BEYOND THE WALL

January - March 2005

Home For Human Rights

Quarterly Journal on Human Rights News and Views

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Quarterly Journal

January – March 2005 Vol. III No.1

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.*

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EDITORIAL

Lanka flouting UN recommendations

The United Nations Human Rights Committee is a treaty body established under Article 28 of the International Covenant on Civil and Political Rights. The International Covenant on Civil and Political Rights (hereinafter referred as ICCPR) was ratified by Sri Lanka and entered into law in September 1980. Sri Lanka ratified the Optional Protocol in January 1998.

Recently the United Nations Human Rights Committee had made its recommendations on two individual Communications from Sri Lanka, Communication No. 950/2000 and Communication No. 1033/2001. The authors of the communications were assisted by Home for Human Rights, Sri Lanka, a Non Governmental organization based in Sri Lanka.

In Communication 950/2000, (Sarma's Case) the Human Rights Committee was of the view that there had been violations of Article 7 and 9 of ICCPR. Further the Human Rights Committee was of the view that the State Party (Sri Lanka) is under an obligation to provide the authors of the Communications with effective remedies. Further the State Party -Sri Lanka was under obligation to prevent similar violations in the future.

In Communication No. 1033/2001 submitted by Nallaratnam Singarasa, determined on 23.08.2004, the Human Rights Committee was of the view that facts in the Communication disclosed violations of Article 14 paragraphs 1, 2, and 3 and 14 paragraphs (G) read together with Article 2 paragraph 3 and 7 of the Covenant.

Further the Committee stated that Sri Lanka is under an obligation to provide remedies to the authors of the communications.

The Committee further stated that Sri Lanka by becoming a party to the Optional Protocol has recognized the competence and jurisdiction of the Committee to determine the issues that arose in the Communications. Pursuant to Article 2 of the Covenant, Sri Lanka has undertaken to ensure to all individuals within Sri Lanka territory and subject to its jurisdiction the rights recognized in the Covenant.

Article 2-3 of ICCPR:

"3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted."

In the Singarasa communication the Committee recommended appropriate remedies including release or retrial and compensation to the violations. Further the committee recommended that Sri Lanka should ensure that the Sections of the Prevention of Terrorism Act are made compatible with provisions of ICCPR. The Committee requested information about the measures taken to give effect to its views.

More than ninety days have passed from the date of the recommendations, August 23rd 2004. Home for Human Rights made representations to the Attorney General of Sri Lanka to implement the recommendations. But there is no response or effective action from the Attorney General up to date.

The comments from Dominic McGoldrich in the Human Rights Committee 1991 on page 13 are worth reflection:

"The undertaking of international measures of the implementation was an exercise of domestic jurisdiction and not an interference with it. International measures were essential to the effective observance of Human Rights, which were matters of international concern"

In a document submitted to the 1993 World Conference on Human Rights the Human Rights Committee endorsed a recommendation from the Chairs of the Treaty Bodies, in relation to individual complaints must be respected by the state parties to the Treaty Bodies.

There is precedence that parties to ICCPR and its Protocols accept and implement its recommendations.

It is asserted that Sri Lanka should observe and implement the recommendations of the Committee. Failure to implement the recommendations may bring further repercussions to Sri Lanka in the international arena.

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PTA violates ICCPR, says UN Human Rights Committee

Given below is the verdict of the United Nations Human Rights Committee on the case of Mr. Nallaratnam Singarasa, who was sentenced to 50 years imprisonment by the High Court of Colombo, Sri Lanka. The Committee held that his right to fair trial and freedom from torture recognized have been violated and recommended retrial or release with compensation. The committee also held that certain provisions of the PTA violates International Covenant on Civil and Political Rights.

Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

Communication No. 1033/2001

Submitted by: Mr. Nallaratnam Singarasa (represented by counsel, Mr. V. S. Ganesalingam of Home for Human Rights as well as Interights)

Alleged victim: The author

State party: Sri Lanka

Date of communication: 19 June 2001 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 2004,

Having concluded its consideration of communication No. 1033/2001, submitted to the Human Rights Committee on behalf of Mr. Nallaratnam Singarasa under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. Nallaratnam Singarasa, a Sri Lankan national, and a member of the Tamil community. He is currently serving a 35 year sentence at Boosa Prison, Sri Lanka. He claims to be a victim of violations of articles 14, paragraphs 1, 2, 3 (c), (f), (g), and 5, and 7, 26, and 2, paragraphs 1, and 3, of the International Covenant on Civil and Political Rights. He is represented by counsel, Mr. V.S. Ganesalingam of Home for Human Rights as well as Interights.

1.2 The International Covenant on Civil and Political Rights entered into force for the State party on 11 September 1980 and the first Optional Protocol on 3 January 1998.

Facts as submitted by the author

2.1 On 16 July 1993, at about 5a:m, the author was arrested, by Sri Lankan security forces while sleeping at his home. 150 Tamil men were also arrested in a "round up" of his village. None of them were informed of the reasons for their arrest. They were all taken to the Komathurai Army Camp and accused of supporting the Liberation Tigers of Tamil Eelam (known as "the LTTE"). During his detention at the camp, the author's hands were tied together, he was kept hanging from a mango tree, and was allegedly assaulted by members of the security forces.

2.2 On the evening of 16 July 1993, the author was handed over to the Counter Subversive Unit of the Batticaloa Police and detained "in the army detention camp of Batticaloa Prison". He was detained pursuant to an order by the Minister of Defence under section 9(1) of the Prevention of Terrorism Act No. 48 of 1979 (as amended by Act No. 10 of 1982 and No. 22 of 1988) (hereinafter "the PTA"), which provides for detention without charge up to a period of eighteen months (renewable by order every three months), if the Minister of Defence "has reason to believe or suspect that any person is connected with or concerned in any unlawful activity".[1] The detention order was not served on the author and he was not informed of the reasons for his detention.

2.3 During the period from 17 July to 30 September 1993, three policemen including a Police Constable (hereinafter "the PC") of the Criminal Investigation Department (hereinafter "the CID"), assisted by a former Tamil militant, interrogated the author. For two days after his arrest, he alleges that he was subjected to torture and ill-treatment, which included being pushed into a water tank and held under water, and

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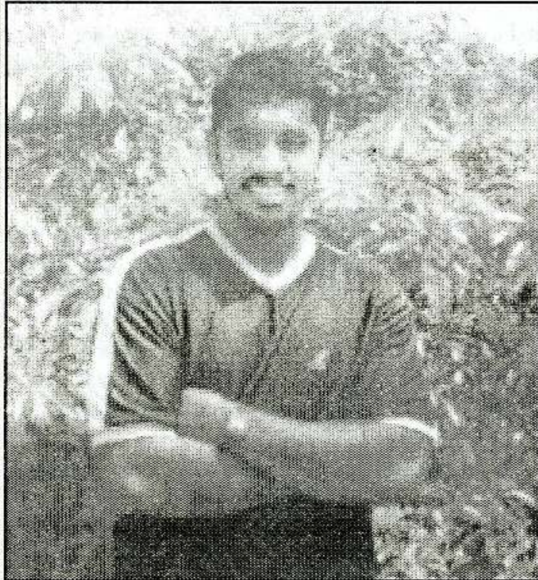

Nalliah Singarasa pictured at his house before his arrest

then blindfolded and laid face down and assaulted. He was questioned in broken Tamil by the police officers. He was held in incommunicado detention and was not afforded legal representation or interpretation facilities; nor was he given any opportunity to obtain medical assistance. On 30 September 1993, the author allegedly made a statement to the police.

2.4 Sometime in August 1993, the author was first brought before a Magistrate, and remanded back into police custody. He remained in remand pending trial, without any possibility of seeking or obtaining bail, pursuant to section 15(2) of the PTA.[2] The Magistrate did not review the detention order, pursuant to section 10 of the PTA, which states that a detention order under section 9 of the PTA is final and shall not be called in question before any court.[3]

2.5 On 11 December 1993, the author was produced before the Assistant Superintendent of Police (hereinafter "the ASP") of the CID and the same PC who had previously interrogated him. He was asked numerous personal questions about his education, employment and family. As the author could not speak Sinhalese, the PC interpreted between Tamil and Sinhalese. The author was then requested to sign a statement, which had been translated and typed in Sinhalese by the PC. The author refused to sign as he could not understand it. He alleges that the ASP then forcibly put his thumbprint on the typed statement. The prosecution later produced this statement as evidence of the author's alleged confession. The author had neither *external* interpretation nor legal representation at this time.

2.6 In September 1994, after over fourteen months in detention, the author was indicted in the High Court in three separate cases.

a) On 5 September 1994, he was indicted in Case no. 6823/94, together with several named and un-named persons, of having committed an offence under sections 2(2)(ii), read together with section 2(1)(f) of the PTA, of having caused "violent acts to take place, namely, receiving armed combat training under the LTTE Terrorist Organisation", at Muttur, between 1 January and 31 December 1989.

b) On 28 September 1994, he was indicted in Case no. 6824/94, together with several other named persons and persons unknown, of having committed an offence under section 2(1)(a), read together with section 2(2)(i), of the PTA, of having caused the death of army officers at Arantawala, between 1 and 30 November 1992.

c) On 30 September 1994, he was indicted in Case no. 6825/94, together with several other named persons and persons unknown, on five counts, the first under section 23(a)of the State of Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1989 with the Public Security (Amendment) Act No. 28 of 1988, of having conspired by unlawful means to overthrow the lawfully constituted Government of Sri Lanka, and the remaining four under section 2(2)(ii), read together with section 2(1)(c), of the PTA, of having attacked four army camps (at Jaffna Fort, Palaly, Kankesanthurai and Elephant Pass, respectively), with a view to achieving the objective set out in count one.

2.7 On the date of submission of the communication, the author had not been tried in Cases nos. 6823/94 and 6824/94.

2.8 On 30 September 1994, the High Court assigned the author State-appointed counsel. This was the first time the author had access to a legal representative since his arrest. He later retained private counsel. He had interpretation facilities throughout the legal proceedings; he pleaded not guilty to the charges.

2.9 On 12 January 1995, in an application to the High Court, defence counsel submitted that there were visible marks of assault on the author's body, and moved for a medical report to be obtained. On the Court's order, a Judicial Medical Officer then examined him. According to the author, the medical report stated that the author displayed scars on his back and a serious injury, in the form of a corneal scar on his left eye, which resulted in permanent impairment of vision. It also stated that "injuries to the lower part of the left back of the chest and eye were caused by a blunt weapon while that to the mid back of the chest was probably due to application of sharp force".

2.10 On 2 June 1995, the author's alleged confession was the subject of a *voir dire* hearing by the High Court, at which the ASP, PC and author gave evidence, and the medical report was considered. The High Court concluded that the confession was admissible, pursuant to section 16(1) of the PTA, which renders admissible any statement made before a police officer not below the rank of an ASP, provided that it is not found to be irrelevant under section 24 of the Evidence Ordinance. Section 16(2) of the PTA put the burden of proof that

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any such statement is irrelevant on the accused.[4] The Court did not find the confession irrelevant, despite defence counsel's motion to exclude it on the grounds that it was extracted from the author under threat.

2.11 According to the author, the High Court gave no reasons for rejecting the medical report despite noting itself that there were "injury scars presently visible on the [author's] body" and acknowledging that these were sequels of injuries "inflicted before or after this incident." In holding that the confession was voluntary, the High Court relied upon the author's failure to complain to anyone at any time about the beatings, and found that his failure to inform the Magistrate of the assault indicated that he had not behaved as a "normal human being." It did not consider the author's testimony that he had not reported the assault to the Magistrate for fear of reprisals on his return to police custody.

2.12 On 29 September 1995, the High Court convicted the author on all five counts, and on 4 October 1995, sentenced him to 50 years imprisonment. The conviction was based solely on the alleged confession.

2.13 On 9 October 1995, the author appealed to the Court of Appeal, seeking to set aside his conviction and sentence. On 6 July 1999, the Court of Appeal affirmed the conviction but reduced the sentence to a total of 35 years. On 4 August 1999, the author filed a petition for special leave to appeal in the Supreme Court of Sri Lanka, on the ground that certain matters of law arising in the Court of Appeal's judgment should be considered by the Supreme Court.[5] On 28 January 2000, the Supreme Court of Sri Lanka refused special leave to appeal.

The complaint

3.1 The author claims a violation of article 14, paragraph 1, of the Covenant, as he was convicted by the High Court on the sole basis of his alleged confession, which is alleged to have been made in circumstances amounting to a violation of his right to a fair trial. Basic procedural guarantees that safeguard the reliability of a confession and its voluntariness were omitted in this case. In particular, the author submits that his right to a fair trial was breached by the domestic courts' failure to take into consideration the absence of counsel and the lack of interpretation while making the alleged confession, and the failure to record the confession or to employ any other safeguards to ensure that it was given voluntarily. The author submits that the appellate courts' failure to consider these issues is inconsistent with the right to a fair trial and argues that the trial court's failure to consider other exculpatory evidence, in preference to reliance on the confession, is indicative of its lack of impartiality and the manifestly arbitrary nature of the decision. He adds that it was incumbent upon the appellate courts to intervene in this situation where evidence was simply disregarded.

3.2 The author claims that the delay of four years between his conviction and denial of leave to appeal to the Supreme Court amounted to a violation of article 14, paragraph 3(c). He claims a violation of article 14, paragraph 3(f), as he was not provided with a qualified and *external* interpreter when he was questioned by the police. He could neither speak nor read Sinhalese, and without an interpreter was unable adequately to understand the questions put to him or the statements, which he was allegedly forced to sign.

3.3 The author claims that reliance on his confession, in the given circumstances, and in a situation in which the burden was on him to prove that the confession was not made voluntarily, rather than on the prosecution to prove that it was made voluntarily, amounts to a violation of his rights under article 14, paragraph 3(g). To him, this provision requires that the prosecution prove their case without resort to evidence "obtained through coercion or oppression in defiance of the will of the accused," and prohibits treatment, which violates the rights of detainees to be treated with respect for the inherent dignity of the human person.[6] He invokes the Committee's General Comment No. 20, which states that "the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment", and observes that measures required in this respect would include, *inter alia*, provisions against incommunicado detention, and prompt and regular access to lawyers and doctors.[7]

3.4 The author claims a violation of article 14, paragraph 2, as, in light of the existence of the confession, which was considered a voluntary one, the onus was placed on the author to establish his innocence and therefore was not treated as innocent until proven guilty as required by this provision. The author claims that section 16(2) of the PTA shifts the burden on the accused to prove that any statement, including a confession, was *not* made voluntarily and therefore should be excluded as evidence, and as such is itself incompatible with article 14, paragraph 2. In particular, where the confession was elicited without safeguards and with complaints of torture and ill-treatment, the application of section 16(2) of the PTA amounts to a violation of article 14, paragraph 2. The author claims a violation of article 14, paragraph 5, because of the decision of the Court of Appeal to uphold the conviction despite the abovementioned "irregularities".

3.5 Article 7 is said to have been violated with respect to the treatment described in paragraphs 2.1 and 2.3 above. On account of *ratione temporis* considerations (see para.3.11), the author submits that the torture is principally relevant to the fair trial issues, addressed above. However, in addition, it is submitted that there is a continuing violation of the rights protected by article 7, insofar as Sri Lankan law provides no effective remedy for the torture and ill-treatment to which the author was already subjected. The author submits that, both through its law and practice, the State party condones such violations, contrary to article 7, read together with the positive duty to ensure the rights protected in article 2, paragraph 1, of the Covenant.

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3.6 The author claims that the decision to admit the confession, obtained through alleged violations of his rights, and to rely on it as the sole basis for his conviction, violated his rights under article 2, paragraph 1, as the State party failed to "ensure" his Covenant rights. It is also claimed that the application of the PTA itself violated his rights under articles 14, and 2, paragraph 1.

3.7 The author claims a violation of article 2, paragraph 3, read together with articles 7 and 14, as the constitutional bar to challenging sections 16 (1) and (2) of the PTA effectively denies the author an effective remedy for the torture to which he was subjected and his unfair trial. The PTA provides for the admissibility of extra-judicial confessions obtained in police custody and in the absence of counsel, and places the burden of proving that such a confession was made "under threat" on the accused.[8] In this way, the law itself has created a situation where rights under article 7 may be violated without any remedy available. The State must enforce the prohibition on torture and ill-treatment, which includes taking "effective legislative, administrative, judicial and other measures to prevent torture in any territory under its jurisdiction".[9] Thus, if in practice legislation encourages or facilitates violations, then at a minimum this falls foul of the positive duty to take all necessary measures to prevent torture and inhuman punishment. The author claims a separate violation of article 2, paragraph 3, alone, as the explicit ban under Sri Lankan law on constitutional challenges to enacted legislation prevented the author from challenging the operation of the PTA.

3.8 The author claims that the trial and appellate courts' failure to exclude the author's alleged confession, despite its having been made in the absence of a qualified and independent interpreter, amounted to a breach of his right not to be discriminated against under article 2, paragraph 1, read together with article 26. He claims that the application of the PTA resulted in, and continues to cause, indirect discrimination against members of the Tamil minority, including himself.

3.9 The author claims a violation of article 14, paragraph 3(c), in relation to cases nos. 6823/94 and 6824/94, as he was detained pending trial for over seven years since his initial indictments (eight since his arrest), and had not been tried on the date of submission of his communication.

3.10 The author submits that he has exhausted domestic remedies, as he was denied leave to appeal to the Supreme Court. As regards constitutional remedies, he notes that the Sri Lankan Constitution (article 126(1)) only permits judicial review of executive or administrative action , it explicitly prohibits any constitutional challenge to legislation already enacted (article 16, article 80(3) and article 126(1).[10] The courts have similarly held that judicial review of judicial action is not permissible.[11] Thus, he was unable to seek judicial review of any of the judicial orders applicable to his case, or to challenge the constitutionality of the provisions of the PTA, which authorized his detention pending trial (in respect of Cases nos. 6823/94 and 6824/94), the admissibility of his alleged confession, and the shifted burden of proof regarding the admissibility of the confession.

3.11 The author argues that the communication is admissible *ratione temporis*. In respect of Case no. 6825/94, the Court of Appeal's judgment of 6 July 1999, which upheld the author's conviction, and the Supreme Court of Sri Lanka's denial of leave to appeal, on 28 January 2000 refusing leave to appeal, were both given after the First Optional Protocol came into force for Sri Lanka. He submits that the right to a fair trial comprises all stages of the criminal process, including appeal, and the due process guarantees in article 14 apply to the process as a whole. The alleged violations of the rights protected under article 14, by the Court of Appeal, are the primary basis for this communication. His claims are said to be admissible *ratione temporis* inasmuch as they relate to continuing violations of his rights under the Covenant. He argues that the denial of a right to a remedy in relation to the claims under article 2, paragraph 3, read together with articles 7 and 14 (para. 3.7), continues. As to his claims under article 14, the author remains incarcerated without prospect of release or retrial, which amounts to a continuing violation of his right not to be subjected to prolonged detention without a fair trial. With respect to Case nos. 6823/94 and 6824/94, the author submits that he has remained incarcerated pending trial for a total of eight years at the time of submission of his communication, three of which were after the entry into force of the Optional Protocol.

3.12 Regarding a remedy, the author submits that release is the most appropriate remedy for a finding of the violations alleged herein, as well as the provision of compensation, pursuant to article 14, paragraph 6, of the Covenant.

The State party's submissions on admissibility and merits

4.1 By submission of 4 April 2002, the State party argues that the communication is inadmissible *ratione personae*. It submits that it did not receive a copy of the power of attorney and if it were to receive same it would have to check its "validity and applicability". Even if the authorisation were presented to the State party, it submits that an author must personally submit a communication unless he can be prove that he is unable to do so. The author provided no reason to demonstrate that he is unable to present such an application himself.

4.2 The State party argues that the author did not exhaust domestic remedies. Firstly, he could have requested the President for a pardon, to grant any respite of the execution of sentence, or to substitute a less severe form of punishment, as he is empowered to do under article 34(1) of the Constitution. Secondly, he could also have applied to the Supreme Court under article 11 of the

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Constitution, which prevents torture or other cruel, inhuman or degrading treatment or punishment, about his allegations of torture by army personnel and police officers. Such action would constitute "executive action" in terms of articles 17 and 26 of the Constitution.[12] If the Supreme Court had found that the author was subjected to torture, it could have made a declaration that his rights under article 11 had been violated, ordered payment of compensation by the State, payment of costs of the legal proceedings and, if warranted, ordered the immediate release of the author.

4.3 Thirdly, the State party submits that the author could have complained to the police, alleging that he was subjected to torture as defined by section 2, read together with section 12, of the Convention against Torture. Criminal proceedings could then have been instituted in the High Court by the Attorney General. Fourthly, he could have instituted criminal proceedings directly against the perpetrators of the alleged torture in the Magistrates Court, pursuant to section 136(1) (a) of the Code of Criminal Procedure Act (No. 15 of 1979). If the Supreme Court had found that the author was subjected to torture or if criminal proceedings had been instituted against the alleged perpetrators, he would either not have been indicted or criminal proceedings, already instituted, would have been terminated.

4.4 With respect to the complaint that his rights under article 14, paragraph 3(c), were violated as he was detained pending trial in Cases Nos. 6823 and 6825, both of which have not yet come to trial, the State party submits that the author could have petitioned the Supreme Court, and complained of a violation, by "executive action" of his "fundamental rights", guaranteed by articles 13 (3), and/or (4), of the Constitution. Such a finding by the Supreme Court could have led to the indictments being quashed or the author's release.

4.5 In its merits submission of 20 November 2002, the State party denies that any of the author's rights under the Covenant were violated or that any provisions of the State of Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1989 (which are promulgated under the Public Security Ordinance) or the PTA violate the Covenant. With respect to the claims under article 14, it submits that the author received a fair and public hearing before a competent, independent and impartial tribunal established by law; he was afforded the presumption of innocence,which is secured under domestic law and recognised as a constitutional right.

4.6 On the issue of access to an interpreter, the State party submits that a person conversant in both Tamil and Sinhalese was present when the author's confession was recorded. This translator was called by the prosecution as a witness during the trial, during which the author had the opportunity to cross-examine him and also to test his knowledge and competency. The State party submits that it was only after this evidence was recorded, during the *voir dire* hearing, that the Court accepted the confession as part of the evidence in the trial. It adds that the author had the free assistance of an interpreter conversant in Tamil during the trial and was also represented by a lawyer of his choice, who was also conversant in Tamil.

4.7 The State party submits that the author had the right to remain silent, or to make an unsworn statement from the dock or to give sworn evidence from the witness stand which could be cross-examined. It denies that he was compelled to testify at trial, to testify against himself or to confess guilt. Rather he elected to give evidence and on doing so the Court was entitled to consider such evidence in arriving at its verdict. The State party explains that under the Sri Lankan Evidence Ordinance, a statement made to a police officer is inadmissible, but under the PTA, a confession made to a police officer not below the rank of ASP is admissible, provided that such statement is not irrelevant under section 24 of the Evidence Ordinance.[13] The voluntariness of such a statement or confession, before admission, may be challenged. Although the burden of proving its case, beyond a reasonable doubt, rests with the prosecution, the burden of proving that a confession was not made voluntarily lies with the person claiming it. According to the State party, this is consistent with "the universally accepted principle of law, namely, he who asserts must prove" and, the reliance on confessions does not amount to a violation of article 14, paragraph 3(g), of the Covenant, and is permissible under the Constitution. It argues that the burden on an accused to prove that a confession was made under duress is not beyond reasonable doubt but in fact is "placed very low", and requires the accused to "show only a mere possibility of involuntariness."

4.8 On the claim of torture, the State party submits that the trial court and the Court of Appeal made clear and unequivocal findings that these allegations were inconsistent with the medical report adduced in evidence, and that the author had failed to make such allegations to the Magistrate or to the police, prior to the trial.

4.9 On the claim of alleged discrimination with regard to the manner in which the confession made by the author was recorded and considered by the Court, the State party reiterates its arguments raised on the circumstances surrounding his confession, in paragraph 4.6 above. On the issue of a violation of article 14, paragraph 5, it notes that the author was afforded every opportunity to have his conviction and sentence reviewed by a tribunal according to law, and that he merely seeks to question the findings of fact made by the domestic courts before the Committee. Finally, the State party informs the Committee that, following the author's conviction in Case no. 6825/94, the charges in Case nos. 6823/94 and 6824/94 were withdrawn.

The author's comments

5.1 Regarding the State party's argument that the communication is inadmissible *ratione personae*, the author submits that the power of attorney was included in the submission, and notes that his imprisonment prevented him from submitting the

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communication personally. He adds that it is common practice for the Committee to accept communications from third parties, acting in respect of individuals incarcerated in prison.

5.2 On the issue of exhaustion of domestic remedies, the author submits that the obligation to exhaust all available domestic remedies does not extend to non-judicial remedies and a Presidential pardon which, as an extraordinary remedy, is based upon executive discretion and thus does not amount to an effective remedy, for the purposes of the Optional Protocol.

5.3 The author reaffirms he was unable to seek constitutional remedies in respect of any of the judicial orders or relevant legislation relating to the admissibility of the alleged confession, or detention pending trial, given that the Sri Lankan Constitution does not permit judicial review of judicial action, or of enacted legislation. Thus, he could not pursue constitutional remedies in respect of the decision of the domestic courts to admit the alleged confession, or domestic legislation which renders admissible statements made before the police and places the burden of proof regarding the irrelevance of such statements on the accused.

5.4 On whether the author could have sought to have the perpetrators of the alleged torture prosecuted, he submits that the obligation to exhaust domestic remedies does not extend to remedies which are inaccessible, ineffective in practice, or likely to be unduly prolonged. He recalls that the applicable laws do not conform to international standards and in particular to the requirements of article 7 of the Covenant. Consequently, remedies against torture are ineffective. The author did not file a criminal complaint that the alleged confession was extracted from him under torture, given his fear of repercussions while he remained in custody. He notes than when he placed these allegations on record, during the *voir dire* hearing before the High Court, no investigations were initiated.

5.5 On the issue of exhaustion of domestic remedies, in relation to the author's detention pending trial and the delay in trial, the author submits that only "available remedies" must be exhausted. There is no specific right to a speedy trial under the Constitution, and, to date, the courts have not interpreted the right to a fair trial as including the right to an expeditious trial. Furthermore, the Constitution explicitly provides for the possibility of detention pending trial and, in any event, stipulates that constitutional remedies are not applicable to judicial decisions, for example when a court decides to grant frequent adjournments at the request of the prosecution, leading to trial delays.

5.6 On the merits, the author reiterates the arguments in his initial communication. With respect to the information provided by the State party on Case Nos. 6823/94 and 6824/94, the author confirms that the charges relating to the former case have been withdrawn and therefore "provides no further submissions in respect of these proceedings". However, no information is available on whether the charges in the latter case have been dropped, and the author submits that he may still be brought to trial on this charge.

Issues and proceedings before the Committee

Consideration of Admissibility

6.1 Before considering any claim contained in the communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

6.2 As to the question of standing and the State party's argument that author's counsel had no authorisation to represent him, the Committee notes that it has received written evidence of the representative's authority to act on the author's behalf and refers to Rule 90 (b) of its Rules of Procedure, which provides for this possibility. Thus, the Committee finds that the author's representative does have standing to act on the author's behalf and the communication is not considered inadmissible for this reason.

6.3 Although the State party has not argued that the communication is inadmissible *ratione temporis*, the Committee notes that the violations alleged by the author occurred prior to the entry into force of the Optional Protocol. The Committee refers to its prior jurisprudence and reiterates that it is precluded from considering a communication if the alleged violations occurred before the entry into force of the Optional Protocol, unless the alleged violations continue or have continuing effects which in themselves constitute a violation of the Covenant. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of previous violations of the State party.[14] The Committee observes that although the author was convicted at first instance on 29 September 1995, i.e. before the entry into force of the Optional Protocol for the State party, the judgement of the Court of Appeal upholding the author's conviction, and the Supreme Court's order refusing leave to appeal were both rendered on 6 July 1999 and 28 January 2000, respectively, after the Optional Protocol came into force. The Committee considers the appeal courts decision, which confirmed the trial courts conviction, as an affirmation of the conduct of the trial. In the circumstances, the Committee concludes that it is not precluded *ratione temporis* from considering this communication. However, as to the author's claims under article 26, article 2, paragraph 1 alone and read together with article 14, and his claim under article 9, paragraph 3, relating to his automatic remand in detention without bail, the Committee finds these claims inadmissible *ratione temporis*.

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6.4 With respect to the State party's argument that the author did not exhaust domestic remedies in failing to request a Presidential pardon, the Committee reiterates its previous jurisprudence that such pardons constitute an extraordinary remedy and as such are not an effective remedy for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.

6.5 Having regard to the author's claim of a violation of article 7 and considering it as limited to torture raising fair trial issues, the Committee notes that this issue was considered by the Appellate Courts and dismissed for lack of merit. On this basis, and considering that the author was refused leave to appeal to the Supreme Court, the Committee finds that the author has exhausted domestic remedies.

6.6 As to the claim of a violation of article 14, paragraph 5, as the Court of Appeal upheld the author's conviction, despite alleged "irregularities" during the trial, the Committee notes that this provision provides for the right to have a conviction and sentence reviewed by a higher tribunal. As it is uncontested that the author's conviction and sentence were reviewed by the Court of Appeal, the fact that the author disagrees with the outcome of the court's decision is not sufficient to bring the issue within the scope of article 14, paragraph 5. Consequently, the Committee finds that this claim is inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

6.7 The Committee therefore proceeds to the consideration of the merits of the communication regarding the claims of torture as limited in paragraph 6.4 above and unfair trial - article 14 alone and read with article 7.

Consideration of the Merits

7.1 The Committee has examined the communication in light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

7.2 As to the claim of a violation of article 14, paragraph 3 (f), due to the absence of an *external* interpreter during the author's alleged confession, the Committee notes that this provision provides for the right to an interpreter during the court hearing only, a right which was granted to the author.[15] However, as clearly appears from the court proceedings, the confession took place in the sole presence of the two investigating officers – the Assistant Superintendent of Police and the Police Constable; the latter typed the statement and provided interpretation between Tamil and Sinhalese. The Committee concludes that the author was denied a fair trial in accordance with article 14, paragraph 1, of the Covenant by solely relying on a confession obtained in such circumstances.

7.3 As to the delay between conviction and the final dismissal of the author's appeal by the Supreme Court (29 September 1995 to 28 January 2000) in Case no. 6825/1994, which has remained unexplained by the State party, the Committee notes with reference to its *ratione temporis* decision in paragraph 6.3 above, that more than two years of this period, from 3 January 1998 to 28 January 2000, relate to the time after the entry into force of the Optional Protocol. The Committee recalls its jurisprudence that the rights contained in article 14, paragraphs 3(c), and 5, read together, confer a right to review of a decision at trial without delay.[16] In the circumstances, the Committee considers that the delay in the instant case violates the author's right to review without delay and consequently finds a violation of article 14, paragraphs 3(c), and 5 of the Covenant.

7.4 On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt.[17] The Committee considers that it is implicit in this principle that *the prosecution* prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by "inducement, threat or promise" are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in Section 16 of the PTA. Even if, as argued by the State party, the threshold of proof is "placed very low" and "a mere possibility of involuntariness" would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes 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, paragraph 3, and 7 of the Covenant.

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7.5 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

7.6 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant.

7.7 Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

** The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski.

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Communication No. 1033/2001 : Sri Lanka. 23/08/2004.
CCPR/C/81/D/1033/2001. (Jurisprudence
Convention Abbreviation: CCPR
Human Rights Committee
Eighty-first session. 5 - 30 July 2004 Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland

(Endnotes)

[1] Section 9(1) of the PTA provides as follows: "Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time."

[2] Section 9(1) of the PTA provides as follows: "Where

Comply with UN verdict, HHR tells Attorney General

Letter written to The Attorney General, by the Home for Human Rights (HHR), dated 11th September, asking for the state to comply with the UN's request.

Appeal to give effect to the views of the UN Human Rights Committee Communication No. 1033/2001

On the instruction of my client Mr. Nallaratnam Singarasa who is currently serving a 35 year prison sentence at Kalutara Prison. I write to you as follows: -

On behalf of theaforesaid I submitted an individual communication to the UN Human Rights Committee, under the optional Protocol of the ICCPR, against the conviction and sentence, alleging violation of the rights guaranteed by the ICCPR.

The said committee having considered the said communication had published its views on 23 August 2004.

In Paragraph 7.6 of its views it states,

"In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant"

In the aforesaid circumstances, I would request you to have steps taken early to give effect to the said views by releasing my aforesaid client from jail and paying compensation.

I also draw your kind attention to paragraph 4.9 of the said views wherein it is stated that,

"Finally, State Party informs the Committee that, following the author's conviction in Cast No. 6825/94, the chares in Case Nos. 6823/94 and 6824/94 were withdrawn" and bring to your notice that one of the said cases viz: 6824/94 has still not been withdrawn and is coming for trial on 14.09.2004 in Colombo High Court No. 04.

I shall be thankful if you have this case withdrawn.

A copy of the said view is annexed for your easy reference.

Kindly acknowledge receipt of this appeal.

Yours Faithfully.
V.S.Ganeshalingam
Attorney-at-law.

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the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time."

[3] Section 10 of the PTA provides as follows: "An order made under section 9 shall be final and shall not be called into question in any court or tribunal by way of writ or otherwise."

[4] Section 16 of the PTA provides as follows: "(1) Notwithstanding the provisions of any other law, where any person is charged with an offence under this Act, any statement made by such person at any time, whether - (a) it amounts to a confession or not; (b) made orally or reduced to writing; (c) such person was or was not in custody or presence of a police officer; (d) made in the course of an investigation or not; (e) it was or was not wholly or partly in answer to any question, may be proved as against su

ch person if such statement is not irrelevant under section 24 of the Evidence Ordinance: Provided however, that no such statement shall be proved as against such person if such statement was made to a police officer below the rank of an Assistant Superintendent."(2) The burden of proving that any statement referred to in subsection (1) is irrelevant under Section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant. (3) Any statement admissible under subsection (1) may be prove

d as against any other person charged jointly with the person making the statement, if and only if, such statement is corroborated in material particulars by evidence other than the statements referred to in subsection (1)." The author notes that section 17 of the PTA further provides that sections 25, 26 and 30 of the Evidence Ordinance, which include additional restrictions on the admissibility of confessions, are not applicable in any proceedings under the PTA. Section 24 of the Evidence Ordinance provid

es as follows: "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat or promise is sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

[5] Article 128 of the Constitution permits appeal to the Supreme Court only on matters of law

[6] Saunders v UK (1996) 23 EHRR 313, CCPR General Comment No. 13, of 13 April 1984; Kelly v Jamaica, Case no.253/87, Views adopted on 4 August 1991.

[7] CCPR General Comment No. 20, of 10 March 1992.

[8] In this respect, the author notes that the recent report of the United Nations Special Rapporteur on Summary and Extra Judicial Executions refers to repeated allegations of confessions being extracted under torture from persons accused of offences under the PTA Report by Special Rapporteur, Mr. Bacre Waly Ndiaye, Addendum, submitted pursuant to Commission on Human Rights resolution 1997/61, E/CN.4/1998/68/Add.2, 12 March 1998.

[9] Article 2, paragraph 1, of the Convention against Torture.

[10] Article 126(1), Constitution of Sri Lanka provides as follows: "The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right." (emphasis added). Article 16 (1) of the Constitution provides: "All existing written and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter [Chapter III on Fund

amental Rights]." Further, Article 80(3) Constitution of Sri Lanka provides: "No court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of [any Act of Parliament] on any ground whatsoever."As a former Chief Justice of Sri Lanka, Justice S. Sharvananda, has commented (see Justice S. Sharvananda,

Fundamental Rights in Sri Lanka

, (Sri Lanka: 1993) at p. 140): "Article 80(3) vests enacted law with finality in the sense that the validity of an Act of Parliament cannot be called in question in any court or tribunal. In this Constitutional scheme, there is no room for the introduction of the concept of 'due process of law' or notions of reasonableness of the law and natural justice as has been done by the Supreme Court of India in Maneka Gandhi's case A.I.R. (1978) SC 597 at 691-692. As stated earlier, in Sri Lanka, it is not open to

a court to invalidate a law on the ground that it seeks to deprive a person of his liberty contrary to the court's notions of justice or due process."

[11] Velmurugu v AG

(1981) 1 SLR 406;

Saman v Leeladasa

SC Appl. No. 4/88 SC Minutes 12 December 1988.

[12] Article 17 provides that, "every person shall be entitled to apply to the Supreme Court, as provided by article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this chapter". Article 26 provides that, "the Supreme Court shall have sole and exclusive jurisdiction to hear and determine any

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question relating to the infringement or imminent infringement by the executive or adminis

trative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV."

[13] Section 28 provides that, "The provisions of this Act (Prevention of Terrorism Act) shall have effect not withstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between the provisions of this Act and such other written law the provisions of this Act shall prevail".

[14]E. and A. K. v. Hungary, Case no. 520/1992, Decision of 7 April 1994, and K. V. and C. V. v. Germany, Case no. 568/1993, Decision of 8 April 1994, Holland v. Ireland, Case no. 593/1994, Decision of 26 October 1996.

[15] B.d.B. v. Netherlands, Case no. 273/1988, Decision of 30 March 1989, and Yves Cadoret v. France, Case no. 221/1987, Decision of 11 April 1991 and Herve Le Bihan v. France, Case no. 323/ 1988, Decision of 9 November 1989.

[16]Lubuto v. Zambia, Case no. 390/1990, Views adopted on 31 October 1995; Neptune v. Trinidad and Tobago, Case no. 523/1992, Views Adopted on 16 July 1996; Sam Thomas v Jamaica, Case no. 614/95, Views adopted on 31 March 1999; Clifford McLawrence v Jamaica, Case no.702/96, Views adopted on 18 July 1997;Johnson v. Jamaica, Case no. 588/1994, Views adopted on 22 March 1996.

[17] Berry v. Jamaica, Case no. 330/1988, Views adopted on 4 July 1994.

Letters pleading for Singarasa's release

As the deadline for the Sri Lankan government to respond to UN recommendations passed, the state did nothing. Below are several requests by the Home for Human Rights (HHR) and international rights organizations such as Amnesty International and Interights to the Sri Lanka government demanding it complies with the UN verdict. These requests have fallen on deaf ears as Singarasa remains in custody.

Letter to The Chairman, Human Rights Commission, dated 16th November

View of the UN Human Rights Committee in Singarasa V. Sri Lanka. Communication No. 1033/ 2001

I write further to the recent decision of the UNHRC in the above case. Dated 21 July. 2004, which was communicated to the Sri Lankan Government on 4th August 2004. I write in my capacity as the representative and Legal Counsel assisting the applicant (Singarasa) in this matter before the said committee.

As your are aware The Committee after considering the submission made by both the parties found, Sri Lanka in violation of its international legal obligations to provide a fair trial and to protect persons detained by its authorities from torture. He was convicted on the sole basis of a confession elicited through torture during police interrogations. The PTA under which he was charged and sentenced to 50 years imprisonment placed the onus on him to prove his confession had not been given freely. This was held to amount to a violation of his fair trial rights and breach of the State's duty to investigate into allegation of torture.

The Committee expressed the view that the facts before it disclosed violations of articles14, paragraphs 1, 2,3, (c), and 14 paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant and further held.

"In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy. Including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned section of the PTA are made compatible with the provisions of the Covenant."

The Government of Sri Lanka was given 90 days to give effect to the views of the Committee. This period expired on 4 November 2004 and there is no indication from the Government as to the action taken or intends to take to implement the Committee's decision. The Applicant is still in Kalutara prison desperately hoping that this recommendation will lead to his release.

In view of the failure of the Government to give effect to the views of the Committee, which are of importance to human rights, I would request the Committee. Which are of importance to human rights. I would request the Commission. Acting under Section. 10 (d) of the Human Rights Commission Act No. 21 of 1996 to recommend to the Government to release the applicant and to pay him compensation. And to amend the PTA to bring it in conformity with international human rights norms and standards.

An early reply will be appreciated.
Yours Faithfully,
V.S Ganesalingam
Director, Legal Programme

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AMNESTY INTERNATIONAL

Sri Lanka: Free Nallaratnam Singarasa

The deadline has now passed for the Sri Lankan Government to respond to a UN recommendation calling for the release or retrial of Nallaratnam Singarasa, who was tortured and has spent more than ten years in prison following an unfair trial.

"We urge the Sri Lankan government to immediately comply with the recommendation of the committee," said Amnesty International and Interights (the International Centre for the Legal Protection of Human Rights) "In light of the amount of time Nallaratnman Singarasa has spent in prison and the severe torture he has suffered, the government should release him as soon as possible."

Nallaratnam Singarasa, an ethnic Tamil, was arrested in July 1993 during the long running conflict between the Government and Tamil separatists. He claims to have been subjected to severe torture following his arrest, which included having his head held inside a tank of water. A doctor later found scars on his back and eye resulting from the torture. During his detention Nallaratnam Singarasa was denied access to a lawyer and an interpreter. He claims he was forced to put his thumbprint on a "confession" written in Sinhalese, a language that he did not understand. In September 1995 Nallaratnam was convicted of crimes under the Prevention of Terrorism Act (PTA) including conspiracy to overthrow the government. He was sentenced to 50 years imprisonment.

In July this year the UN Human Rights Committee reviewed his case and concluded that Nallaratnam Singarasa's right to a fair trial had been violated as his conviction was based solely on his supposed" confession" and as he had been denied access to an interpreter during interrogation. The committee also criticized the fact that the onus was put on Nallaratnam Singarasa to prove that his confession had been obtained by torture and concluded that the government had failed in its obligation to effectively investigate allegations of torture.

The Sri Lankan Government was given 90 days to respond to the recommendation of the Human Rights Committee at the beginning of August. However, three months later Nallaratnam Singarasa is still in prison although he desperately hopes that this recommendation will lead to his release.

Amnesty International and Interights are concerned that the PTA provides an incentive for interrogating officers to obtain "confessions" from detainees by any means, including torture. This is because the PTA allows for "confessions" to be used as evidence in court as long as they are heard by officers above a certain rank. Amnesty International has consistently called for the Act to be repealed or brought into line with international human rights standards.

INTERIGHTS

Time for Sri Lanka to Take Action on UN Human Rights Committee's Findings of Torture and Ill Treatment

On 21 July 2004 the UN Human Rights Committee decided in the case of *Singarasa V Sri Lanka,* that a Sri Lankan national and a member of the Tamil community had been tortured and ill-treated during his detention by the Sri Lankan police thereby breaching his rights under the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a party. Mr. Singarasa was represented by Mr. Ganesalingam, legal counsel of 'Home for Human Rights' a Sri Lankan based NGO, and INTERIGHTS, the International centre for the Legal Protection of Human Rights, based in London.

The Committee found that Mr. Singarasa, who had been arrested in 1993 and taken to an Army Camp pursuant to an order under the Prevention of Terrorism Act (PTA), had been interrogated by police officers without an external interpreter, and that a 'confession' signed under duress by him in a language he did not understand, was then used as the sole justification for his criminal conviction. Further, as the PTA places the burden on the victim of proving the confession was obtained through torture, this amounted to a denial of Mr. Singarasa's rights under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees a fair trial. Tenacious dismissals by Sri Lankan courts of Mr. Singarasa's claims as lacking in credibility were also held to be a breach of the government's duty to effectively investigate allegation of torture. The Committee concluded that Sri Lanka was under an obligation to provide Mr. Singarasa with an effective and appropriate remedy, including release or retrial and compensation. In addition, the state was to avoid related violations in the future by amending the relevant provisions of the PTA found to be inconsistent with human rights standards. The significance of the case is that it requires the government to address unlawful practices regarding treatment of persons in detention and the denial of safeguards during interrogation.

The decision was communicated to the Sri Lankan government on 4 August 2004 who then had 90 days to respond. This deadline has now expired with Mr. Singarasa still in Kalutara prison and no indication from the government what action it has taken or intends to take to implement the Committee's decision. INTRIGHTS calls on the Sri Lankan government to comply fully with the decision and to communicate what steps it is taking to Mr. Singarasa's family, is legal representatives and the Committee.

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Linkages between international law and domestic accountability

By V.S. Ganesalingam

Had someone questioned Adolph Hitler for his persecution of the Jews, he would have replied that how he treats his citizens is an internal matter and it cannot be a matter of legitimate concern for other nations. He would have added interference with it amounts to interference with the sovereignty of his state. He would have been right then, because that was the status of human rights laws as it stood in the early 1930's.

But he would not have been right after the adoption the UN Charter because the Charter "Internationalized" human rights. That is to say, by adhering to the charter which is a multilateral treaty, State parties recognized that the human rights referred to in it, are subjects of international concern and to that extent, no longer within their exclusive domestic jurisdiction . Internationalization of human rights, though frequently challenged by some states in the early years the UN, is no longer open to doubt. What it does mean is that even in the absence of any other treaty obligation, a state today can no longer assert that manner in which it treats its own nationals, is a matter within its exclusive domestic jurisdiction.

Accountability arises from a legal liability or obligation under law. By subscribing to the UN Charter the member states pledge themselves to take joint and separate action in cooperation with the organization to promote universal respect for and observance of human rights (Article 55 and 56). By virtue of the pledge, States are obliged to submit themselves to the jurisdiction of the UN Charter based institutions designed to ensure compliance by Governments. Today it is generally recognized, for example, that a member State that engages in practices amounting to a "consistent pattern of gross violations" will be accountable under the 1503 procedure. In addition, consideration by the Commission on Human Rights, reports received through special rapporteurs, working groups, individual reports and study of the human rights situation in specific countries often culminates in the Commission adopting a resolution to make States accountable. A statement by the Commission would be seen as an expression of international concern on domestic violations.

To illustrate this I would refer to a consensus resolution of the Commission on Human Rights on the Sri Lankan situation.

On 5 March 1987, Leandor Despouy, in his capacity as head of the Argentinean Delegations to the 43rd Session of the U N Human Rights Commission deposited Resolution (L 74) relating to the situation in Sri Lanka only carrying his sole signature. In spite of a number of detailed interventions by NGOs and some Government delegates relating to human rights violation in Sri Lanka that preceded the submission of the draft resolution, the Sri Lankan delegation headed by H.W. Jayawardene was confident that, as in these previous years, no draft resolution would find its way into the Agenda. Despite the elaborate efforts by Sri Lankan delegation including getting Pakistan to move a Counter Resolution extolling the efforts of the Sri Lankan and condemning the Tamil groups, it got into the agenda and an amended resolution (L 74 Rev 1) co-sponsored by Canada, Norway and Argentina was submitted on 11 March and on the following day Argentina moved the resolution which was unanimously adopted with the agreed amendments moved by Senegalese delegate.

This resolution called upon all parties to renounce violence and to pursue a settlement based on principles of respect for human rights and fundamental freedoms and to consider favourably the offer of the services of ICRC. The text of the resolution is given below

Resolution co-sponsored by Argentina, Canada and Norway unanimously adopted on 12 March 1987 at the 43rd Sessions of the Human Rights Commission of the United Nations

The situation in Sri Lanka

"The Commission on Human Rights guided by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and the universally accepted rules of international humanitarian law

Recalling its decision 1984/111 of 14 March, 1984,

Taking note of the Report of the Special Rapporteur on Torture and the Report of the Working Group on Enforced or involuntary Disappearances.

1. Calls upon - all parties and groups to respect fully the universally, accepted rules of humanitarian law

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2. Calls upon – all parties and groups to renounce the use of force and acts of violence and to pursue a negotiated political solution, based on principles of respect for human rights and fundamental freedom

3. Invites the Government of Sri Lanka to intensify its cooperation with the International Committee of the Red Cross in the fields of dissemination and promotion of international humanitarian law and invites the Government of Sri Lanka to consider favourably the offer of the services of the international Committee of the Red Cross to fulfill its functions of protection of humanitarian standards, including the provision of assistance and protection to victims of all affected parties, and

4. Expresses hope that the Government of Sri Lanka will continue to provide information to the Commission on Human Rights on this question "

Pushing through a resolution in the UN system is not an easy task. Home for Human Rights, Colombo played a significant role in all stages in the adoption of the adoption of this resolution. This could be seen as a first successful step in internationalizing the ethnic problem in Sri Lanka as evident by Government Sri Lanka permitting ICRC to the north, followed by the arrival of the IPKF and now by Norway

As you could see from the following, documentation of violations, of lobbying and raising the issue under the thematic procedure are desirable steps, before going to the Commission.

Two well prepared documents, one on arrest, detention and torture in Sri Lanka, and the other on Extra Judicial and arbitrary killings were already distributed among the delegates. Thirteen non governmental organizations jointly made an urgent open appeal calling for immediate action by the Human Rights Commission. Respected, Martin Ennals, Secretary General of International Alert on behalf of Minority Rights Group made an oral intervention. Reports of three important UN working groups viz: The Special Rapporteuer on Torture had expressed great concern at the practice of torture. The Working Group on Disappearance listed several hundreds cases of disappearances and the report of the Special Rapporteuer on summary execution referred to several allegations of arbitrary killings. Above all there was a Resolution of the Sub-Commission on Human Rights adopted in 1983 on the same issue.

Besides UN Charter, it could be said that customary international law and the human rights treaties ratified by States have made them accountable both under international human rights law and domestic law. Of the 30 rights recognized by UDHR most of the core rights in it have been incorporated in the constitutions of several States and therefore for those countries whoever who violates the law guaranteed by the constitution violates international law as well and become accountable under both systems. Even though UDHR is not a treaty, having no force of law, yet it is considered as customary international law which the States are bound to respect. In India, a rule of customary international law is binding provided it is not inconsistent with the domestic law; whereas in Sri Lanka, it has no legal status in the national laws.

Treaties and covenants enjoy a status different from that of the customary instrumental law, in that covenants are legally binding treaties which creates legal obligation to respect and implement.

For some countries international treaties on ratification atomically become part of the national laws and are enforceable. But for others including Sri Lanka and India those treaties have to been transformed into domestic law to be made enforceable as could be seen by Act No. 22 of 1944 by which Sri Lanka gave effect to the torture Convention.

Now I would draw your attention to the terminology used in the Covenants, where the word 'Shall' is used, which means mandatory.

ICCPR

Article 7 No one shall be subjected to torture

8 No one shall be held in slavery

No one shall be held in servitude

9 No one shall be subjected to arbitrary arrest.

CAT

Article 3 No State shall expel, return or extradite a person to another State where he may be subjected to torture.

Article 4 Each state shall ensure that all acts of torture are punishable criminal offences.

I think it would be appropriate to refer to Article 2 of the ICCPR which reads as follows;

1. Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language,

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religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes

a) To ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy

c) To ensure that the competent authorities shall enforce such remedies when granted." As you could see, ICCPR creates a legal binding on the State Parties to respect and to ensure the rights recognized to its people and the article 2 of it states how the State Parties should implement, that is, by taking administrative, legislative, judicial and other measures.

A similar provision could be found in Article 2 of the Convention against torture which states

"Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its Jurisdiction'. The second limb of it specially states that the States cannot plead exceptional circumstances such as war, threat of war, internal political instability, public emergency or order from the superiors.

It may be relevant to refer to one common Article found among the Directive Principles in the Constitution of India and Sri Lanka.

Article 51 (c) Indian constitution -

"The State shall endeavour to foster respect for international law and treaty obligation in the dealings of organized people with another".

Article 27 (15) Sri Lankan constitution-

"State shall endeavour to foster respect for international law and treaty obligation in dealing among nation:"

Guided by this principle, the Supreme Courts, both in India and Sri Lanka have in their judgments demonstrated that the rules of international law and municipal law should be construed harmoniously.

In Vishaka v State of Rajasthan, Verma, CJ, cases on gender equality and guarantees against sexual harassment, in which there is no domestic law, held '(a) any international convention not inconsistent with the fundamental rights and in harmony with its sprit must be read into those provisions to enlarge the meaning and content thereof.'

In, Peoples Union Court Liberty v. Union of India and Aynor, the Supreme Court went further and held that Article 9 (5) of the ICCPR, that provides for a right to compensation for victim of unlawful arrest and detention, to be enforceable in India even though India has not adopted any legislation to this effect, despite the fact when ratifying it India had entered specific reservation to the said article stating that India did not recognize the right to compensation for victims of unlawful arrest and detention.

In Sri Lanka as well we could find similar thinking.

In Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda & other

Despite the fact that article 6 of the ICCPR-right to life, is not a guaranteed right fundamental right under the constitution Justice Mark Fernando held that,

"Article 11 (read with Article 13 (4) recognizes a right not to deprived of life – whether by way of punishment or otherwise – and, by implication, a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively (cf. Article 118(b))."

In Weerawansa v. Attorney General and others (2001 1 Sri LR 409) Justice Mark Fernando while holding that the Court should have regard to the provisions of the ICCPR further held,

"Article 27 (15) requires the State to" endeavor to foster respect for international law and treaty obligations in dealings among nations". That implies that the State must likewise respect international law and treaty obligations in its dealings with its own citizens, particularly when their liberty is involved. The State must afford to them the benefit of the safeguards which international law recognizes.

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On becoming a party to the Covenants, in addition to the undertaking to ensure the rights to the people, the State Parties are obliged to submit itself to international scrutiny by treaty bodies. Articles 40 ICCPR 16 of ICESC, Article 19 of the CAT requires the State Party to submit periodical reports to the Committees of experts set up under the Covenants, explaining the extent to which these undertakings have in fact been implemented, which are considered by the Committees in public. At the deliberations of the Committees not only the State delegates make oral presentations but the concerned NGO also submit parallel report and make oral presentations. Questions are put to delegates on the various issues and matters referred to the report and the Committee makes their Concluding Comments.

No doubt that one of major lacuna in treaty based complaints procedure remain the absence of any mechanism for the enforcement of the decision of the treaty bodies for the obvious reason that they not legally binding on States. Yet, the publicity given to the decision, opinions and views published in the Annual report of the General assembly of the body concerned, now available in the website or published in the annual reports of the UN bodies, remains the effective mechanism to compels and implementation. At the same time "shaming a government into compliance" and a more assertive method recently used by the Human Rights Committee or the Committee on the Rights of the client to publish "black lists" of un-cooperative States in their annual reports, are also used.

On acceptance of the competence of the Treaty bodies, the State Parties subject themselves to their Jurisdiction of the Committees. The Decisions of the highest Court in the national legal system is brought before the Committees, by way of individual complaints and becomes subject matter of review by treaty bodies. Of the three existing complaints procedures, that under ICCPR has become by far the best established and most authoritative. Over the past 25 years, the Committee has made important contributions to the interpretation of the provisions of the ICCPR and contributed immensely to what can be termed truly international human rights jurisprudence.

Sri Lanka ratified the Optional Protocol of the ICCPR on 3 October 1997 (entry into force on 3 January 1998) and thereby accepted the competence of the Human Rights Committee to receive individual complaints. Now, I will refer to two communications - No. 950/2000 and No.1033/ 2001, submitted to the Committee under this protocol in which the Committee had given its decision.

Communication No.950/2000 (Sarma's)

Jegatheeswara Sarma (hereinafter referred to as author) a Sri Lanka Tamil, complained to the Human Rights Committee that, on 23 June 1990, during a military operation his son, himself and three others were removed by army men from their family residence in Anpuvalipuram, in the presence of the author's wife and others. Thereafter the author and others arrested were forced to parade before the author's hooded son. Subsequently, author was released and his son was taken to Plantain Point army camp.

Thereafter, on 9 October 1991, while the author was working at 'City Medicals Pharmacy 'a yellow van with license plate No.35 Sri 1919 stopped in front of the pharmacy an army officer whom the author identified as Lt Amarasekera came out of the van to the pharmacy . At that moment author saw his son in the van looking at him and as he attempted to talk to him, the son signaled not to talk. There was no information as to his whereabouts despite 39 letters and other request related to disappearance of his son sent to numerous Sri Lankan authorities. In the circumstances the author claimed that his son is a victim of violation by Sri Lanka of Articles 6, 7, 9 and 10 of the ICCPR and that he and his family are victims of a violation by Sri Lanka of article 7 of the covenant.

I would say, most appropriately, the author pointed out to the Committee that the disappearance of his son is an act committed by State agents as part of a pattern and policy of enforced disappearances in which all levels of the State apparatus are implicated.

The Committees having considered the submission of the parties stated that,

"The Committee is therefore of the opinion that the facts before it disclose a violation of articles 7and 9 of the International Covenant on Civil and Political Rights with regard to the author's son and article 7 of the Covenant both with regard to the author's son and with regard to the author's family."

And expressed the view that,

"Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to punish the Committee's Views.

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The views of the Committee are of significance to human rights for variety of reasons.

State responsibility

Government of Sri Lanka (State Party), while admitting cordon and search during which arrest and detention did take and having indicted one Corporal Sarath for the abduction of the author's son was avoiding State responsibility as well as command responsibility by maintaining that the responsible officers were unaware of corporal Sarath's conduct and the abduction of the victim and that the" State did not, either directly or indirectly or through the relevant field commanders of its army, cause the disappearance of the author's son" in the circumstance it said cannot be seen as violation of his right.

The Committee held, that for purposes of establishing State responsibility, it is irrelevant in the present case that the officers to whom the disappearances is attributed acted ultra vires or that superior officers were unaware of the actions taken by that officer and concluded that, in the circumstances, the State party is responsible for the disappearance of the author's son.

In this context it could be pointed out that the submissions of the Government is not in conformity with many of the decisions of our Supreme Court from Velmuru case to Saman v Leeladasa.

Disappearance constitutes series of violations

The Committee notes the definition of enforced disappearance contained in article 7, paragraph 2(i) of the Rome Statute of the International Court:

Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organizations, followed by or refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention removing them from the protection of the law for a prolonged period of time "and held,

"Any act of such disappearance constitute a violation of many of the rights enshrined in the covenant, including the right to liberty and security of persons (article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of human person (article 10). It also constitutes a grave threat to the right to life (article 6)."

This decision of the Committee, endorsing the definition for disappearance in the Rome Statute and enumerating the violation of series of rights that constitute disappearance goes to contribute to international human rights jurisprudence.

Disappearance is a violation of art 7 in respect of the family as well

This decision is of importance in human rights litigation for the reason that it extends State liability to the family of the victim as well and give an indication as the circumstance under which a claim could be made for pain of mind.

The Committee recognizing the suffering involved in being held indefinitely and incommunicado without outside contact and the author accidentally seen the son after 15 months in the company of the army that abducted him, and "noting the anguish and stress caused to the author's family by the disappearance of the son and by the continuing uncertainty concerning his fate and whereabouts, the Committee considers that the author and his wife are also victims of article 7 of the covenant. The Committee is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant both with regard to the author's son and with regard to the author's family"

Violation of article 9 in its entirety

Art 9 is concerned with liberty, security and prohibiting arbitrary arrest and detention. The State party has itself acknowledged that the arrest of the victim was illegal and a prohibited activity. Not only there was no legal basis for his arrest, there evidently was none for his continuing detention. Committee held that such a gross violation of article 9 can never be justified.

Effectiveness of domestic remedies

As you know, exhaustion of domestic remedies is one of the conditions of admissibility. In the instant case, Government of Sri Lanka argued that the author has failed to resort to the following remedies – Writ of habeas corpus, writ of mandamus against the Police for the failure to conduct investigation, institution of action in the Magistrate Court under section 136 of the criminal procedure code.

The author demonstrated to the satisfaction of the Committee by referring to reports of human rights organizations such as Amnesty International and the Centre for the Independence of Judges and Lawyers that the remedy of Habeas corpus is effective and unnecessarily prolonged. Given the situation that prevailed then, the author himself may disappeared if he had resorted to any action against the perpetrators

Failure to take effective remedy

The author prior to his communication to the Committee, in several of his letters to various authorities has named the perpetrators and gave

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the names of several persons who were witnesses to the arrest, testified before the Presidential Commission of Inquiry into disappearances and had even named the star class officer of the army in whose company the victim was seen after 15 months of arrest, together with the license plate number of the vehicle in which the army officer came, yet the Government took no steps to help the author. The inaction coupled with the arguments advanced in the submissions to the Committee, will definitely create serious doubts on the sincerity of the Government.

Communication No.1033/2001 (Singararsa's)

This communication was submitted by lawyers attached to Home for Human Rights on behalf of Nallaratnam Singarasa who was convicted and sentenced to 50 years imprisonment by High Court Colombo (reduced to 35 years in appeal).In the Communication it was alleged that his conviction solely on the basis of a confession elicited by the police under torture while in police custody, which was admissible in evidence in terms of Section 16 of the PTA and that the Section 17 of it that cast the burden on him to prove that the confession was not made voluntarily, violates fair trail norms of the ICCPR. He also stated that High Court has convicted him despite the fact that there was medical report confirming torture and that the learned judge had relied on his failure to inform the Magistrate of the assault indicated that he had not behaved as a "normal human being".

The Human Rights Committee, acting under Article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, on 21July 2004 held that it " is of the view that the facts before it disclose violations of articles 14, paragraphs 1,2,3, (c), and 14 paragraph (g), read together with articles 2 paragraph 3 and 7 of the Covenant" and recommended retrial or release with compensation, and further recommended that the Government "should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant".

The decision was communicated to the Government on 4 August 2004 who then had 90 days to respond.

The deadline has now expired with Singarasa still in Kalutara prison and no indication from the Government what action it has taken or intends to take to implement the Committee's decision.

Committee's view on the violation of article 7 in Sarma's case seems to have been followed to some extent in Sriyani Silva's application. Under our constitution in terms of Article 126 (2) read with Article 17 only a victim of violation could seek relief from Court. In this application filed by the widow of a deceased victim of torture, Supreme Court held that

"When there is a casual 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."

In the same application Justice Fernando quoting Article 14.1 of the ICCPR, in interpreting the right of the compensation held that the rights "accrues to or devolves to the deceased's lawful heirs and or dependents. Bringing our law into conformity with International obligations, and standards and must be preferred."

In this judgment no doubt we could see a progressive thinking and judicial activism, in extending the locus standi "to any person having a legitimate interest.' However, this view is not in conformity with the jurisprudence of the Committee. In that the court did not hold that the act of torture resulting in the death is a violation of article 11 of the constitution both with regard to the deceased and with regard to the family. I quote

Justice Mark Fernando held " I hold that the deceased's fundamental rights under Article 11, 13(2) and 17 have been infringed by the 1st and 2nd Respondent, and other police officers, and that his rights have accrued to or devolve on the Petitioner and their minor child (M.K. Lakishitha Madusankha).

Liability for command responsibility was something alien to our legal system. But from the judgment in Sriyani Silva's case it appears that our Courts moving towards fixing command responsibility on those who were in the chain of command in keeping with the jurisprudence of the Committee. In this case, court held that the officer in Charge of the Police Station, whose subordinate was responsible for the violation, was liable for inaction, to quote form the judgment of Justice Mark Fernando

"Responsibility and liability was not restricted to participation, authorization complicity and/or knowledge. As the officer in Charge, he was under a duty to take all reasonable steps to ensure that persons held in custody (like the deceased) were treated humanely and in accordance with the law. That included monitoring the activities of his subordinates. He did not claim to have taken any steps to ensure that the Petitioner was being treated as the law required. Such action would not only have prevented further ill-treatment, but would have ensured a speedy investigation of any misconduct as well as medical treatment for the Petitioner"

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Case study of custodial torture survivors

By V.S.Ganesalingam

This paper was presented at a conference held in Sri Lanka from the 2nd to 6th December 2004. The conference was organized by the International Rehabilitation Council for Victims of Torture, Denmark and discussed the Implementation of Istanbul Protocol on Torture Victims in Sri Lanka.

Torture is prevalent in prisons and army camps as well as police stations. Factors which contribute to torture includes the provisions of the law that encourage torture, impunity surrounding torture, disregard of legal safeguards regarding interrogation of suspects and above all, the lack of political will. Torture is such a routine affair that it does not attract any attention unless it results in the death of the torture suspect or is taken up in Courts by way of Fundamental Rights application.

From a study of the cases of torture victims arrested and detained by the police, security forces and para military forces working with the forces, it could be said that it is the Prevention of Terrorism Act (PTA) that has created an atmosphere conducive for torture to occur in a good number of cases. There are also instances of torture in police stations after arrests on private complaints regarding property related issues or family disputes, to satisfy influential persons or politicians. I will refer to a recent decision of the Human Rights Committee of the UN, (Communication No. 1033/2001), in which the Committee held that certain provisions of the PTA violates International Covenant on Civil and Political Rights (ICCPR).

In this Communication submitted on behalf of Nallartanam Singarasa it was alleged that his conviction and sentence of 50 years imprisonment by High Court (reduced to 35 years in appeal) solely on the basis of a confession elicited by the police under torture while in police custody, which was admissible in evidence in terms of Section 16 of the PTA and that the Section 17 of it that cast the burden on him to prove that the confession was not made voluntarily, violates fair trial norms of the ICCPR. Singarasa also stated that a Sri Lankan High Court has convicted him despite the fact that there was medical report confirming torture and that the learned judge had relied on his failure to inform the magistrate of the assault indicated that he had not behaved as a "normal human being."

On 21 July 2004, the UN Human Rights Committee held that his right to fair trial and freedom from torture recognized by articles 14 and 7 of the Covenant have been violated and recommended retrial or release with compensation, and further recommended that the Government "should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant."

The decision was communicated to the Government on 4 August 2004 who then had 90 days to respond.

The deadline has now expired with Singarasa still in Kalutara prison and no indication from the Government what action it has taken or intends to take to implement the Committee's decision. The failure on the part of the Government to give effective to the recommendations of the Committee, despite appeals from concerned human rights organization both local and international, clearly indicates lack of political will to repeal the laws that facilitate torture.

It is an accepted fact, that it is the judiciary and the medical profession that has a significant role to play in our efforts to prevent torture. The first outsider that a victim of custodial torture will be seeing in custody could either be a Magistrate or a Doctor. This takes place, when the authorities decide to take him before a magistrate to get the remand order or before a Doctor to get a medical report. Our courts place a heavy reliance on the medical reports submitted to Courts to decide if the confessions made while in custody were voluntary or not. Medical reports are also heavily relied on, in Fundamental Rights applications to decide on the allegation of torture.

As most of you in the Medical and Legal professions are aware, medical examination of a suspect could take place either when a person is produced before a medical practitioner under Section 122 of the Criminal Procedure Code or on the order of Court.

Section 122:

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(1)" *Where any officer in charge of a police station considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation he may, with the consent of such person, cause such person to be examined by a Government Medical Officer. The Government Medical Officer shall report to the police officer setting out the result of the examination.*

(2) Where the person referred to in subsection (1) does not consent to being so examined, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing a Government medical officer named therein to examine such person and report thereon"

What this section permits is medical examination that is necessary for the conduct of investigation, with the consent of such person and if there is no consent then the police must apply and get the order of Magistrate

A study of the cases of victims of torture held under PTA and produced for examination at the initiative of the police revealed that these examinations were not for any reason necessary for the conduct of the investigations, but for the purpose of protecting them from allegations of torture in the fundamental rights applications. What happens is that the police along with the suspect will produce the Medical- Legal Examination Form (Police/20). The police officers entering names, address etc and the medical officer promptly filling up the balance columns and handing it back without examining the suspect.

Medico's aid torture

To illustrate this I would refer to FR Application No.363/2000

In this application filed by a 25 year old labourer, he states that he was arrested by Chettipalayam STF on 19th April 1999, on the same evening handed over to the Kaluwanchikudy Police and on the next date handed over to the Counter Subversive Unit (CSU) of the Police who subjected him to torture in the manner described in the petition and got him to sign in several sheets of paper

The Police while denying the allegation of torture submitted to courts five medical reports obtained on production of the suspect before medical officers on their initiative during a short period of 2 months, which reports have interesting remarks of the medical officers in remarks the column of the medical – legal form, as given below;

a) 3R2 dated 19.04.1999 was issued by, Deputy Medical Officer (DMO) Kaluwanchikuddy before whom the Petitioner was produced by Chettipalayam STF;

Remarks -no external injuries

b) 3R3 dated 20.04.1999 was issued by the same DMO on the Petitioner being produced by Kaluwanchikudy Police; remarks - no external injuries

c) 3R4 dated 21.04.1999 was issued by Judicial Medical Officer (JMO), Batticaloa before whom the Petitioner was produced by the CSU; remarks -no external injuries

d) 3R6 dated 15.06.1999 was issued by the same JMO on being produced by the CSU; remarks - he is anxious about his family

e) 3R7 dated 15.06.1999 was issued by the same JMO on being produced by the CSU; remarks – torture/ frightened

According to the OIC of the CSU (the 3rd Respondent) the applicant was produced on 15.6.1999 twice one before recording the confession and the other after recording the confession. From this it is clear that the purpose of medical examination was for a purpose other than that is permitted by the Criminal Procedure Code.

As could be seen from the above, the victim was produced before DMO Kaluwanchikudy on 19.04.1999 and on the following day as well. More interestingly, he was produced before JMO Batticaloa on 15.06.1999 twice. I had the chance of meeting this victim in prisons and he made me to understand that he was never examined on any one of those occasions and the Medical Officer (MO) did not even ask for his name to check on his identity. They never checked up whether he consented to an examination.

Subsequent to the said 5 medical examinations, on 17August 1999 he was examined by the very same JMO on the orders of court and his detailed report submitted to court confirmed the allegation of torture and also disclosed 20 injuries, caused by torture.

Now, I quote from the Judgment of the Supreme Court rejecting the said several medical reports submitted to Court stating that no reliance could be placed on them.

"The Medico – Legal Examination Forms (1R4, 3R3, 3R6 and 3R7) produced by the respondents is self serving evidence and no reliance could be placed on them. The person said to have been produced before the Medical Officer has been brought under police custody and returned to the same office. There is no evidence as to the identity of the person produced, expect for the name given in the form which has been at all times in the custody of the Police. Their contents are totally contradicted by the Medical Report stated 30th August 1999 submitted pursuant to an examination carried out on an order by the Magistrate. In the circumstances I place no reliance on the contents of Medico – Legal examination Forms marked as 1R4, 3R3, 4R6 and 3R7."

I will refer to the judgment of "Autukorale J in Amal Sudath V. Kodituwakku I P (1987 2SLR) 124 & 125 where it was held that such medical reports as valueless.

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"True, no doubt, the petitioner himself made no such complaint either to the Bandaragama MO or to the acting Magistrate. But his failure must be viewed and judged against the backdrop of his being, at the time, held in police custody with no access to any form of legal representation. The report of the M.O Bandaragama is in my view, valueless and unworthy of acceptance. On his own showing it is evident that he has not carried out an independent examination of the petitioner to ascertain whether he had any injuries. It seems to me to be preposterous for any medical officer before whom a suspect is produced for a medical examination in the custody of a police officer to expect him to tell the officer in the very presence of that police officer that he bears injuries caused to him as a result of a police assault. This seems particularly so when the suspect is produced at the instance of the police themselves and not upon an order of Court. I therefore reject the report of the M.O.

Justice Shirani A Bandaranayake, in the case stating that she is in complete agreement with Justice Atukorale in the Amal Sudath application, quotes

"The Petitioner may be a hard-core criminal whose tribe deserves no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set-up. It is essential that he be not denied the protection guaranteed by our Constitution."

I reproduce below the history given in the medical report, which has been incorporated in the Judgment of the Supreme Court for you to know the pattern of torture.

Methods of torture

"He was arrested on 18.03.1999 at about 1.30 p.m. at his house by the STF personnel from the Cheddipalayam STF camp. Then and there he was blind–folded and taken to the Cheddipalayam STF camp, where he underwent torture in the following manner:

i) He was physically assaulted and beaten with wooden rods on his entire body;

ii) His moustache was forcibly pulled out by twisting the strands of hair by hand;

iii) He was kicked by boots, legs on his chest and abdomen;

The same evening he was transferred to the police station of Kaluwanchikudy, where he was kept the whole night, and at that time he was kicked on his chest and abdomen. Following this on 19.03.1999 he was handed over to the C.S.U. Batticaloa, where also he underwent torture as below:

a) He was beaten with wooden rods, bamboo spikes, electric wires, S-lon pipes loaded with sand and also by hands and legs on his whole body;

b) A shopping bag containing petrol and chilli powder was tied around his neck covering his face and head completely, in order to suffocate him. Later he had noticed that the skin on his face was pealing off, and from then onwards he felt burning sensation on his face and irritation of his eyes;

c) He was submerged in a water tank after tightening his limbs upside down;

d) He was cut by a razor blade on his limbs and body;

e) He was burnt with an ignited cigarette butt and with ignited mosquito coil on his limbs and body;

f) He was ordered to bend down under a table was beaten by bamboo spikes;

g) He was also forced to place both his hands on a table and was beaten by bamboo spikes;

h) He was slapped on both his ears and cheeks by open hands;

i) He was thrown to the ground and later into the sewage canal;

j) Once again he was forced to go inside the sewage canal and forced to drink the polluted water;

k) He was forced to kiss a diseased stray dog. As he had no alternative he had to kiss that animal;

l) His penis and scrotum were drawn and squeezed forcibly, which caused him immense pain;

m) He was suspended upside down to a height after tightening his limbs, and was beaten with bamboo spikes;

n) Both his legs were forcibly twisted;

o) He was made to sit on a chair and both his soles were elevated and beaten;

After two (02) months detention he was transferred to the Batticaloa prison, on 15.06.1999.

From the interviews I had with some of the victims of torture in their places of detention, I found that it is this pattern and technique of torture that was adopted at various places of detention whether in the north, south or east, giving the impression that they had training on technique of torture from the same source.

In this connection, I would like to draw your attention to the practice of some of the law enforcers taking the suspects before a medical practitioner out side the District in which the suspects were detained, by passing medical officers of the District, to the medical practitioners in the adjoining Districts to obtain medical report on the detainees. The purpose of such production may be to obtain the service of a friendly medical practitioner.

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There had been an instance of a person detained in the District of Vavuniya being produced before D MO Anuradhapura for medical examination and one case of custodial death from Kalmunai being produced before D M O. Ampara.

To quote one such case – an 18 years old boy was arrested by the Police Kalmunai on 13.10.1998, and his father and other family members who visited him in the police cell was told by him that two policemen dashed him on to an electricity post and that he has pains in the hips, was unable to eat, had swelling on the neck and blood oozing from his shoulders, and that he was taken to hospital for treatment on previous night(this report was not produced to court). On the morning of 17.10.1998 his father was informed by the police that his son is dead and to collect the body at the Ampara Hospital. When his father went to Ampara Hospital he was informed that D.M.O. Ampara had carried out the postmortem of the body and the cause of death was recorded as "shock following extreme bleeding through pelvic blood vessels after injury from a fire arm."

However, the report was silent as to whether the injuries were inflicted before or after death.

On the application made by the father of the victim to the Magistrate the victim's body was exhumed on 27.11.1998 and another post-mortem was done by JMO, Batticaloa on the order of Magistrate, Kalmunai . The JMO identified 9 anti mortem injuries, noticing the blunt weapon would have caused these injuries. Circular and semi circular contusions were also found on the neck, which the report ascribed to the possible application of fingers on the neck. On 21st October 1999 the Magistrate held that the said victim has been subjected to torture and had been murdered dying of bleeding caused by gun shot injuries and referred the case for further investigation by the CID.

Subsequently, the Magistrate received a copy of the letter-dated 19.08.2002 from the Attorney General's Dept, addressed to the Director C.I.D , which states as follows;

"Upon a consideration of investigative material and further investigative material submitted consequent to investigate 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"

Great job by medical officer

Now I will refer to another Fundamental Application No.186/2001 where the medical officers did an excellent job.

In this application filed by a 27 year old unmarried women taken to custody by the Negombo police and detained at the police garage initially then in a cell from 21.06.2000 to 26.06.2000 and then transferred to the Terrorist Investigation Department (TID)and detained till 20.09.2000,

"The Petitioner alleges that her ear studs had been removed and her ears slapped with force. Her face had been covered with a shopping bag containing chilli powder mixed in petrol, almost suffocating her. On one occasion she had been asked to remove all her clothes except her underwear and her face had been covered with a shopping bag containing petrol and chilli powder after which she had experienced a burning sensation all over her body. She had been asked to lie flat on a table, four other policemen were holding her, pressed to the table, and four other policemen pricked paper pins under the nails of her fingers and toes. She had been assaulted with a club and wires and when she fell down she had been trampled with boots. On another occasion she had been hung and whilst she was hanging had been assaulted with a club all over body.

On or about 25.06.2000 the policemen who were torturing her had asked her to place her signature on some statements prepared by them and when she refused to sign, one policeman had shown a plantain flower soaked in chilli powder and had said that it would be introduced into her vagina unless she signed the papers. When she refused to sign she had been asked to remove her blouse and cover her eyes with it and had been asked to lie on a table. Whilst she was lying down on the table four policemen had held her legs apart and the plantain flower had been inserted by force into her vagina and had been pulled in and out for about 15 minutes. She had experienced tremendous pain and a burning sensation. She had become unconscious and after a few minutes she had been asked to lie on the table till about 9.30. p.m. After some time some sheets of paper typed in Sinhala had been brought by them and she had been asked to place her signature on them. Being unable to bear the torture she had signed them.

The contents of the documents she signed had neither been read nor explained to her. After sometime she had been put into a cell with strict instructions that she should not wash her genital region. When she was crying in pain inside the cell one policeman on duty had shown mercy on her and by about mid night had been permitted to use the toilet. The acts of torture meted out to her as set out above has affected her physically and psychologically and her matrimonial prospects had been shattered as a result of the mental and physical trauma that she had undergone at the hands of the police. She states that she is suffering from depression, loss of sleep, loss of appetite, loss of concentration, fear and nervousness. "

On 19.09.2000 the victim was produced before the Assistant JMO, Colombo to whom she complained of her torture and he took a white sheet of paper and asked her sign on that, which she did. His medical report was submitted to Court by the police because the Assistant J.M.O. who examined her did not find any injuries.

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Consequent to the complaint made to the Magistrate she was examined by J.M.O Colombo North on 4.11.2000 who did an honest job. Not only he did a detailed examination but also referred her to the following consultants - Psychiatrist, Obstetrician and Gynaecologist, Radiologist, ENT Surgeon and Eye Surgeon and his report disclosed 20 scars of injuries. In his conclusion and opinions among things he states,

There is positive medical evidence of vaginal penetration.

Vaginal penetration of plantain flower is possible

She has features of post traumatic stress disorder and depression

It is very strange that the A.J.M.O who examined her could not find any one of these injuries.

Court held that "such methods can only be described as barbarous and savage and inhuman. They are most revolting and offends one's sense of human decency and dignity" and awarded Rs. 250,000/ - as compensation.

From the point of protection of victims of torture this case became relevant and important for other reasons as well. Here is a case where the often claimed "built in mechanisms" in the laws and the various institutions said to be in existence for the protection of the human rights has failed to protect this victim.

On 21.7.2000 when she was produced before Colombo, Magistrate her attempt to inform him about torture was successfully prevented by the sergeant who produced her. The Magistrate also did not ask her anything. She was again produced before the same magistrate on 20.9.2000 with strict warning that she should not attempt to speak to the magistrate. However, she was able to complain of torture to the magistrate on 23.10.2000 only through an Attorney-at-law.

Appeal made by lawyers on her behalf to the Human Rights Commission on 31.10.2000 was followed by one of its investigation officers recording her statement at Negombo prison. Not only that Commission failed to take any follow up action, but also did not respond to the direction of the Supreme Court to send the statement recorded from the victim. The Emergency Regulation (ER) then in force made it mandatory for the detaining authority to submit monthly list of detainees in their custody to the magistrate of the area and the Magistrate is expected to visit the places of detention. In this regard it may be pertinent to quote the observation made by "Asia Watch" in one of its report as follows:

"It was not enough to point to an impressive array of laws and institutional mechanism adopted to protect and promote human rights. Unless these laws and mechanisms are utilized to secure the effective enforcement of rights, and unless that enforcement is strictly monitored, the introduction of such measures will serve only a cosmetic purpose"

Failure of existing mechanisms

I will quote a case of custodial torture and rape in Police custody about which a complaint was made to Human Rights Commission (complain No.BC/02-11/04) where the mechanisms have failed and remained only for cosmetic purposes.

A 23 year old female casual attendant at the Polonaruwa General hospital was taken into custody by the Methirigiya Police, while on duty on 24.11.2001 and was detained at the said Police station till 14.03.2001 on which date she was produced before Polonnaruwa Magistrate who made order of indefinite detention under PTA and sent her to Anuradhapura Prison and thereafter to Welikade Prison.

In her complaint to the Human Rights Commission made by way of an affidavit dated 20.11.2002, she complained that while in police custody on 24.11.2001 she was gang raped by 12 police personnel after making her nude they burned all her body by cigarette butt and blow the smoke on her face. Due to sexual assault she was profusely bleeding and the stomach swelled up. After this ordeal, since she was unconscious they were sympathetic enough to give her a glass of milk tea and allow her to sleep completely nude.

When she became conscious they threw water mixed with chillie powder on her face. Thereafter at about 10 p.m. the very same 12 of them raped her again one after the other. Neither a magistrate nor a senior police officer nor any one from Human Rights Commission visited her while she was in police station for nearly 4 months. A lawyer attached to the Human Rights Commission only visited her while she was in Welikade Prison. To him she did not disclose anything about the rape or torture for fear of reprisals. She disclosed the torture when she was produced before High Court Batticaloa, and the Court ordered a medical examination and the JMO Batticaloa examined her.

According to his report there were 22 scars caused by injuries out of which four were on the breast which are consistent with nail scratches by violent handling of the breast during sexual assault. He further expressed the opinion that penile penetration could have taken place and that she had mental trauma. In the trial before the High Court the Police as usual submitted the Medical Legal Examination Form duly filled up by the Medical Officer, Medico Legal, Base Hospital Polonnaruwa where in the remarks column he has stated 'no complaint.'

Even though the complaint was made to the Human Rights Commission as far back as 20.11.2002 and the inquiry was completed on 19.11.2002, Commission has yet to make its recommendations.

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Massacre of innocents at Tiraikerny

By. K.N. Tharmalingam

Tiraikerny is a Tamil settlement established in 1954, on a coconut estate of about 300 acres belonging to the late S. Dharmaratnam. It is situated between two villages, - Oluvil to the East, and, Palamunai to the South. The settlement was then under the administration of the District Revenue Officer Akkaraipattu uand is now under the Divisional Secretariat of Addalaichchenai. The Magistrate at Akkaraipattu exercises judicial authority over the area.

The late Dharmaratnam represented, half the Eastern Province, - from Batticaloa to Kumana, in the former State Council. He was a scion of the ruling family whose lands and properties were scattered all over the province and Tiraikerny was part of his estate extending over one thousand acres. Sympathizing with the hardships of the landless peasantry, both Muslims and Tamils at Palamunai, Oluvil, Meenodaikattu, and Addalaichenai, the estate was given to the people at a very nominal price of Rs.200/- per acre. The pioneer of the settlement was Nagappar Subramaniyam, who functioned as the Secretary of the Palamunai R D Society. Periya Kanapathipillai Upathiyar of Karaitivu played a pivotal role in the development of the village, making it a very successful agricultural village.

When fighting broke out in June 1990, the Tamils in Amparai District had to endure great atrocities committed against them. Thousands of Tamil youth 'disappeared' between June 1990 and January 1994. But, those Tamils at Tiraikerny were spared of such a tyranny, as they had enjoyed a deep and sincere friendship with the Muslims.

It was very unfortunate that this state of peace soon ended abruptly on the 6th August, 1990, when tempers flared up against the Tamils and secret plans were hatched to separate the two communities. Muslims in hundreds stormed into the village Tiraikerny on August 6th 1990 and began to set ablaze the homes of the Tamils; attacked them and threw their mutilated bodies into the Hindu Temple of the village. Statements recorded from victims and witnesses to this outrageous crime reveal that there was no provocation from the Tamils for such an attack.

A woman witness revealed the background of the events, the intention and purposes leading to the attack and how it was executed. The ruthless killings at Tiraikerny disgraced the Muslim fraternity.

A witness, in her statement:

"... I was married in 1976 and had three children, - two sons, and a daughter. Around 6 0' clock in the morning, on the 6th August 1990; I heard the cries of women from the direction of my Muslim neighbour's house. Since we had maintained a friendly relationship with our Muslim neighbours, I rushed to the house from which the Muslim women raised cries."

"I found several women in that house and every one was in tears, weeping over the death of some member of the family. The women said that their men who went to the paddy field at Alimadakadu had been cut to pieces and slain. I was told that the identity of the killers had not been established."

The witness added, "I spent about half an hour with the grieving family, I shared their sorrow but returned home to attend to the household chores before the children left for school.

A few minutes after I returned home, and was busy with my work, I heard the shouts of people suggesting that they were in grave danger. Together with my spouse I rushed to the gate to see what was amiss.

We found men, women and children moving away from their homes in a state of excitement. They were in a state of great confusion, agitated with fear and worry. They told us that they were running away from an angry mob composed of Muslims who had vowed to destroy Tiraikerny. We are going to the Pillaiyar Kovil as it is dangerous to remain in homes. The Tamils who were running away, warned us saying 'Do not stay here, the mob is heavily armed according to information received from friendly Muslims.'

My spouse was shaken by the news. When the entire population in the village was moving out, we

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Ruins at Tiraikerny

saw no wisdom in staying at home. Leaving all our possessions in our house and keeping the doors open, we left home with the children and took refuge in the Pillaiyar Kovil. Soon the Muslims appeared on the road at a distance.

Riotous gangsters numbering more than 150 men, armed with knives, swords, sickles and clubs and seemingly possessed by wild and violent anger, shouted slogans against the Tamils, and called out the Muslims to unite to fight the Tamils. We were in bewilderment and spent every minute in fear. People prayed for Divine intervention to save the people from the apparent danger. As we looked up we saw clouds of smoke rising up the sky. The smoke emanated from the burning houses of the Tamils. As the goons were approaching the Kovil, the people ran towards the Periyathambiran Kovil and the mob followed. The people having resigned their fate to Destiny watched with fear every movement of the menacing crowed of attackers.

In a split of a second, - no sooner the mob reached the Temple premises, an armoured car, - popularly called 'Kawasa – Vaganam' drove into the temple premises. There were six soldiers in uniform in the vehicle.

The people wondered whether it was a joint attack of the Army and the Muslims – such attacks had occurred in the Tamils areas previously.

The arrival of the soldiers at the Hindu temple premises had an impact. The goons appeared very happy and they shouted in jubilation and Tamils were in great distress.

The soldiers acted differently. They did not engage themselves in any form of attack as anticipated. The behaviour of the soldiers gave some courage to the Tamil youths to approach the armoured car. With hands raised above their heads, they walked upto the soldiers and sought to negotiate with the soldiers to prevail on the Muslims to prevent any attack on the poor innocent Tamils who had sought refuge in the temple. The soldiers, I was told, had declined to prevail on the Muslims. The soldiers were alleged to have told the young men that the Tamils had killed Muslims and therefore the army cannot intervene.

The soldiers waved their hands, telling the Tamil youths to go away from them, and that waving of their hands was taken as a signal for the attackers to begin their assault. First they began desecrating the Temple. Some went to damage the wall while some others broke the door. Yet the Tamils did not say a word to the attackers. Some of the Muslims entered into the sanctum and came out with the Sacred Trident and the spear that were firmly fixed to the ground. Some took away the tools like knife -, axe and crow-bar, - used in the Temple by the priests. The Tamils were later attacked with the Trident, the spear, and the tools taken away from the Temple.

The Attackers first assaulted the men seated on the ground with knifes. Those who were in the rear made a bold escape. In the melee that followed the attack, even some of the injured ran away, but did not return alive. My spouse was attacked with knife and he died there.

As the attackers were busy mauling the innocents, sharp reports of fire-arms were heard from the main

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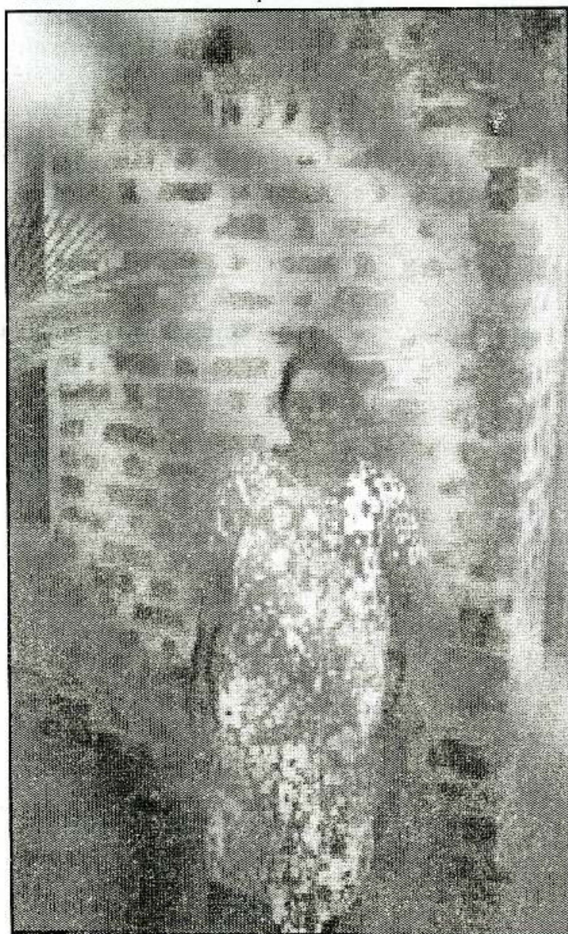
trunk road. The soldiers who had come over to Tiraikerny to witness the annihilation of the Tamils fled in their armoured car.

When the armoured vehicle left, the attackers too fled, crying out. 'Tigers are coming to attack us'. When they had all fled, I looked around, and found several of my people ded, and among those killed were not only men but also women and children. A very young mother known as Vijelaxmy and her infant too were killed.

A contingent of the police – the Special Task Force (STF) came in a number of vehicles. They had come there firing all the way. We realized that it is their firing that drove away the soldiers and the attackers. They saw the large number that had been murdered and injured. The women, who had been frozen from shock and fear were unable to speak. There was blood and flesh strewn all around. In the midst of piercing shrill cries and screams of the injured, the chief of the STF promised protection and help to all victims."

".... following the merciless killings at Tiraikerny on the 6th August, 1990, the Police Special Task Force has brought us to the refugees' camp here at Karativu and I am with about 250 families rendered destitute. I am with my little children after having lost both the bread-winner and our possessions."



A survivor back at her house in Tiraikerny

A young man, called KK, (for purposes of protecting his identity) aged 28, who suffered a grievous injury but miraculously saved, said:

"When the rioters were getting ready to attack the people in the Kovil, the soldiers appeared to have come there to supervise the massacre and not to uphold the Constitutional provisions relating to Fundamental Rights of the citizens of Sri Lanka. Our right to life and freedom from torture, cruel and inhuman treatment and punishment appeared to have been consigned to limbo."

"The attackers fought with savage fury indulging freely in arson, murder and rape. There was partiality on the part of the armed Forces except the STF.

As the bloody deed was being committed and when people were felled by knives, the soldiers were watching the sordid behaviour of the attackers. They seemed to have come over there to help to shed lives than save lives. They bolted away no sooner the gun-fire was heard. I suffered an injury but escaped from death."

Sworn statements to lawyers confirmed the serious violations of Human Rights at Tiraikerny. One of the witnesses had the most disgusting story where a police officer at Akkaraipattu had refused to entertain any complaint against the Muslims. The Officer had agreed to entertain any complaint that accused the LTTE as responsible for the burning of homes and murder of persons. Later, police reports were issued stating that "unknown persons", whose identities cannot be established, committed the mischief, - burnt houses, killed people and injured many, on the 6th August, 1990.

According to statements provided, the following deaths had occurred at Tiraikerny consequent to the attack beginning from the early hours of the morning on the 6th August, 1990.

Infants and Children:

1. Rajadurai Prahalatha, (female child, one year old)
2. Sri Kantha Yarl Alagan (aged 2)
3. Nagalingam Vijayan (aged 3)
4. Poopalapillai Ehamparam (aged 19)
5. Kanapathipillai Saroja (12 years) (According to a sworn statement, the little girl was seized and raped, and thereafter, thrown into the fire. Rescuers recovered the half-burnt body and buried it.)
6. Samithamby Swendiran (aged 12)
7. Samithamby Saundararajah (aged 14)
8. Nagalingam Thambirasa (aged 14)
9. Sinnathamby Sivasithambaram (aged 16)
10. Ramacutty Mylvaganam (aged 17)
11. Sellathurai Balachandran (aged 18)

Youths

12. Samithamby Nagarajah (19)

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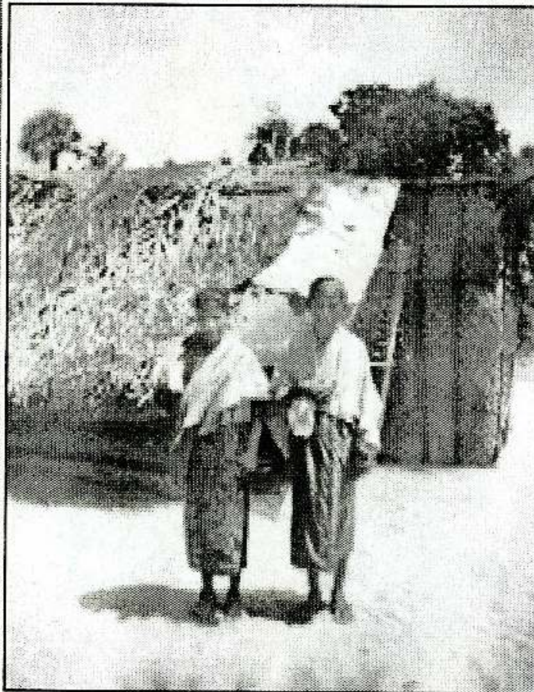

Displaced from Tiraikerny now reduced to living in cadjan huts

13.Kanapathipillai Amirthalingam (24)
14.Poopalapillai Pulendrarajah (25)
15.Selliah Packiyarajah (26)
16.Ponnan Alagiah (27)
17.Kathiran Packiyarajah (28)
18.Murugesu Nagendiran ((28)
19.Kanagaratnam Alagiah (28)
20.Kaathan Navaratnam (31)

Adults

21.Tambimuthu Anandarajah (32)
22.Ramacutty Mylvaganam (33)
23.Marcandu Kirubai (33)
24.Velupillai Paskaralingam (33)
25.Velupillai Gunarasa (34)
26.Kanthakutty Packiyarajah (34)
27.Kanthacuty Tahmbipillai (38)
28.Viswalingam Alagiah (40)
29.Sellan Seenithamby (41)
30.Kaalicutty Samitamby (42)
31.Maariyan Alagiah (43)
32. Velan Kathiresapillai (44)
33.Thambiappah Kobal (46)
34.Marcandu Mylvaganam (33)
35.Sellathurai Christian (40)
36.Kannapathy Kaalicuty (50)
37.S. Samithamby (52)
38.Sinnathamby Sellathamy (52)
39.Moothathamby Marcandu (57)
40.Sellathurai Krishan (60)
41.Pattayan Kandacuty (69)
42.Murugan Kanapathy (70)
43.Sinnathmby Kanny (78)

Many who fled after having been injured, succumbed to their injuries without medical aid. Their remains were discovered near shrubs, when a foul ordour emanating from decomposing bodies attracted the attention of a Grama Niladhari. The bodies were buried without action being pursued under the Penal Code and the Code of Criminal Procedure. Inquests were never held into the deaths that occurred at Tiraikerny. The period of prescription to conduct such an inquiry is not yet over as provided in the Code of Criminal Procedure and the government must show its commitment to preserve Human Rights by pursuing action to punish the criminals who committed several acts of crime – most importantly those falling under sections 290, 296, 300, 317 & 419 of the Penal Code. The STF who were at one time in the Police Force ought to have known that murders should be inquired into.

Twelve people got discharged from the hospital. The police too did not record their statements either.

Men of wisdom and culture, men of religion and erudition once asked:

> "Was it the mad fury or, racialism that drove persons claiming to belong to Islam, to commit such inhuman blood chilling dastard and heinous crimes against humanity? Was it that an incubus in human form – of a Muslim was responsible for the devilish act of rape, in day light, and subsequent murder of the rape victim by fire?"

There was no answer.

A political leader of repute when asked by a man of strong religious fervour as to why the Muslims singled out the Tamils at Tiraikerny to suffer the demonic fury? That leader felt deeply embarrassed.

When the perpetrators of the crime revealed their beastly elements through brutality, the government failed to restore order or deliver justice to the victims.

The government had an obligation to protect those lives lost at Tiraikerny. After the massacre the government failed to inquire into the massacre and bring to justice the perpetrators of such a heinous crime. The government's compliance in the massacre encouraged lawlessness in many parts of the East. Thus the State aided and abetted in the commission of all crimes against humanity. The Universal Declaration of Human Rights (UDHR) was outrageously violated. The UN declaration, which the government has ratified says:

- Every one has the right to life, liberty and security of person (Article 3)
- No one shall be subjected to torture or cruel inhuman or degrading treatment (Article 5)
- All are entitled without any discrimination to equal protection of Law (Article 7)
- No one shall be arbitrarily deprived of his

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A refugee from Tiraikerny

property (Article 17)

All the rights enumerated above were denied to the Tamils in the district of Tiraikerny.

What happened at Tiraikerny in the aftermath of the 1990 August violence is a classical example of how the Tamils in the East were (and continue to be) denied their rights by the Sri Lankan government. There did not exist an effective system of government to prevent the violence against innocents and thereafter a system to punish those who violate the rights of others. Three hundred and forty houses where 362 families lived were set ablaze and valuables were robbed. Seventy two million rupees was the value of goods destroyed at Tiraikerny. Ninety persons were reported killed, and forty were injured.

A mother who lost her son lamented, "Is there the rule of law in this country? People sent by the Security Forces committed murder and set fire to houses. The State, instead of punishing the offenders, proceeded to pay compensation at Rs.15,000/- for every youth who was murdered . Does the government think that the value of a life could be measured in terms of currency notes?"

Witnesses claimed that the murder of Muslim at Alimda Kaadu cannot have been committed without the connivance of the Armed forces, as their camps were not far from the place of murder of Muslims. Nothing could have ever occurred without the knowledge of the forces. The massacre at Tiraikerny occurred on the 6th August, 1990, and then there was a similar attack on Tamil at Veeramunai and Eravur on the 12th. The attack on Aligamby is a grim reminder of involvement not only of the Muslims in these attacks but also the government.

Muslims in the Ampara district had always been regarded as a highly religious and cultured unit, following the path of Allah, whose infallible words had been conveyed in human language. Muslims who are enjoined to believe in the Prophets, their scriptures, in angels, in the day of Judgment, hell and heaven, are guided by the Holy Quaran. The Sharia, or, the Sacred Law of Islam governing individual action helps for a better way of conduct. The Holy Quaran and the Sharia requires the followers to ' refrain from committing EVIL'.

Islam requires the followers to keep away from the path of Satan, who enjoins to commit evil and indecency. Quaran exhorts the believers

" ... do not be aggressive. Allah does not love aggressors." ("2:190")

True followers of the Prophet (Sal) cannot act counter to his teachings. Therefore, we draw the conclusion that Satan and his men in the guise of Muslims invaded Tiraikerny and carried out the massacre. Perhaps that is the reason why the State, following the Satanic rule failed to take action against recidivism in the East.

When murder and arson were committed the armed forces stood to protect the offenders. That is the story of the massacre of innocents at Tiraikerny, and the process of decimation of the Tamils continue.

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