petitioner that the petitioner was under restraint from the date of her arrest and she was able to secure a copy of the medical examination report only on 12.3.2001.

In the case of *Saman Vs. Leeladasa and another 1989 1 SLR* page 1. The petitioner had been arrested on 29.7.87 and produced before the Elpitiya Magistrate 18.10.87 and remanded to the Galle Prison, on his orders made from time to time. While in custody on 1.12.87 the petitioner was bathing at a water tank near the prison cell the 1<sup>st</sup> Respondent was alleged to have assaulted the petitioner saying that he was not entitled to bathe there at that time. Though the application was filed only on 7.1.88 more than one month after the alleged infringement took place on 1.12.87. It was held that "yet being a remand prisoner the petitioner's lack of access to a Lawyer and his hospitalization from 2.12.87 in remand prison till his release on 11.12.87 must be taken into account". It was observed by Fernando J at page 10 that "the period of time necessary would depend on the circumstances of each case. Here, the Petitioner has (been) hospitalized from 2.12.87 until his release, and was thus prevented from taking immediate action to petition this Court for redress: an impediment to the exercise of his fundamental right under (Article 17) to apply to this Court caused by the very infringement complained of. Further, the fact that he had been assaulted, or that an injury had been inflicted on him, would not per se bring him under Article 11: whether the treatment meted out to him would fall under Article 11 would depend on the nature and extent of the injury caused: until the petitioner had knowledge, or could with reasonable diligence have discovered, that an injury sufficient to bring him within Article 11 had resulted, time did not begin to run. The principle *lex non cogit ad impossibilia* applied and the application was held to have been filed within time.

In the case of *Namasivayam Vs Gunawardena 1989 1 SLR 394* at 400 Sharvanande CJ observed that "to make the remedy under Article 126 meaningful to the applicant the one month prescribed by Article 126(2) should be calculated from the time that he is under no restraint. If this liberal construction is not adopted for petitions under Article 126 (2) the petitioner's right to his constitutional remedy under Article 126 can turn out to be illusory. It could be rendered nugatory or frustrated by continued detention.

Having regard to the circumstances relating to this case I hold that although an attorney-at-law had visited the petitioner on 14.9.2000 when she was detained at the Terrorist Investigation Division and although an attorney-at-law had appeared for her when she was produced in Court on 23.10.2000 that the petitioner was under restraint and that time did not begin to run until the petitioner was able to secure a copy of the judicial medical officer's report on 12.3.2001 and the application filed on 19.3.2001 has been filed within time. For the reasons stated I overrule the preliminary objections raised by the respondents.

The 1<sup>st</sup> respondent admits that he and a party of police officers from the Negombo Police Station went and arrested the petitioner at Trincomalee on 21.6.2000 and searched the house in which she was residing at Trincomalee and brought her back to the Negombo Police Station at about 9 p.m. He denies that the petitioner was detained in a garage at the Negombo Police Station and tortured by stating that she was a LTTE suicide bomber. He further admits that the petitioner was detained in a police cell and kept there till 26.6.2000 under a detention order issued by Daya Jayasundera, Deputy Inspector General of Police, Western Province, (Northern Range). The 1<sup>st</sup> respondent vehemently denies that the petitioner was assaulted by him or any other police officer attached to the Negombo Police Station whilst the petitioner was being detained at the said police station. The 1<sup>st</sup> respondent further states that the petitioner was produced before the judicial medical officer of Colombo on 19.7.2000 and the petitioner did not disclose to him a word about the alleged assault torture and degrading treatment that she faced.

The medical report referred to by the 1<sup>st</sup> respondent was called from the judicial medical officer, Colombo and the consultant judicial medical officer, Colombo has forwarded the report of Doctor M. Sivasubramaniam, assistant judicial medical officer, Colombo who had examined the petitioner at about 2.30 p.m. on 18.9.2000. An examination of the said report reveals that the petitioner had complained to the assistant judicial medical officer that she had been arrested by the police at Trincomalee on 21.6.2000 and taken to the Negombo Police Station on the same day and kept there till 26.6.2000 and that during the said period that police had assaulted her with clubs, wires and her head and face had been covered with a shopping bag containing petrol and chilli powder. Further all her clothes, except the brassier had been removed and the tip of a plantain flower rubbed with chilli powder had been introduced to her vagina, which had resulted in bleeding.

### Contradicting reports

However, according to the report of the A.J.M.O of Colombo he has found no injuries or scars of recent injuries on the petitioner's head, face, chest, abdomen, and of her upper limbs, and lower limbs. The A.J.M.O., states that her external genitalia were not examined as the corpus refused to give her consent for such examination. The A.J.M.O. concludes that there were no injuries or scars of recent injuries and that he cannot give an opinion regarding the history of sexual assault.

It is to be noted that the history given by the petitioner to the A.J.M.O. Colombo when he examined her on 18.9.2000 contradicts the assertion of the 1<sup>st</sup> respondent contained in paragraph 9 of his affidavit where he states that when the petitioner was produced before the J.M.O., Colombo that she did not disclose a word to him about the alleged torture or degrading treatment inflicted on her.

The 3<sup>rd</sup> respondent admits that the petitioner was taken over by the Terrorist Investigation Unit on 26.6.2000 for further investigation but denies that the petitioner was assaulted or tortured as alleged by her. The 3<sup>rd</sup> respondent also admits that he and the Superintendent of Police, Gamini Dissanayake accompanied the petitioner to Vavuniya but denies that he placed several applications of Tamil personnel who had obtained passes to travel to Colombo from Vavuniya and directed the petitioner to pick out the passes of LTTE cadres and when she failed to do so that he mercilessly assaulted the petitioner in the presence of Superintendent of Police, Gamini Dissanayake.

The 2<sup>nd</sup> respondent, the Headquarter Inspector of the Negombo Police Station in his affidavit states that he was on leave between 21.6.2000 and 26.6.2000 and was away from the station at Dikwella and that one Inspector Rodrigo acted for him as the Headquarter Inspector at the relevant time. The 2<sup>nd</sup> respondent denies the petitioner's allegations that she was tortured at the Negombo Police Station. Since on his own admission he was away at Dikwella on leave, during the relevant period he was chosen to base his objections relying on the notes of the 9<sup>th</sup> respondent. Hence no reliance can be placed on the assertions in paragraph 3 to 13 of his affidavit as the assertions therein are based on hearsay material.

### Did not complain about torture

The 9<sup>th</sup> respondent in his affidavit admits that he along with some other officers attached to the Negombo Police Station arrested the petitioner and searched her house in Trincomalee and brought the petitioner to the Negombo Police Station and detained her there till she was handed over to the officers of the Terrorist Investigation Unit of the Criminal Investigation Department on 26.6.2000. This respondent denies that the petitioner was tortured by him or any other respondents attached to the Negombo Police Station. He further states that although several relatives and the Attorney-at-Law of the Petitioner visited her that the petitioner did not complain of the alleged torture to them or to the A.J.M.O before whom the petitioner was produced. This respondent has produced the notes relating to the arrest of the petitioner marked 'R1', the Detention Order upon which the petitioner was detained marked 'R2', the Medico Legal Examination form marked "R3" and the statement of the Petitioner and the notes of the police officers marked 'R4'.

On a perusal of the notes of investigation relating to the arrest of the petitioner made by the 9<sup>th</sup> respondent, it appears that on 20.6.2000 that he had left the Negombo Police Station at 5.45 p.m. with a party of police officers including the 1<sup>st</sup> respondent and an informant probably (Sekar) referred to by the petitioner, in a private van driven by a police driver. They had arrived at 1 a.m. at the Habarana police station and spent the night there since it was not safe to proceed to Trincomalee at that time of the night. He had left the Habarana Police Station at 6 a.m. and reached the Trincomalee police station at 10 a.m. At the Trincomalee Police Station he had sought the assistance of the Headquarter Inspector of the Trincomalee Police Station and together with some police officers from Trincomalee and proceeded to Langanagar. On learning that the petitioner had left for Trincomalee town he had kept the police officer from Trincomalee at Langanagar and proceeded towards Trincomalee town. Whilst patrolling the Trincomalee town near the People's Bank the private informant had pointed out the petitioner and she had been arrested by the 9<sup>th</sup> respondent. Thereafter her house in Trincomalee had been searched and she had been brought to the Negombo Police Station at 8.50 p.m. on 21.6.2000.

The notes of investigations of the police officers R.S. I. Wijesekera, the 1<sup>st</sup> respondent, Police Sergeant 2714 Mahinda and that of women Police Constables 1439 Gamlath, 1341 Rupasinghe and 1263 Samanthi, all reveal that they had accompanied the 9<sup>th</sup> respondent to arrest the petitioner on information that the petitioner was a member of the LTTE Suicide Squad but nowhere in their objections have the respondents claimed that at the time of arrest that the petitioner was informed that she was being arrested for that reason. According to the petitioner, the reason was given only after she was arrested and put inside the van, when one of the police officers had informed her that they had come from the Negombo Police Station to arrest her in connection with an information lodged against her by the 8<sup>th</sup> respondent.

However, it is to be observed that in the 'B' Report dated 21.7.2000 filed by the O.I.C. of the Terrorist Investigation Unit at the time the petitioner was produced before the learned Magistrate it is stated that "the investigations reveal that the petitioner had received training in LTTE training camps and that she had failed to divulge that information to the police." It is also observed that in the Detention Order 'R2' issued by the D.I.G. the reason given for the detention of the petitioner for 90 days under Regulation 19 (2) of the Emergency Regulations is that there were reasonable grounds for suspecting the petitioner to be concerned in or to be committing or to have committed offences under Regulation 45 of the Emergency Regulations. Regulation 45 of the Emergency Regulations deals with attempts to commit offences and states that:

1. any person who attempts to commit or does any act preparatory to the commission of; or
2. aids or abets another person to commit and; or
3. conspires with another person in the commission of an offence under any Emergency Regulation shall be guilty of that offence and shall accordingly, be tried in the like manner and be punished with the same punishment as is provided for such offence under the Emergency Regulations.

Thus it is seen that the respondents have given different reasons at different times in regard to the reasons for the arrest of the petitioner. Further although in the affidavits of the respondents the claim that the petitioner was a member of the LTTE Suicide Squad there is not an iota of evidence to support that assertion. On the other hand the record reveals that no proceedings had been instituted against the petitioner in any Court under any law and she has been discharged from custody.

The Detention Order 'R2' upon which the petitioner had been detained specifies the place of detention as the Police Station Negombo, and it is to be noted that the petitioner had been taken away to the Terrorist Investigation Unit from 26.6.2000 and detained there, from where she was produced before the Magistrate and remanded.

Although the 9<sup>th</sup> respondent has produced the Detention Order marked 'P2' issued by the D.I.G. ordering the detention of the petitioner for 90 days at the Negombo Police Station the D.I.G. has chosen not to adduce any material relating to the circumstances under which he formed the opinion that he had reasonable grounds to suspect that the petitioner was concerned in committing offences under Regulation 45 of the Emergency Regulations. Further no explanation has been adduced by the respondents as to why she was detained at the T.I.D. from 26.6.2000 until she was remanded by the Magistrate. In my view the respondents have failed to establish any acceptable or plausible reason upon which the petitioner had been arrested and detained at the Negombo Police Station and the T.I.D. I hold that the detention of the petitioner at

*The D.I.G has  
chosen not to  
adduce any  
material relating to  
the circumstances  
under which he  
formed the opinion  
that he had  
reasonable grounds  
to suspect that the  
petitioner was  
concerned in  
committing offences  
under Regulation  
45 of the  
Emergency  
Regulations.*

the T.I.D from 26.6.2000 was unauthorized and unlawful.

For the reasons stated I hold that the arrest and detention of the petitioner was unlawful and that the 1<sup>st</sup> to 5<sup>th</sup> and the 9<sup>th</sup> respondents have violated the petitioner's fundamental rights guaranteed under Article 13 (1) and 13 (2) of the Constitution.

Although the respondents in their objections have denied that the petitioner was assaulted and tortured at the Negombo Police Station, as well as in the Terrorist Investigation Unit in the Criminal Investigation Department and tendered the Medico Legal Form 'R3' and the report of Dr. Sivasubramaniam the A.J.M.O., Colombo which state that the petitioner had no injuries. They had been obtained whilst the petitioner was in the custody of the police and no reliance can be placed on them.

An examination of the report of the Assistant Judicial Medical Officer, Teaching Hospital, Colombo North, Ragama 'P2' reveals that the petitioner had been examined on 4.11.2000 as directed by the learned Magistrate. She had given a long history to the Judicial Medical Officer in regard to the acts of torture and assault by the Police Officers of the Negombo Police Station and also at the Terrorist Investigation Unit.

Upon examination the Doctor had found the following injuries:

#### Scars on the anterior aspect of the body

1. Somewhat oval shaped, hypo pigmented, depressed scar, 1/2 x 1/4 in size, placed on the left front of the chest 3 cm above and 3.5 cm medially to the breast.
2. Brown irregular shaped, scar 2 cm x 1.5 cm, in size placed on the right lower abdomen 3 cm below and laterally to the umbilicus.
3. Brown linear thin scar 3 cm long, somewhat horizontally placed in the left lower abdomen. It's medial and was 5 cm below and 3 cm laterally to the umbilicus.
4. Brown somewhat circular shape scar, 2 cm in diameter placed on the front of the upper forearm 3.5 cm below the mid of the cubical fosse.
5. There were two irregular shaped, brownish, somewhat thickened scars in varying sizes (2.5 cm-2 cm x 1.5 cm) placed in front of the left knee.
6. Hypo pigmented, circular, somewhat depressed scar 2 cm in diameter placed in the front left lower leg 5 cm above the ankle.
7. There were two hypo pigmented, rectangular shaped, somewhat depressed scars in varying sizes (2.5 cm-2 cm x 2 cm- 1.5 cm) placed in the dorsum of the left foot.
8. Brown irregular shaped, somewhat depressed scar 2 cm x 1.5 cm in size placed on the front of the right mid thigh 6 1/2 above the knee.
9. An oval shaped, hypo pigmented somewhat depressed scar 1.5 cm x 5 cm in size placed on the front of the right lower thigh 3 cm above the knee.
10. There were two irregular shaped hypo pigmented thickened scars each measuring 1.5 cm x 1 cm and 1 cm x 5 cm in size placed on the front of the right knee.
11. There were about four somewhat circular brown scars 2 cm in diameter placed on the dorsum of the right foot.

#### Scars on the posterior aspect of the body

1. A 'Y' shaped 0.5 x 0.5 x 1 cm in size hypo pigmented scar placed on the back of the upper arm 3.5 cm below the shoulder tip.
2. An oval shaped, hypo pigmented scar 1.5 cm x 5 cm in size

3. placed on the lateral aspect of the left elbow.
3. An oval shaped, somewhat depressed black scar, 2 cm x 1 cm in size placed on the back of the right upper forearm 4.5 cm below the elbow.
4. An irregular linear hypo pigmented scar, with the weave margin 4.5 cm long placed obliquely towards the mid line just medially to the medial border of the right scapula.

#### Vulvo vaginal examination

1. Sexual organs and para sexual organs were developed well.
2. Little whitish discharge was present in vulva.
3. Labia covered with vaginal orifice and there was no scars or injury on the labia.
4. Clinically there were no signs of venereal diseases.
5. There were two old tears on the 6' clock and 3' clock positions on the annular deeply seated hymen with multiple folds.
6. Introits (vaginal orifice) admitted the index finger with moderate resistance and painful discomfort.
7. Pain on the lower abdomen (suprapubically) noted while performing the bimanual vaginal examination

#### Systematic examination

1. Respiratory and central nervous systems were clinically normal
2. The lower abdominal pains (Tenderness) notes on the palpation of abdomen. According to the report of the

Assistant Judicial Medical Officer 'P2' the petitioner had been examined by the Consultant Psychiatrist Dr. P.N.L. Fernando who had reported that she has suggestive features (symptoms) of post traumatic disorder with depressive features.

Upon examination by the Consultant Obstetrician and Gynecologist Dr. Agitha Wijesundara he had reported that there were two old tears at the 3 o' clock and 6 o' clock positions on the hymen with admission of the index finger.

The Consultant Radiologist Dr. Mrs. K.G. Krishanthi Pathirana had performed an ultra sound examination on the pelvis and reported as follows: Bulky uterus with thickened endometrium and cystic left adnexal mass with moderate amount of fluid in the pouch of douglas. The cause of the thickened endometrium and pelvic sepsis may be on account of insertion of the plantain flower being introduced.

#### By way of conclusion the A.J.M.O has found that:

- a. There is positive medical evidence of vaginal penetration.
- b. There is positive evidence of pelvic sepsis with endometriosis;
- c. She has many scars on her limbs and the torso: and
- d. She has features of post-traumatic disorder and depression. The considered medical opinion of the A.J.M.O. is that;
  - a. Vaginal penetration by the insertion of plantain flower is possible.
  - b. Pelvic sepsis with endometriosis could have followed by the insertion of plantain flower as conclusively suggested by the Consultant Radiologist. The frequency of urination

*the facts of this case has revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman...'*



and irregular menstrual period could have been the result of the physical, psychological and sexual violence that she underwent whilst in custody.

- c. The symptoms of post-traumatic disorder and depression could have resulted from physical and mental trauma, that she underwent whilst in custody.
- d. The causation of the original injuries and resultant scars could have been sustained in the manner described in the history given by the prisoner.

The medical opinion, in my view, amply corroborates the petitioner's version in regard to the injuries caused and their causation. As Athukorala J in Sudath Silva Vs Kodituwakku 1987 2 SLR 119 observed 'the facts of this case has revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting and offend one's sense of human decency and dignity particularly at the present time when every endeavor is being made to promote and protect human rights.'

For the reasons stated I hold that the 1<sup>st</sup> to 5<sup>th</sup> and 9<sup>th</sup> respondents have violated the petitioner's fundamental rights

guaranteed under Article 11 of the Constitution as well.

I order that Rs.250,000 be paid as compensation and costs to the petitioner out of which Rs.150,000 be paid personally by the 1<sup>st</sup> 3<sup>rd</sup> & 9<sup>th</sup> respondents in equal shares and the balance Rs.100000/- by the State.

I further direct the Attorney General to consider taking steps under the Convention Against Torture and other cruel, Inhuman or degrading treatment Or Punishment Act No. 22 of 1994 against the Respondents and any others who are responsible for the acts of torture perpetrated on the Petitioner.

JUDGE OF THE SUPREME COURT

FERNANDO J.

I agree Sgd.

JUDGE OF THE SUPREME COURT

ISMAIL J.

I agree Sgd.

JUDGE OF THE SUPREME COURT

***I further direct the Attorney General to consider taking steps under the Convention Against Torture and other cruel, Inhuman or degrading treatment Or Punishment Act No. 22 of 1994 a***

## Sathasivam Sanjeevan..

*Cont. from page 19*

However, Court did not receive any report from the CID despite several dates. Director Criminal Investigation by his letter dated 10 July 2002 informed the Magistrate as follows:

"The Criminal Investigation Department has conducted investigation in connection to the above noted case, on a letter sent by UN Special Rapporteur, through the Ministry of Defence.

The relevant extracts of the investigation had been forwarded to Attorney General for advice."

Subsequently, the Registrar MC Kalmunai received a copy of the letter addressed to Director CID dated 19 August 2002 sent by Yasantha Kodagoda (for Attorney General) which states as follows:

"Upon a consideration of investigative material and further investigative material submitted consequent to investigative guidelines provided by this department. It is my view that there exists a clear basis to determine that the versions of the police (depicted in the relevant notes) relating to both the arrest as well as the death of the aforementioned is false and fabricated. However, the available material does not provide a basis to institute criminal proceedings against either one or more of the police officers for having perpetrated torture and or committed the murder of the afore-named.

"It is however my view that the investigative material does provide both a basis and a justification for the consideration of the institution of disciplinary action against the relevant police officers. Therefore, you are hereby advised to forward a detailed report of the investigation conducted and a copy of this letter to the relevant disciplinary authority, enabling the latter to consider taking appropriate disciplinary action."

Relevant dates: Arrested on	13.10.1998
Died in custody on	15.10.1998
Magistrate's verdict on of homicide	21.10.1999
AG informs that on no material to prosecute	19.08.2002

### Issues for Consideration

- \* Arrest illegal
- \* Acknowledgement of arrest not given at the time of arrest
- \* Reason for arrest told
- \* Torture
- \* Relative not informed of the inquest no representation at the inquest
- \* No intimation as to the date of Magisterial inquiry
- \* State failed to protect/prosecute - custodial death
- \* Contradictory post-mortem report. Inquest reports contradicts Doctor's report
- \* There is no provision to file FR
- \* It is only the AG who could prosecute both under the Criminal Procedure Code and the Torture Act. He had declined to proceed.

Can we think of a Communication to UN Committee alleging following violations:

- 1) Art. 6 Right to life
- 2) Art. 7 Torture (to parents)
- 3) Art. 9 right to Security
- 4) Art. 10 to be treated with humanely
- 5) Art. 26 right to equal protection

The question of exhaustion of local remedies will not arise for the reason that no remedies are available for the parents under our law.

Art. 6 is not recognized by our constitution and even in respect of other violation it is only the victim who could apply for relief.

# Impact of armed conflict on children in Sri Lanka

By V. Yogeswaran

## Introduction

The last 20 years' history of Sri Lanka has been marked by civil war and it has left over 60,000 dead and many maimed. The destruction of valuable property and the displacement of persons internally and as refugees overseas, have had their impact on the Tamil people who have suffered long. The year 2002 however saw a marked difference with the formation of the new government. Committed to peace, the Prime Minister signed an agreement with the leader of the LTTE ushering a ceasefire that has silenced the guns. Though there have been snags in the implementation of the MoU, the ceasefire is holding and three rounds of talks have been completed.

Talks have brought about a united effort by the government and the LTTE to rebuild the devastated northeast. Already plans are underway to join hands in rebuilding the economy, social infrastructure, in the rehabilitation and resettlement of displaced persons, and assist in other needs.

It is in this context, I reflect on one issue – the impact of war on children in Sri Lanka.

Armed conflict has changed the lives of millions of women and children all over the world and this includes Sri Lanka. In an armed conflict nothing is held sacred and nothing is protected. One of the striking features of the modern day armed warfare is its impact on women and children.

## Armed conflict – what it had made our children become

Walking on the streets of Sri Lanka, in the villages and towns of this beautiful island, I meet a lot of children with smiling faces. Yet under every smiling face, deep scars lie concealed. The war has placed its scar on the faces of all our children.

The affected children can be grouped into categories using various standards of analysis. I focus my attention and classify these little faces into identifiable groups depending on what predominates in their experience of war. The purpose is to create awareness among persons who are engaged in reconstructing society, to pay attention to these faces that will form adult society soon. Unless timely action is taken to recognize as to what we are confronted with, we may be deceiving ourselves in this task of building a meaningful future for ourselves and for these children.

## Child soldiers of Sri Lankan armed conflict

The place: a cemetery of militants in Jaffna, Sri Lanka. Boys and girls who sacrificed their lives for a cause they thought were noble. Most of them were younger than 18. We see a

mother wailing over a tomb. Her son was killed in the latest battle, just 16 years old and a favourite son. She looks at us and says: "Even when freedom comes, we shall walk over the bones of our sons and daughters. What kind of freedom is that?" Sri Lanka's civil war has claimed thousands of young boys and girls as 'martyrs.' To the mothers who bore them, the much-touted martyrdom is eternal agony.<sup>1</sup> The fact that children have been made use of in the armed conflict, which devastated Sri Lanka is a fact that cannot be denied. The Convention on the Rights of the Child Art.38 clearly protects children being recruited into armed forces. The government has acceded to this and has raised the age limit to 18 years and over for the armed services.

The militant groups have not adhered to this yet. Various pressures from concerned groups are exerted on the militants to comply with this provision. We do not know as to how many children had actually been recruited and trained and are still in active service.

What one gathers from the various reports in newspapers is just an indication of what may be the tip of an iceberg.

Especially children in the north and east have become very vulnerable to forced and involuntary conscription. The reports of the SLMM in the recent past from the northeast have repeatedly highlighted the problem and the fear of children and parents of forced recruitment.<sup>2</sup>

"Sri Lanka's protracted conflict in the northeast has resulted in a generation of children knowing nothing but war. While the psycho-social impact of the conflict has affected the entire child population adversely it has taken the heaviest toll on approximately 900,000 children living in the conflict affected areas. Apart from the day to day stresses of coping in an uncertain and violent environment, children in this region have to bear an added trauma of being forcibly conscripted or lured into direct military combat by the LTTE guerrillas and other militant groups."

The destruction of physical and social infrastructure, the irregular functioning of schools and poor access of internally displaced children to schooling have all contributed to a large population of children in the conflict affected areas being out of school. This is reflected in the high secondary school dropouts rates in these areas – the northern province has the highest secondary school dropout rate in the northeast – in fact the northern province has the highest secondary school dropout rate in the country (12 percent for boys and 10 percent for girls in 1997, in contrast to the national average of 4.4 and 3.5 percent, respectively).

Information on child combatants is scarce. However, the international human rights group Amnesty International has confirmed the LTTE has been recruiting children as young as 11 years for its fighting formation known as the 'baby

*The militant groups have not adhered to this yet. Various pressures from concerned groups are exerted on the militants to comply with this provision. We do not know as to how many children had actually been recruited and trained and are still in active service.*

brigades.' The attack of army camp in Weli Oya in 1995 where several of the LTTE casualties comprised children, the 1998 Mankulam attack where 26 LTTE child combatants (boys and girls) surrendered to the army, and the most recent – October 1999 – clashes between security forces and the LTTE in which 49 children (mostly girls) aged 11 – 15 were killed, are all factual testimony which support this assertion.<sup>3</sup>

Further Amnesty International has in its report repeatedly highlighted the issues of children drawn into armed conflict in Sri Lanka.<sup>4</sup>

Now that the MoU is in place one would think the situation is better. But there are disturbing reports from the northeast that the situation has not improved or been contained.

"UN child rights agency UNICEF is to obtain the release of more child recruits in LTTE custody, UNICEF's Sri Lanka representative said. He said that the LTTE had agreed to hold regular meetings with UNICEF to investigate into pending cases and cases that would be brought before it and encourage the release of children. Already two batches of children have been released from LTTE custody after lobbying from local and international NGOs and UNICEF ... during the past weeks 85 children between the age group of 14 – 17 were released from LTTE custody .

"These children from Jaffna, Mullaithivu, Mannar and Vavuniya were in LTTE custody between February and July this year. Trauma usually associated with child recruits had not been evident in this group, as they had not seen combat due to the ceasefire in place... Mr. Chaiban said UNICEF was focusing primarily on two issues – poverty and the lack of education opportunities which were factors that pushed children to join LTTE ... Besides education and poverty in re-integrating the child, another aspect that is being looked into was psychosocial support which involved in variety of activities to allow children to be children again, he said."<sup>5</sup>

There is lot to be done in the release and rehabilitation of child soldiers as well to bring an end to the forced conscription currently prevalent under many names.

### Children in refugee camps

There are more than 175,000 persons living in 348 government welfare centres, many for up to 10 years. At least 75% of these persons are women and children. The registered displaced population is dependent on food rations provided by the government, whose supplies at times can be irregular and insufficient.

Different figures are made available to understand the situation of the internally displaced persons (IDP). The cause for the discrepancy in the figures is because though a vast majority of them live in refugee camps or welfare centres, there are also those who live with relatives, while some others with means have found private accommodation.

Further, there are many living in the refugee camps in Tamil Nadu. It is estimated that there are about 80,000 persons in the government controlled refugee camps and about 70,000 living outside the camp. Among them how many are children below the age of 18 is anybody's guess since proper census is not available.

What one comes to know from all these is that a vast majority of children from the northeast are in refugee camps, in IDP welfare centres or in the refugee camps of Tamil Nadu. Some have been born and brought up in a camp environment. They know nothing but camp life and the values implanted or imparted through camp life. There are many others who have been displaced not just once or twice, but on multiple occasions. They view themselves as gypsies rather than as displaced persons.

The experience of living in a camp or a welfare centre leaves its mark in many forms on the mind of the child. When the war breaks out in one area, people of that area move out to safer localities and neighbouring villages. When there is an unexpected influx into these villages, they become vulnerable to instability because their economies cannot sustain the arrival of such large groups of people. There is no infrastructure to provide employment, healthcare, accommodation etc. The displaced are grouped and accommodated in public buildings like schools, temples etc. This in turn disrupts the life of the adults and their children as well. Due to unemployment, parents and adults depend on food stamps and other relief supplies given by the government or NGOs to support the family. This turn create idleness and laziness, which leads to frustration and possibly the abuse of alcohol.

Restrictions imposed by the government on movement outside camps through a pass system, which was mostly prevalent in Vavuniya and Mannar districts, further contribute to the suffering of displaced persons and certain camps eventually become open prisons.

When this vicious cycle is set in motion, the ground is prepared for the abuse of children and women and the breaking up of families. Has this not been the repeated experience of anyone who has visited camps of displaced persons? The children are exploited to do household work, and both the displaced as well the village children are denied education.

"Out of the 800,000 internally displaced people, 160,000 have returned. A majority of them are in Jaffna, Mullaithivu and Kilinochchi. There is some movement in and out of the Vanni region... All this is despite the 500,000 – 2 million landmines that wait de-mining.

"Women and children are vital component of any social fabric whose decomposition will only lead to greater social issues. Families in disarray carry the potential of social instability. A 20-year-old ruined social structure has got to be put on track to get moving once again."<sup>6</sup>

Armed conflict has deprived children of many things and entered into all spheres of the lives of those who had been forced to live in the refugee camps and welfare centres: War has contributed to:

- lack of privacy and family life
- lack of recreational facilities, games - indoor and outdoor
- child abuse in various forms resulting in unwanted pregnancies, disastrous love affairs, suicide, early marriages etc.
- lack of educational opportunities due to deprivation of educational materials, teachers, space and buildings poor healthcare due to a lack of hospitals, medicine, doctors malnutrition – lack of proper food.

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*The children are exploited to do household work, and both the displaced as well the village children are denied education.*

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The experience of repeated internal displacement – going from camp to camp at various times due to conflict – living in welfare centres in India for many years and now with MoU in place getting ready to come back to their destroyed villages have all left their impact and scars in the minds the child victims of this conflict.

### Child in a Muslim refugee camp

Last year I was in the Puttalam District to conduct a seminar among the displaced Muslim children there. They were displaced from Vanni, Jaffna and other areas in the north. Some had the experience of being displaced at a very early age when they could not comprehend what was happening to their family and why they had to leave abruptly. What wrong did they do and to whom that they had to leave in such a hurry abandoning their homes and parents' livelihoods? This was one of the unanswered questions in their minds.

Growing up in a displaced environment, they learnt of their pasts from adult family members and tried to comprehend and contextualise the loss suffered by the family and its continued hardships, from their own life experience. The predominant anxiety for them was waiting to go back, which they had inherited from the adults. "Where I am now living is not my home and village. I am a refugee. I am living in exile and I will be a refugee as long as I live here." This was the sentiment shared in the groups as we discussed many issues affecting their lives.

Though the desire to go back to their own roots is great, fear rankled their minds. "Will the home community welcome me back? Will I be able to reintegrate into society? Will my culture and religion be respected and education and employment opportunities assured? Will we be accepted as equals and afforded equal opportunity?" are some of these fears. Resettlement not only disrupts life the displaced have come to be familiar with but also gives rise to anxiety as to whether it will be for better or for worse.

### Orphaned and unaccompanied children

It is estimated that over 60,000 persons have died in this senseless war. The war has given Sri Lanka an abundance of orphans and widows. Orphanages have mushroomed in the northeast.

While attention is being paid to sustain the cessation of armed conflict that has come to replace the war after the signing of the MoU, the country is confronted with multiple questions about children affected by war, especially those who are orphaned. They seem to say, "Peace cannot replace my mother or father; peace cannot replace my lost innocence and childhood; peace cannot make me lovable and loved. I am kept in an institution and I am not at home, I am charitably maintained by the adult society in this institution but not lovingly. Peace cannot give me a new future due to this irreplaceable past of mine."

If we adults fail to listen to this voice, we will reap a black harvest.

I have had the opportunity of visiting orphanages in various places and the visits have convinced me these children are already worried about their future. "If I do not behave well or make mistakes or break rules, I will be sent away. Will I be looked after in this place till I find a job? Will I be looked after

and be given in marriage in due time?"

I am left wondering whether the institutional approach to take care of the orphaned is appropriate and will bring the desired outcome. Should we adopt other formulae in looking after these children? Will we not have better options in seeking foster-parent home adoption to bring a home environment for the orphaned child instead of an institutionalised environment?

### Children of the missing

There are numerous requests that have come my way from parents looking for their missing children and children looking for their missing parents. I have shared many anxious moments with children and parents helping them to cope with the emotional problems arising from these tragic circumstances.

This group of children is so special because of their unique experience. It is difficult to convey the truth that their missing parent is dead and will not come back. This peculiarity is derived from the fact that these missing persons are not counted among the dead. The security forces use the term 'missing in action.' In a similar manner, there are also many civilians accounted for as 'missing' in the northeast whose children are waiting in hope their father/mother will come back. This has become a long wait and reconciliation and acceptance has not really taken place.

It is futile at this juncture to ask hypothetical questions such as whether the LTTE or the security forces are holding missing persons in secret locations. Practical reality tells us that these persons are dead and there is only a remote chance of discovering them alive. But the human spirit refuses to accept this and the search continues. Not only is the anguish of the adults communicated to the children but their frustration, arising from the futile search, is also taken out on them. The refusal of the grownups to accept this reality is detrimental to the welfare of the child. Neither the child nor the parent is afforded an opportunity to cope with this emotional stress. There are thousands of such families and situations to be addressed in the future as the country moves towards peace and reconciliation.

Children of missing soldiers have similar experiences. They too grow up waiting and hoping that one day their father will come back. It is only an illusion and temporary shelter to sooth the emotional and psychological trauma of the child. Unless the reality is confronted and accepted the healing process will not begin.

### Disabled children

Children disabled by war and armed conflict, mostly victims of landmines, miss play, which is an imported element in the life of the growing child. When a child misses play it means he or she fails to express himself/herself fully. Play is an integral part of a child's world and the play in adulthood is the expression of the child in the adult.

According to a survey conducted by the White Pigeon Movement there are about 11,455 children affected by landmines according to the following breakdown: Mullaitivu 6158, Kilinochchi 4043, Mannar 1254. Other areas were not covered in this survey. All these children are below 16 years.

*Practical reality tells us that these persons are dead and there is only a remote chance of discovering them alive*

Loss due to landmines does incalculable damage to a child, physically and psychologically. The maimed child has difficulty in integrating with society. He or she is always bitter because of the lack of opportunities in life such as prospects for marriage, family life and employment.

### Impact of armed conflict on a child's life

Armed conflict leaves deep wounds in the physical, psychological and spiritual life of children.

Physical impact - especially in the area of education, health and food

#### a. Education

Standards of education of children in the northeast have declined due to educational institutions being occupied by the security forces forcing children out of school. Besides, school buildings have been destroyed or damaged, teaching staff displaced due to security and other reasons and in the institutions continuing to provide education, a serious inadequacy in facilities including a lack of study materials and other equipment.

Bamini (14) of Jaffna who was displaced many times with her family says, "When we were displaced, we did not have any food to eat, no water to drink and no place to stay... Every time we were displaced, we studied in different schools... I have studied in seven schools so far."<sup>7</sup>

"Amidst fear and uncertainty children from refugee camps and displaced homes in isolated and abandoned areas peddled or walked to schools, which sometimes meant a tree shade or temporary hut. The student population which stood at 290,000 in 1990 dropped drastically in the coming years and was only 130,000 in 2000... Among the other areas, (the) education sector seems to be a major constraint facing the development officers. Even though the army has vacated most of the school buildings, there still remains a lot to be done. Teacher shortage, rehabilitation of war-torn buildings, provision of drinking water, sanitation facilities and physical resources to name a few."<sup>8</sup>

A UNICEF survey indicates over 11,500 students do not go to school regularly in the Jaffna peninsula. Of that, 7809 have dropped out permanently and about 3946 do not attend most of the time.<sup>9</sup>

In the Vanni, over 10,000 children do not attend school and others have polythene covered sheds as schools. Surveys are needed in other areas.

"Just think of it. Every single child in our country today was born and has grown up experiencing the uncertainties, the fears and the destructive terror of armed conflict, either directly or indirectly. Today we have more than 270,000 internally displaced children who lost homes or had their families brutally killed or torn away from them. Thousands of them lost either one or both parents. Think of the near impossible task of locating their relatives or re-homing them in foster homes."<sup>10</sup>

#### b Health services and food distribution

"Thousand of children are killed every year as a direct result of fighting – from bullets, knife wounds, bombs and

landmines. But many more children die from malnutrition and disease heightened by armed conflict. Wars – many of them in the world's most impoverished regions – disrupt food supplies and destroy crops and agricultural infrastructure. They wreck water and sanitation systems along with health services. And wars displace whole populations, tearing families and communities apart. All these take immense physical and emotional toll on children. Beset by malnutrition, common childhood diseases and opportunistic infections, children by the thousands fall into a fatal spiral of failing health. Some of the highest fatality rates occur among children who have been uprooted from their homes, including those languishing in camps for refugees and internally displaced."<sup>11</sup>

Children in Sri Lanka are no exception to this rule. Due to the economic embargo imposed on the northeast many essential goods were prohibited from being taken across. Prohibiting medical goods have caused serious health problems. According to health authorities the official embargo on pharmaceuticals to the north have caused the mortality rate among infants and pregnant mothers to increase by nearly 18%, mortality rate among children under five to increase by nearly 18% and malnutrition among under-12s which was at 4.3% in 1983 to go up to 40% in 2001. The death rate due to common diseases has increased due to the shortage of drugs.<sup>12</sup>

The war destroyed the economy of the northeast. The mainstay of the northeastern economy is agriculture and fisheries. The war has demolished irrigation systems and planted paddy fields with landmines, making fertilizer a rare commodity and the land barren due to the adverse impact of warfare on the environment. The displacement of fisher families and the damage to fishing gear placed further restrictions on fishing. Children whose parents depend on agriculture and fishing to support the family are impoverished due to this.

The restriction imposed on the movement of people and on the transport system imposed further constraints on the growth of the economy. Whatever little was produced could not be marketed and goods from outside could not be brought in.

"Children who survive armed conflict have to deal with the horrors they have witnessed. War undermines the very foundations of children's lives, destroying their homes, splintering their communities and shattering their trust in adults. Children spared the direct experience of violence in armed conflict still suffer deep emotional distress in the face of the death or the separation of the family members and the loss of friends... war affects every aspect of the child's development – physical, emotional, intellectual, social and spiritual. Children who have lived through conflict need psychological support. Article 39 of the Convention of the Rights of Child guarantees the right of children to psychological recovery and social integration following armed conflict and other abusive experiences.

"Exposure to armed conflict also contributes to a child's internalisation of the culture of violence. Children take cues from their adult caregivers, so when they witness situations in which the anxiety and vulnerability of their parents is exposed, they tend to become more fearful and insecure themselves. Children can also have difficulty understanding erratic, overly protective or authoritarian attitudes in adults."<sup>13</sup>

Symptoms arising from prolonged exposure to armed conflict

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*A UNICEF survey indicates over 11,500 students do not go to school regularly in the Jaffna peninsula. Of that, 7809 have dropped out permanently and about 3946 do not attend most of the time.*<sup>9</sup>

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are found among children in Sri Lanka. There is hatred for an unknown enemy – for the child in the northeast it is the Sinhalese soldier; it could be otherwise to children from the south. There is bottled-up anger due to reasons from loss of family members to loss of property, culture etc. Almost all the children in the northeast have been deprived of basic facilities like food, shelter, clothing, education and medicine. The impact and effect of being deprived and knowing the consequences of the deprivation has disturbing effect on the child.

Further, the child in the northeast has had a lopsided exposure to one culture – songs, plays and public performances glorifying that culture while degrading the culture of the 'other' as oppressive. This creates false pictures and images in children's minds. These constant one-sided exposures without explaining enough the causes of war and their justification (if any), has imparted wrong values in children. Intense fear is another experience which children are forced to cope with – fear of being killed, abducted, arrested, repeatedly displaced – all that have led to a life of pessimism and frustration.

Fieldwork conducted by a team from the Butterfly Garden among children affected by war from four villages in Batticaloa revealed the following: 41% had personally experienced conflict-related violence (e.g. home attacked or shelled, shot at, beaten or arrested). 53% had direct family members killed violently, including disappearances of family members following abduction or detention. 95% of the children recalled events for which the definition of PTSD applied (i.e. personal experience or witnessing events of actual or threatened death, serious injury, threat to integrity of self or others). 92% of these events were directly conflict-related, as distinct from domestic violence or accident. Severe (20%) and moderate (39%) levels of post-traumatic psychological distress were found, as well as similar levels of depression and unresolved grief reactions. Many children disclosed experiences and shared emotions previously withheld from others. This survey in just four villages among 170 children is a pointer to the psychological and emotional imbalance that exists in the children affected by war.<sup>14</sup>

### Impact of this armed conflict in the spiritual life of children

In any culture the place of worship is a sacred one. When everything fails and falls apart, the human spirit longs to find solace and remedy to troubles and suffering before of his/her favourite deity. Therefore, the place of worship is very important in the social, cultural and spiritual life of a society.

The occupation by the armed forces of places of worship has made these centres inaccessible for the adults and children. Further, it has also raised questions in the minds of the children of the purpose and meaning of religion and God. Can God protect us from suffering? Why can't He prevent disaster? Where is God in the face of death of loved ones? Failing to understand manmade misery and suffering, children tend to blame God for it and have moved him out of their lives.

### Conclusion

It is an enormous task that faces adults in dealing with children affected by armed conflict in Sri Lanka. The important question that one needs to ask is about oneself.

What can I do individually within my capacity and ability? Each one of us has a duty to contribute to this process of peace and reconciliation building. Thereafter, men and women of goodwill can come together to form interested groups for collective action. What can be done collectively at church/organizational level to be then transferred to the national level? What can be done nationally with other partners engaged in similar programmes?

The world is not silent and people of goodwill in our country are not silent either. There are many actively involved in rehabilitation and reconciliation. I came across a programme or plan of action spelt out by the UNICEF: "Children: Zones of peace"<sup>15</sup> and I find much needed material there for action planning depending on capacity and expertise.

I do not intend elaborating what has already been said in the above mentioned chart of action of the UNICEF to protect our children from future and further armed conflict. We could be partners in this programme.

Sri Lanka on ratifying the Convention on the rights of children, submitted its initial report to the UN Committee on the Rights of the Child and the committee gave a list of recommendations on 21 June 1995<sup>16</sup>. These could be of use in planning future action for children's welfare in Sri Lanka. The UN committee is now considering the next report submitted by the Government of Sri Lanka.

### Endnotes

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15. Children: Zones of Peace: A Call for Action (Promoting and Protecting the Rights of Children affected by Armed Conflict in Sri Lanka (*UNICEF May 1998*)
16. Concluding observations of the Committee on the Rights of the Child: Sri Lanka. 21.06.95

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