



BEYOND THE WALL

July - September, 2005

A background image showing several white hands raised in the air against a yellow background, symbolizing protest, solidarity, and human rights. The hands are positioned at various heights, creating a sense of movement and collective action.

Home for Human Rights

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BEYOND THE WALL

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

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

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

Editor:
I. F. Xavier

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Home for Human Rights,

14, Pentreve Gardens,
Colombo 3, Sri Lanka

EDITORIAL

Back to Emergency

By V.S. Ganesalingam

The assassination of Foreign Minister Lakshman Kadirgamar saw the promulgation of a State of Emergency by the President under the Public Security Ordinance on 13 August 2005. The State of Emergency, which was in force for one month, was extended by a majority vote in Parliament for a further period despite the concern expressed by members who represent ethnic minorities.

In the 50 years since independence, Sri Lanka has been ruled more under Emergency than under normal law so much so that law-enforcing authorities thought that national security laws *were* the normal laws. During these years Sri Lanka earned a notorious reputation, as one of the worst violators of human rights in the world, and at one time had the second largest number of disappearances in the world next to Sudan. During these dark days it was estimated that more than 60,000 disappeared — most presumed to be extrajudicially killed. Human bodies burning on tyres on roadsides, was a common sight across the country. In the North and East, scores of people disappeared after being abducted (or “arrested during security roundups”) from their homes and refugee camps.

Even in prisons and in other places of detention massacres occurred. Hundreds languished in detention camps and police stations over long periods without trial. Torture in custody was rampant with several cases of deaths in custody.

If the purpose of the declaration of Emergency — going by what was said in Parliament — was to facilitate the investigation into the assassination of the Foreign Minister and the reasons for the extension was to curb the continuous killing of unarmed civilians and attacks on police stations and Army posts in the North and East by the LTTE, it was not clear how these ends could be achieved through Emergency Laws. This is because no Emergency was in force when Mr. Kadirgamar was killed and thus his assassination could not have been an offence under Emergency Regulations (ER). Instead this was an offence under the Penal Code and investigation could only be conducted under the Code of Criminal Procedure. As for the reasons given for the extension, those who were familiar with the working of the Emergency Regulations for the past 17 years would agree that these Regulations have not produced the

desired results.

Furthermore, provision in the Emergency Regulations relating to arrest, detention, places of detention and inquests following deaths in custody, seriously affect the rights to life, liberty and security of persons — as pointed out by the Civil Rights Movement (CRM). In terms of the ER any person authorised by the President, not necessarily the police or the armed forces, could arrest any person and persons so arrested could be kept in custody for 90 days and indefinitely remanded thereafter. Other ominous provisions include preventive detention at the command of the Secretary of Defence for up to one year, detention at places decided by the IGP, conditions of detention at the discretion of authorities, death penalty for certain offences and extensive censorship of the media.

The ER currently in force are more or less similar to those that were in operation over the years and over which serious concerns have been expressed both locally and internationally. This is mainly because the provisions provide the security forces and the police with wide powers to detain persons incommunicado and without charge or trial for long periods of time. They also provide a ready context for death in custody, disappearances and extrajudicial executions as borne out by the wide-scale human rights violations that occurred in the past.

However the most obnoxious provisions are those regarding inquests and confessions. Accordingly, the salutary provisions contained in the Criminal Procedure Code relating to inquests into deaths — where inquirers and Magistrates had been given wide powers to ascertain the cause of death — had been removed by ER 54 to 58. Instead, under these ER, inquiries into deaths in custody could take place upon the application of the IGP; the postmortem report should be kept a secret and it is only the High Court in Colombo that is empowered to inquire into such death. What is most unsatisfactory is that these High Court proceedings are not open to the public.

The Regulations also contain provisions that violate the Constitutional right to fair trial and presumption of innocence guaranteed by Articles 13(3), 13(5), and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) — to which Sri Lanka is a

party. The admissibility in trials of statements — whether or not they amount to a confession — by suspects to a police officer not below the rank of Assistant Superintendent of Police as well as casting the burden upon the accused to prove that such a confession was not made voluntarily, found in previous ER as well as the Prevention of Terrorism Act has been incorporated into the present Regulations. This is despite the views of the UN Human Rights Committee in Communication No. 1033/2001 (Singarasa vs. Sri Lanka) in which the Committee held “*that by placing the burden of proof that his confession was made under duress on the author, the State Party violated Article 14 paragraphs 2, and 3(g) read together with Article 2, paragraphs 3 and 7 of the Covenant.*”

The motion to extend State Emergency was easily passed in Parliament with the major Sinhalese parties i.e. the SLFP, UNP, JVP and JHU voting in favour. The TNA and Mano Ganeshan of the WPPF voted against. Sri Lanka Muslim Congress abstained while the CWC, which voted with the government for the promulgation of the ER, was absent at the time of voting for the extension.

During the debate on the extension of emergency the main Opposition party's (UNP) concerns were limited to the applicability of ER to elections. Its deputy leader even said that the party will support the extension if the regulations were relaxed by the day of nominations. Minister Ratnasiri Wickramanayake responded that those provisions dealing with holding of rallies and processions had been relaxed for upcoming elections and also gave the assurance that ER would not be used to hamper election work.

On the other hand serious concerns of imminent rights violations expressed by the TNA were neither considered nor received any response from the government. R. Sampanthan, parliamentary group leader of the TNA said that it was the Tamils who were mostly victimised under ER. He said, “*If the people inhabiting this country are to coexist, we must realize that such coexistence is possible only in the*

context of our respecting each other. If we are subjected to the fascist boot of emergency rule it must inevitably lead to a situation where coexistence amongst the different communities that inhabit the country would become impossible, unattainable,” he warned.

However, it is also worth recalling what the then government said when introducing the Prevention of Terrorism Act (PTA) in 1979. The 1979 government said that the Act would only be used to contain threats posed by Tamil armed groups – so there was little opposition to the law from the South. But the manner in which this draconian law was later ruthlessly imposed in the South is now common knowledge.

Significant contributions to the debate came from the Upcountry Peoples Front and the JVP who suffered considerably under emergency rule. Mr. Chandresakaran who himself was incarcerated under the security laws, said it is the upcountry Tamils who will be most affected by the emergency law. He added that there will be political vengeance, arrests for the non possession of national identity cards and there will be checkpoints where human dignity will be lowered.

JVP Member of Parliament, Chandra Wijesinghe said, “We have lived through the dark period when emergency was used to suppress all forms of opposition and we don't want a repetition of that kind of era.” He further said that the Party was not in favour of emergency rule even though it supported the government in this instance because of the growing terrorist attacks by the LTTE. It is also worth recalling what the then government said when introducing the Prevention of Terrorism Act (PTA) in 1979. The 1979 government said that the Act would only be used to contain threats posed by Tamil armed groups — so there was little opposition to the law from the South. But the manner in which this draconian law was later ruthlessly

imposed in the South is now common knowledge.

Finally it is somewhat unfortunate that our parliamentarians have failed to address the possible not addressed their minds as to whether these regulations could offend the Ceasefire Agreement entered into between the government of Sri Lanka and the LTTE — because according to Article 2.12 states that “the parties agree that search operations and arrests under the Prevention of Terrorism Act shall not take place. Arrests shall be conducted under the process of law in accordance with the Criminal Procedure Code. And Article 2.13 says, “The Parties agree to provide family members of detainees access to the detainees within D-day + 30.”

H U M A N R I G H T S C A S E S

SL HRC to decide compensation for disappeared son

The following are excerpts from a submission made by Home for Human Rights on 8 August 2005 in furtherance to the request made by the Human Rights Commission (HRC) of Sri Lanka to decide on the compensation payable to Jegatheeswara Sarma for the disappearance of his son. The Human Rights Commission has been requested by the Government of Sri Lanka to decide on compensation, after the State accepted responsibility for the disappearance of Thevaraja Sarma. Accordingly, the Human Rights Commission accepted the suggestion that the computation of compensation be according to international standards.

Background Information

J. Thevaraja Sarma, the son of Jegatheeswara Sarma, was a 20-year-old Tamil youth and a motor mechanic. He was arrested on 23 June 1990 along with his father and several others, by security forces during a military operation. Subsequently, he was taken to the Plantain Point Army camp and his whereabouts are still not known.

Jegatheeswara Sarma, his father, having failed in all his efforts to get information from the State as to the whereabouts of his son, filed Communication "No.950/2000" dated 25.10.1999 with the United Nations Human Rights Committee claiming that his son is a victim of a violation by the State Party of Articles 6, 7, 9 and 10 of the International Covenant of the Civil and Political Rights (ICCPR). Also that he and his family are victims of a violation by the State Party of Article 7 of the Covenant.

The State Party's objection to the admissibility was ruled out by the Committee and, despite the State claiming that the said abduction and disappearance has been distinctly separate and independent from the cordon and search operation carried out by the Sri Lankan Army and that the State is not responsible for the disappearance, the Committee at its meeting on 16 July 2003, held that the facts before it, disclosed a violation of the Articles 7 & 9 of the ICCPR with regard to the author's son and Article 7 of the ICCPR with regard to the author and his wife. The Committee further recommended effective investigation into disappearances to determine the fate of the author's son, adequate information resulting from investigations, and adequate compensation for the violation suffered by the author's son, the author and his family.

In responding to the UN-HRC's decision the government of Sri Lanka informed the Committee that, "*The Criminal proceedings against the accused charged for the abduction of the author's son, are pending before the High Court of Trincomalee. The Attorney General has on behalf of the government of Sri Lanka informed the Court to expedite the trial. The government of Sri Lanka will thereafter refer the case to the Human Rights Commission of Sri Lanka to*

make recommendations on the question of payment of compensation including the determination of the quantum of such compensation".

Consequent to this, a meeting was called by the Sri Lanka Human Rights Commission on 16 June 2005 attended by Mr. S. Fernando, Deputy Solicitor General (DSG), representing the State, the author of the Communication and his Attorney at law V.S. Ganesalingam. On the DSG informing the Commission that the State accepts responsibility for the disappearance, the Chairperson suggested that compensation could be for abduction, pain of mind and disappearance. The suggestion by Mr. Ganesalingam that the computation of the compensation be according to international standards was accepted.

International Standards for Payment of Compensation

To ascertain the international standards, on the question of computation of compensation, it may be relevant to quote from the Human Rights Resolution 2005/35 of the Commission on Human Rights, which has been adopted by the General Assembly in April 2005: "The Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law"

"Compensation should be provided for any economically assessable damages, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violation of international human rights law and serious violations of international humanitarian law, such as:

- Physical or mental harm;
- Lost opportunities, including employment, education and social benefits;
- Material damages and loss of earnings, including loss of earning potential;
- Moral damages;
- Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

For this submission, reliance is placed on the judgments of the European Court of Human Rights and Inter American Court of Human Rights. Even though there are some judgments of the Supreme Court of India and recommendation of the South African Ad hoc Committee on Reparation as part of the truth and reconciliation process, they are not helpful in that appropriate heads of compensable damage and the principles of assessment were not made known. Like the compensation awarded in the Fundamental Rights applications in Sri Lanka, the practice had been to award lump sum payments.

The right to claim compensation for disappearance and the liability of the State to pay arises from the principle of international law that every violation of an international obligation which results in harm creates a duty to make adequate reparation and compensation. It is further submitted that the right to claim according to international standards arises from the fact that the right held to have been violated is a right under international law.

Accordingly, in *El Caracazo Case vs. Venezuela Reparations*, the Inter American Court of Human Rights held that, "*Reparation of the damage caused by violation of an international obligation requires, whenever possible, full restitution (restitution in integrum), which involves the reestablishment of the previous situation. If this is not possible, as in the instant case, the international court must order a set of measures to, in addition to ensuring the rights infringed, redress the consequences of the breaches, as well as to decide on payment of indemnification as compensation for the damages caused. This obligation to make reparations is regulated, in all its aspects (scope, nature, modes, and determination of beneficiaries) by international law, and cannot be modified by the Respondent State nor can it fail to comply with it, invoking to this end provisions of its domestic law.*"

As their name indicates, reparations are measures that tend to eliminate the effects of violations that were committed. Their nature and amount depend on the damage caused at both the pecuniary and non-pecuniary level. Reparations cannot involve enrichment or impoverishment of the victim or his heirs. In this regard, reparations established in this Judgment must be consistent with the violations found in the judgment on the merits."

To be in line with international standards, it is better to divide the claim into pecuniary and non-pecuniary or moral suffering (pain and suffering, mental anguish, humiliation, loss of enjoyment of life and loss of consortium)

Definitions

Pecuniary Damages:

Pecuniary Damages include lost earnings, consequential damages, and patrimonial damages to the household.

Consequential damages: Such damages include funeral expenses, medical expenses and monies spent to search for the disappeared.

Lost Earnings: This is calculated on the basis of the income at the time of violation up to his probable life expectancy, deducting a percentage for personal expenses was considered a prudent method.

Non-Pecuniary damages

This is for the injurious effects, which are not economic or patrimonial and may include sufferings, emotional harm and affliction caused to the victim and his relatives. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages for purpose of comprehensive reparation to the victim, courts have held that it could be compensated only in two ways – i.e. by means of payment of money, goods, or services that can be extended in monetary terms decided by application of judicial discretion, and recognition of their dignity by some means, such as a public apology or erecting monuments as consolation to the relatives.

Going by the above said international standards, the author claims compensation as follows:

Pecuniary Damages

Lost earnings:

At the time of disappearance the victim, Thevaraja Sarma was a 20-year-old youth, a qualified motor mechanic who underwent training on motor mechanism at the National Youth Service Council of the government. He was working in a motor garage in Trincomalee, and was earning Rs. 600/- to 700/- per day. On this basis, calculated at the rate of Rs. 650/- per day his annual income will be (261 days x Rs.650) Rs. 169,650/-.

The normal life expectancy is taken as 60 years, the total loss of income will be (Rs.169,650 x 40 years) Rs.6,786,000/-. From this, a reasonable sum will have to be deducted for his personal expenses. The Inter American Court of Human Rights has recommended a 25% deduction for personal expenses. In the instance case, 25% will amount to Rs. 1,696,500/- when deducted, the balance payable will be 5,089,500/-.

Table 1

The victim's family consisted of the following

	Name	Age at the time of disappearance	Occupation	Relationship
1.	Jegatheeswara Sarma	50	Unemployed	Father
2.	Mrs. J. Jegatheeswara Sarma	48	House wife	Mother
3.	Thevaraja Sarma	20	Motor mechanic	Victim
4.	Thevanatha Sarma	17	Student	Brother
5.	Thevarani Sarma	16	Student	Sister
6.	Thevakanthan Sarma	13	Student	Brother

Consequential Damages

Consequential damages namely monies spent on searching for the disappeared, also will have to taken into account.

The author had submitted as many as 39 letters and appeals to the various authorities from His Excellency the President down to Army Field Commanders, appeared before the Presidential Commission on Disappearances and been in correspondence with international human rights organisations viz. AI, Interights and Human Rights Watch seeking their advice and assistance. He had also submitted a Communication and submissions to the Human Rights Committee, appeared before the High Court, and also had been searching for the victim at various places of detention throughout the country. For all these he claims a reasonable sum of One Million rupees as compensation.

In support of this computation, he cites two judgments of the European Court of Human Rights and two judgments of the Inter American Court of Human Rights.

Decision of The European Court of Human Rights

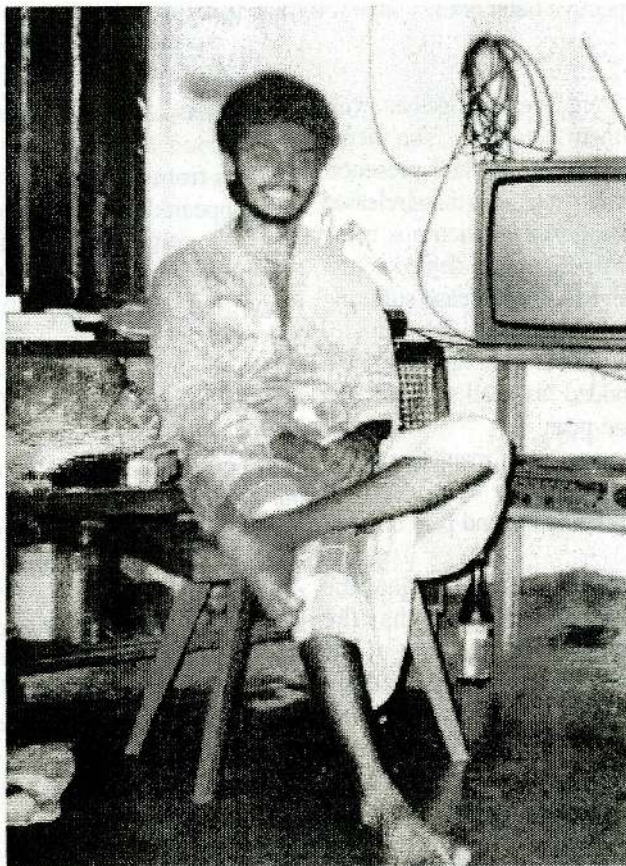
i) The case of IPEK vs. Turkey (25760/94) [2004] ECHR 73 (17 February 2004)

In this application against the Republic of Turkey, lodged with the European Commission complaining of the disappearances of his sons, who were 19 and 15 years old respectively as well as the alleged destruction of his family house and property by security forces in the course of an operation the court awarded as follows:

- EUR 7,000 for each of the applicant's son's compensation as pecuniary damage.
- EUR 29,400 in respect of pecuniary damage for the applicant,
- EUR 15,000 in respect of non-pecuniary damages for the applicant,
- EUR 13,130 in respect of costs and expenses exclusive of vat and less legal aid

ii) The case of Kurt vs. Turkey (24276/94) [1998] ECHR44 (25 May 1998)

In this application lodged with the European Commission, the applicant complained that his son was surrounded by soldiers



Thevaraj Sarma spending his time at home, before he was abducted

and village guards, detained by security forces in the village, and has not been seen thereafter. No record was kept of his son's detention in the village, and authorities failed to carry out an effective investigation into disappearance. The Court held that the respondent State is to pay,

- £ 15,000 in respect of costs and expenses claimed by lawyers,
- £ 15,000 as non pecuniary damages which sum is to be held by the applicant for her son and his next kin,
- £ 10,000 as non pecuniary damages he paid to the applicant.

Decisions of The Inter American Court of Human Rights

i) In the case of Velasquez Rodriguez vs. Honduras compensatory damages, judgment of 21 July 1989 [Inter Am. Ct. H.R. (Ser.c) No. 7 (1990)] for the disappearance

of a 30-year-old student considering the 'dramatic characteristic of the disappearance; the court set the loss of earnings in the amount of 500,000 lempiras and moral damages in the amount of 250,000 lempiras

ii) El Caracazo vs. Venezuela – Reparation – the applicants were 44 civilians who were victims of violations (injury disappearance and death) were paid total sums as follows:

- US\$ 1,559,800 as compensation for pecuniary damages to be paid to the victim and next kin
- US\$ 3,921,500 as non-pecuniary damages
- US\$ 75,000 as legal cost and expenses incurred under domestic jurisdiction and before the Inter American system
- US\$ 10,000 to cover expenses in future proceedings to compliance with the instant judgment
- US\$ 1,000 to CEJIL to cover cost and expenses before the inter American system

Non-Pecuniary Damages

In the instant case the author and his family have suffered and continued to suffer emotional damages, moral damages for which, according to international standards, a "fair compensation on equitable basis is payable",

- i) considering special circumstances of this case,
- ii) and more particularly the dramatic characteristic of the disappearance,
- iii) the content of the primary obligations and

- iv) the evaluation of the respective behaviour of the parties.
- a) Both the son and the father were arrested together while the mother was looking at them helplessly. The victim was assaulted by the security forces in their presence. Despite the information the family had from those released from Plantain Point Army camp that the victim is being detained there, the family members were denied access and he was kept incommunicado. To increase suffering more, the father has seen his unfortunate son subsequently in the company of the Army officer in a van opposite a pharmacy and the victim nodded his head signaling the father not to attempt to come near.
- b) Considering him a terrorist suspect and maintaining that terrorists who were posing as civilians were identified and apprehended is causing humiliation and pain of mind to his family.
- c) There has been no meaningful investigation into the enforced disappearance despite the fact that the Applicant has repeatedly drawn the attention of the relevant authorities. The State commenced an investigation only on 24 January 2001 by recording the statement of the author and that of the other civilian witnesses in February 2001 after the author filed his communication with the Committee, dated 25 October 1999, which was characterized by excessive delay and inadequacy in that it failed to investigate seriously either the State responsibility or the individual responsibility of those who committed these acts. It has not provided background information concerning any orders that may have been given to Corporal Sarath and others responsible regarding their role in search operations.

More particularly, the State has failed to record statements from those in the chain of command even though the author has named them both in various communications addressed to State agencies and to the Committee.

As in Krishanthi Kumaraswamy's case, in the instant case as well, Corporal Sarath who was in the tail end of the operations, stands indicted in the High Court. Eyewitnesses who could be material witnesses for the detention at Plantain Point Army camp have not been cited as witnesses. A person who was in detention with the victim at the Plantain Point camp for few days and another who was taken along with the victims in a lorry towards the said Army camp were not found to be material witnesses for the prosecution.

The facts as outlined above demonstrate that the Applicant's son was disappeared by agents of the State and that this formed part of a pattern and policy of enforced disappearances, with which all levels of the State apparatus are implicated.

d) As could be seen from **Table 1** the victim's parents were unemployed and his two brothers and a sister were school going at the time of the disappearance. They have been solely depending on the victim for their livelihood and schooling. Neither the victim nor the family owned any property anywhere in Sri Lanka. There was no insurance cover and the family has not received any compensation

from the State or from any other organizations.

e) The enforced disappearance of the Applicant's son took place in a context where such disappearances were not anomalous but a matter of systemic practice. A pattern of abduction was coupled with a system designed to preclude relatives from ascertaining information as to the whereabouts of disappeared persons or those responsible. The 'Final report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces' (The Department of government Printing September 1997) concludes that:

'Youth in the North and East disappeared in droves in the latter part of 1989 and during the latter part of 1990. This large scale disappearance of youth is connected with the military operations started against the JVP in the latter part of 1989 and against the LTTE during Eelam War II beginning in June 1990 ... It was obvious that a section of the Army was carrying out the instructions of its Political Superiors with a zeal worthy of a better cause. Broad power was given to the Army under the Emergency Regulations which included the power to dispose of the bodies without post-mortem or inquests and this encouraged a section of the Army to cross the invisible line between the legitimate Security Operation and large scale senseless arrests and killings'

A feature of the systemic practice of disappearances in Sri Lanka is the absolute impunity that officers and other agents of the State enjoy. In this respect, the Report of the Working Group on Enforced or Involuntary Disappearances (E/CN. 4/2000/64/Add.1), reporting on its third visit to Sri Lanka in 1999 found that:

'with respect to criminal action against perpetrators of enforced disappearances, the three Presidential Commission of Inquiry ... played a crucial role. They established evidence concerning 16,742 cases of disappearances and identified, in their final reports of September 1997, suspected perpetrators in relation to 3,861 cases of disappearance which had occurred under the former government.'

Under these circumstances the claim for non pecuniary damages is made on the basis of three times the lost of earnings, which amounts to Rs.5,089,500 x 3 = Rs.15,268,500/-. We base the claim on the Inter Am Ct decision where, in once case, it awarded 15 times annual income as moral damages.

Table 2: Summary of the Claim

Pecuniary Damages		Loss of Earnings
Total Earnings	6,786,000	
Less: personal expenses 25%	1,696,500	
Balance		5,089,500
Consequential Damages (Lost earning x 3)		1,000,000
Non-Pecuniary Damages	5,089,500 x 3	15,268,500
TOTAL CLAIMED		21,358,000

Parents petition UN-HRC over abduction of son

The following are excerpts of a communication made to the UN Human Rights Committee in September, 2005 by Vadivel Sathasivam and his wife regarding the alleged unlawful arrest, illegal detention, torture and custodial death of their son S. Sanjeevan. The authors were assisted by V. S. Ganesalingam Attorney at Law for HHR and Interights, London UK.

I Information Concerning the Author of the Communication

1. The authors of the Communication are Vadivel Sathasivam, age 42, a labourer, and his wife Parathesi Saraswathi, a housewife, both Sri Lankan Nationals of Vaithiyar Road, Pandirippu in Sri Lanka.

2. The authors are assisted in the matter by their Legal Counsel, V. S. Ganesalingam, Attorney at Law, Home for Human Rights, Colombo 03, Sri Lanka and Interights, an International Human Rights Law Centre, having its office at Lancaster House, 33 Islington High Street, London, N19 LH UK.

3. The present address of the authors for the exchange of confidential correspondence regarding the matter is c/o Home for Human Rights, 14, Pentrive Gardens, Colombo 03, Sri Lanka. (Tele: 00-941-2577962, Fax: 00-941-2573693)

II Information Concerning the Alleged Applicant (If other than the Author)

4. The authors submit this application on their behalf and on behalf of their son Sathasivam Sanjeevan, deceased, hereinafter referred to as 'the victim'.

III State Concerned/ Articles Violated/ Exhaustion of Domestic Remedies / Other International Procedures

A. State concerned:

5. The State Party to the International Covenant on Civil and Political rights ('The Covenant' or 'ICCPR') and the First Optional Protocol against which the Communication is directed in the Democratic Socialist Republic of Sri Lanka.¹

B. Articles of the ICCPR allegedly violated:

6. It is submitted that this case arises from the unlawful arrest, illegal detention and custodial torture resulting in custodial death involving breaches of Articles 2(3), 6, 7, 9 and 10 respectively of the Covenant.

7. The applicant's claim relates to:

i) The illegal arrest, unlawful custody and custodial torture resulting in the death of the applicant's son Sathasivam Sanjeevan aged 18 a GCE Ordinary Level student of Wesley College, Kalmunai in the Eastern Province of Sri Lanka at the hands of the Sri Lankan Police at their police station at Kalmunai on or about 15 October 1998.

ii) The failure on the part of the State Party to prosecute those responsible for the torture and the custodial death of the applicant's son.

iii) The failure to provide effective remedy to the parents of the victim of custodial death.

C. Exhaustion of domestic remedies:

8. The applicants submit that no remedies are available to the applicants. Under Section 126(2) of the Constitution it is only the victim who could apply for relief to the Supreme Court by way of a Fundamental Rights Application for illegal arrest or unlawful custody or torture. There is no provision for any family members or heirs of the deceased victim to file such an action.

However this position was changed, not by any change in the law or Constitutional amendment, but by the Supreme Court by its majority decision dated 10 December 2002 in the Fundamental Rights Application No. 471 /2000. Deciding on the question of locus standi (this is a case where the wife of the person who died in custody due to torture filed the

application) the SC expanded the locus standi and Justice Shirani A. Bandaranayke held, "when there is causal link between the death of a person and the process which constitutes the infringement of such person's fundamental rights, any one having a legitimate interest could prosecute that right in a proceeding instituted in terms of Article 126(2) of the Constitution. There would be no objection in limine to the wife of the deceased instituting proceedings in the circumstances of this case".

In deciding on the merits of this application, on a subsequent date, Justice Mark Fernando endorsed this view and further citing the obligations of Sri Lanka under Article 14 of the Convention Against Torture (CAT) held that the dependants of the victim are entitled to compensation.

Both under our Criminal Procedure Code as well as under the Torture Act No. 22 of 1994 it is only the Attorney General who could prosecute the perpetrators of death or torture. In the instant case the Attorney General had decided that the available material does not provide a basis to institute criminal proceedings against one or more police officers for torture or for murder. The decision of the Attorney General could neither be challenged nor could the AG be compelled by a Writ of Mandamus to prosecute the suspects. In Munasinghe Vs. B. Devarajan the Supreme Court held that the Writ of Mandamus would not lie against a servant of the crown.²

(Note: The Petitioners could have filed a Civil Action for compensation against the State under delict within 2 years from the date of occurrence, but this was not done. Action was prescribed in law after 2 years)

It is submitted that there is a consistent pattern of torture and death in custody and recourse to legal proceedings is meaningless. Cited below are few such instances:

(i) K. Navaratnarajah, a young farmer from Trincomalee who was arrested on 27 March 1983 died on 10 April 1983 at Gurunagar Army camp in Jaffna and the Medical Examination disclosed 25 external and 10 internal injuries. It was reported that he was hung upside down to the ceiling fan and rotated. No one was prosecuted.

(ii) 53 Tamil political prisoners detained in Welikade Prison were hacked to death in 2 separate incidents. In the 1st attack on 25 July 1983, 35 prisoners were killed while in the 2nd attack 2 days later, 18 were killed. No one was prosecuted.

(iii) Wijayadasa Liyanarachchi, a Lawyer arrested

by the Tangalle Police died in custody in September 1988 and there were well over 100 injuries on his body. No one was prosecuted.

(iv) In June 1995 out of the several Tamils who were arrested in and around Colombo and who were in the custody of the Special Task Force of the police, bodies of 25 were found floating in the Bolgoda River in Colombo. The case was dismissed in the Magistrate Court, Colombo after the accused and Attorney General failed to appear.

(v) In July 1996 after the Army took over Jaffna more than 300 persons had disappeared. Following the disclosure made by an Army corporal who was indicted in the case of one Krishanthi Kumaraswamy whose body was recovered, that "almost every evening dead bodies were brought and the soldiers were asked to bury them at Chemmani", exhumation was done at Chemmani and 15 human Skeletons were exhumed. No one was prosecuted (except regarding the killing of Krishanthi Kumaraswamy aforementioned).

(vi) In 1977, 3 Tamil detainees were killed in the Kalutara Prison in a clash with the prison officials. There was no prosecution.

(vii) On 25. 10. 2000, at the Bindunuwewa Rehabilitation Centre, 28 out of the 41 inmates — all of whom were Tamil children —

were killed and reportedly 13 others were injured. The suspects were prosecuted but eventually all were acquitted.

(viii) On 28. 08. 2003 R. M. Lokubanda aged 60 died in the Mathurata Police Station after his arrest. The police claimed that the man had died of heart attack, but eyewitnesses claimed they saw him assaulted. There was no prosecution.

(ix) On 05. 09. 2003 Okandahewage Jinadasa allegedly died at Okkampitiya Police check point after his arrest by 2 home guards. The police claimed that the victim died from a fall but the postmortem report indicated that he was assaulted with a dual weapon.

D. Admissibility Ratione Temporis:

9. The alleged torture and killing as well as the decision of the Attorney General not to prosecute was after the First Optional Protocol came into the force for the State Party.

10. It is further submitted that this claim is admissible *ratione temporis* in as much as it relates to continuing violation of the applicants' rights under the Covenant with respect to Article 2(3) read with Article 7, the denial of a right to a remedy in respect of the violation of their rights continue. Indeed the

It is submitted that there is a

consistent pattern of torture

and death in custody and

recourse to legal proceedings

is meaningless.



prohibition under the Sri Lanka Constitution on judicial review of enacted legislation continues to remain in place to date.

E. Other International Procedure:

11. This matter has not been submitted for examination to any other procedure of international investigations or settlement.

IV Background Facts

Arrest:

12. On 13 October 1998 Sathasivam Sanjeevan a GCE Advance Level student of Wesley College, Kalmunai (the victim) left home on a push bicycle and never returned again. On 14 October 1998, the police who were conducting a cordon and search operation of the village saw the applicant's father and informed him about 9:00 am that his son was arrested and that he was at the Kalmunai Police. But when the father went to the police station he was denied access to the victim.

Meeting with Victim:

18. On 14 October 1998 about 4:00 pm the applicant's father with an Attorney at Law visited the victim at the police station and the victim related the torture he had been subjected to. On 15 October 1998 the applicant's father along with another relative visited the victim at the police station around 5:00 pm. The victim said that he had been taken to a hospital for treatment and pleaded with the parents to get him released. On 16 October 1998 the applicant's father who went to visit the victim was denied access to his son. That same evening he received a police message from Kalmunai requesting him to proceed to the Amparai Police immediately.

Victim's body shown:

18. On 17 October 1998, the father went to Amparai and he was shown the body of the victim at the mortuary. The father saw stitches on the tongue and the body cut open from the chest to the stomach. The father requested that the body be given to him. He was informed by the Sammanthurai Police that the postmortem and inquest was over and that he could take charge of the body, but should not take the body out of Amparai. However subsequently, he was allowed to take the body to his village and the body was brought to Kalmunai and buried.

Legal process:

15. On 15 October 1998, the Samanthurai Police filed a report in Case No. 13455 at the Kalmunai Magistrate's Court in which it was stated as follows:

"On 15. 10. 1998 while the said Sanjeevan was being taken from Kalmunai Police Station to Amparai Police Station by:

U. P. P. Weerasekara	—	OIC Crime
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 Amparai about 9:00 pm 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 Amparai Hospital. Sanjeevan passed away and the other two are getting treatment in Ward No. 08. There was damage to the vehicle.

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

(Note: The report does not disclose that the arrest made was on the 13th)

Inquest:

18. The inquest was held by A. S. M. A. Razak, Acting Magistrate, Kalmunai on 16. 10. 1998. The inquest was conducted after visiting the scene. In his

report to Court under "Scene visit and inquest" the Acting Magistrate states as follows:

"On either side of the road there are paddy lands. The width of the tarred road is 5 ½ metres. A channel/ditch runs 6 ½ metres 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 and it was dry".

I viewed the following injuries on the body;

- Shot injury on the left elbow;
 - Shot injury on the right shoulder – entry;
 - Shot injury on the right arm – exit;
 - Right – side hip – shot injury – exit
 - Shot injury on right – wrist and two fingers
- No injuries other than this.

I order the DMO District Hospital Amparai to hold a 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 the I. C. R. C. in the event they refuse to accept

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 it)

it and bury it on State expenses.

Call for further Report on 21. 10. 1998.

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

Postmortem:

17. On 16. 10. 1998 the postmortem was held by Dr. A. N. D. Bandara, DMO of Amparai. His report indicates the 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 it).

Magistrate inquiry:

18. The Magistrate's inquiry commenced on 21. 10. 1998 (not on 22/10 as informed to the father) and the Kalmunai Police Headquarters OIC led the evidence of Weerasekera Muthasalange Pretheepkumar Weerasinghe, Sub Inspector OIC, Security Coordinating Unit, Amparai. Mr. Weerasinghe had headed the police team that took Sanjeevan from the Kalmunai place to Amparai Police on 14/10 during which time Sanjeevan was killed. Since the postmortem report was not received by Court the inquiry was postponed to 29. 10. 1998 and again postponed for 12. 11. 1998 for the same reason.

The parents of Sanjeevan were not notified about the said inquiry and neither they nor any lawyer on their behalf appeared on 21 and 29 October before the Magistrate.

The father of the victim having come to know that the case was to come up on 12. 11. 1998 contacted Home for Human Rights, Colombo for legal assistance. HHR lawyers appeared on 12. 11. 1998 and moved Court to cite witnesses. One Gaffor of the Samanthurai Police informed Court that since Kalmunai Police Headquarters conducted the investigations their presence was necessary. Hence the inquiry was postponed on 26. 11. 1998.

On 26. 11. 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 October. Both described in

detail the nature and extent of the torture inflicted on the victim as told by him and as seen by them. The relevant portion of their evidence is given below.

(Vadivel Sathasivam, the father) "His aunt Manohari and I visited him at the police station. He was seated being unable to raise his hands. When I asked him, what happened he said that two policemen got hold of him and dashed him against a telephone post. He said he is unable to walk or to eat anything. There was swelling on the back of his neck. He said he had injuries on his hips. I did not see that. Blood was oozing from both his shoulders. When he was out I saw that he was unable to stand. He was bending and bending. He could not stand by himself and he was leaning and standing. There was swelling on the left side of the neck, but no injuries. He was able to speak to me and I gave him a soda. He said he could not drink. The next day I took food, I don't know whether he ate the food. He told me to somehow get him released. I asked him how he got injuries. He said the police assaulted him. I inquired from the police officer there as to how my son was injured. He said an inquiry was being conducted and

that he would be released after the inquiry. I left..."

"Then on the 15th about 5:00 pm I went and saw my son at the police station. His condition had deteriorated from when I saw him the previous day. He could not stand and talk to me. He could not lean. The injuries I saw the first day were visible. He was not wearing a shirt. He said he was given saline. He also said he was taken to the Maduvatha Hospital and medically treated. He had been taken to the hospital on the 14th night. We took him food. I gave him soda. He said he was unable to drink it because of pain in his throat. He said he would take the food later. He cried, begging to be taken out by any means. Thereafter, I came out."

Parathesi Manohari in her evidence said:

"When we saw him he was not in a position to move his hands. There were marks on his neck. Blood was oozing from his elbow. His trousers were slipping down but he was not in a position to pull them up. I did not see any injuries on his head, face or forehead. He was unable to stand and the police were holding him. When we took food and soda to him, he said he could not open the bottle of soda. I opened and gave him. He said that he is unable to drink it. I saw some injuries on his hips. He did not eat the food we took".

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. They attempted to move Court to have the body exhumed and sent to the JMO,

*We took him food. I gave
him soda. He said he
was unable to drink it
because of pain in his
throat.*

Batticaloa for examination, in term of 373(2) of the Criminal Procedure Code.

Exhumation:

19. The Magistrate considered this application and ordered the exhumation of the body. The exhumation was done on 27. 11. 1998 in the presence of the Acting Magistrate A. S. M. A. Razack and the body was sent to the JMO, Batticaloa Teaching Hospital.

The JMO Batticaloa submitted his report to Court in which he had identified 9 anti-mortem injuries. According to his report the cause of death and the relevant opinion was as follows:

“ There were four gun shot injuries on his body and the reason for his death was hemorrhage caused by gunshot injuries;

Other anti-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;

He probably received the blunt weapon injuries before he was shot.

Verdict of homicide:

Court directs investigation:

20. In his verdict dated 21 October 1999 the Magistrate held that Sanjeevan had been subjected to torture and died of bleeding caused by gunshot injuries. He further held that his death amounted to homicide. He also

ordered the OIC Sammanthurai to send the case for further investigation by the Criminal Investigation Department, and also to arrest the suspects and produce them before Court.

However, Court did not receive any report from the CID despite several court dates.

Then by letter dated 10 July 2002, the Director CID informed the Magistrate that, “The Criminal Investigation Department has conducted investigation in connection to the above noted case on a letter sent by the UN Special Rapporteur, through the Ministry of Defence” and that “The relevant extracts of the investigation had been forwarded to Attorney General for advice.”

Attorney General's decision:

21. Subsequently, the Registrar of the Magistrate's Court, Kalmunai received a copy of a letter addressed to the Director CID dated 19 August 2002 and sent by Yasantha Kodagoda (on behalf of the Attorney General) which stated as follows:

“Upon a consideration of investigative material and further investigative material submitted consequent to investigating 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 aforementioned.

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”.

22. Information to the Human Rights Commission of Sri Lanka: Parathesi Saraswathi the mother of the victim on 13. 10. 1998 brought this matter to the notice the Regional Coordinator of the Human Rights Commission at Kalmunai. Accordingly, the Regional Coordinator informed her that he had faxed the information to Human Rights Commission, Head Office in Colombo on 05. 11. 1998.

At the request of the parents of the victim, Mr. V. S. Ganesalingam, Attorney at Law of the Home for

Human Rights, by his letter dated 2 November 1998 wrote to Chairman, Human Rights Commission requesting him to, “take action in terms of Section 14 and 15 of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 and to

a) Direct the DIG in charge of the region to order investigation and;

b) To bring this to the notice of the Magistrate of the area”

However, no action was taken on the request made and the request was not even acknowledged.

V. Alleged Breaches of the Covenant

23. Article 2(3) requires State Parties to promote an effective remedy to those whose rights have been violated. In this case, the victim had been arbitrarily arrested, detained and tortured and this has led to his death. Even if the police version that he died in teh crossfire was to be believed—but which was accepted by the Attorney General as fabrication—the medical examination after exhumation disclosed that before being shot he had received blunt weapon injuries. The State Party had failed to take effective legal,

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death.*

administrative judicial and other measures to prevent torture and custodial death. The decision recommending disciplinary inquiry would not constitute effective remedy. However to the knowledge of the applicants not even a disciplinary inquiry was held.

Furthermore, in the revised draft of the General Comments, the Committee states:

"As with the failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognised as criminal under international law, such as torture and similar cruel, inhuman or degrading treatment (Article 7), [summary and arbitrary killing (Article 6) and enforced disappearances (Articles 7 and 9)]. Indeed the problem of impunity for these violations, a matter of sustained concern by the Committee, [is often seen] [may be] an important contributing element in the recurrence of violations" (at para 17)

Article 6 – Right to life

24. Under Article 6 of the Covenant an individual has a right not to be deprived arbitrarily of his life. As borne out by the evidence before the Magistrate, the victim was subjected to torture while in police custody and there was no evidence to show that he was taken before a Magistrate or a Doctor. The persons who took the victim in the jeep were identified. However, there has been no prosecution on the basis of *Quinteros* and thus the victim's parents who are the applicants are indirect victims of Article 6.

The Committee's jurisprudence establishes that the State Parties to the Covenant have an obligation in respect of Article 6 read with Article 2(3) to take positive measures to protect the right to life. [Case of *Arhuaco v. Colombia* (612/1995) — General Comments No. 6 paragraph 3 and 6.

Article 7 – Freedom from torture

25. Article 7 of the ICCPR provides that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment. The Committee had held that the State Parties must take measures to prevent, investigate and punish acts of torture whether inflicted in official capacity or otherwise. Not only the victim Sanjeevan but his parents, the applicants too are victims of this violation.

Article 9 — Right to liberty and security

26. Article 9(1) guarantees the right to liberty and security, Article 9(3) requires that the arrested be

promptly brought before a Judge or other officer. The victim was not produced before a Judge or other officers authorised by law.

Article 10 — Right to be treated with humanity

27. Article 10(1) requires that all persons deprived of their liberty be treated with humanity and respect of the inherent dignity. The way the victim was treated while in police custody as described in the background facts clearly shows that the victim was not treated with humanity or with dignity.

Relief

i) A recommendation that the identified perpetrators of Sanjeevan's death and torture be prosecuted;

ii) A recommendation that, to the extent necessary for an effective prosecution, further investigation is conducted;

iii) Compensation to be paid to Sanjeevan's family as indirect victims of the violations of the Covenant, and

iv) A recommendation that Sri Lanka establishes a framework for the prevention of further violations of Articles 6 and 7 by State agents and for the effective investigation and prosecution of those respondents.

¹ Sri Lanka acceded to the ICCPR on 1 June 1980 (entry into force on September 1980) and the First Optional Protocol to the ICCPR on 3 October 1997 (entry into force on 3 January 1998). It also became party to the Convention against Torture and other forms of cruel, degrading and inhuman treatment or punishment ('CAT') on 3 January 1994 and to the Convention against All Forms of Racial Discrimination (CERD) on 18 February 1982.

² In *Munasinghe v. B. Devarajan* 57 NLR 256. The Court held "It seems to me that this application must fail for the reason that a Writ of Mandamus does not lie against the Crown, not against a servant of the Crown where the duty sought to be enforced is not one which is imposed on the servant himself but is imposed on him only in the capacity of agent for the Crown. The principle on which the rule is based is stated in 9 Hailsham, page 761: "As no Court can compel the Sovereign to perform any duty, no writ of Mandamus will lie to the Crown. Where it is sought to establish a right against the Crown the appropriate procedure is by way of petition of right. Nor will the writ lie against a Secretary of State in his capacity as an agent for the Crown, for in that capacity he is responsible to the Crown alone, and is under no legal duty towards a subject". The same rule applies as regards other persons acting as, proper remedy in such a case is, in England, A Petition of right and in Ceylon, a regular action against the Crown"

T S U N A M I

The impressions of an HHR intern

Originally from Karachi, Sarosh Syed is currently a student at Georgetown University's Master of Science in Foreign Service programme. He joined HHR as an intern this year and will be providing technical assistance to HHR in their post-tsunami relief project in the Eastern Province. HHR has begun work on reconstruction projects with about 200 families displaced by the tsunami. The organization has started to provide emergency food, shelter, medicine and psychological assistance to the refugees. In the next stage of the project, which is to start next May, HHR will be assisting these families to learn skills that would help rebuild their lives. Here, Sarosh shares his experiences of working with HHR.

Here Goes.....05/28/2005

I arrived in my hometown of Karachi, Pakistan last night – I leave for Colombo tomorrow morning. Between Washington, D.C. and Karachi, I have had 20-odd hours to think about what I'm going to find once I get to Sri Lanka. Part of me thinks the summer will be the proverbial piece of cake, but another, equally substantial part is convinced that I'm in WAY over my head. I am accustomed to working with small, under-funded, and often chaotic NGOs, and I grew up in a developing country in South Asia, so the summer shouldn't be too much of a challenge. The word "disaster" comes to mind.

But regardless of whether the summer will be a light-hearted breeze or a gruelling misadventure, I know it will be meaningful. Many of the briefings and reports I read to prepare myself for the summer identify tsunami reconstruction and abatement of the government/LTTE conflict as the two major hurdles to Sri Lankan development. How often does one get an opportunity to work with an organisation that's working on both? This fact alone is enough to make me look forward to my time with the Home for Human Rights, be it a cakewalk or a catastrophe.

All these concerns, however, can wait till later. Right now, I need to beat my jetlag....

Some Things Never Change. 06/02/2005

It's my fifth day in Colombo, and the first day that my jetlag has been controlled enough for me to venture out, find an internet café, and post my first entry to my blog.

Until next week, when I leave for the tsunami-affected Batticaloa district in Eastern Sri Lanka, I'm staying at Colombo House, an old colonial mansion converted into a

four-room guesthouse. It's quite interesting being a Pakistani staying here. Everything about it from the enormous rooms to the stark, heavy furniture, to the stately balconies, to the leafy view, feels like colonial India.

The most interesting part of my stay here – the only interesting part, really, since the remainder of my free time has been spent in my room, reading, playing my guitar, or passing out at entirely the wrong time of day – is breakfast. I walk down to the dining area, exchanging pleasantries on the way with the lovely Danish lady who runs the place. In the empty dining room, I ring a bell to let the wait staff know that I demand breakfast.

As I chat with my host, discussing plans for my day – plans that will never come to fruition because I will be asleep by 6:30 pm – a middle-aged gentleman in a sarong rushes out with china and silverware for my meal. A younger Sri Lankan lady follows with a newspaper, half a papaya, toast with butter and margarine, and some damn fine tea. For the remainder of my breakfast, they take turns walking by, checking on my tea, and asking, "Bring something else, sir?"

Having grown up in Pakistan, hearing all about the evils of colonialism and the glorious independence from the British, I'm realising that things in South Asia really haven't changed much. I suppose the racial walls are coming down – seeing as I'm closer in heritage to my servers than the official European colonizers – but the class barriers are alive and kicking. And they're really making me quite uncomfortable.

The 2004 Tsunami: The World's Worst Natural Disaster and a Killer Sales Pitch 06/06/2005

I don't leave for the tsunami-ravaged Batticaloa district

until tomorrow, but I already have one tsunami story under my belt.

I went to cool off at the beach yesterday – at the Galle Face Green, a long stretch of lawn facing the sea where hordes gather for weekend R&R. I bought some ice cream from one of vans lined along the road, and found a seat among the loving couples that gather here on Sundays.

A pleasant, elderly man wandered along shortly and helped himself to a seat next to me. He asked me the time – always a reliable conversation-starter – and after exchanging some pleasantries, he mentioned that he was living in a camp for tsunami survivors.

He had seized my attention. He told me how he lost his wife, four of his six children, and most of his belongings to the tsunami. He told me that he had been sick for four days because of the filthy water at the camp. He told me how devastated he was that he'd never go home again. My bleeding-heart-liberal instinct was in overdrive. "Tell me your troubles," I imagined saying to him, "You have my ear! You have my shoulder!"

And as I equated his cheerful demeanor to the tenacity of the human spirit, it turned out that what he really wanted was my money. "Only you can help, sir," he added, and went into the same pitch I have heard countless times in Pakistan. "My children are starving, I am hungry, sir," etc. etc.

Suddenly skeptical of his story, I offered him 50 rupees – not a substantial amount, but enough for a roadside meal – and begged my leave. He refused and walked away.

I don't know if this man was a tsunami survivor or if he was just a drifter down on his luck. I don't know if it really matters. But it's a shame that as calamitous a disaster, one that begs for every ounce of compassion the world can muster, can fall prey to his sales pitch and my suspicious mind.

The Trials of a Tropical Paradise. 06/09/2005

I arrived in Batticaloa on Tuesday. The scenery surrounding this small town on Sri Lanka's east coast is as stunning as its people are welcoming. The clear waters of the lagoon that surrounds Batticaloa end in thick vegetation and all the shades of green one can imagine. The people here must be among the friendliest in South Asia, quick to greet outsiders with a smile, a nod, and if they can manage it, a "good morning."

But all is not well in Batticaloa. The town was first ravaged by war and then by the tsunami. Batticaloa's tourist industry was crippled when Sri Lanka's civil war intensified in the 1990s. The guesthouse I am staying in was closed for five years, and only reopened to host the

foreign NGOs that swarmed here to help control the conflict. Batticaloa now operates under an unofficial and tenuous truce between the government and the LTTE: the Army is in charge during the day, and the LTTE takes over after dark.

When the conflict subsided, the tsunami came. Reminders of the tsunami are omnipresent, from levelled brick houses half a mile from the ocean's edge, to toys in a tree on the guesthouse grounds, deposited there by the tsunami and preserved by the guesthouse staff. The local beaches, which were once calm enough to guarantee safe wading for a six-month-old, are now potholed, littered with debris, and hardly fit for recreation. The singing fish that the lagoon was once famous for, have not returned since the tsunami.

Two nights ago, I was standing at the edge of the lagoon looking for some respite from the area's oppressive heat. The serene silence was interrupted only by the distant barks of stray dogs and the occasional splash of a fish jumping out of the water. Looking up, I could see the stars trace almost perfect silhouettes of the palm trees. It was hard to believe that such devastating forces, of both natural and human creation, could percolate under the surface of this tropical paradise.

My Kingdom For A Translator. 06/15/2005

I'm nearing the end of my first two-week stretch in Batticaloa. The last few days have been heartbreaking, humbling, and frustrating, all at the same time.

In the last week, I have visited some of the beneficiaries of HHR's post-tsunami reconstruction work: Students in a sewing school that HHR established to help employ displaced women, a tailor for whom

HHR replaced a sewing machine she lost in the tsunami, and two *dhobies* (people who wash clothes) who received buckets and bicycles to continue their trade.

I have collected some brief but horrific stories during my visits. Between the war and the tsunami, these people have survived tragedies I can scarcely imagine. One lady interrupted her sewing to show me pictures of relatives she lost to the war before she lost her home to the tsunami. A *dhobie* told me about his harrowing escape from the giant wave, his story punctuated by quivering hands and moist, reddened eyes. Another told me of the three months he spent after the tsunami, living on handouts until he could work again.

This was before Sanathani, the soft-spoken administrator from HHR headquarters who had been

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my interpreter, returned to Colombo. I am now just a language barrier away from the fascinating stories that surround me. Mr. Mariathan, head of the local office, is the only staff member fluent in English, and he is unable to accompany me to the field because of tsunami-related injuries.

Without a translator, I am incapacitated. There are scores of people I have yet to meet and stories I have yet to hear. Many people I have met have not yet opened up enough to tell me about their experiences. Batticaloa is full of heroic tales of survival that the world and I need to hear about. But without a translator, I am only as useful as the monosyllabic sentences and wild but meaningless gesticulation my communication with the locals is limited to.

In the last week, HHR beneficiaries have given me brief glimpses into their private epics of conquest over adversity, for which they have my untellable gratitude. But my journalistic ambitions are stalled for the moment. Until I find an interpreter, I am confined to the only contribution I can make – ironing out bureaucratic wrinkles in streams of HHR paperwork.

Trees Falling in a Forest. 06/23/2005

Natural disasters like the tsunami are hard to ignore (although, the headlines about Michael Jackson's acquittal seem to indicate that much of the world is up to the challenge.) But Sri Lanka is rife with staggering tragedies of less spectacular proportions that the world will never hear about.

I began collecting content for HHR's web site this week.

Going through files from HHR's Torture Victim Rehabilitation Programme, I read about a 21-year-old woman that Sri Lankan authorities arrested, beat, and stomped on. One morning, they threw her in a dark room where twelve police officers took turns raping her. They doused her eyes in hot sauce, and raped her again.

I read about a 19-year-old arrested as an LTTE suspect. His captors beat him for days until he was unable to walk. They covered him with cigarette burns and suffocated him in a plastic bag soaked in petrol and hot sauce. When this treatment did not produce a false confession, they hung him upside down by his thumbs and big toes. He tolerated this treatment for three years.

I read about a 47-year-old widow, a mother of four that the Army arrested and beat for days. After countless days of captivity, they took her out to the beach and

raped her for five hours. They strapped her hands to a doorframe and slammed the door on her fingers until her wedding ring broke off. By the end of her four-year incarceration, she could not find her way home or recognise her own daughters.

These are only three of the dozens of horrific stories I had to read. HHR has hundreds more. There may be thousands that HHR has never heard about. These innumerable trees continue to fall in the proverbial forest, and the world never notices the difference.

With even as epic a disaster as the tsunami fading from the world's attention, it is hard to hope that these silent tragedies will ever receive their deserved attention.

Vulnerability Personified. 07/09/2005

This week, after a week spent searching for a translator and waiting for higher level decisions about the tsunami project, I began to visit a few more of HHR's current beneficiaries. Each of them has been through turmoil beyond my comprehension, but one story in particular was almost too heartbreaking to tolerate.

This HHR beneficiary was a slight man, probably in his mid-thirties. He lost his wife, his daughter, his home, and all his possessions in the tsunami. He now lives with his remaining daughter in a temporary house smaller than my storage space in Washington. He looked tired; not the way one looks after a hard day's work, but the way one would look anticipating the hard days ahead. He managed to smile every now and then, but the obvious effort behind the smile made him look even more tired.

His exhaustion disappeared for a moment when he introduced me to his three-year-old daughter. She was clearly the focus of his life now. He placed all the cash compensation he received since the tsunami into a savings account for her education. He did not use any of it for his livelihood. To make ends meet, he washes clothes on the weekends and builds other people's houses during the week.

He had one, determined reply to all my questions about his future. Somehow we will manage, he repeated, wrapping his arms around his daughter. He did not know how or when he would be able to find a permanent house, replace his belongings, or overcome the trauma of his losses. All he knew was that he would continue building houses and washing clothes, until he did.

Despite his belief in himself, one can't help but wonder what will become of this man. How much longer would he have to live in his tiny temporary house? How would

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percolate under the surface of
this tropical paradise.*

his ordeal affect his relationship with his daughter? Would he survive if anything were to happen to her? Will they ever manage to find security and stability or will the Sri Lankan civil war resume and open a new chapter of turmoil in their lives?

I doubt I will ever be able to answer these questions. All I can do for now, I suppose, is wish him my best and hope and pray that his determination will prevail over his exhaustion.

The Great Divide 07/27/2005

The head of the Italian Red Cross in Batticaloa hosted a pizza party last week. An invitation found its way to me through the NGO grapevine. It was a welcome opportunity to escape the omnipresent horrors of conflict and the tsunami. However, as I sipped drinks with the exclusively western attendees, I couldn't help questioning the value of the plethora of international NGOs in Batticaloa.

There is no question that INGOs have provided invaluable support to the people of Batticaloa. While government relief funds were locked up in months of political wrangling, UNICEF, ACF, World Vision, CARE, Zoa, GTZ, and others provided tsunami-affected families with drinking water, housing, and sanitation. NGOs picked up the slack while the government ignored the plight of the eastern provinces, concentrating its relief efforts in the southern districts of powerful legislators. There is no question that INGOs deserve most, if not all, of the credit for the fact that Batticaloa escaped the post-tsunami outbreaks of starvation and disease that many had predicted.

Yet, there is something about the hordes of NGO workers in Batticaloa (myself included) that makes me somewhat uncomfortable. The pizza party I attended was the most palpable example of the odd racial and class disparities between NGO workers and Sri Lankans. There were only two Sri Lankans among the roughly 60 western guests. The pizza, beer, and wine flowing inside the house were in stark contrast to the abject poverty and flattened homes outside.

After years of NGO presence, many eastern Sri Lankans continue to live in poverty. NGO workers manage a well-deserved break every now and then, but their beneficiaries continue to work countless hours for \$3 a day. Meanwhile, government officials shrug off responsibility for disaster relief or development projects, secure in the knowledge that if they do nothing, an NGO will eventually do their job for them.

The party I attended was only one of many NGO parties

in Batticaloa. The stark divide at the Red Cross pizza party made me wonder: are we helping to deliver the people of Batticaloa from years of conflict, calamity, and poverty, or are we just creating a culture of dependency? Or are we doing both? Is it possible to do one without the other?

Only time can answer those questions. In the meantime, I have seen some of the poverty and misery rampant in the area, and I know it's impossible to stand by and do nothing.

Good bye Sri Lanka: 08/09/2005

My time in Sri Lanka is at an end. As I slipped into the reflective mood typical of times of departure, I looked over my blog to recap all I have experienced here. I realised that my blog entries focused exclusively on the poverty, misery, and devastation on Sri Lanka's east coast. I never mentioned anything about the most heartening part of my experience – the people of HHR. In my ten weeks here, I have become convinced that HHR and other similar Sri Lankan NGOs are the key to Sri Lanka's prosperity.

Sri Lanka is a country of enormous potential, but its half-century-old civil conflict has stunted its development. Like in so many other countries, violence in Sri Lanka has begotten more violence. Hostility from the government has incited greater hostility from the LTTE. When one side shoots, the other side bombs. When one side kills a leader, the other side razes a village. This painful cycle of violence has continued for almost 50 years, and has entrenched hostilities that seem impossible to overcome.

Here at the HHR office, I had the opportunity to work with the people who are fighting back. These are the people who still have the decency and the tenacity to demand a return to civility in their country. From the jovial director, Mr. Xavier, who maintains a fantastic sense of humor despite

decades of witnessing the most gruesome violence imaginable, to the tireless field officer Parasuraman, who continues to work with groups that have targeted him, these are the people who hold the key to Sri Lanka's future.

They come to their work not because of political pressures in a faraway land or a desire to witness the exotic. They are not motivated by pity, condescension, or guilt. They do their work because they have witnessed and experienced the inhumanity inherent in war, and they have refused to tolerate it.

My time with them draws to a close, but they will forever have my support and my eternal gratitude for welcoming me to their world. For the sake of the thousands of war-weary and tsunami-stricken Sri Lankans, I wish them the best of luck and I hope they succeed.

I read about a 47-year-old widow, a mother of four that the Army arrested and beat for days. After countless days of captivity, they took her out to the beach and raped her for five hours. They strapped her hands to a doorframe and slammed the door on her fingers until her wedding ring broke off. By the end of her four-year incarceration, she could not find her way home or recognise her own daughters.

T S U N A M I

Arugam Bay: More injustice to victims of the tsunami

By Sarath Fernando, Movement for National Land and Agricultural Reforms (MONLAR)

After the tsunami struck, the government moved quickly to announce they were launching into a grand plan not just to rehabilitate the affected areas but also to rebuild the whole nation. They have since gathered commitments of over \$3 billion from the international financial institutions and foreign governments to carry this out. In the meantime, non-governmental agencies have been carrying out almost all of the work in cleaning up the destroyed areas, building temporary shelters and regenerating livelihoods.

Within days of the disaster, the government had announced that people should not rebuild their houses on the coast. Within weeks, an exclusion zone of one hundred metres in the Southern part of the country and two hundred metres in the North and Easteran part of the country had been announced. Shortly afterwards, exceptions were announced for tourist businesses. All throughout, the government has been talking about the need to promote tourism and the Sri Lanka Tourist Board proclaimed, *'In a cruel twist of fate, nature has presented Sri Lanka with a unique opportunity, and out of this great tragedy will come a world class tourism destination'*¹.

Plans are now being developed to transform 15 coastal towns all around the island into magnificent tourist resorts as part of the post-tsunami rebuilding process. Wadduwa, Beruwela, Bentota, Hikkaduwa, Galle, Unawatuna, Koggala, Matara, Hambantota, Tangalla, Yala, Arugam Bay, Passikuddah, Nilaweli and Kalpitiya have been singled out for redevelopment according to different themes.

The first plan to emerge was that for the redevelopment of Arugam Bay, a small town nestled on the edge of a 300-hectare lagoon on the east coast of Sri Lanka, which just happened to be one of the best surfing spots in the world, with beautiful beaches as well. It is said that this will serve as a model for all the other areas. The *'Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity'*² covers a stretch of land 17km by 5km between Komari and Panama, including Pottuvil Town.

Reorientation

It envisages the total reorientation of the area away from the current fishing and agricultural communities, supplemented by seasonal guesthouses, into a large development of hotels (*'low cost budget windsurfer to 5-star tourist'*), a commercial centre (*'shoppers' paradise'*³), a yachting marina, floating plane pier and helipad. According to the plan, while only 9 out

of 25,000 hectares are currently being used for tourism, this figure is set to increase exponentially through the redevelopment.

Consultants contracted by those responsible for the plan admit, *'consultants have drawn heavily upon past plans (esp. the Tourism Master Plan)...which was widely recognised as being 'grandiose' and 'inappropriate',*⁴ referring there to a report of the Asian Development Bank⁶. The disconnect between the planned development and the interests of the people is illustrated in the following quote: *'The location of the helicopter pad near the new pedestrianised road will bring a new vibrant life in to Arugam Bay town centre'*⁷.

Fishermen Pushed Away

To achieve this, the Sri Lanka Tourist Board is ready to acquire not only all the land within the buffer zone declared by TAFREN⁸ of 200m from the high tide line, but also a stretch of up to 1km wide running along 3km of the coast beyond the buffer zone, and a belt of in places over 600m around the edge of the lagoon. Added to that was an area of sea next to the lagoon entrance for the yachting marina and a strip across the middle of the lagoon for the floating plane landing pier.

It was reported in notes taken at a meeting organised by Sewalanka Foundation between the community and the Sri Lanka Tourist Board Chairman that⁹, *'The land belongs to the government. Maybe your forefathers lived in that area, but the 860 acres belongs to the government. It will be developed as a tourist zone. We will put up buildings and develop the area and we will ask you to come and work there...After I became the Chairman I captured 5,000 acres of land for the Tourist Board. My target is 15,000 acres'*.

The plan explains that new housing for the estimated 5,000 displaced families¹⁰ will be provided in 5 separate inland locations, in all cases behind areas zoned off for tourism. These locations would be at an average of well over 1km from both the sea and the lagoon, obstructed from accessing the same by the new infrastructure. It then proposes to allocate houses by drawing lots. It is reported in the same set of notes aforementioned that *'these houses will be given to people who support our programme'*. And further, *'if you built any illegal structures in Arugam Bay, the army and the police will have to come and remove them'*.

The document also says that the estimated over 70 existing guesthouses and numerous other small enterprises that will have to be relocated would, if they were already registered businesses, be given the option of leasing land within the zones for a period

of up to 30 years, while unregistered businesses would have no such rights. Nobody would receive compensation.

The initial investment in the planned development was estimated at \$80 million. Of that, \$50 million was earmarked for a bridge over Arugam Lagoon, which according to the document 'will stand as an inspirational symbol that shows progress towards the achievement of prosperity for Arugam Bay' as 'the gateway to a tourist paradise'. Another \$5 million was allocated for a new road around Arugam Lagoon. Then \$20 million was proposed for the construction of the new inland townships of 2,500 houses. The remaining \$5 million was given for water supply schemes and sanitation systems in the new townships and the tourist zone.

The cost of the other proposed infrastructure and amenities, such as the floating plane landing pier and helipad, was not yet included in the overall plan, although it was stated in the document that this will have to be funded either from investment by government or from NGOs.

Wrong People in Charge

The plan was initiated apparently independently by the Rebuild Sri Lanka Trust¹¹, which was set up in the aftermath of the tsunami by 4 individuals and started working in the Arugam Bay area as a 'non-political private sector initiative'. The Trustees are Ajith De Costa, Michel Sproule, Hanif Yusoof, and D. Kumara. Mr. De Costa is Managing Director of Maxim Ltd., a garment manufacturing company. He was previously appointed Chairman of the Central Environmental Authority and Chairman of the Taskforce that produced the Colombo Megapolis 2030 Master Plan. Mr. Sproule is his stepson and a senior partner in a Colombo law firm, specialising in foreign investment, infrastructure development advisory services and real estate. Mr. Yusoof is the Managing Director of Expolanka Freight Ltd, a transport services company. Mrs. Kumara is a retired doctor.

The Rebuild Sri Lanka Trust had within a month of the tsunami contracted a series of consultants to work on the plan. These were Arcadis, a company of consulting engineers from the Netherlands, ECOPLAN-Z Limited from New Zealand, and EML Consultants from Sri Lanka. All are themselves involved in or are directly linked to work on large Asian Development Bank or World Bank infrastructure projects. The local company, EML Consultants, according to their website, normally works in facilitating US investment in water and environmental services, in carbon trading and in the promotion of plantation agriculture and floriculture.

The plan was finalised by 25 April 2005 and stated that at the time of writing the President had already given approval,

and further was 'keen to see the action projects proposed in the report are implemented without delay'¹². In fact, USAID had already published a Pre-solicitation Notice¹³ for a contract to construct the bridge, road, water supply scheme and wastewater system in Arugam Bay by 8 April 2005, and hosted a Pre-Bid Conference for potential contractors in Colombo on 10 May 2005.

The first the residents of Arugam Bay heard of the plan was at a meeting organised by the Sri Lanka Tourist Board and Sewalanka Foundation in Colombo on 17 May 2005. An assessment of the plan carried out by Arcadis said, 'the most important shortcoming is that it has largely been produced in isolation in Colombo, with little or no stakeholder involvement. It is evident that the team spent only two days in Pottuvil - Arugam Bay, and apart from the GA officer in Ampara and the DS in Pottuvil, they met only with INGO staff.'¹⁴

Another Disaster

The picture that is becoming ever clearer by the day shows that the direction being taken in the post-tsunami rebuilding is completely counter to the interests of those people who have suffered in the disaster. They are being driven off their land and out of their livelihoods in the name of a grand plan for the 'modernisation' of the country.

This process started long before tsunami, but it is now being pushed with the \$3 billion the government has gathered in the name of the tsunami victims. If all of the 15 tourist townships require an investment of \$80 million, the cost will be \$1.2 billion, or a massive 40% of the total amount raised. If all of the 15 tourist township plans follow the model of Arugam Bay, the number of families pushed out of the way of hotels, yachting marinas, helipads and floating plane landing strips could be well over 75,000.

¹ Sri Lanka Tourist Board Bounce Back website at http://www.srilankatourism.org/bb_slrebuilds.htm

² Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity, 25th April 2005

³ ABRDP, 25th April 2005

⁴ ABRDP, 25th April 2005

⁵ Arcadis in Environmental Assessment for Post-Tsunami Rehabilitation: Assisting the Planning Process at Arugam Bay, Sri Lanka, 16th March 2005

⁶ Eastern Coastal Community Development Project - PPTA No. 3479-SRI, Asian Development Bank

⁷ ABRDP, 25th April 2005

⁸ Taskforce for Rebuilding the Nation www.tafren.gov.lk

⁹ Notes from Arugam Bay Meeting in the Committee Room of the Sri Lanka Tourist Board, 17th May 2005

¹⁰ Estimate by Sewalanka Foundation, as reported in the Washington Post, 4th June 2005

¹¹ www.rebuildsrilanka.org

¹² Arugam Bay Resource Development Plan, 25th April 2005

¹³ Presolicitation Notice for Upcoming Issuance of Request for Proposal (RFP) Number SL688-05, 8th April 2005

¹⁴ Environmental Assessment for Post-Tsunami Rehabilitation: Assisting the Planning Process at Arugam Bay, 16th March 2005

HUMAN RIGHTS VIOLATIONS

Re-living the horror of September 1990

In a personal testimony, Soosaipillai Vijayarajah, 28 and a resident of Kondaiyan Kery, Valaichchenai re-lives his horrifying experience at the hands of the Sri Lankan Army during his detention at the Petrol Shed Army Camp at Valaichchenai. The year was 1990 and the Army and the Liberation of Tigers of Tamil Eelam (LTTE) had just resumed armed hostilities in what was commonly referred to as Eelam War II. In this narration he describes the gruesome forms of torture he and other detainees were subjected to, the indiscriminate shootings and the 'Auschwitz style' mass murder he witnessed. And he was barely 15 years old at the time. No doubt he is one of the lucky ones who survived to tell his tale. But it makes one wonder, whether he ever recovered from his traumatic experiences or though a young man now, his life was changed forever. War brings out the beast in man – the following leaves little doubt of that.

My name is Soosaipillai Vijayarajah. I am 28 years old and I reside at Kondaiyan Kery, Valaichchenai.

I remember the morning of 3 September 1990. This was around the time when the second Eelam war (Ethnic War) began. I remember most people from Kondaiyan Kery gradually leaving the village to settle in other villages or refugee camps. At the time, I was 15 years old and knew little about fear. So, quite oblivious to the tension around us, I, together with my friends Yogalingam and Satheesh, Kandiah Arutchelvam and Shankar, were playing marbles in front of the Kondaiyan Kery Pillaiyar (Hindu) Temple. Being young boys, we never dreamt we could be arrested and continued with our game earnestly.

Then suddenly, about 25 Army personnel came in an armoured car, a pickup vehicle and a jeep and halted near us. Two Army personnel (whose names I later found out to be Raj Fernando and S. Karunaratne) called us. They accused us of being members of the LTTE intelligence group and ordered us to get into their vehicles. When we hesitated, several soldiers thrashed us with the hard end of a coconut leaf. Hearing the commotion our mothers and brothers rushed to the scene crying but the soldiers threatened to beat them up too. We were then taken away in the Army vehicles.

They took us near to Oodumavadi Bridge and kept us there for almost an hour. Our captors told the Army personnel there that we were of the LTTE intelligentsia. But no one harmed us there. Later, we were taken to the Oodumavadi Town where the Army told several Muslim people there that we were 4 LTTEers. Thereafter about half a dozen people began attacking us with S-Lon pipes filled with stones. We were thus, severely assaulted. Later, we were taken to the Petrol Shed Camp in Valaichchenai. Our vehicles were met

by several Army personnel. And as we alighted, they too began to assault us. The attack continued for about half hour and until we were all bleeding from our noses and mouths. At this point, a bearded Army personnel who was carrying a heavy rod, walked up to Shankar and slammed him hard on the head. To my utter horror, Shankar fell down dead. Then two Army persons dragged his body away. That night, I saw his body being burnt over tyres.

A little while later the soldiers tied sarongs around our neck and two of them raised each of us. I was suffocating and became unconscious. I don't know what happened to the others. Later they splashed water on my face, and I got up. I also saw my friends. Around 4:00 pm they gave us food.

About 5:30 pm the Army transferred us to a shop about 50 metres from the camp and which I think was occupied by personnel from the Criminal Investigations Department (CID). Inside I saw 13 more children, 3 of whom I recognised. One was Balan who worked in a meat stall in Valaichchenai while I did not know the names of the others. Then they covered Satheesh — who was arrested with me — with a gunny bag and had taken him to the village of Kondaiyan Kery. A little while later, they brought 8 more people and the number of arrestees inside the shop increased to about 24. I knew all these 8 persons, 4 of whom were named Manikkan, Kanalan, Ravi and Selvam.

Around 7:15 pm my friends and I were told to stand in a queue accompanied by three LTTE deserters who were now Army informants viz. Anson, Nauffer and Buhari. The remaining 21 odd persons were forced to kneel and move forward on their knees with their hands tied behind — for about 30 metres. As it was dark I could not see clearly, but I heard the sound of gunfire. Then I saw some soldiers taking 5 big tyres off a tractor. I also saw my friend Shankar's body taken to be burned. About one hour later when I was taken out to urinate, I saw bodies burning

and several Army personnel leaning by the side of the well and watching the bodies burning. I felt sick. I said I wanted to go to my mother. But an officer nearby threatened me that if I opened my mouth again, I would be put into the same burning pyre. I was taken into a room and my hands were chained together. I spent the night in absolute terror.

The next day (4th) around 8:00 am we were taken to the toilet and then given a meal of rice and sambol. About 9:00 am we were informed that the CID wanted to interrogate us and were accordingly taken to an adjoining room. I was taken in first and my toes were tied with nylon string. There was an oil barrel in the room filled with water mixed with chillie powder. A nasty odour was coming from the barrel. They took me to the barrel and then immersed my face into the water. They forced my head into the water until I began struggling and gasping for air desperately. They continued this treatment maybe for 1-2 hours. Sometimes I became unconscious. Then they splashed water on my face and when I regained consciousness, the procedure was repeated. Later, I was taken into the next room and the others were given the same treatment. They also assaulted us demanding that we give them the names of LTTE members and their supporters. About 6 people attacked us with rods and wires. About 2:30 pm we were given lunch, but we could not eat. The rest of the day, we were not attacked. Late evening we were given our dinner, then chained and locked in the room. Once again I spent a restless night.

The next morning (5th) we were given our meals. About 8:30 am we were taken to the adjoining room and assaulted with fists and kicked with boots. The attackers demanded information about the LTTE. When we denied knowledge of such information, they put petrol into shopping bags and covered our faces. I felt a terrible burning sensation and difficulty in breathing. They continued this treatment intermittently for nearly one hour. Around 10:30 we were taken to the room and later on allowed to bathe. We were not attacked thereafter. But we spent the night in trepidation of what the next day had in store for us. However thereafter we were rarely assaulted. But I remember, whenever there was news of an attack by the LTTE on an Army camp, we received a severe thrashing from the Army.

During my incarceration at the Army camp, I also remember soldiers often bringing 2-3 civilians from adjoining villages and mercilessly assaulting them in a room nearby. I saw many of them severely injured with fractured heads and hands. These people were attacked with iron bars and wooden rods. Then one day when

about 20 people were collected in that room, they were made to crawl on their knees with their eyes and hands tied — to another dark room. Then I heard the sound of firing. Later, I saw bodies being burned on tyres. But because of the rain, the bodies did not burn completely. So the next afternoon, my friends and I were told to assist some Army personnel to burn the partly burnt bodies. We did it.

One evening I heard the CID telling the Army informants to go to the Vandaramula University for a 'round up' operation. Consequently the informants brought in about 168 people in two buses. We did not actually see the busloads of people, but the informants told us. The informants separated the people into groups and then severely assaulted them. We heard their cries well into the night. We spent the night in utter fear. The following morning when we went to answer a call of nature, we saw the people arrested in the search operation. We recognised some e.g. Tharmarajah from Kondaiyan Kery, Varathan from Eravur, Geethavan from Senkalady, Nadarajah from Kondaiyan Kery.

We were all given lunch around 12:30 pm. At that moment, one arrestee attempted to escape. An Army soldier shot him in the leg and the man fell. Another Army personnel chopped him with an axe and killed him. Then the person named Raj Fernando reprimanded the person sitting next to the one who attempted to escape and shot him dead with a revolver. I saw all this and felt sick

to my stomach. However, the horror did not end; they started killing the rest of the people. The remaining 166 persons were blindfolded and their hands tied. A CID officer would then attack a person on the head with an iron rod. The person's body would then be dragged by an informant and placed over a wooden stump. Another Army personnel chopped his head with an axe. Likewise about 150 people were killed that day. I then saw the bodies being dumped into a factory lorry that arrived at the premises. One person told us that these bodies were taken to be burnt at the Navalady Junction.

A few days later, we heard that another 11 of those unfortunate arrestees were killed at night and their bodies burnt. The remaining 5 were still kept alive at the time we were released. I don't know what happened to them thereafter. But I remember prior to our release, we were ordered to serve meals to these people. But they would not take their meals. I noticed that they were severely wounded and that their wounds gave a nasty odour. I thought, this was the reason we were sent to serve their meals.

Finally on 30 September 1990, about 10:00 am the 4 of us were released. Before being allowed to leave, we were warned not to reveal what we had witnessed to anyone.

*A CID officer would then
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HUMAN RIGHTS VIOLATIONS

The need for healing

Patricia Lawrence a MacArthur Fulbright and Rockefeller Scholar, has conducted ethnographic research in Eastern Sri Lanka from 1991 to the present. She came across several stories such as Vijayarajah's (that is published in the preceding pages). In order to bring some relief for such survivors she wrote to Mr. K. Palakidnar, the then Chairman of the 'Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons' about the disappearances of 184 unarmed residents of Saturukondan, Pannichaiadi, Pillaiyaradi, and Kokuvil, in Thannamunai, Batticaloa District, Sri Lanka, on 9 September 1990. To bring about healing she suggests a change in attitude — the development of the will to understand and public acknowledgement of the immense suffering undergone by these people. Beyond the Wall is publishing this letter to remind the relevant stakeholders of such horrendous massacres on the steps that could be taken to bring closure and build peace within and between communities.

In the years 1991, 1992, 1993 and 1994 I conducted PhD research in the discipline of cultural anthropology in the Batticaloa District, Sri Lanka. My PhD field research in Sri Lanka was funded by the Social Science Research Council — MacArthur Foundation Program and the U.S. Education Foundation. Although I had already lived in Batticaloa earlier, the American Ambassador and political officers were concerned that the “security situation” was too dangerous for me to pursue studies in the Batticaloa District, where my proposed research was located, and I therefore withdrew my studies to Colombo for a period of Fulbright funding, returning when the political climate was more settled. My research concentrated on the revitalisation of local religion and rituals of healing physical and psychological illness, focusing on activity at local Amman temples, of which there are more than one hundred in Batticaloa District's villages, hamlets, and towns. As you might expect in a region where the healthcare infrastructure collapsed and psychiatric assistance is absent, assisting shattered families in their attempts to cope with unresolved grief of “disappearances” and other forms of war injury¹ has become a large part of the daily healing work of local Amman pucari-s, oracles, and religious specialists. I base this independent report on information I received in the course of doctoral field research in Batticaloa District.

Many Batticaloa residents believe that each locally enshrined Amman is a source of protection and well being whose powers are particularly strong in the immediate territory of her surrounding area. Hindu residents further believe that if local goddesses are properly propitiated, peace will prevail in the region. A correlation is frequently made in the logic of local

residents with misfortune of extrajudicial execution: or massacres in places like Kokkadiccolai, Mahaladitivu, Vellaveli, Illugamam, and Saturukondan, among others, with neglected or improperly conducted annual ceremonies of propitiation and delayed reconstruction of damage to Amman temple structures. In Saturukondan, there is an old Kannakiyamman temple situated next to a large lotus tank that had not been repaired since the devastating cyclone of 1978. Saturukondan has also been the site of a massacre of many unarmed women, children, and elderly people after the intensification of violence in the eastern war zone in 1990. Thus, people in the area believe that the Amman, in this case, Kannakiyamman (known in Sinhala as Pattini), has withdrawn her powers of protection. Most surviving members of these families are afraid to speak forthrightly about what has taken place there. This is fully understandable as they live in a region contested by the Liberation Tigers of Tamil Eelam (LTTE) and the government of Sri Lanka where government security forces checkpoints and camps have become entrenched and arbitrary arrest common.

In Thannamunai as elsewhere in Batticaloa District, people generally attempt to give the impression that they know little about the activities of the security forces, the LTTE, TELO, PLOTE, ENDLF, EPDP, gangs such as Mohan's, and past activities of individuals such as Munas — because they hope that the less they publicly appear to know, the safer they will be. Today most Batticaloa residents reject all sides of the protracted political conflict, and seek neutral space in local religion. As the current situation is one in which political silence prevails in public, I give below a synopsis of information conveyed to me about the loss of their family members, and I give this in the spirit of standing next to them, rather than

speaking for them. The independent report I offer to your Commission follows: I have tried to piece together as accurate a picture as possible from the information that has been shared with me by individuals too numerous to count, who trusted me as a neutral party.

Independent Report

After the LTTE had slayed Muslim people in Eravur on 12 August 1990, people living in nearby Tamil villages were frightened by the possibility of retaliatory killings by the Muslim home guards in Eravur, who were by that time armed by the government. People were so frightened that many of the Tamil men and boys of these villages were sent out of the area by their families for their own safety. The Sri Lankan Army rounded-up twenty-two young Tamil men after the LTTE killings in Eravur and detained them. Eighteen were released after beatings and torture, and managed to travel the distance home to be reunited with their families. According to the understanding of people living in Thannamunai, four of those arrested were killed and their bodies were burned near the Saturukondan Army camp. Male members of families, who were most at risk in the context of house-to-house arrests under the Prevention of Terrorism Act and Emergency Rule, left their homes and were waiting in Batticaloa town and safer places for the climate of intense fear around the Thannamunai area to dissipate.

For these three weeks there had been numerous rumors that armed Muslim home guards were moving south from Eravur, taking their revenge on Tamil households as they came, so an unbearable state of tension and fear continued to mount in these neighbourhoods where much tragedy had already been experienced in the course of the war, including a battle between the LTTE and the forcibly conscripted TNA when the Indian Peace Keeping Forces were withdrawn by Delhi.

Then on 9 September 1990 around 5:30 in the evening, a large group of "commandos" (40-50) came to the houses in Thannamunai, reporting to the people that Muslims were "coming and killing people on their way", and telling the frightened people to leave their houses and come with them, assuring them safety. Some of the "commandos" were carrying guns and wearing civilian clothes, and others were in uniform. Furthermore, local people explained to me, that the commandos told them the Officer in Charge of the Saturukondan Army camp wanted to see them. The impression given was that the OIC would advise them. The people collected on the road and went with the commandos to hear the OIC's advice. Mothers swept up the littlest children and carried them for miles on the walk to Saturukondan Army camp. (Note: There is some divergence in the method of persuading people to walk all the way to the Saturukondan Army camp from these hamlets.) In the former letter of 9 October 1990, written by the Batticaloa Peace Committee to Brigadier A.M.U. Seneviratne, Commander, Third Brigade. The Peace Committee's letter states:

"A group of men in uniform and civil clothes, armed with weapons had arrived at the villages of Saturukondan, Kokuvil, Panniyachaidai and Pillayaradi, and taken away a large number of civilians of these villages. The family members and relations

of the missing persons inform us that immediately on arrival the group ordered the residents that all people including elderly men/women, children and infants should get on to the road. The residents were warned that anyone refraining to come out of their homes would have to face death. Therefore, everyone without any exception gathered at the roadsides. Thereafter they were directed to proceed to a location in the vicinity of the Boys Town, Saturukondan."

On that evening, many frightened mothers with infants and their children, who had remained in their homes for some weeks without the presence of the male members of their families, walked together along the road to the Saturukondan Army camp seeking the advice of the Officer in Charge. This is why such a large percentage of this group of residents comprised of women, children, and the elderly. According to the attached list of the "disappeared" drawn up by the Batticaloa Peace Committee, 69 of the victims were twelve years of age or younger, and 16 were seventy years old or older.

As the Committee may be aware, there was one group, which walked to the Saturukondan Army camp that evening. One young man twenty three years old at the time received injuries but managed to crawl out of sight and make his way to his uncle's house in Batticaloa town. His father is a firewood chopper, and he is described as a "simple boy," vulnerable to arrest by the security forces even today. His right to life should be carefully guarded and respected, and he should not be endangered or psychologically disturbed by this inquiry in any way. His account recorded on tape by the Batticaloa Peace Committee, included the sentence (translated into English from Tamil):

"...I saw them dragging people and cutting them swords one by one...and putting their bodies in a ditch..."

(There are copies of this tape-recording outside Sri Lanka, which could be made available to the Commission. I hasten to add that the recording was made when the boy was under severe post traumatic stress, and may not be as important as statements by others which could be given today.)

Local people found it difficult to believe the large number of children involved had also been killed and burned in the ditch, and for months afterwards some held onto the hope that occasional sounds of youths playing insider another nearby Army camp on the Trinco Road were the voices of their lost children.

Thousands of Disappearances

Family members of those who disappeared on 9 September 1990, at Saturukondan lived as refugees in and around Batticaloa town for about one year. When their relations did not return that night they decided to go into Batticaloa town early the following morning. Some people stayed in St. Mary's Convent (nearby St. Theresa's on the lagoon). The next year the government offered 2,000 Rupees per household for resettlement. When the frequency of security forces operations and activities of insurgent LTTE cadres diminished, these surviving family members began returning to their homes in the Kokuvil, Pannichaiadi, Pillayaradi and Saturukondan area. By that time it was public knowledge in Batticaloa that

the victims' bodies had been burned with tyres in the ditch where they had been thrown by their attackers in the Saturukondan Boys Town Army camp. Numerous Batticaloa residents, impressing upon me the thousands of disappearances and severity of widespread political violence experienced in 1990, suggested that I could take a drive out that way and have a look at the skeletons — a suggestion I did not take up. Some of the Catholic Sisters, however, did venture out to the Boys Town site and were among the first to view the remains of those who lost their lives in this particular massacre. Prior to these "troubled times" (*piraccallai natkal*) the Boys Town functioned under the administration of the Sisters.

On 10 September 1990, Colonel Percy Fernando, the injured youth who had managed to escape from the massacre the previous night, and a citizen of Batticaloa town went briefly to look for evidence of these extrajudicial killings, but the severely traumatised youth was unable to locate the place. The Sri Lankan Army then ('pressured the President of the Batticaloa Peace Committee to sign a statement to the effect that there was no evidence of a massacre, as the Peace Committee had alleged. Mr. T. Arunagirinathan signed the statement and then resigned as the President of the Peace Committee. This forced statement was the beginning of three consecutive Third Brigade, Brigadiers, consistently denying the occurrence of a massacre of unarmed civilians by the Sri Lankan Army on 9 September 1990 at Saturukondan Boys Town Army camp.

Corpses in wells

When surviving family members began the resettlement process at the government's prompting the following year, they were confronted with another dilemma when they began to clean out their wells. At Saturukondan, residents put a pole in a well and found there was a sari, and as they pulled it they saw there was also a skeleton. A number of wells contained the remains of their lost ones. They came into Batticaloa town and spoke with the new Grama Sevaka, who in turn went to the A.G.A. asking "How can these people return; how can they drink this water?" The order was given to break in such wells and conceal them by covering them with sand. The corpses were left in the wells, and they were covered over. Money was allocated for new well construction by the A.G.A. (who has since died). The climate of fear and broken trust was so great at that time in Batticaloa; people didn't want to bring evidence of extrajudicial killings, which were in their very household compounds to the attention of the Army for fear of retaliatory murders. This fear was the main reason for concealing the evidence contained in the wells. I asked people why they thought the bodies were in the wells, and they offered two explanations: a) the bodies might have been dumped to remove evidence of extrajudicial executions or b) Tamil women might have jumped into a well to escape rape.

Most of the residents of Saturukondan, Kokuvil, Pannichaiadi, and Pillayaradi are poor, and as a result of their impoverishment some individuals have made false statements about the circumstances of the deaths of lost family members in order to collect death compensation to enable the surviving to live. Such records should not be used by the Ministry of

Defense as evidence to disprove the tragedy of the deaths at Saturukondan.

In May 1994, people living in Thannamunai observed Army soldiers removing bones from the main ditch at the site of the massacre, and burning these bones to ashes *a second time* in a series of piles. Close to this date, human rights advocates asked Brigadier Rohan Gunawardena, Commander of the Third Brigade at the time, whether or not any progress was being made in conducting an inquiry into the "disappearances" at Saturukondan. He replied that he was not aware of any event of "disappearances" in that area of Batticaloa District. In the next breath, he offered the advice that it was time to forget the past and build a new future.

Shift in Attitude

Although Brigadiers seem to have been given the power to authorise or deny historical realities, people will remember what *cannot* be erased from anguished memory. What is needed in Thannamunai, and places like it throughout the island, is the development of the will to understand, and public acknowledgement of the immense suffering — this shift in attitude would bring healing and a new future.

In closing I suggest that the Catholic Sisters who housed refugees from Thannamunai and those who viewed the remains of victims at Saturukondan, and certain devotees of the Saturukondan Kannakiyamman Kovil (which will open its doors for the first time in sixteen years in March 1995) are worthy of approaching for evidence which contradicts the effacement of extra-judicial killings of women, the very young the very old and the innocent at Saturukondan in September 1990. It is widely recognised by scholars and devotees in Sri Lanka and around the world, that the traditions of Pattini/Kannaki worship are part of a deep historical tradition shared by both the Sinhalese and Tamil ethnic communities. During my field research on the east coast, I met a government soldier from a large impoverished Sinhalese family, who in the course of years of duty in the interior of Batticaloa had become an oracle for *Pattini Amman*. Tamil people appreciated his respectful presence at *Amman* temples in Batticaloa, where I often saw him during days and nights of annual temple rituals to please the goddess. With the friendships he was able to make among local Tamil people in mind, I wish to close my independent report with respect, and with these words:

May the grace of Saturukondan, Kannakiyamman/Pattiniyamman be with you in the course of your responsibilities as a Commissioner of Inquiry into Involuntary Removal and Disappearances of Certain Persons. Perhaps the government of Sri Lanka would consider placing a memorial to those whose lives have been lost by the lotus tank of this Amman temple. The idea of such a memorial has been conceived by the people there, but remains only a wish.

¹ These data are too extensive to discuss here. However briefly summarised: common war injury other than "disappearances" were cases involving repetitious arrest and systematic torture, extortion practices of the LTTE and other armed Tamil organisations (TELO, PLOTE, and Mohan's group) working alongside the security forces, displacement, economic paralysis, disintegration of traditional matrilineal marriage practices, and severe post traumatic stress.

HUMAN RIGHTS VIOLATIONS

Sea of despair at “Naalam Colony”

By T.K.Tharmalingham

The article below is part of a series of articles on the Human Rights Violations that have taken place in Amparai District. Mr. Tharmalingam is a Human Rights Lawyer, who has lived his life in the Amparai District and continues to serve the people of the district diligently.

Professor Harold Laski in his celebrated “*Grammar of Politics*” proclaimed the basic principle that each individual is entitled to expect from the State, an environment in which he/she can hope to realise the best in him/her/self. The theory propounded by Professor Laski sought to establish the concept that governments are responsible for the well being of all citizens, without discrimination. Accordingly, if the State exercises its powers, so as to differentiate between its members, the conditions, which legitimise a government, is lost.

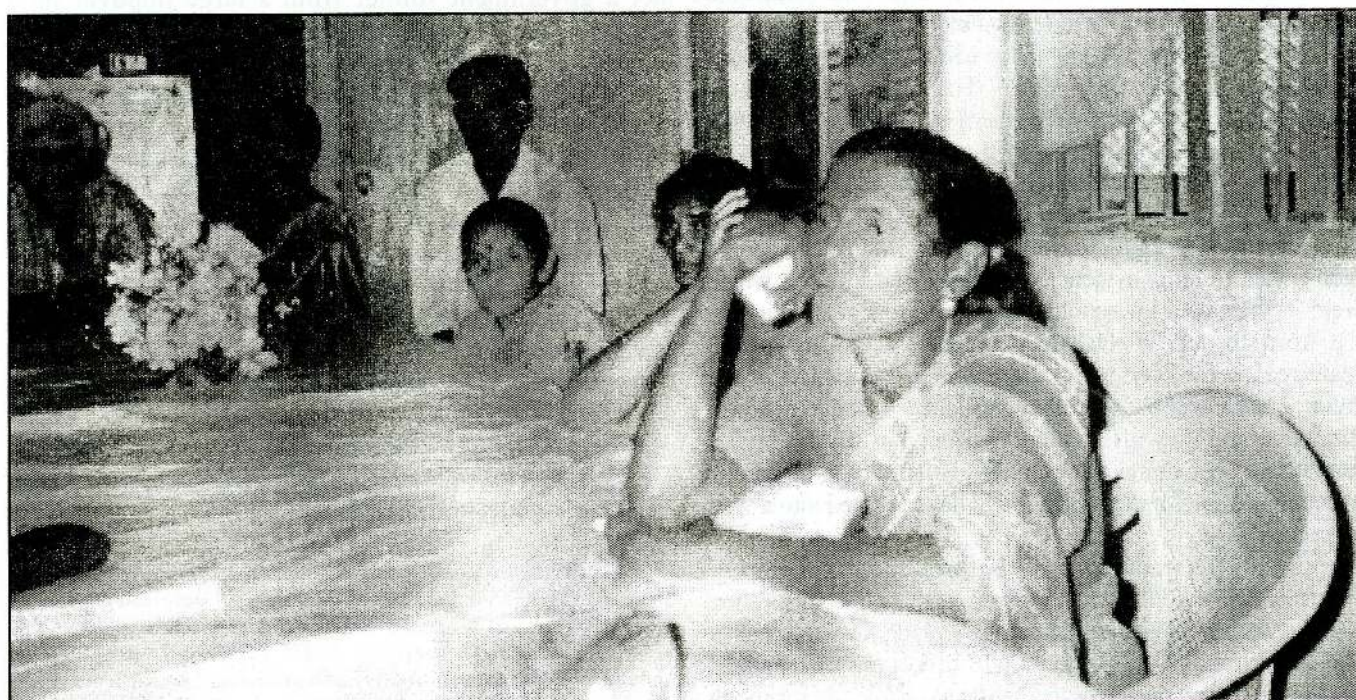
According to Prof. Laski a State exists to protect the interests of its citizens and if the government fails to protect its citizens, the citizen on his/her part assumed a moral duty to inquire into the grounds of such failure and is then compelled to take action against the State. Contingently, the citizen may be compelled to seek to overthrow the State; if that citizen holds that the power of the State is being exercised not for the ends implied in its nature but for the ends incompatible therewith. The

civic outcome of such a perception is the duty of resistance. The citizen has, in other words, rights against the State because he is a citizen.

Arising from the aforesaid principles, we now seek to examine the performances of the Sri Lankan State in guaranteeing the rights and protecting the lives of the people of the Gal-Oya Valley, Amparai in 1990 – when the people say the State Army was mobilised and struck terror in the region. Let us examine how the State fared in the performances of its duty to create an environment conducive for the citizens to realise the best in themselves.

Attacked

A team of Human Rights activists visited the village called “Naalam Colony”, and identified it as one among the many Tamil settlements that had suffered repeated attacks from ‘mobile mobs’ — that is, policemen, home guards, armed force personnel — leading to destruction of lives and properties. Witnesses claimed that the inhabitants fled from their homes to save their lives when the soldiers began to indiscriminately kill people. They said that in a sea of despair some 3800 persons fled from Naalam Colony to Mandur and thence to Kallar, and Kalmunai in 1990. Though many years have flown since



One of the victims to attack, who lost her spouse gives evidence, before the Human Rights Activists who went to Naalam Colony

the killings occurred in the village, what seems outrageous is that the victims who lost their breadwinners have yet not been compensated for the tremendous loss caused to them. And this despite it being reliably established that none of the settlers affected were concerned with militancy or in any way involved in acts of violence against persons or State.

The unprovoked attack on unarmed, innocent people of the Gal-Oya valley by the security forces was also seen as a premeditated crime intended to destroy, displace and dispossess a community of farmers belonging to the district who were also the pioneers in the colonization

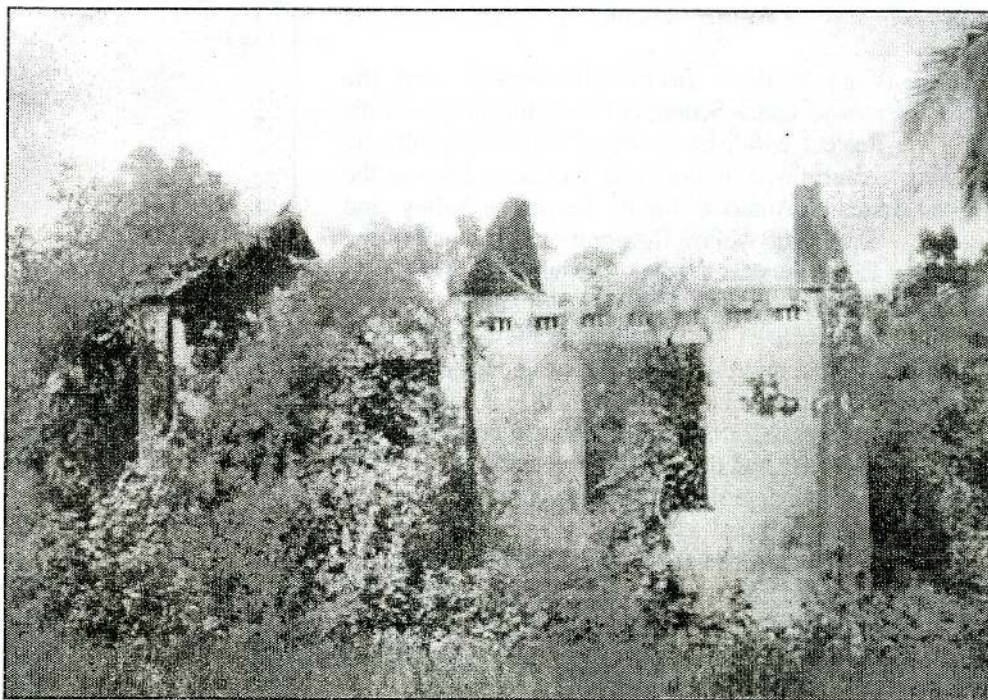
Scheme in Gal Oya. A victim opined that the government wanted to wipe out all traces of Tamil presence in the valley. "The dark secrets of the brutality with which the Army, and the police sought to destroy the Tamils in Amparai, yet haunts our memories" lamented a woman who lost her two sons during the Army onslaught. Another mother who lost her only son during the attack said, "As the forces moved with a murderous fervour, the people realised that the State has unleashed its tremendous capacity for destruction of the Tamil villages in the district. Thousands of innocent Tamils, — men and women, both young and old, fled from their homes in search of a safer haven — but they failed to find one".

Tamil Homeland

Rock inscriptions belonging to the 3rd Century BC, unearthed in the Valley, during 1951, has shown that the region now called Gal Oya Valley had been the homeland of the Tamils. It has also been found that these Tamils patronised Buddhism and supported the Buddhist clergy.

Almost fifty-six years ago, the present Amparai District was part of the Batticaloa District. It was a land of many rivers. But these rivers brought not only prosperity, but also ruin to the people. When floods interfered with agriculture, employment and economy of the people, the people lost what they owned and possessed.

When the late S. Dharmaratnam, M.S.C. (Member of the State Council), who represented half of the Eastern Province in the State Council, was elected to the Executive Committee on Agriculture, headed by D. S. Senanayake, (the Minister of Agriculture and Land), he succeeded in promoting a plan to control floods from



What remains of a beautiful house after it was destroyed in the attack in 1990

the thirteen tributaries emptying into the Pattipola Aru. His plan emerged as the Gal Oya Scheme. He planned to restore the abandoned irrigation works that had fallen into a state of decay and ruin after the Dutch era. His plan was aimed at helping the people in the District to emerge out of their miseries arising from landlessness, unemployment, and resultant poverty. However his efforts turned out to be the proverbial bee, "that has honey in its mouth and stings in its tail." His plans when implemented went contrary to his intentions because the State proceeded to implement the Scheme to the detriment of the indigenous population.

What existed then in the Batticaloa District was a feudal society, where a minority of families owned land. With a view to identifying the poor and the causes of poverty, an economic survey relating to land and agriculture was conducted in the District. The survey, completed in 1943 revealed that 39,000 families were landless poor agricultural workers. (NB: Similar surveys have also been conducted in the Districts of Puttalam, Matara, Galle and Kurunegala)

When the proposals for the control of flooding under the river Pattipola Aru was examined, the reconnaissance revealed that the river winding its way through a journey of 28 miles before emptying into the sea at Kalli-Odai could provide water to irrigate an extent of 100,000 Acres of virgin land if a dam was built at Inginiyagala. The floodwater so contained could be stored up, and released gradually for cultivation. Inspired by the accomplishments in the development of rivers elsewhere, the proposal on Pattipola Aru was seen as an extremely rewarding multi-purpose Scheme. The government proceeded to enlist the services of Dr. Savage — an internationally recognised

expert on Multi-Purpose Schemes — to report on the project.

Dr. Savage made a favourable report, and the government said that a Scheme of such magnitude as the Gal Oya Project could be executed efficiently only by creating a centralised authority as had been done in the United States of America, for its Tennessee Valley, and India's 'Damodara Valley Corporation'. Thereafter, the Gal Oya Development Board Act became law on 24 November 1949. This Act was based to some extent on the Act, which created the Tennessee Valley Authority in the United States, and the contract for the construction of the dam at Inginiyagala was entrusted to an American firm of engineers, Morrisson, Knudson International Inc (MKI). (The writer had the privilege to work for the MKI at Inginiyagala for five days before moving on to the Gal Oya Development Board at Amparai SE - I&D's office.)

Anyway, Work on the main and spillway dams and structures, and the power plant, with a capacity of 5,000 KVA, was completed by the contractors within two years. And, the Minister spelt out the name of the Project and its principal object, when he directed the Gal Oya Board thus: "to establish within the area of its authority of Gal Oya, maximum number of families, Ceylon citizens, adopting the main principles of peasant colonisation, while encouraging the growth of co-operative agricultural and industrial undertakings among such peasant colonists."

The Board was directed to regulate water in the Gal Oya Reservoir to reduce the dangers of flooding within its Area of Authority and although a solution was found for the problems of flooding with the Senanayake Samudra, the development of Gal Oya did not reach the indigent indigenous Tamil population. The hopes of the sons of the soil who had endured miseries for generations were shattered when families were transplanted from distant places to colonise the East. The changing tides of political power made the Tamil representatives powerless and the Gal Oya Scheme did not benefit the majority of the Tamils in the then District of Batticaloa.

TABLE 1 shows the selections made for the Left Bank (L.B.) of Gal Oya.

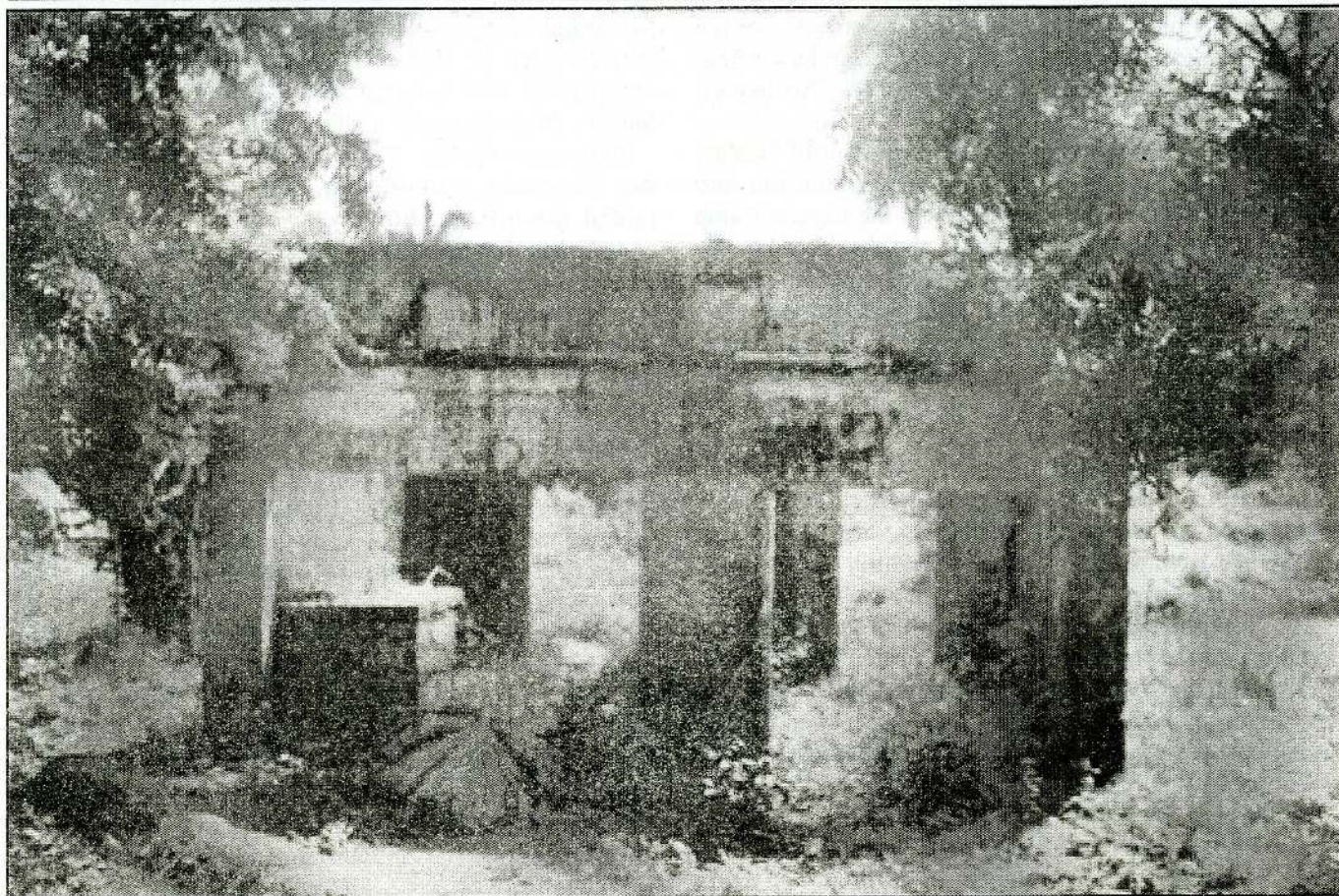
Village	Sinhalese	Tamil	Muslims	Total
1	148	-	-	148
2	149	-	-	149
3	136	-	-	136
4	1	110	38	149
5	-	-	145	145
6	1	85	52	138
7	-	90	47	137
8	143	-	-	143
9	138	-	-	138
10	112	27	-	139
11	-	144	-	144
12	-	1	149	150
13	-	26	108	134
14	-	90	-	90

15	-	102	34	136
16	11	128	-	139
17	76	74	-	150
18	93	-	-	93
19	148	-	-	148
20	143	-	1	144
21	147	-	-	147
22	144	-	-	144
23	147	-	-	147
24	126	1	-	127
25	1	35	-	36
26	148	-	-	148
27	149	5	-	154
28	143	-	-	143
29	149	-	-	149
30	150	-	-	150
31	145	-	-	145
32	147	-	-	147
33	145	-	2	147
34	147	-	-	147
35	-	124	-	124
36	107	-	-	107
37	-	143	-	143
38	-	143	-	143
39	-	133	-	133
40	-	102	-	102
41	105	-	-	105
Total	3399	1558	581	5538

The first stage of development in Gal Oya was implemented in the Left Bank with the establishment of forty-one villages called Units, each such village had 150 cottages. The colonists were alienated with well-developed paddy land and homesteads. Few Tamils and Muslims from Kalmunai and Paddiruppu electorates were selected as colonists.

When the selection of colonists for the L.B. began in 1951, the government resorted to a pattern of colonisation through transplantation of people from distant places. Nine villages were settled with families from Kegalle, seven villages with colonists from Badulla, and six villages with people from Kandy. Settlers were also selected from Districts of Matara, Kalutara, Kurunegala Colombo, Chilaw, Galle, Hambantota, Nuwara Eliya and Ratnapura. Thus, while indigenous people who were poor and without land for their economic progress were denied opportunities, people from far away places were brought to the East.

On the whole, of the ten thousand families settled in the Scheme, a meagre 852 Tamils were settled. Tamils were not settled in any of the 27 villages in the Right Bank (R.B.) Scheme and the V.E. Schemes. This was pure and simple discrimination perpetrated by the State against the Tamils. And this pattern of colonisation, in later times, led to a serious situation when violence broke out in the District — contributing to grave violations of human rights. Thus we see the government exercising its authority to 'differentiate' between the citizens and forfeiting its claims to allegiance of one segment of the community. The pattern of



A row of shops burnt down by the attackers

colonisation in Gal Oya is an example how the State proceeded to *differentiate* between communities. On one community the State bestowed advantages at the expenses of the other, which while ruining the country defeated the principles of good governances.

When violence erupted in Gal Oya with volcanic force during 1956, 58, 61, 71, 77, 81, 83 and 1990, the country witnessed a bloodbath and the Tamils were at the receiving end. At one time a large portion of the Tamil population became refugees. Upon the directives from the top, the armed forces mounted their attack on innocent Tamil civilians — killing, maiming and burning; Tamils suffered loss of lives and property. When Tamils were attacked, the government of the day, as usual, failed to protect them, failed to take meaningful steps to restore peace, and thus, violated many of the rights guaranteed to them under the ICCPR. And as the State derogated its duty, a state of tyranny and oppression found expression as the armed forces deprived the people of their rights to life, liberty and security of person.

It was evident that in 1990, the Sri Lanka State was acting under an authoritarian impulse. The rule of law appeared to be suspended. And when the Army took control over Amparai, dead bodies were found strewn in the field where paddy had been sown, in the market place and in the homes. Several incidents reported from Naalam Colony are reproduced below and they refer to

killings of non-combatants, the disappearances of innocent people and the general mayhem created.

Massacre of the Innocent

Ms. Devika of Naalam Colony said: “Policemen attached to the Central Camp police went berserk one day and shot dead my father who was relaxing in the yard after his breakfast. It was about 10:00 in the morning when the shooting occurred. I saw the policemen on the road, and they then rushed into my house and shot at my father. And when he fell down dead they (the policemen who murdered him) took his body away.

“My father was 60 years old at the time of his killing. He was a law abiding and peace loving person. The policemen had no reason to shoot my father who was resting at home after his morning meal. They kept his body at the hospital for four days and then handed it over with a report that said ‘terrorists’ killed my father. When we queried about the inaccuracies of the police report, we were told that such a report would enable us to get compensation for his death. After so brutally killing my father, the police then kept us away from the inquest. The Police Department too, instead of punishing the criminals, proceeded to shield them.

Ms. Devika continued, “My sister Santhawathy was 22 years old in 1990 and she was married to a 26-year-old Sinhalese named Piyasena. They had a three month old infant. In June 1990 the Army entered their home and shot

dead the couple. When we heard the gunshots we ran away terrified and returned the next day to find their dead bodies, which we buried sans funeral rites. No inquest was held into their deaths."

Mr. P. Sinnathamby, aged 53 and a resident of Naalam Colony said: "I had two sons — Ravichandiran and Selvaratnam. One day, policemen from the Central Camp police station stormed into my house and shot dead my 10-year-old son Ravichandiran who was asleep when he was murdered. They shot him in the head, and took away his body to the police station after warning us not to follow them. To my knowledge an inquest was not held into the death. Later, my elder son Selvaratnam was killed by the Army."

Any government, at any time and in any country, has a duty to preserve the rule of law, and to ensure law and order within its territory. From the two cases reported above however, one may draw a different conclusion. That is, that the right to life had been arbitrarily denied to an elderly person aged 60 and to a 10-year-old child.

Ms. S. Pushpawathy 23, who became a widow just six months after her marriage, complained that her husband, T. Krishnapillai — whom she married in January 1990 — was killed in June that year by the Army when he was travelling to his mother's home. Ms. Pathmawathy was widowed in June 1990 when her husband, Thavarajah, a father of three, was killed by the SL Army while working in his vegetable garden. Ms. Vadivel Annalaxmy complained that her spouse, a tractor operator, was killed by Army personnel when he was inside a camp for refugees established at the Unit 5 School. Reportedly her spouse Yogarajah was seen with the Army before being killed.

Again, Ms. K. Ranjany, widowed one month after her marriage with Samithamby Thavarajah said: "I was married in May 1990, and in June the SL Army entered Naalam Colony. One day, in the early hours of the morning I was cleaning our compound when soldiers walked into the compound and began torturing me by hitting me with their gun butts. I cried out in pain and my husband who was working inside came out. But no sooner had he appeared, the soldiers released me, rushed at him and shot him at point blank range. They then walked away. I buried my husband in my own compound and fled to my relatives at Kalmunai." However she said that when she returned to her house a few days later to look for her belongings, there was nothing but a heap of rubble at the place where the house had stood. Thus, she lost not only her husband but also all her belongings and her home. Who had looted her house and then destroyed it, is the question she is still asking.

Then there is Ms. K. Saraswathy, 56 who complained that her son-in-law Thangavadivel, a father of five children was abducted by home guards and was never seen again. His daughter had later committed suicide. K. Kandasamy, also a father of five and a grower of vegetables disappeared in June 1990 after an Army attack. R. Alagaratnam, father of five and a cigar merchant disappeared in 1990. His 13-year-old grandson Kokulan too disappeared later. Ms. S. Navamany, aged 50, alleged that her spouse Kandasamy, aged 38, and her son

Selvarajah, aged 16, disappeared after the Army raided their village in 1990. Ms. Thamotheram Leelawathy complained that her two sons — Sudhaharan, 24 and Suresh, 26 disappeared in June 1990.

Sixty-year-old Ms. Thangammah complained that her son, Mariyadas, a shopkeeper disappeared after the Army raided the village. Forty-year-old Ms. Iswaryammah complained that her two brothers Kopalapillai and Inparaj disappeared. Sixty-year-old Ms. Kannachi complained of the killing of her son Mathavan. Altogether there were more than 64 complaints of killings and these were apart from the scores more enforced disappearances that occurred during the period.

State Responsibility

The principles proclaimed by numerous UN human rights instruments and ratified by the government of Sri Lanka assured the people their right to life and liberty. The Fundamental Rights enshrined in the Country's Constitution too recognised the right not to be deprived of liberty except according to procedure established by law, the right to be informed of the reasons if and when arrested, the right to be produced before a judge, the right to a fair trial and the right to be heard. But, the Sri Lanka Army, the police and home guards when dealing with the Tamils of Naalam Colony in 1990 denied almost all their rights to life, liberty and the security of person.

Acting under the powers conferred in terms of the infamous Prevention of Terrorism Act (PTA), the armed forces engaged in what could be described as 'genocide'. In fact the allegations against the security forces is a grim reminder that the government of the day neither complied with the principles of the UN Charter to promote respect for human rights without distinction, nor did it proceed to respect the ethical idealism taught by their religion — Buddhism, raised to the position of State religion by the Constitution. After all, did not the Lord Buddha exhort "No God can save the doer of evil, the man of malice, perpetrator of crime? Be kind to all beings. If thou speakest false, if thou KILLEST LIFE what would thou gain by pilgrimages to Gaya?" But the political leaders — who whilst engaging themselves in wilful acts of evil, nonetheless made periodic pilgrimages to Gaya and other places of religious worship — infringed the morals of both.

However it is now appropriate also to reminisce a couple of incidents where two, committed policemen — Bertram Weerasinghe, Superintendent of Police and his Headquarters Inspector Daya Ranasinghe — who single-handedly prevented a mob at Anuradhapura from attacking thousands of Tamils. The mob had come in a convoy of trucks (government vehicles) armed to the teeth with bombs and weapons and intent on destroying the Tamils in 1958. The two police officers were subsequently awarded the much-coveted Ceylon Police Medal for Gallantry. The question is, do we have men of their calibre now?

Finally what happened in Naalam Colony — as in many other places, no doubt in the North and East — was a gross violation of human rights which any civilised society would have been ashamed of.

