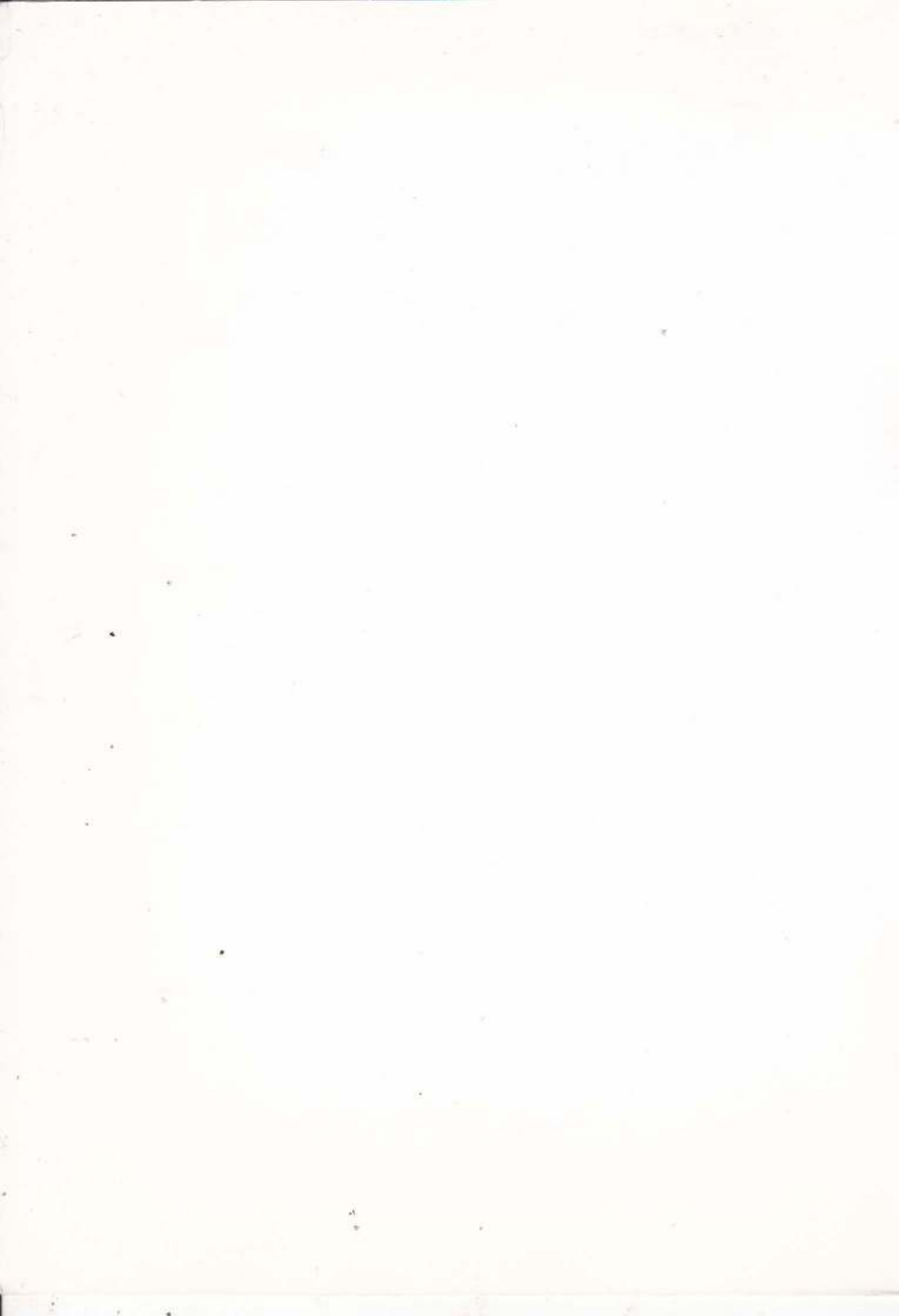


Gaps in the Krishanthy Kumarasamy Case:

Disappearances & Accountability

UNIVERSITY TEACHERS FOR
HUMAN RIGHTS (JAFFNA)*



Gaps in the Krishanthy Kumarasamy Case
**Disappearances &
Accountability**

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**UNIVERSITY TEACHERS FOR
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The University Teachers for Human Rights (Jaffna) (UTHR(J)) was formed in 1988 at the University of Jaffna, as part of the national organisation University Teachers for Human Rights. Its public activities as a constituent part of university life came to a standstill following the murder of Dr. Rajani Thiranagama, a key-founding member, on 21st September 1989. During the course of 1990 the others who identified openly with the UTHR(J) were forced to leave Jaffna. It continues to function as an organisation upholding the founding spirit of the UTHR(J) with its original aims:

To challenge the external and internal terror engulfing the Tamil community as a whole through making the perpetrators accountable, and to create space for humanising the social & political spheres relating to the life of our community. The UTHR(J) is not at present functioning in the University of Jaffna in the manner it did in its early life for reasons well understood.

***Gaps in the Krishanthu Kumarasamy Case:* Disappearances & Accountability**

Introduction & Summary

Torture and extra-judicial killing became endemic among the Sri Lankan Armed Forces with their politicisation from 1979 to a degree unknown previously. This was when the Armed Forces were used as a substitute for a political process which the situation demanded. The 1979 operation in Jaffna to clean the North of terrorism was undertaken against the better judgement of the Army Commander and other senior officers. The 'Weli Oya' operation in 1984 to change the ethnic character of an area by third degree methods was a blatantly political operation. There were rewards for individual officers who pandered to the vanity of the rulers by undertaking to do the imprudent, the immoral and the unlawful. The Armed Forces suffered, created virulent rebels after their own image, and created in turn a rationale for their own prodigious expansion. In time expressions like 'crush the eggs' and 'grind to powder' became well understood jargon within the Army.

From about 1992 in the wake of international pressure and sections of the Armed Forces who felt the need, there were attempts to straighten out their image with regard to Human Rights. An important event was the dialogue between the Government and Amnesty International in

late 1991. Among the undertakings given by the Government was to issue receipts for arrest as a safeguard against disappearance. Although this undertaking was generally honoured in the East during 1993, the serious shortcomings were also evident. The failure to issue a receipt was not punishable. It was also about the same time, in 1992, that the Human Rights Task Force (HRTF) was established as a monitoring body. Its two reports prepared by Justice J.F.A. Soza covering the period August 1992 to August 1994 bear testimony to the competent and dedicated work that was done.

With the election of the PA Government in 1994 there was a new emphasis on Human Rights, and an optimism that we had turned the corner. The new government signed the Convention Against Torture and in 1996, the Optional Protocol to the International Covenant on Civil and Political Rights. But the optimism received a serious setback with the onset of disappearances in Jaffna during 1996, following a suicide bomb attack which killed Jaffna's Town Commandant. When paranoia took over, the individual civilian had no safeguards that worked.

The rape and murder of **Miss. Krishanthy Kumarasamy** and the murder of those who went in search of her, by its very horrifying nature, created a demand for its investigation and trial. On 3rd July 1998 death sentences were passed on six service personnel, who in turn made disclosures of mass graves in Jaffna. **While the trial does credit to the Government by being the first of its kind leading to a conviction, many glaring aspects of the case did not receive attention.**

While we were about the first to sound the public alert on disappearances in Jaffna, we had subsequently said little on the **Krishanthy Kumarasamy** case as the facts were brought out by various organisations and activist groups and were widely written about.

In this report however, we explore leads in the trial that were not followed up, the relation of the crime to disappearances in Jaffna, and how well our structures are geared to fight the abuse of human rights.

There were several fault-lines in Jaffna. Everything was controlled by the Defence Ministry, including the transport of journalists to Jaffna. There was too much complacency. The newly promoted generals in charge of 51 and 52 divisions controlling Jaffna had earned notoriety for the role they played from 1988-1990 which was the worst period of extra judicial killing.

The suicide bomb attack in Jaffna on 4th July 1996, though not in the least unexpected, resulted mainly from complacency. The system went into a panic and Jaffna was blacked out to journalists. The Defence Ministry ran the show. The safeguard of receipts for arrest remained a dead letter. The HRTF was virtually told to stay out of Jaffna until things improved.

The **Krishanthy Kumarasamy** murder took place in the context of indiscipline and lawlessness sanctioned during that period by the Army top brass. The complicity of the Defence establishment could hardly be gainsaid. By artificially isolating the convicted men from the system, the case against them has been made weak and unconvincing. It again strengthens the argument against capital punishment : Those who are sentenced to death are too often scapegoats from the humbler orders of society.

Take what we reliably understand was the context in which **Krishanthy's** murder took place on 7th September 1996. Pungankulam army camp was a main camp east of Jaffna City that controlled Chemmani point where the murder took place. Persons detained over a large area were first brought to Pungankulam camp, where a decision was taken what to do with them. Many were then sent to the Intelligence Camp in Ariyalai East, which is quite near Chemmani, the

whole comprising a largely uninhabited area. Here the prisoners were tortured, and we are yet to hear of survivors. On regular occasions the men at Chemmani point would be alerted during the night. The naked corpses of detainees tortured and killed at the Intelligence Camp were then taken to Chemmani in a vehicle, for the men at that point to assist in the burial. This context behind the **Krishanthi Kumarasamy** murder trial was staring at us from behind a thin veil which no one dared to rend. The defence attorneys prevented the men on trial from testifying, forcing them to wait till the end.

It for example came out during the trial that a complaint had been lodged at Pungankulam camp the very next morning after **Krishanthi's** abduction. On 16th September, just after the matter was raised in Parliament, the Brigadier commanding Jaffna Town had asked the Police to investigate, surely, suggesting a cover-up. There was indeed more than this particular crime involved. To those who knew the operation at Pungankulam, everything was plain.

In November 1996 **President Kumaratunge** appointed a Board of Inquiry chaired by a senior Defence official with other senior armed forces officers to inquire into complaints about missing persons in Jaffna. About the only concrete matter for which they claimed credit was to ensure the issue of receipts for arrest in Jaffna - a standing obligation from 1991! As to what they really discovered, and what they told the President that her chiefs had hidden from her, was not revealed.

The revelations about the Chemmani graves were made in Court on 3rd July '98. The investigation into the mass graves was handed over to the Human Rights Commission (successor to the **HRTF**) by press notice from the Presidential Secretariat about two weeks afterwards. The **HRC** wrote to **Mrs. Mary Robinson**, UN High Commissioner for Human Rights, seeking the help of her office (**OHCHR**) in the investigations. **A reply was received from the OHCHR with an offer to help, provided the Government would agree to the basic technical**

requirements for them to do the work. This was communicated to the President's office in September and reminders have been sent. We understand that there has been no response.

While the **OHCHR** has been kept in suspense along with the **HRC**, it looked as though from March the matter was being handled by the AG's department and the Police. There is ample reason to believe that both these institutions are politicised, and the most one could expect from them is a damage limitation exercise. One only needs to look at the catalogue of cases where the evidence was misled, bungled or simply not proceeded with. In his second **HRTF** report, **Justice Soza** drew attention to two important cases - the disappearances of 158 refugees from Eastern University and the massacre of 184 persons including 68 children at Sathurukondan - both inquired into by him and the findings recorded in his first report ; where no action had been forthcoming from the AG's department or the Police. That was now more than five years ago.

We need also to face the fact that we have no real deterrents against the worst human rights abuses. What we have, do not work when they are most needed. The **HRTF** could not establish an office in Jaffna in 1996. The **ICRC** could be ignored when needed. Despite all the Commissions no senior officer has been punished. The President asks the Human Rights Commission through the Press to investigate the Chemmani graves and then sends it into limbo by failing to reply to their letter for months.

As to what influence the appointment of the Board of Inquiry in November 1996 had on the Army in Jaffna, we have given a fairly routine torture case that took place in Manipay, another intelligence camp, in January 1997. The victim was among other things drilled through the toes, hooks were inserted by which he was hung, and beaten. A nail was inserted into his hand (removed 20 months later), and was beaten on a heel with a spiked board. Probably owing to the **ICRC** finding out, he was handed over to the Police, was taken to

Anuradhapura court hardly able to walk, issued a detention order for 3 months, and was produced in court in Colombo, where he was granted bail. He was completely innocent.

At no point was a move made by the Police, the Courts or the Prisons to ensure that he had appropriate medical care. All lent their complicity to covering up a victim of grievous torture. The system nullifies any benefit to the citizens from Sri Lanka becoming a signatory to the Convention Against Torture.

This will remain the case until, at least as a temporary measure, legislation is introduced to give a body such as the Human Rights Commission, the power to impose penalties and place it on an offender's record.

There is not much point in an investigation of the Chemmani graves where its credibility becomes a subject of contention. For the Tamils themselves there are other issues at stake. There are several mass graves in the North-East that are the result of internal repression. An investigation into these is morally and politically essential for the Tamils in order that they could find their feet. These are graves not left behind by a brutalised state-army, but are monuments revealing the nature of their so-called liberators. If the credibility of the investigation into mass graves left behind by the state-forces becomes suspect, the investigation into the other graves would also become impaired for all time.

The Government has nothing to gain by trying to limit and minimise the damage from an investigation into mass-graves left behind by the State forces. It would be far better for everyone if the offer of help from the UN High Commission for Human Rights and other interested organisations with experience is accepted. ALL mass graves, both known and those whose existence will be revealed, must be investigated without leaving any room for criticism or bias. There are then bound to be some healthy and interesting developments.

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Gaps in the Krishanthu Kumarasamy Case: Disappearances & Accountability

1. Disappearances in Jaffna 1996

Late morning on 4th July 1996, **Minister Siripala de Silva** was due to open a new Building Materials Corporation outlet in Stanley Road, Jaffna. A little before the opening a blue scooter with a pillion rider turned from Ariyakulam Junction into Stanley Road away from town. The scooter then turned into a lane, bypassed the railway station, went through into Martyn Road, then along Chapel Street, got into Jaffna Bazaar through the Regal Theatre lane and came into Stanley Road through a lane near the old Power House. Those who saw the look on the faces of the riders knew unmistakably who they were. They had got to the place of the opening ceremony avoiding all the Army check points there were at that time.

The Minister came to the venue with the Town Commandant, **Brigadier Ananda Hamangoda**. The crowd had been kept at a distance. At this point the popular Commandant made a move which cost him his life and preluded events that left a dark cloud hanging over Jaffna. He smilingly gestured to the crowd to come nearer. A young girl wearing a suicide kit ran forward and exploded herself, killing several people. The Minister had a narrow shave. The two men on the scooter were evidently the ones who came to signal the final instruction to the bomber.

The Army which had been complacent up to this point, began a series of mass arrests. If explicit orders were not given, a signal had come from high up to play rough, with a corresponding loosening of discipline. Apart from these arrests which were not being acknowledged, following the **LTTE** overrunning Mullaitivu army camp on 19th July, this loosening of discipline led to random reprisals. The

victims were often travellers going past lonely check points or persons taken for questioning. Such persons were taken into camp and mercilessly assaulted. Several no doubt died. Some had amazing escapes - such as the youth from Kerudavil thrown into a covered septic tank with a cut in the neck.

Several of these testimonies were brought out by us in Special Report No. 7 issued at the end of August. This which was picked up by news agencies, sounded the first public alert on the disappearances in Jaffna. The following is an excerpt from Reuter (2.9.96 - Island 3.9.96):

"A Sri Lankan human rights group accused the government on Monday of covering-up extra-judicial killings and abductions by the army in northern Jaffna, former stronghold of Tamil Tiger rebels. The rights group, the University Teachers for Human Rights Jaffna, also accused (LTTE) rebels of carrying out assassinations of those promoting peace and rehabilitation in the peninsula.

"Though security forces showed a refreshing level of care in Jaffna, cases of human rights violations continue to be covered up Cases of unauthorised arrests, beatings, torture and killings by security forces continue and have become notably worse after Mullaitivu", said the report by the group. A military spokesman declined to comment, saying : "We don't want to comment just because someone is making allegations"...."

Reuter also observed that the report came less than a week after the cabinet approved the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) that allowed Sri Lankans to complain directly of violations, and appeal, to the United Nations Committee on Human Rights. This suggested that what was happening in Jaffna then was not related to government policy.

What brought matters to a head was the **Krishanthi Kumarasamy** incident a few days later on 7th September. The 18 year old student

from Chundikuli Girls' College had been cycling home to Kaithady at noon past the isolated Chemmani check-point, after sitting the A Level Chemistry paper. She was detained at the check-point and this was seen by a neighbour who alerted her mother **Rasammah Kumarasamy**, a school vice-principal. **Mrs. Kumarasamy** had gone to the check-point with her son **Pranavan Kumarasamy** and her neighbour **Sithamparam Kirupamoorthy** at 3.00 PM. All four went missing. The matter was raised in Parliament as a question by **Joseph Pararajasingham MP** on 13th September. Deputy Defence Minister **Anuruddha Ratwatte** promised to inquire and give a reply.

Despite the fact that the mother and the two who accompanied her had remained at the check point from 3.00 PM till quite late in the evening and had been seen by several passers-by, the Army first denied the arrest. About 10th October, nearly a month later, when the Hindu correspondent, **Amit Baruah**, raised the matter at a press-conference, **Ratwatte** continued to maintain that there were no violations in Jaffna. There is little doubt that in **Ratwatte's** mind the plan was to sit it out by sticking to bland denials - the practice of the State since the passage of the PTA in 1979. But in Jaffna **General Janaka Perara**, an intelligent officer who had maintained good public relations, was feeling the heat. He maintained that he wanted to get to the bottom of it. Matters had been made worse by the disappearance of a second girl, **Rajini Velauthapillai** (23), at a check-point in Kondavil on 30th September.

Given **Ratwatte's** position and his decisive influence in security matters, it is certain that the decision to conduct a full investigation was taken by **President Kumaratunge**, who had till then not responded publicly on the reports of violations. By 22nd October arrests had been made in both cases. The **Krishanthy** case became a focus of agitation by women's groups in Colombo, and went into a much publicised trial in the Colombo High Court, leading to unprecedented death sentences being passed on 6 service personnel on 3rd July 1998. We will take this up later.

The first indication that several hundreds of people may be missing, came in the **Uthayan** of 15th November, with a report that the Citizen's Committee for Peace and Harmony, chaired by the Roman Catholic Bishop of Jaffna, had presented **General Perera** with a list of 230 missing persons, 35 of whom were students. It must also be said that the arrests made over the two cases above enabled the Army to retain a considerable measure of confidence. The Bishop of Jaffna was later quoted in the press as saying that the Army was doing a difficult job well, and that there had been no major violations since November. It was then still hoped that most of the missing persons would be released.

However by March 1997 disappearances in Jaffna had become a much publicised issue around the world. Amnesty International released a list of 676 disappeared. This number was implicitly substantiated before the UNCHR by **Ambassador Nakkawita** of Sri Lanka in March 1997. At the same time the Justice and Peace Commission for the Roman Catholic Diocese of Jaffna, and the Guardian Association for the Disappeared in Jaffna, both had lists of around 360. So far no proper check has been done to say where things stand. By the middle of 1997 any hope of finding the disappeared had largely vanished.

In November 1996 in response to mounting complaints of disappearance in Jaffna, **President Kumaratunge** had directed a Board of Inquiry to be appointed to go into the matter. The Board chaired by the Additional Secretary/Defence was largely made up of very senior officers from the Armed Services and Police. The Board had 730 distinct complaints, and held 4 sittings in Jaffna from January to August 1997. According to a statement by the Board which appeared in the Daily News of 4th October 1997, it had recorded statements from 367 complainants and 129 witnesses. About 170 of those summoned failed to turn up. In about 25 cases the GA Jaffna was informed by relatives that the disappeared persons had returned home. The Board, it said, had visited places of detention, examined the records, traced 180 missing persons and informed their next of kin.

The statement speculated that some of those missing may have been forcibly enlisted by the LTTE or had left Jaffna. This still left a large section of about 525 persons unaccounted. The Board also took credit for ensuring the issue of receipts in respect of detained persons, so that the number of complaints during the first 8 months of 1997 declined to 38.

There naturally is scepticism about some these claims. The President is the Commander-in-Chief of the Armed Services, and the mandatory issue of receipts in response to proposals made by Amnesty International has been in force from 1992. Why should a Board appointed by the President take credit for the issue of receipts in Jaffna after November 1996? Rather, the Army top-brass in Jaffna should have been held answerable for the almost sinister failure to issue receipts during those crucial months of 1996.

The question of receipts is a key question that needs to be answered. Army officers in Jaffna then knew about the need to issue receipts. After all many complainants at the Town H.Q. were told, *"If we arrested the person we would have issued a receipt"*. In conjunction with this were the delays in the establishment of the Human Rights Task Force office in Jaffna. Even before our report appeared in late August 1996, the ICRC and GA Jaffna should have routinely informed the President about the large number of missing persons. In fairness to herself, the President must explain what steps she took then, particularly to ensure immediately that receipts are given in the event of arrest. It will then become clearer who is responsible. In retrospect the failure to issue receipts was deliberate.

It would also have been far better for the image of the Army and only fair by **General Srilal Weerasooriya**, who was commander of the Forces in Jaffna until early 1997, if he was cleared of blame for disappearances, before being made army commander.

More seriously, before the Government could claim credit for a better record on Human Rights with substance, it must show genuine

accountability. The North-East Disappearance Commission report issued over a year ago shows how easy it is for the Armed Forces to evade responsibility. The Commission forwarded the complaints to the Army Commander, and the replies often took the form 'not shown on our records', 'records missing' or records in effect 'destroyed under circumstances beyond control'. The matter simply ended there. Contrary to known facts, it may be held sometime in the future that there were no disappearances or that the persons concerned had gone elsewhere. The Commission mentioned was among those appointed by **President Kumaratunge** and covered the late 80s and early 90s, dealing mainly with the former Eastern Province. These disappearances took place under the former regime.

The present Government was pledged to better accountability. The Board of Inquiry appointed for Jaffna has done little more than prepare a list of complaints and check lists of detainees maintained by senior officers. And among officers and gentlemen one does not accuse another of such things as torture and murder. Thus the gravity of the serious lapses is ignored, the families are fobbed off with a pittance for compensation and promises to go on looking for the missing. Thus impunity remains a fact of life. Before we examine the **Krishanthu Kumarasamy** case, which we believe has a deeper significance for the disappearances in Jaffna, we take a look at the challenges faced by the Army in taking over Jaffna.

1.1 Behind the Disappearances

The population of Jaffna had been tightly controlled by the **LTTE** for nearly 10 years, thousands had been compromised with the **LTTE** and many though unwilling were obliged to do favours for the **LTTE**. In Special Report No. 10 of last year, we gave an instance of a woman, who as the **LTTE** pulled out of Vadamaratchi in April 1996, was with her sisters, and children of a sister, installed in a house in Nelliady. The house had a built-in secret chamber to accommodate infiltrators. Among the tens of thousand civilians who returned to Valikamam in

April 1996, there were certainly many youths, apart from infiltrators, who had been associated with the LTTE, and had deserted or had left the group after having received training.

The LTTE then started contacting them and applying pressure on them to help them. We give the story of one youth that is not untypical. This youth's marriage ran into trouble and this had much to do with the LTTE making an entry into his life. This youth had no ideology. It was in his very nature to help and be loyal to anyone who was kind to him. Individual operators in the LTTE exploited this. When the Police looked for him in Colombo in the early 90s, he escaped to Jaffna and did odd jobs for the LTTE. If the LTTE duped him, so could others. He approached a man who had worked in Anuradhapura on behalf of the LTTE and offered him money to move to Anuradhapura and open a radio repair shop there. This was because the Army command had been moved there.

The man contacted had already decided to leave Jaffna with his family and go abroad, but was held back by the LTTE's rigid and punitive pass system. He agreed to the proposal, and the youth got passes for his entire family to leave the North, and also the money. The man crossed over to the South, left his family in a rural Sinhalese area where he had friends, and used the money to go to Canada.

The youth's mother who was a devoutly religious woman had been pleading with him to break off all links with the LTTE. One day in 1993 the youth was at Nochchimodai, the final LTTE check-point north of Vanuniya. The Army launched a thrust into LTTE territory, and this youth with several other civilians found themselves among soldiers. The Army questioned them briefly, but left them and withdrew the same day. This event among others caused the youth to heed his mother's advice. He broke with the LTTE and devoted himself to the Pentecostal Mission, with whom he thereafter lived most of the time. He did much to look after Pentecostal brethren displaced from Jaffna during the Exodus. But as the LTTE was pulling out of Vadamaratchy

in April 1996 in the wake of the Army's advance, **LTTE** men called on this youth a few times at nightfall.

Subsequently the youth at the invitation of Pentecostal brethren from Jaffna, moved to the Mission in Jaffna. A relative asked him to mind a shop in town and left for Colombo. Life went on for the youth between the Mission and the shop. One day in mid-July the youth felt that he was being shadowed and felt very nervous. About 6.00 PM on 15th July 1996, he was returning to the Mission from the shop along with a Pentecostal boy who helped at the shop. The boy, **Manuelpillai Prabhakaran**, never had any links with the **LTTE**. Both were detained at the Rasavinthottam check-point on Hospital Road.

A relative, **Mr.S.Philip**, who witnessed the arrest informed the boy's mother who lived on Temple Road, 200 yards from the Checkpoint. The mother, **Manuelpillai Rajeswary**, immediately went to the check-point. The arrest was acknowledged. But she was asked to go home with the promise that her son would be questioned and released. This was not to be. About 8.00 PM that night, according to residents near the check-point, the detainees were loaded into a truck and driven away. The very next day **Rev.A.S. Dawson** of the Pentecostal Mission raised the arrests with the Army's Town H.Q.. We understand he was told that they would be released.

On 29th October 1996 **Major Punchibanda**, Secretary for H.Q. Palaly, replied to a written representation by **Rev. Dawson**, "Your appeal is forwarded to H.Q. 51st Division, Jaffna." The latter was headed by **General Janaka Perera**.

In a letter dated 6/1/97 to the mother from the President's office stated: "I have been directed by Her Excellency the President to acknowledge your letter of 19/12/96 and to inform you that it has been referred to the Commander of the Army, **AHQ**, for necessary action." Later in a letter dated 9/5/97, **H. Banagoda**, Secretary to the Board of Inquiry asked the mother if her son had returned home.

It was a rather funny game of letters where a system that was part of the State had arrested a boy, about which there was no doubt. Then the mother was called upon to tell the system if it had released her son. After the game is dragged on and the mother is tired, she is likely to be offered a little money. The Law, the respect for which alone upholds the legitimacy of the State, had been rendered meaningless, swamped by the systematic evasions and gentlemanly sweet nothings of the ruling class.

Before moving on, we will give some more instances to point to the role of check-points in the disappearances that took place then. Other instances can be found in Special Reports 7 & 9, and Bulletin No. 13.

Following the return of civilians in April 1996, a scholar who was known for helping those in need, was asked by two well meaning ladies to keep with him **Kuhanesan**, an undergraduate. The boy's family was originally displaced from Punnalaikkaduvan. The boy himself was helpful and accommodative. The scholar discovered later that the story he was told about the boy's brother having been killed by the **LTTE** was not true.

On 30th August 1996, the boy went with two empty petrol cans to obtain kerosene oil which was then rationed. He was last seen at the check point at the Temple Road - Hospital Road junction. The scholar went to the Town H.Q. and complained about the incident to the officer in charge of dossiers. On a later occasion the scholar asked this officer whether he should continue his search. The officer replied, "Stop your search". The scholar told him that the boy was of good conduct and character. To this the officer replied, "He may have been sent to kill you!".

A day or two later at the same check-point, a soldier detained a young A Level student, a convert, who was going back from Arul Ashram on Temple Road. He was gagged and beaten. Women outside who heard muffled cries of 'Jesus, Jesus' coming from inside went crying

and told old **Fr. Celestine** of the Ashram. In the meantime more cloth was stuffed into the boy's mouth and the beating continued. **Fr. Celestine** arriving at the sentry point told the soldiers in Sinhalese to release the boy. The priest was asked to go away. Then an officer arrived, pulled up the soldier beating the boy, saying, "You drunken bugger, you beat innocent people", and the boy was sent away.

In Report No. 7 of August 1996, we reported the disappearance on 17th July 1996 of **Ronnie Arichunan**, a postal worker married 2 years and expecting his first child. He had left the **LTTE** in 1991 and was an active worker in the Zion Church. He is believed to have been taken in at a sentry point while travelling on duty between Neeraviady and Navanthurai sub-post offices. We later learnt that **Arichunan's** disappearance followed the detention of another postal employee suspected of opening mails for the **LTTE**. If Arichunan was doing anything at all for the **LTTE**, it was certainly something minor and under duress.

The relatives of those arrested were told nothing, and were driven from pillar to post and kept writing letters. For the State it was a cruel game of procrastination, calculated to hide the extent of the disappearances. Some looking for their own relatives supplied local groups monitoring the disappearances with information pertaining to others which they chanced across :

Logeswaran Cheren was arrested on 15.7.1996 at Ariyalai. His mother saw him the following morning at Pungankulam army camp. Thereafter nothing was heard of him. As part of a pointless public relations exercise, some in search of missing relatives were invited to Palaly army camp. An official named **Asok Silva** produced two lists of 70 names. **Kaushalya**, who went looking for her brother **Ajan**, said later that she saw **Logeswaran's** name on one of the lists.

An A Level student detained at Palaly and released through the Mallakam courts said that he had seen another detainee **Selvarajah Partheepan** at Palaly,

The mother of **Sinnarasa Uthyakumar** was told by **Poopalasingam Vigneswary**, that **Kandiah Sivasubramaniam** of Main Street, Trincomalee, saw and spoke to **Uthayakumar** en route to Anuradhapura via Trincomalee.

Such bits of information were often straws in the wind, which, while keeping people in hope may not lead to anything.

In our previous reports mentioned, we have given several cases of arbitrary killing and assault at check points during those months of 1996. The scene was thus set for so horrifying a tragedy as the **Krishanthu Kumarasamy** murder.

2. The Krishanthu Kumarasamy Murder & Trial

The trial began in November 1997 in the High Court at Hulftsdorp, Colombo. The Bench for the Trial-at-Bar comprised judges **Nimal Dissanayake**, **Gamini Abeyratne** and **Andrew Somawansa**. The eight accused comprised soldiers and a reserve police constable who were: **Corporal Somaratne Rajapakse** (1st), **Mudianselage Jayasinghe** (2nd), **RPC Pradeep Priyadharshana** (3rd), **Priyantha Perera** (4th), **Wijayananda Alwis** (5th), **Muthu Banda** (6th), **Lance Corporal Mudianselage Jayatileke** (7th), **Indrajith Kumara** (8th) and **Pathiranalage Nishantha** (9th).

Nishantha, early in the trial, and **Muthu Banda**, at the end of the trial, were released for the lack of evidence of involvement. **Alwis** died in prison of meningitis amidst accusations of neglect by the prison authorities. Apart from circumstantial factors, the evidence comprised confessions made to the Military Police which led to the location of the corpses, along with the testimony of **RPCs P.A.Samarawickrema** and **A.H.Nazaar** who turned crown witnesses. The Bench decided to

accept the confessions made to the MP. The verdict was delivered on 3rd July 1998.

We now give a sketch of the incidents based on what transpired in Court. **Krishanthi** as mentioned was arrested by **Rajapakse** at noon on 7.9.96. At 2 PM **Samarawickrema** met **Rajapakse** in the rest room. Since he could speak Tamil, **Rajapakse** asked him to get some information from an LTTE activist. **Samarawickrema** saw a girl in the bunker with her hands tied and her mouth taped. When questioned after removing the tape, she gave her name as **Krishanthi Kumarasamy**, student at Chundikuli Girls' College. Corporal **Rajapakse** asked her to shut up as her voice could be heard by those on the road passing the check point.

At 3.00 PM **Krishanthi's** mother **Rasammah** (59) came to the Chemmani Check point with her son **Pranavan** (16) and neighbour **Kirubamoorthy** (35). **Rajapakse** made a pretence of inquiring over the walkie talkie if a girl had been detained and denied that such a thing had happened. **Rasammah** had come to know of the abduction after **Gananathan**, a neighbour who witnessed it, had told **Kirubamoorthy**. Having waited till late, when **Rasammah** turned to go, **Rajapakse** detained them, saying "You cannot come and go as you like". **Samarawickrema** said that he had reported this to **Corporal Asoka** who was in charge of another check point more than 500 yards away on the Kandy Road. This is an open area with a bo-tree junction, from where the Kandy Road goes east towards Chemmani Lagoon and Kaithady where **Krishanthi** lived. Between the junction and Chemmani Bridge lies an abandoned saltern where there is the check point where **Rajapakse** was. From the same junction going south-west is the section of the A-9 trunk road (the Kandy Road), leading to Jaffna Town through Ariyalai. Going west from the junction is the road leading to Nallur (Chemmani Road). The main camp controlling Chemmani was in Ariyalai in the Maniam Thottam Road, the road turning left towards the sea, about a mile towards Jaffna from the bo-tree junction. This was an intelligence camp to which detainees were

brought for inquiry. **Lt Thudugala** who controlled the Chemmani check-point was based in this camp at Ariyalai.

This camp controlled several sentry points in the open fields about Chemmani. Not far from the bo-tree junction along Chemmani Road also lies a cremation ground used by Hindus. Except for travellers between Thenmaratchy and Valikamam by day, the area is totally uninhabited.

According to **Samarawickrema**, he then went to **Corporal Rajapakse** with **Corporal Asoka** and asked him to hand over the three [four?] detainees. Upon **Rajapakse** refusing, they went back to their posts. This was about 8.00 PM. The orgy of crime began near the saltern after **Priyadharshana** whistled a signal and received one in return apparently from others watching the road.

According to **Nazaar** who had been asked by **Priyadharshana** to follow him, the girl was on the ground with several others standing by on the moonlit night. **Nazaar** was then asked to wait on the road. 10 minutes later **Priyadharshana** told him, "We have finished, you go if you want". When **Nazaar** went **Krishanthy** cried for water, which **Nazaar** gave from a bucket of water. When he asked her in Tamil if she had links with the **LTTE**, **Krishanthy** replied that she had nothing to do with them and had passed her G.C.E. O Levels with 7 distinctions. Then according to **Nazaar**, **Jayatileke** (7th accused) abused him in foul language for talking to her and chased him away. **Nazaar** described **Krishanthy** as being filled with sorrow. She later pleaded with her 6th rapist to let her rest for 5 minutes.

Earlier, according to **Rajapakse**, he with **Perera** (4th), **Indrajith** (8th) and **Jayatileke** (7th) had strangled the two men and buried them. **Pranavan** had given his wrist watch, and both men their identity cards, to **Rasammah** as they were meekly led away to be killed.

According to **Rajapakse's** confession, those besides him who raped **Krishanthy** were **Jayasinghe** (2nd), **Pradeep** (3rd), **Jayatileke** (7th),

Indrajith (8th) and **Nazaar**. **Krishanthu** was then killed and buried, as was her mother. The mother's gold chain was later recovered by the police from **Rajapakse's** brother and sister. **Rajapakse** (27) was a married man.

In making the final address from the Bench on 3rd July 1998, **Justice Abeyratne** said : *".... in view of the strong evidence placed before it, deterrent punishment had to be imposed. The court cannot ignore the barbaric and brutal assault made on a school girl and the violence perpetrated on four people by committing their murder.... the accused held responsible positions in the Armed Forces and Police, but they attacked this young girl like a pack of savage animals".*

Sentences were passed on six of the accused :

- * **Rajapakse (1st)**: 10 years RI (Rigorous Imprisonment) and Rs.50,000 fine for abduction, 20 years RI for rape and death for the murder of all four.
- * **Priyadharshana (3rd)**: Same as above, but murder only of Krishanthu.
- * **Jayasinghe (2nd)** : 20 years RI and death for rape of Krishanthu and murder of all four.
- * **Priyantha Perera (4th)** : 20 years RI and death for abduction, rape and murder of Krishanthu and murder of Pranavan and Kirubamoorthy.
- * **Jayatilleke (7th)** : 20 years RI and death for rape of Krishanthu and murder of Rasammah.
- * **Indrajith (8th)**: absconding : 20 years RI and death for murder of Kirubamoorthy and Pranavan, and warrant for arrest.

2.1 Who was guilty of Krishanthy's murder

It was a perfect trial and quick by Sri Lankan standards. Justice within two years of the crime. The speed and the sentences, one suspected, had something to do with the political establishment wanting it that way. One could think of several trials dragging on for close upon 10 years involving crimes attributed to security personnel. These seem to go according to the saying 'Justice delayed is Justice denied'. One could drag on questions about disappearances for years. But something so graphic and horrifying as the **Krishanthy** murder, if unaddressed, would have done immense harm to the Government's tenuous credibility. The sentences were met with relief and praise. But there were clearly some troubling issues the court proceedings nor the judges had addressed. The process failed to make any connecting links between the hundreds of disappearances in Jaffna during that period and the crimes before the Court, raising the suspicion of a damage control exercise. This was underlined by the convicted men telling the Court after the verdict that they on orders buried several hundred bodies in Chemmani and at other places.

About the first to raise some of the key issues that had not surfaced was the Defence Correspondent of the 'Island', writing in the Mid-Week Review of the paper on 8th July 1998 : *"[The verdict] runs contrary to previous courts martial proceedings passing lenient sentences on officers and men... Perhaps most importantly, the Army's top brass must come clean and accept their part of responsibility in human-rights abuses. Starting from the Army Commander himself, down to the lowly second lieutenants, they should accept that most of them turn a blind eye to human-rights abuses, although it is their sworn duty to uphold the law...*

"... Where was the lieutenant in charge of the platoon? The captain in charge of the company? The major in charge of the unit? The Lt. colonel or colonel in charge of the battalion? Although they weren't involved in kidnapping, rape and murder, didn't they know what was going on and turn a blind eye?"

*" Even if they didn't know which seems highly improbable, the officers bear some responsibility for the actions of their men. The charge brought against the officer in the Kokkadichcholai case [June 1991], should also apply to the officer in the **Kumarasamy** incident.*

" When the incident was first reported the Army conducted a cursory investigation and announced that the four civilians had not been detained at the check point, despite the fact that dozens of civilians had witnessed it. As far as the Army was concerned, that was the end of it all. It was only when human rights organisations brought pressure to bear on the President and she ordered a thorough investigation, that the bodies were found and the culprits arrested.

*" Overshadowing the entire case is the fact that every single one of the condemned men stood up in Court and said they could show where up to 400 bodies of Tamil civilians were buried in mass graves in the Jaffna Peninsula and that the officers knew what was going on ... What most army field officers know by now is that this [i.e. violations] was one of the biggest causes in the growth of the **LTTE** and is directly responsible for the fanatical attitude of Tiger cadres ..."*

We shall now go into certain aspects of the case.

2.1.1 How the Army top brass handled the case

Krishanthi's relatives and friends had taken the following steps :

On the very next morning (8.9.96) **Buveneswary Arumugam**, a teacher on the staff of **Rasammah's** school went with her brother and made a complaint to a captain (probably the PRO) at Pungankulam Camp in Ariyalai, which came under the Jaffna Brigade (512) and had a close link with **Lt.Thudugala's** platoon commanding Chemmani. The officer promised to look for the missing.

Another relative **Kodeeswaran**, a post master from Jaffna, when told about the matter the following morning, went to Kaithady army camp and complained to **Captain Perera**. When offered a written complaint, the Captain said that they had not arrested the missing.

As far as is known the Army did little. No one apparently complained to the Police because the Army was the controlling power in Jaffna. The Police had in practice no independence then.

What the Jaffna Brigade Commander, **Brigadier Gamini Jayasundera**, did is most revealing. The question of the missing four was raised in parliament on 13.9. and it was reported in the '**Sunday Island**' on 15.9. One way or the other the query in parliament would have come to **Jayasundera**. The normal channel would have been through the Army Commander, through **General Weerasooriya**, through **General Perera**.

As testified to Court by **Upali Senerath**, then Chief Inspector, Jaffna Police, **Brigadier Jayasundera** telephoned him on Monday 16th September ('96) and made the complaint about the persons missing at Chemmani - very likely from an official communication rather than the '**Sunday Island**'. **Senerath** had it typed and routinely forwarded it to Fernando, Inspector Crimes. Apart from questioning a few people, the Police clearly did not get very far. Sub Inspector **Asoka Herath** told court that he had done a tooth-comb of the Chemmani sentry point and the bunkers. There was evidently no serious interrogation of anyone, as they were mainly concerned with locating the missing persons.

To anyone in the security forces in Jaffna then, the Brigadier's move would have seemed a fulfilment of legal rituals for the record than a serious intention to locate the missing. The Brigadier had at his disposal all the means to get at the truth. What the Military Police did later on the President's directive could have been done by **Brigadier Jayasundera** himself. The Military Police team under **Lt. Colonel Kanniya Gunaratne** which was sent to Jaffna on 15th October '96,

came with nothing new and brought nothing new. It however diverted attention away from the top brass in Jaffna who had done nothing serious.

This is after all an Army, and **Jayasundera** would only have had to pass the word down the line of command that he wanted the truth quickly. That the Army did try to find out internally is suggested by what **General Perera** told civilians he associated with. Being dissatisfied with the lack of information from the officer-in-charge, **General Perera** is said to have responded, "*In that case we will have to pack up and go home*". [Our Bulletin No. 13]

The matter in fact was quite simple. Four persons cannot simply vanish in broad daylight from a check point with more than ten men and with civilians constantly passing by. Soldiers are usually scared of their officers, and if it came to the worst, the civilian witnesses could have been called and an identification parade held.

There were already after all reports of over a hundred missing persons in Jaffna at that time. When the Police were called upon by the Army which they knew to be responsible for those missing, they would have known that the intention was to cover up. For, an honest investigation of a case of this kind was bound to open a Pandora's box.

The 'Virakesari' of 15.10.96 published a letter from **Krishanthiy's** elder sister **Prashanthiy**, the only surviving member of the family, to **President Kumaratunge**, appealing for an inquiry into the matter. In it she stated, "*Several neighbours who witnessed the arrest are reluctant to give evidence after soldiers entered our house and fired into the air*". This letter may have been the turning point. Incidentally, it was about this time that six soldiers were arrested over the rape and murder of **Rajini Velauthapillai** in Urumpirai. This may have happened independently.

In our Special Report No.7 of August 1996, we gave several uninvestigated cases of rape and murder. In the one at Manthuvil, Thenmaratchy, on 17th May '96, three men and a child were killed and three women were raped. We could now guess what the Army's attitude at the top would have been.

2.2 Who ordered the murder of Krishanthy? - Some unanswered questions

The large number of disappearances at that time suggest that a decision was taken at high level to eliminate persons suspected of helping the LTTE. It is this climate of impunity that enabled **Krishanthy's** tragedy to take place. This is also why there was a reluctance to probe the affair. The Court decision suggests that **Corporal Rajapakse** was the ring-leader of the crime. Possibly so, but it is not so simple.

Krishanthy's is different from **Rajini's** case. It did not arise from a sudden bestial urge that was over in a short time. The rape and murders took place more than 8 hours after the initial abduction. Four civilians were involved and at least ten service personnel, including another corporal, knew about it. The Story was bound to spread, become the gossip of the Army and very likely reach the alternative press. Eight hours was a long time for the men to reflect on the consequences. That is why this case is much more sensitive than **Rajini's**.

The men appear to have been confident that they were to some extent doing what they were required to do and that the Army would cover up for them. Take the descriptions of the murders and the burials given in the confessions and the testimony of **Nazaar**. Hardly any orders were issued, hardly anything spoken. It was like a well-practised team moving with mechanical precision.

Take the following extract from **Rajapakse's** confession read out in Court, but largely ignored: "*The accused Rajapakse had informed the incident to Lt.Thudugala and another officer, Wijesiriwardena. They had then ordered the accused to eliminate them*". It is not clear whether he is supposed to have met the officers, sent a messenger or communicated by radio. The latter would have had others listening in.

The following is from **Samarawickrema's** testimony: Later [about 8.00 PM] **Corporal Asoka** and witness went to the first accused's [**Rajapakse's**] check-point. There both of them asked the first accused to hand over the three [4?] persons to them, the first accused refused, following which they went to their posts. During the following morning they learnt that all three [4?] of them had been killed during the night.

Surely then, the event was soon after known to members of the Platoon(s) who were not involved in the crime; and **Lt.Thudugala** who came to the area the following day is bound to have been told about it by someone. If not there was a state of mutiny. How could the Captain at Pungankulam to whom a complaint was made the next morning failed to have come to know?

Take **Lt.Thudugala's** testimony [Island 5.12.97]: "*Personnel at army check-points are not allowed to detain civilians. If in case of suspicion a person is taken into custody, HQ Jaffna should be informed immediately to take charge of the person.*"

If this was the actual state of affairs, once the complaint about the missing was received, **Thudugala**, who had a whole career before him, should have been the most keen to find out. He had to wait for the Jaffna Police to come 8 days later and learn nothing, and then for the Military Police team from Anuradhapura to do what he could have done 43 days before. This is a dubious state of affairs. If this was the position, **Corporal Asoka** who has been let off lightly is guilty of a serious breach of duty in failing to inform **Thudugala** of arrests made with criminal intentions by **Rajapakse**, that he was made aware of.

An aspect of **Rajapakse's** testimony implicating **Thudugala** deserves attention. It is a statement made in a confession to persons who meant business, under conditions by no means friendly. When an officer was implicated the boat was being rocked, and those interrogating him would have repeatedly, and not at all politely, challenged him. If what he claimed was not true, **Rajapakse** must have been a strong and calculating person to insist that it stayed on the confession he signed, which otherwise admitted his guilt in damning detail.

Major Sanath Podiralahamy, an investigating officer from the Military Police, told the Court [Ceylon Daily News 5.3.98] : *"Corporal S.Rajapakse, the first accused had revealed in his statement that Krishanthi and three others were arrested and later murdered and buried upon the instruction of Lt.Thudugala. But I am not aware that Lt.Thudugala was arrested and released despite evidence of his involvement in the Chemmani Crimes"*.

This was said in response to the defence prodding him about trying to cover up for the platoon commander. **Podiralahamy** was a senior investigating officer soaked in the details of the case. He is unlikely to have made such a statement unless he had some doubts about **Thudugala**, and on the spur of the moment, found himself unable to explain why this officer was not questioned. Later, on second thoughts as it were, **Podiralahamy** said that he was not aware of a situation where **Lt.Thudugala** was arrested and released, and that the officer had no involvement to his knowledge. [CDN 10.5.98]

2.3 The Letter from Prison

Whatever the nature of **Thudugala's** role, there are significant indications to suggest that some of the men, at least, believed that in killing the four they were carrying out orders from above. One such indication which set us looking more deeply into the matter was an

unsigned hand-written document in Sinhalese sent by one or more of the accused from Welikade Prison. An ex-serviceman discharged from prison handed over the document to the editor of the Sinhalese weekly, **Yukthiya**. It alleged that a number of dead bodies had been buried in Chemmani on orders and gave a sketch of the area showing 32 burial sites. This was in early 1997, long before the case was taken up in Court and the sensational disclosures at the end of it. Soon after the verdict **Yukthiya** used the map in its story, which it had not done so earlier out of an anxiety that the burial sites may be tampered with.

The text of the document too merits closer scrutiny. The contents reveal that the main author of the document is **Indrajith**. Some of it is fanciful or wildly speculative. It is for example suggested that **Thudugala** wanted **Krishanthy** killed because she was eyewitness to a vehicle driven by him knocking down and killing **Krishanthy's** classmate, whose very funeral **Krishanthy** had been to a few minutes before being abducted at Chemmani. We understand that the actual driver of the vehicle, an army driver, had himself gone to the funeral and had been deeply upset about the accident.

We will take some of the contents that seem to throw light on the inner drama. **Indrajith** understood that the orders had come in the form, "**Bittara hathara podikara dhanda**" (**Crush the four eggs**). The document says : "*A ring and two purses were removed from the men and given to the mother. She was told that the men were being taken for questioning. One male was taken by Pradeep, Muthu Banda, Jayatilleke and Perera, and was strangled and killed using a wire. The other male was taken by Indrajith and Jayasinghe. Indrajith tightened the wire around his neck. But the wire broke. Jayasinghe then took an axe and struck his head. He fell down. The next blow came down on his chest.*

"... Nazaar and Samarawickrema came where Corporal Rajapakse was with the girl and started talking to the girl. All the rest came to Rajapakse. Jayatilleke, Perera, Jayasinghe, Pradeep, Nazaar and

Samarawickrema took the girl to a bund in the field. Indrajith came to Rajapakse and asked where the others were. Rajapakse said that they had gone down and asked him to look and come. Indrajith went and asked the girl whether she belonged to the LTTE. The girl replied, "No, I am a student".

"Jayatilleke and Nazaar told Indrajith, "We brought her here to rape, you go and observe 'sil' (Buddhist devotions)". Indrajith responded, "Haven't you been told that you may kill, but you must not rape?"

"Subsequently Jayatilleke, Nazaar, Samarawickrema, Perera, Jayasinghe and Pradeep raped her in that order, killed and buried her...."

According to the document the group, or several of them, left for an operation in Killinochchi some days later. **Rajapakse** was injured by shrapnel from a mortar shell and his fate remained uncertain. When the incident became public, the document says, **Thudugala** and the other officer told them that they would tell the Police that **Rajapakse** was wholly responsible, and anyone contradicting that version would face dire consequences.

The extracts above show that **Indrajith** played a central role in drafting the document. All else in the document is hearsay. Further, in **Rajapakse's** confession, he had named **Indrajith** as a rapist. But **Indrajith** did not accept rape in his confession and, importantly, the Court did not find him guilty of rape - apparently on the grounds that he had not confessed to it. Except for **Nishantha**, **Muthu Banda** and **Alwis** who died in prison of meningitis, whom evidently no one accused of rape, the rest seem to have assumed that they were all guilty of it, although they were not eyewitnesses to the whole of it. They were moving about. **Rajapakse** seems to have been about the last to rape the victim and **Indrajith** may not have been there.

The document also seems to have been eager to implicate **Nazaar** and **Samarawickrema** in rape. On the other hand **Indrajith** may have seen **Samarawickrema** talking to **Rajapakse** just before the orgy began and may have assumed that he stayed on. **Nazaar**, who was forced to keep the weapons, said that he saw several others whom he could not identify. Some may have come from other sentry points.

Indrajith, quite remarkably, has not shown any hesitation in accepting his role in murder. It is murder rather than rape that carried a death sentence. In his mind it was rape, rather than murder, that was shameful. In **Nazaar's** statement he first saw **Indrajith** bringing a bucket of water - perhaps the routine requirement for washing after the labour of killing and burying.

The order "*Bittara hathara podikara dhanda*" - "*crush the four eggs*" - is a variant of standard military jargon, well understood by the men. In our Bulletin No.10 of February 1996 dealing with the Kumarapuram (Killiveddy) Massacre, we reported a similar expression uttered by a very high ranking officer as a prelude to the massacre and rape. The expression "Kudu karanda" - "Smash into powder" - was heard being uttered by this officer in the neighbouring Sinhalese village of Dehiwatte, and communicated in person to the late MP for Trincomalee, **Mr.A.Thangathurai**, with a plea not to let it out that they had told him. Not so remarkably, only about a dozen of low ranking men from the battalion of **Colonel Nihal Silva** which was responsible for this outrage have been charged. The men are on bail with the case involving rape and murder still dragging on. "Justice delayed is Justice denied".

Take the exchange **Indrajith** claimed to have had with **Jayatileke** and **Nazaar**, where they told him "We brought her here to rape, you go and observe 'sil'", to which **Indrajith** had replied, "You may kill, but not rape". If **Lance Corporal Indrajith** had invented this, it qualifies him as a writer of good fiction, which he is very likely not. According to **Nazaar**, **Pradeep** had asked him to go and have his turn at rape, and

a little while later **Jayatilleke** came up and scolded him in foul language for talking to the victim and chased him away.

This is strong corroboration of a crucial part of **Indrajith's** letter, written long before the case came to Court. **Indrajith** could not have known the contents of **Nazaar's** statement to the interrogators. This means that **Indrajith** came to where **Krishanthy** was, at the time **Jayatilleke** and **Nazaar** were there. "You go and observe 'sil'" in the letter corresponds well with **Jayatilleke's** 'foul language' referred to by **Nazaar**. This encounter may also explain others suspecting **Nazaar** of rape.

Jayatilleke appears to be the focus of anger in **Indrajith's** document, apart from the officers. The above also gives some insight into **Indrajith's** subsequent conduct. He and **Rajapakse** staged an escape from their jailers after asking to be taken for a call of nature when attending Court. **Rajapakse** surrendered, while **Indrajith** is still absconding. **Rajapakse** and the others seemed fairly resigned to the verdict, while **Indrajith's** whole conduct is suggestive of a certain righteous indignation. His point-of-view comes across as : "**Just as society hires butchers to kill animals for consumption and pays them a living, I too joined the Sri Lankan Army, and was paid for killing when those in command wanted me to kill in cold blood. Now why are you punishing and humiliating me, while the officers who wanted us to kill are getting their promotions and decorations, and are being lionised as national heroes?**"

The **Krishanthy Kumarasamy** case was one where, for those who care to see, far too much was revealed than the Defence establishment bargained for. Primarily it was not a case of a few bad apples, but mainly the result of institutionalised violence of the State, which did not understand the limits of impunity that could be covered up.

The victims of the incident were not just **Krishanthy**, her friends and relatives, but also the families of servicemen implicated in the case - wives and mothers denied support, whose lives had collapsed in

shame, and children too young to understand the stigma they would have to live with.

Thus the State which was pledged to protect and foster Buddhism, had picked these youths out of rural areas where they were taught the tenets of that noble religion in the humble village temple, and pushed them into a world of institutionalised depravity, which destroyed them.

The court case, although an exercise in damage control, did a lot of good, and is one of the few concretely beneficial things this government has done. [Some would object that the Government cannot take credit for the normal operation of the law. But that is now how things are in Sri Lanka. No previous government would have allowed the case to go through and let the judges decide.]

The court decision has at least given the message that no service personnel committing a crime on orders from superior officers, can take indemnity for granted.

The case also witnessed the judiciary and even the defence confine themselves to chosen limits so as not to buck the Defence establishment and the State. It is therefore a tremendous loss that the deeper questions about the causes of the escalation of conflict were not raised. This also did an injustice to the convicted by isolating their actions from the system which more or less expected them to act in the manner they did. The performance of the defence was one where the accused did not get a fair deal. They asked the witnesses from Jaffna pointless questions about people killed by the Tigers. They would have done much better to raise deeper questions about the Jaffna disappearances and the institution to which the accused belonged. But this would have rocked the boat. Indeed, the Army had abandoned the accused who could not afford lawyers. We learn that they had wanted to testify in Court, but this had not been allowed by the lawyers appearing for them. They had to make their dramatic intervention after the verdict.

2.4 What were the officers doing?

When the displaced civilians returned to Jaffna in April 1996, the **LTTE** was determined to make life difficult for them. The **LTTE** started throwing bombs at soldiers keeping order in queues of civilians collecting food rations, hoping for reprisals. The Army's highly disciplined behaviour in these instances was highly commended. Even though information was reaching the Army on the **LTTE**'s activity, the civilians were getting worried by the Army's inaction and over-confidence. The civilians did, after all they had been through, want to be left in peace. Suggestions were put into suggestion boxes advising the authorities not to have grand public tamashas and opening ceremonies such as the one on 4th July where the Town Commandant lost his life. Instead they were asked to go ahead with rehabilitation decisively, but on a low key, where people could see the results. This advice was not taken. Decorating and painting a place in advance of a public ceremony and ministerial visit was looking for the kind of trouble which came on 4th July. Since then ministers have been very paranoid about going to Jaffna.

Shaken badly, the defence authorities became paranoid. A decision was taken to play rough. Military Intelligence in Jaffna, which was then under **Colonel Zacky** was no doubt asked to compile lists of **LTTE** suspects from information received, if it had not already done so, and pass them onto the area commands. Arrests were made at homes, at sentry points, often from lists and also on mere suspicion. The 'white van' arrests in Jaffna Town, discontinued as soon as people began to talk about it, were directly associated with MI. But it took several months before people realised that those arrested were being killed.

We have no doubt, and it cannot be otherwise, that those in command well knew what was going on. We stated in Special Report No.7 of August '96 that when people complained to very senior officers about persons arrested and missing, they listened, appearing to be concerned but unable to do anything. Sometimes these officers told the

complainants, "Before the incident [4th July] we tried the soft method, but we were not getting much information. But now we are trying a different method and are recovering many hidden weapons!"

The decision no doubt was taken high up. The officer in command in the Jaffna Peninsula was at that time **General Srilal Weerasooriya**. He was in Trincomalee when the war began in June 1990 and was immediately replaced by the late **Brigadier Lucky Wijeratne**. Earlier **Weerasooriya** had been communicating with the **LTTE** at the behest of **President Premadasa**, and was reportedly bitter when the **LTTE** ended the honeymoon and went to war. All this was done over the heads of the people who later suffered from Premadasa's and the Army's ire.

In mid-February 1991 **Brigadier Weerasooriya** replaced **Siri Peiris** in Mannar. The change was regarded as for the better in that missing persons were generally accounted for, although bad forms of torture continued. One incident in particular says something about his approach. On 17th February 1991 [our report No.9 of 1992], four persons, including three teachers, one of whom, **Sebamalai**, was a head master, were travelling to Murunkan from Mannar Island. They were stopped by the Army at Vankalai. An RC priest who went that way on a motor cycle saw **Sebamalai** lying injured on the road and crying for help, but was afraid to stop. Other travellers saw what appeared to be corpses in a nearby well.

Relatives who went looking for the missing later on found the well covered up and a patch of plants at the site. The matter was raised with **Brigadier Weerasooriya** by local citizens, who in turn promised to investigate the matter. Later on he said that he could not proceed in the matter as the field officer, **Major Dias**, completely denied the incident.

Under **Weerasooriya** in Jaffna were **General Janaka Perera** in charge of 51 Division and **General P.A.Karunatileke** in charge of 52 Division. Both were implicated in testimony before Disappearance Commissions

dealing with the South. Perera also had to appear before the magistrate's court in Nikerawetiya over the killings of 20 civilians by the Army after he had personally threatened reprisals. In January 1996 **President Kumaratunge** had reportedly included them in a list of about 200 officers to be placed on compulsory leave, sent with a covering letter to the Army Commander. Action was not taken. Where the courts are concerned too, nothing serious is bound to happen.

What we could be fairly certain of is that since these officers were marked, they were not likely to risk their careers further by initiating a course of disappearances unless they were covered by agreement and consent from above. Moreover whatever was communicated to officers at brigadier level was certainly in the form of license to play rough and even kill rather than instructions to kill. For example **Larry Wijeratne** who commanded the Vadamaratchy Brigade under **Karunatileke** had a refreshingly clean record during that dark period. He maintained order in a place of great symbolic importance to the LTTE, but by using humane methods. It is his exemplariness that made him a target of the LTTE, falling victim to a suicide bomber on 14th May 1998.

The **Krishanthy** tragedy was the result of the license that existed at that time, even to low ranking men, to detain, torture and to kill. All those who indulged in such were confident that the Army and the Defence Ministry would cover up for them, as we may judge from the record.

2.5 Pinning responsibility

With the verdict delivered in the **Krishanthy Kumarasamy** case, many deemed the Government to have earned a reprieve for what happened during those months. We have argued that the problem lay not so much with those like **Rajapakse** and **Indrajith** whose hands actually touched blood, but much higher up. Making a show of throwing them

to the hangman solves nothing. They are relatively innocent, however horrible their actions. This is one of the strongest arguments against hanging in general.

To pin the responsibility for this tragedy, among hundreds of others in Jaffna at that time which still lie shrouded in darkness, the key question is this : **Why was no action taken to enforce the issue of receipts for arrest in Jaffna during those crucial months against mounting complaints of missing persons?**

It cannot be as accidental as may be argued. It was sinister and translated itself into hundreds of murders, often after cruel torture. The requirement to issue receipts was well known to all the officers. Between **Deputy Defence Minister, Mr. Ratwatte, General Daluwatte** who was then army commander, and **General Weerasooriya**, they have a case to answer. It could not have been without their knowledge.

Ratwatte has been reported as being angry over the Army's failure to complete the northward advance begun in June 1997 after more than a year. Evidently the disappearances in Jaffna did not cause him the slightest worry. The disappearances in Jaffna were undoubtedly a blow to **President Kumaratunge** just when she wanted to show the world that she was inaugurating a new era of Human Rights in Sri Lanka by the signing of the Optional Protocol of the ICCPR. She had everything to gain by getting to the bottom of the matter. Why she in addition as commander-in-chief of the armed forces gave promotions to the very men who had let her down remains to be explained.

2.6 Krishanthiy : How did it happen?

There is a particular psychology that operates at sentry points. One is advised to look appropriately humble and not keep one's spine erect while passing soldiers who are normally suspicious. During those months when license for acting with impunity was given, it

must have been much more dangerous. There have been press reports of others taken in at the same Chemmani sentry point and going missing, including a young Brahmin priest. Some of this may have been done on the basis of lists furnished.

Krishanthy was an intelligent and spirited girl with a bright future, who very likely did not conform to the norms at a sentry point. Normally she travelled in a group. The soldiers knew her and would have regularly plied her with questions, sometimes out of fun, and sometimes out of suspicion, depending on the individual. On that fatal day several factors combined to contribute to the tragedy.

Having sat for her A Level Chemistry paper, **Krishanthy** had gone with her friend **Gowthami Sundaram** to the funeral house of their friend and classmate **Janaki**, who had succumbed to being knocked down by an army vehicle. Even what was purely an accident would have had a different colouring in the minds of the people because it was an army of outsiders. **Krishanthy** then travelled alone. She may have been asked by the soldiers where she was coming from and why alone? The soldiers then had power over life and death, and perhaps her reply or the tone of the reply may have provided the context for them to show their power, even if their intentions then did not go so far as what transpired.

According to **Samarawickrema's** testimony, **Rajapakse** at 2.00 PM had asked him to get some information from an **LTTE** activist. Her reply to **Samarawickrema's** question is also of significance : "We trusted the Army and returned to Jaffna. Why are you harassing us like this?"

Rajapakse was an experienced man, and he does not come across as one so devoid of intelligence as to have believed that he could kill four and get away with it under the circumstances, unless he and his accomplices were confident that they would be shielded. There were many witnesses, including civilians passing by, as well as colleagues in the Army and Police.

An important question is whether he or anyone else told the officer **Lt.Thudugala** as **Rajapakse** claims he did and **Thudugala** denied. There are also some further considerations.

From what civilians have observed in Jaffna, the lieutenants know where their men are and exactly what they are doing while on duty. There is also an obligation on the part of the others to report any breach of orders. If not it is not an Army. A corporal and his party sent to guard an important point can all get drunk and fall asleep. Here the drama took place over a duration of more than ten hours with other men in the platoon knowing.

Lt.Thudugala had not told the Court that he came to know of the crimes when he went to the point the following day, or on any other day in the succeeding 43 days with the matter increasingly becoming a public issue, until the investigation team found out. **Thudugala** had no conceivable motive, except that at a time when killing of suspects was the norm, if **Rajapakse** had told him that he had an **LTTE** suspect along with some others looking for her, he (**Thudugala**) may have answered indifferently. On the other hand if the high command had insisted upon issuing receipts, with strict accountability for those detained, the officers and their men would have had to look sharp. There is enough testimony to show that this was far from being the situation in Jaffna then.

If **Lt.Thudugala** knew at least a day or two after the event, as we are sure he did, then all the senior officers up the line did. They had to protect **Lt.Thudugala** to protect themselves and delay the exposure of the game they were all playing.

As a postscript, **Krishanthi** scored distinctions for the two A Level papers she sat, with no family to celebrate except her lone grieving sister.

The case above gives us a strong reason for not reviving the death penalty. Too often it is scape-goats from an under privileged sections of society that the courts sentence to hanging.

It has been reported that **Lt.Thudugala** and several members of his platoon died in the slaughter at Killinochchi during late September 1998. All these men were in some way victims of bad policies of successive governments that resulted in professional degradation of the security forces, which strengthened the virulence of rebellion, and sent them into slaughter.

The camp controlling Chemmani in Maniamthottam Road, we reliably learn, is one of the camps to which detainees were brought for torture and elimination. Among those killed were a couple living near that camp towards the Kandy Road. The wife was killed after rape. The naked bodies of the detainees killed at the intelligence camp used to be transported to Chemmani for assistance in burial by **Rajapakse** and his men. After Embilipitiya where clothes helped in the identification of corpses after 5 years, the Army has learned to take off the clothes before burial. Note also that in the four killed in the **Krishanthy** case, the clothes were cut up and buried separately by low ranking men who had obviously been taught by their officers.

According to the system followed in the area, all those detained in that area, whether on information, or on suspicion at sentry points, were sent to Pungankulam army camp. This was the controlling camp for Chemmani. An officer in charge at Pungankulam then, or closely associated with it, has been named as **Major Lalith Weerakody**. It was Pungankulam camp which decided what to do with the detainees. Some were perhaps released or sent to Palaly or KKS. The others were sent to the Ariyalai intelligence camp. We are unaware of survivors from this camp at that time, but we give below the testimony of a survivor from the Manipay camp a few months later (January 1997).

It is also notable that some of those who disappeared were first reported having been seen at Pungankulam camp. Also the very next morning after **Krishanthy's** arrest, a complaint was lodged with a responsible officer at Pungankulam camp. To anyone who got to know the system,

things would have been immediately clear. There was little mystery. One wonders what the illustrious members of the Board of Inquiry were doing in Jaffna pottering about with marginal matters, discovering hardly anything new.

Another camp under Jaffna Town Commandant where torture used to take place is the one near Stanley College, quite close to Pungankulam and Ariyalai. Another notorious camp in **Janaka Perera's** division was Manipay (See 3.1). Several more, especially in Thenmaratchy, Karunatileke's division, remain to be identified. Some of the big camps in Thenmaratchy, where a larger number of persons disappeared, are in isolated places such as coconut estates, previously taken from the owners and used by the **LTTE**. It will be a long time before skeletons are found in this area. It is also possible that those detained in Kaithady and Navatkuli in Thenmaratchy too were sent to the Ariyalai intelligence camp, since it is nearby. Bodies were disposed of in all kinds of places, e.g. lavatory pits and wells. One need not wonder at the anxiety the **Krishanthu Kumarasamy** case would have caused the Town Commandant, **Brigadier Gamini Jayasundara**, and his superiors, **Generals Janaka Perera, Srilal Weerasooriya**, and those still higher.

3. After the 1996 disappearances

Apart from the agony of the families concerned, all that the Jaffna disappearances accomplished was to put Sri Lanka back into the top league of human rights violators. It was the work of paranoid, unprincipled men, who after 18 years failed to understand the problem. As we said the disappeared were nearly all under duress marginal **LTTE** helpers, ex-**LTTE** or completely innocent. In a society once closely controlled by the **LTTE**, the organisation had many to pressure and use. More seriously, for an organisation in permanent crisis as the **LTTE** is, the disappearances made it far more difficult for

discontented **LTTE** cadre to leave in the confidence that they could start a new life without being crushed between two sets of killers.

For the **LTTE** it was business as usual. Its core network remained largely intact. In November 1996 two former employees of an **LTTE** propaganda unit were seen in a queue of Deepavali shoppers outside a government sales outlet selling cloth. The next day a grenade was thrown, killing a salesgirl and injuring 12 others. 25 yards from a sentry point on Navalar Road a young couple who seemed to be madly in love were talking to each other under a tree. The soldiers were staring at them in amusement. The two were **LTTE** agents. There are youths who drop into certain shops and inquire about prices without buying anything. The shop keepers have no doubt who they are. There are persons loitering around shops near army camps watching who is going to meet the Army. Several shops have known agents spying for the **LTTE**. A middle-aged employee of a government department hangs about the Jaffna bus stand about the time air passengers from Colombo arrive by bus from Palaly. From his movements and whom he meets, the people know his business. Few of them do it for the love of the **LTTE**.

The **LTTE** retains the network to spread rumours, intimidate people and to control the press indirectly. The people of Jaffna and the Army have to live with this until the Government gets its act together and implements a political settlement that would give the people the confidence to defy the **LTTE**.

The **LTTE** never was and never will be serious about the disappearances under Army control. Several members of the Human Rights Commission were pushing hard to investigate the claims about the Chemmani graves. As they were about to come last September, the **LTTE** stopped the air-service by shooting down a Lionair flight. Just before a team came from Colombo on 5th March this year, the **LTTE** stopped magistrate's courts from functioning under threat. Equally inexplicable delays on the part of Government too raise doubts about an honest investigation into the Jaffna graves.

If instead of killing the large numbers of those who disappeared, the Army had questioned them, released them, and asked them to sign weekly at army camps, the **LTTE** would have become paranoid and killed many of them as the record in Jaffna (see our reports) suggests. For the **LTTE** people are use and throw materiel. There was another problem for the **LTTE**. As soon as the Chemmani graves issue came up after the court verdict, there were frantic messages from Jaffna, from those who are forced to remain silent : "Don't forget those other mass graves left behind by the **LTTE** in Vatharawattai, Vathiri and so on!" If Chemmani is excavated, other excavations may follow and that would be awkward for the **LTTE**. Its supporters instead of giving relief to the families of those who disappeared under Army control, would like to keep the issue alive for propaganda mileage without letting it go too far.

While disappearances caused by the Army are actually good for the **LTTE**, its own problems stem from something else - the tired, angry and long-suffering people. After the **LTTE** during its rule had made torture and disappearance the norm, there was little resentment about disappearances caused by the Army. Many accepted that most of those who disappeared had some **LTTE** links, and took it as something to be expected in a change of regime. Some reacted strongly to our reports on disappearances with sentiments such as : "When an **LTTE** fellow places a bomb opposite my house, why does he do it? Some army patrol will get caught to it, one or two would get killed, and he then expects and wants the Army to come and kill me and my family. What do you expect the Army to do if they catch him, other than kill him?"

Most often politically conscious persons who understand the State, the long term implications, and value the sacrifices made for the Tamil struggle, have strong qualms about giving information to the Army. To them fighting the **LTTE** where they are concerned must be an internal affair. But for the ordinary people, their depoliticisation primarily owed to the **LTTE**'s repression. In confronting the deviousness of the **LTTE**, they have learnt to be equally devious. It is

like the people in the East making covert deals with the Army to thwart the LTTE's attempts to recruit their children. [Macan Markar in Sunday Leader 12 Dec. 1998.]

In several parts of Jaffna the people could be quite open about this. One lady said in the presence of some of her neighbours, "I saw some of those fellows next door and sent the man in front to tell the Army". Another lady teacher said quite openly, "Lord Murugan packed off those fellows to the Vanni jungles. Now they are trying to come back through peace talks. Let them try, we will teach them a lesson!"

This is one aspect of the Tamil tragedy. There is an upper segment of this society who verbally support the Tigers, either out of fear of because it gives them a thrill. For them there is no sense of responsibility for the young Tiger cadre, the people or for the lives of the young and old being ruined. At a lower level, a people once ready to make sacrifices for the liberation struggle are left leaderless, managing their lives from day to day. The political life of the community plummeted to its lowest level. The Tigers' brand of totalitarianism which forced the people to become 'traitors' en masse, carried the seeds of its own destruction.

Like the families of those who disappeared under LTTE control, those of victims who disappeared under Army control too are left very much alone, with no genuine friends, unable to find meaning, hope or reparation in these unwanted deaths.

3.1 An extraordinary ordeal : Torture after the Krishanthi affair :

The Government had signed the Convention Against Torture and in November 1996, appointed a Board of Inquiry into missing persons in Jaffna. The case of torture below which took place in January 1997

and all that followed shows how seriously all this is taken by the State machinery and the Security Forces.

V is in a family of 4 girls and 2 boys. The father was a factory hand at the KKS cement factory which has been closed from 1990. The family was displaced and the father died in 1992. The elder brother left for France after the completion of his ALs.

V studied at Mahajana College, which had been relocated from Tellipallai about 1991, and gained considerable skills by following courses. A craft course in radio repair at the Uduvil YMCA enabled him to support his family. He also learnt karate from Bala Master and earned a certificate. At school he conducted karate classes. He never joined the LTTE. But while the LTTE controlled Jaffna, he had to do what he was asked to do with his skills, and sometimes was taken away with his whole class to dig bunkers.

The family was displaced to Vadamaratchy during the Exodus, and after their return in April 1996 life went on much as before. Soldiers coming to check his house saw his karate Brown Belt certificate, and some of them came to him for lessons as LTTE cadre had done earlier. He also taught karate at school and repaired radios. Soldiers too were among his customers.

On 2nd January 1997 there was a round up by the Army from Manipay and 35 young men and women were detained at Thavadu army camp. The round up party had come with three masked persons whose hands were tied behind. There was some beating during the round up, but at camp they were not beaten for two days. Some soldiers who knew about V even got him to teach them karate. There was then a landmine explosion in which some soldiers were killed - 3 bodies were brought to the camp. Then the beating with poles and wires commenced. The officers regularly looked in and knew what was going on. But the beating and torture took place when the officers were not present. Prisoners were laid on the ground, and then soldiers

stepped on the head saying that they would get off if the prisoner admitted being in the LTTE. This was done repeatedly leaving heads of prisoners swollen and in pain.

While the men were tortured the women were made to watch. Then the women were blindfolded and the men were made to watch while the women were pinched with players. Once when the officer-in charge came that way, the women complained about what was being done to them. The officer dramatically asked them to point out the culprits. The women told him to ask the men since they had been blindfolded. Except for about two men, the rest said that they did not know. After the officer left, the two prisoners who pointed at some of the culprits were taken to a room and beaten.

The men were kept with their hands and legs tied and the women with only hands tied, but in a dishevelled state of dress and appearance. On Sunday (5th) there was a meeting at the camp attended by about 150 soldiers. After the meeting the officers made themselves scarce. The men who came for the meeting, along with the others already there, went into a beating spree, pulling and squeezing the private parts of both the men and the women detainees.

On Monday 6th about 8.00 P.M., the detainees were transferred to the Manipay main camp at Suthumalai, situated in a paddy field near Amman Kovil. The men and women were now separated. Here the torture continued in earnest. The prisoners were beaten with sand filled s-lon pipes, suffocated with polythene bags containing petrol and ants wrapped over their head and electrocuted through both sides of the head using current from a large manually rotated dynamo - apparently taken from a vehicle. The officer in overall charge was **Colonel Udaya Perera**.

The prisoners witnessed something significant while being led from one house in the complex to another, two premises away. The soldiers suddenly ordered them to lie down flat saying that the LTTE is about

to fire. They saw some soldiers rushing in with three dead bodies. Quickly lifting the concrete slab covering a septic tank, they threw in the bodies and let the lid down, One body may have possibly been that of the younger of two brothers detained with the group. Ranjan, the elder, continued to be with them. But they lost track of the younger.

Later at Manipay, 16 persons were hung in a row by their toes, burning chilli powder was placed beneath and they were beaten on the back till the skin started peeling. A soldier who was called 'Kapa' and spoke some Tamil told them, "*It is not the LTTE that we want to kill. It is because of them that we have jobs. It is you people who help the LTTE that we must kill!*"

Things then got more novel and gruesome. The most cruel of all, an electric drill was brought out and V's two big toes were drilled through. Then hooks such as those used at Kaavady festivals were inserted into the holes and V was hung inside a well by his hooked toes with a rope going over a pulley. All the time V was questioned about teaching the LTTE karate and helping them in other ways. V admitted doing various things because he had no choice. His entire class was taken to dig bunkers and to hang 'thoranam' (decorations) at 'martyrs' funerals. This went on for about 90 minutes. V was suffocated by dipping into the well four times. V fainted several times. Finally V was dumped on the floor and cut with a shaving blade to check if he had fainted. There were in the camp about 3 ex-LTTE ers assisting the Army in the proceedings. About 16 prisoners were so drilled.

V could not get up the next day. A wooden plank with nails fixed was brought and the nails were 'beaten into V's heels. Then 4 soldiers came, unlocked V's handcuffs, placed his palms on a flat board and beat them with a pestle. A 1/4 inch nail was placed above the right hand and was hammered with the pestle and lodged in. At 6.00 A.M. on the 7th the ICRC arrived. The prisoners who were in a very bad state like V were quickly taken away to another part of the camp on stretchers, and brought back after the ICRC left.

Sadism was routine and uncontrolled. For example a soldier came in and asked V who was lying in pain if he would like to smoke a cigarette. Without waiting for an answer, the soldier lit a cigarette and burnt him by holding it down in 4 places including the testicles. Once the prisoners were asked if they would like to ease themselves. Those wanting to were taken out, singed with a gas burner and sent back.

Some of the Army women went out of their way to be kind to the prisoners who were bed ridden, such as by cleaning their wounds or brushing their teeth. If they heard the men coming, they quickly ran away. Once some men came after the women had left and asked V who cleaned his teeth? Then a soldier said, "*You are fighting for your soil, aren't you? You can have plenty of it*", and then proceeded to stuff V's mouth with sand, ordering him to brush.

From the screams they regularly heard from where the women were held, they knew that the women too were being tortured. On the 7th, some bearded rough looking men, apparently from the Special Forces, brought in what appeared to be an unconscious woman, threw her on the floor, and asked the male prisoners to identify her. Since no one could identify her, they were beaten. The prisoners were then told, "*Remember that many of our colleagues killed by you have been sent home packed in plastic bags, limb by limb. Now you must do the same for your people.*" An SF man brought out a sword, and to the dismay of the prisoners around, proceeded to cut the girl into 4 pieces. The prisoners were ordered to put the pieces in sacks.

It was later that the prisoners realised that the girl must have been shot dead outside and was not a prisoner killed in the camp. For some of the prisoners had noticed the corpse bleeding from the stomach and chest. One day V was asked whether he was in school. When he replied in the affirmative, word was sent to his principal to bring his certificates, which were received the next day. Seeing that he took part in swimming, cycle racing and cross-country running, they told him that he was studying to be a Sea Tiger.

On the same day that the **ICRC** first visited, 3 detainees were released in the night. Through them a message was passed on to the **ICRC** to the effect that some of the prisoners were in a very bad condition. Whether because of this message or because of having talked to some of the prisoners earlier, the **ICRC** arrived at 6.00 P.M. the next day. They waited at the entrance for a long time, until the commander went to them. They had an argument with him and left. Apparently the commander wanted them to come the next day. Before **ICRC** could come again, 25 prisoners were sent to the KKS police station. **V** went in an Elf van whose back portion was covered with a sheet. At the police station they were put into cells after their statements were recorded. On the 10th, Friday, the **ICRC** came to KKS and took them to Jaffna Hospital. Although the hospital doctors wanted **V** to be warded, the Police insisted on taking him back.

Just after mid-March when **V** could just manage to walk a short distance, he was blindfolded and transferred to Anuradhapura prison. 3 days later he was produced in court at Anuradhapura where the proceedings were in Sinhalese. Evidently the police had given some kind of charges implicating him with the **LTTE**. There is plenty of scope for implicating anyone in Jaffna - digging bunkers for example when the **LTTE** was in control. The prisoner who could hardly walk and carried the nail in his person gifted by his torturers, was, for his grave crimes, committed by the Judge to Magazine Prison. The victim was among 25 prisoners produced in mid-June 1997 before the Judge in Colombo. In the meantime the school principal had visited the victim in prison and had given him a school enrolment card. This helped him to get bail for Rs 2500/-. Others were charged significantly higher amounts.

So helpless was the victim in Colombo, and such was the fear among his relatives, that it took him nearly a year to seek medical help. He stayed with an uncle in a Colombo suburb working as a sales boy in his shop. In the meantime he was being repeatedly picked up by the police - in mid-September '97, mid-December, mid-March '98 and late

May. On each occasion he was released in a matter of days. On the last occasion he and his cousin were in the cell for 5 days.

In February '98 he had an experience which says a good deal about the position of Tamils in Colombo. It is a common occurrence in Colombo for drug addicts to pick out the Tamil shops and demand protection money from them. Failure to give the money is bound to result in various forms of criminal harassment. They dare not try this with Sinhalese or Muslim shopkeepers, as the latter have a number of options to deal with them. On this occasion, V's uncle sent him to the bank with Rs 200,000/- in a bag to be deposited. Some drug addicts followed him, stabbed him in the thigh with a knife and grabbed the bag with the money. But V in a burst of energy not displayed for the past 14 months caught up with the robbers, gave them a taste of his karate brown belt skill, and got the money back. The matter was reported to the Police. The Police advised the uncle, *"We can pick them up and put them in the locker. But sooner or later we will have to release them and they will come back to you. You will have the least amount of trouble if you simply pay them something once in a way."* Here, the State was technically upholding the normal-law to the letter.

It was after mid-98, about a year from his release, that V sought medical help over the nail in his hand at the Colombo G.H.. The doctor who examined him arranged for surgery and also referred V to the Family Rehabilitation Centre - an NGO dealing with trauma victims. On 20th August the nail was removed from the hand under local anaesthesia. Two days later the Police picked him up again. This time the officer-in-charge scolded the men who brought him, pointing out that they had already checked him out several times, and released him.

V suffers from muscle pain in the back, his left-heel cannot be placed down, some of his fingers are partially numb and his eyes tear and have become short-sighted. The scene of the girl being cut by the SF men recurs in his dreams, causing him to scream and faint. V also

sweats when he sees the Police. He now intends going to France and joining his brother. The only way, unfortunately, would be illegal.

The case in question tells us a good deal about the system that is confirmed by several cases we have presented from time to time. V was arrested in the first place either because the masked informants under pressure to point out suspects had dealings with him when they were in the **LTTE**, or the soldiers may have wanted karate lessons. He was tortured because of a surmise that a Tamil boy interested in a number of sports, including karate, must have been a Tiger.

Once he was dispatched to the Police after the **ICRC** brought about pressure, the Police too tried to cover up rather than give the victim the required medical attention. From the fact that he was later bailed out and not subject to further questioning after the Police had first recorded his statement, shows that the Police knew that he was quite harmless. But they had to pretend that he was a dangerous case who might escape, so as to avoid warding him in Jaffna hospital where some visiting journalists may have talked to him.

When he was sent to Anuradhapura prison 3 months later, he ought to have been routinely examined by a judicial medical officer (JMO) and his condition reported to the judicial officer (eg. magistrate) concerned. The victim went before the judicial officer with a pronounced limp and a nail in his hand. No inquiry was made about his condition, no provision made for treatment, but the victim's incarceration was for no intelligent reason extended on a detention order for a further 3 months. The victim was bailed out carrying a message drawn from his treatment all this time, that any attempt to get medical help and reveal his problems was bound to land him in trouble. Later the Police who occasionally held him in Colombo, and nurses at the Colombo GH where he eventually got some treatment, well meaningly advised him not to talk about what had happened to him.

In a country that has accepted that torture is abhorrent by signing the international convention against it, there should have been meaningful steps to prevent its occurrence. Any official, whether police, medical, judicial, or even military, confronted with its occurrence, should have been obliged to report it and act against it through given channels. Instead, the whole system is geared to accepting it and covering it up. At the judicial level, complying with the culture of the PTA and ERs has led to a progressive degeneration of judicial functions, exacerbating ethnic and social inequalities.

The case above occurred at the tail-end of the regime responsible for the disappearances in 1996. Already pressure was being mounted on the Government to account for hundreds of missing persons in Jaffna and things were slowing down.

General Janaka Perera who had been in charge of 51 Division (Valikamam) had finished his term in Jaffna at the end of December 1996 and **General Lionel Balagalle** was taking over. In the next few weeks **General P.A. Karunatilleke** who was in charge of 52 Division was to take over from **General Srilal Weerasooriya** who was in overall command of Jaffna, and **Brigadier Chula Seneviratne** was to take over 52 Division. The year 1997 saw a drastic improvement with disappearances coming down to a small number. The victim above owes his survival to a slowdown brought about by pressure on the Government. It is hard to think of torturers drilling and driving nails into a person whom they expected to be released. In the matter of 'missing persons', the Government machinery has enough practice in getting away through sheer procrastination. A 'torture victim' on the other hand cannot be talked away by appointing sham committees. This victim gives us a graphic picture of what happened then in Jaffna behind closed doors and in isolated premises. The top brass certainly had a good idea of what was going on.

4. The State & Missing Persons

Although more than 300 persons taken into custody by the Army in Jaffna are acknowledged to be missing, the matter became a hot issue only after the allegations about graves in Chemmani. The reason is that a body excavated and identified admits a legal process. A person merely missing or a body unidentified does not. For example in the case of the Bolgoda Lake victims, the corpses are evidently unidentified. But the Police who had extracted confessions from STF men, announced at a press conference at the end of August 1995, that these same persons were killed at the STF HQ and gave graphic details of how they were killed. What we now have is a stalled legal process over the issue - virtually stalled for ever, with the killers on bail.

Out of the 550 Jaffna cases the Board of Inquiry had not traced, one may one day find that the odd person had been released and is now in Canada. But one is pretty sure after more than two years that a large number of them had been killed. There may only be a fraction of the remains in Chemmani, while most of the bodies are likely to have been disposed of in lavatory pits of vacant houses or buried in earth at the back of camps. This uncertainty enables the State to play conjuring tricks with the issue, doing nothing while giving assurances and letting things drag on. The Commission Report on Disappearances in the North-East during 1988-94 does not hold out much hope of accountability. A part of the reason is that there are no local organisations or political parties organising the people and helping them to persist. Anyone going too far with Human Rights to build up a mass movement would be marked by the LTTE. Mass movements are hard to control and are bound to start looking at wider issues. Although there are thousands who witnessed the arrests of 173 persons at Eastern University during September 1990, unlike at Embilipitiya not a single body was found. The Defence Secretary then claimed that only 31 were detained and they were all released.

The Commission sent lists of missing persons to the Army, which merely said that they had no records. But the Commission itself accepted that they were missing and lists of missing persons comprise a significant part of the Report. Relatively a few, and most of them low ranking, officers have been named. Some of the most obvious leads have been missed.

For example the disappearances from the Eastern University (159 on 5th September 1990) are well established. The letter written by then Secretary, Defence, **Air Marshal Walter Fernando** is available. **General Gerry Silva** visited the University 3 days later on the 8th, met leading persons in Batticaloa, implicitly accepted the arrests, did not contest the figures, and spoke to the effect that those detained were guilty! General Silva later became Army Commander and is now Ambassador to Pakistan. Brigadier (later General) **P.A. Karunatileke**, then at Valaichchenai, arrived for the meeting but did not say a word. Those detained had been taken towards Valaichchenai, then under **Karunatileke**. The Commission too has failed to question the leading figures implicated in this affair such as Fernando and Silva who had much explaining to do. [See our Report No.7 of 1991]

In the case of the Sathurukondan massacre (9.9.90) too the Commission names three captains **Warnakulasooriya, Herath and Wijenaiké**. Here 184 villagers were taken to a camp from their homes and set upon with swords and knives. Testimony about it came from one survivor (our Report No.8 of August 1991). This area is barely 3 miles from Batticaloa Town. Surely those higher up had to answer for this. The camp concerned was later identified as the Boy's Town camp where some remains were found.

Again in the Amparai area the Report gives an account of the grave nature of the violence by the security forces. But no officer has been named. In our Report No.4 we stated that three leading citizens from Thirukkivil including the RC and Methodist clergymen went to meet **Colonel Fonseka** who had led the Sri Lankan troops into Akkaraipattu

in July 1990. They asked him for some assurances. He told them that he would take their youth, screen them and release them. Having got an idea of the killings in Akkaraipattu, they did not trust him [see our Special Report No.3 of October 1990]. They quickly went southwards and met the STF column and found the officer **Ratnayake** who had earlier been in Thirukkovil, and invited the STF to take over before the Army arrived.

Colonel Fonseka had earlier led the advance into Kalmunai, where hundreds of youths were rounded up and killed. A professional man and his wife made a desperate bid to save their only son who was picked in a round-up. We quote from our Report No.7: "... The sentry put them through, thinking from their middle class bearing that the officer was known to them ... The officer (**Colonel Fonseka**) finally replied, "I will release him because he is your only son. If you had another son, I certainly would not release him". There was no question of whether he had LTTE connections. All that mattered was that he was Tamil. In judging the officer, it must be kept in mind that in an affair of low humanity, he came up at least to this level."

The officer is now major general. The Commission Report lists 342 disappearances from Kalmunai and Pandiruppu. The worst happened just after the Army arrived.

We had also reported on conditions at Plantain Point army camp, Trincomalee during 1990, when **Colonel Tennekoon** was in charge. Conditions were quite notorious. When prisoners were brought to the jetty, howling soldiers would receive them, hitting away with hammers and various gadgets. They were often persons randomly picked up because they were Tamil. One detainee, **Babu**, went insane after being hit on the head with a hammer and later died. An elderly retired teacher, **Ratnam Master** from Nilaveli was brought to Plantain Point for refusing to give cattle to home guards. He died there of an untreated septic wound from rubber being wound around an arm and set on fire.

The Commission questioned **Tennakoon** about scores of persons removed from Trincomalee Hospital and MC Heyzer Stadium, along with other cases. Colonel (now Brigadier) Tennekoon was recorded as telling them : *"I cannot say what happened to the records maintained by Brigadier (Lucky) Wijeratne. I cannot speak as the records were with Brigade Commander Wijeratne and operations were conducted by the late Wijeratne and Superintendent of Police Wijesekera, who is also no more"*. The Commission found this highly unsatisfactory.

This is about the furthest the Commission got in getting the State to respond in any particular case. It also illustrates the limitations and handicaps faced by such commissions. Had Civil Society and the Press been more conscientious, publicised the issues, written investigative books or reports and kept them alive, the Commission would have found its task easier. Our own reports reached a limited circle and then received little publicity in the newspapers. **'Someone Else's War'** based on these reports came as a book in 1994, in English and Sinhalese, by when it was received with the comfortable, but wrong, assumption that things had changed. It is hard for a Commission by itself to stir up gentlemen whom everyone takes for granted as distinguished public servants and heroes, and question them about complicity in mass murder.

By comparison the Commission Reports with respect to the Central, North Central, North Western and Uva Provinces [C] and Southern, Sabragamuva and Western Provinces [S] have come out as comprehensive documents. One reading these would get a clear picture of the nature, sources, political undercurrents and social effects of the violence.

Interim Report II of [C] tells us : "In some cases lists of persons appear to have been given by politicians who belong to the UNP. In most cases the evidence reveals that the persons involuntarily removed were either SLFP organisers or active supporters of the SLFP.

It seems that political opponents of the then regime were eliminated under the guise of crushing the **JVP**.

Interim Report IV of [C] names some of the leading politicians mentioned in connection with disappearances in the area under reference : " ... **F.D.Mahindasoma**, Chief Minister, NCP, **A.M.S.Adhikari**, Cabinet Minister, **H.G.P.Nelson**, MP for Polonnaruwa, stand out."

[S] cites examples pointing to the politicisation of the security services. One is the rise of **Udugampola** from IP in 1977 to DIG in 1988 over 180 others. Former IGP **Cyril Herath** is quoted : "*I saw plans to use the police force in the narrow interests of politicians. It was clear to me that alternative structures of command were being put in place within the police force for that purpose.*" The experience of **Daluwatte** the former army commander is cited to which reference will be made later.

An important lead that [S] tried to follow up was the disappearance while in police custody of **Tarzan Weerasinghe**, a key suspect, an event featuring prominently in the conclusions of the Vijaya Kumaratunga Assassination Commission. A sister of **Tarzan Weerasinghe's** told the Commission of having been informed by the ICRC of information given to them by a co-detainee that her brother had disappeared under CID custody in March 1990. The ICRC had refused to disclose to the Commission the identity of the witness.

Of the 8739 cases reported to [S], 8543 were males. In violence pertaining to the **JVP** era dealt with, 4858 disappearances were caused by State and paramilitary forces, 779 by the **JVP**, 59 owing to personal enmity and 1543 unknown.

One is immediately struck by a key handicap faced by the North-East Commission, apart from the lack of help from Civil Society. In the South a fair deal of the violence pertained to supporters of the SLFP and the Traditional Left, presently in government. The Commissions

were therefore able to use trusted police officers to conduct investigations and party supporters to give information without fear.

This was not possible in the North-East. The victims largely belong to an ethnic group having next to no influence in the state structures, and in this case there is hardly anyone in the Police or the Army motivated or willing to go out of the way and risk being branded a traitor to ferret out information about the incidents. Whenever confronted with official obfuscation, the North-East Commission was up against a blank wall. We are now left with several absurdities.

The most precise and succinct report on the Eastern University disappearances, clearly indicating where the blame lies, is contained in the Human Rights Task Force Report (August 1992 - August 1993) issued by the Chairman Justice JFA Soza.

The HRTF Report said that many of the soldiers involved came from HQ 8, Valaichenai, then under **Brigadier Karunatileke**. The officers implicated are **Captain Kaluaratchi**, Chenkalady (Kommathurai); **Munas** alias **Richard Dias**, NIB Batticaloa; **Major Majeed**, C.O., Valaichenai and **Major Mohan Silva**, Batticaloa. The Report also said that an SLBC news bulletin on 7th September (two days later) announced that 148 persons from the EU camp were taken into custody by the Army for inquiries. In response to a letter from GA Batticaloa about 22.10.90, **Major S.Seneviratne** of HQ 8 Brigade Group, Valaichenai Paper Mills, said in his reply of 29.10.90 that during the troop round up over 200 inmates of the EU refugee camp were questioned, but no one was detained. Both these official versions contradicted each other and the Defence Secretary's claim referred to. Further, the Defence Secretary's letter gave a list of 31 persons whom he said had been released within 24 hours. No 18 in the list was **N.Stanley** (35) of Vantharumoolai. **Stanley's** wife appealed to the Presidential Mobile Secretariat held in Batticaloa during July 1993 about her husband. She later got a reply on cyclostyled paper, saying that he was never taken.

A clear case had been made to begin prosecutions. But **Justice Soza**, a former supreme court judge; complained a year later in his next **HRTF** report that no action had been taken. Now we have another commission report, four years after Soza's, referring to the same matter again, but with less clarity. So much for the institutional memory of the AG's department. One wonders whether these reports are meant only to keep the **AI** and **UNCHR** dogs from barking, but with no action intended.

The recent N-E Commission Report, which includes a memoir from Patricia Lawrence of Denver Law School, earlier a researcher in Batticaloa, contains a fairly full account of the Sathurukondan disappearances. After taking the survivor, **Krishnakumar**, to the area in a vehicle and, not surprisingly, finding nothing, Colonel (now Brigadier) **Percy Fernando** (then in Batticaloa HQ 3) got the chairman of the Batticaloa Peace Committee, to sign a statement that there is no evidence of a massacre. The **AI** pursued the matter, **General Wanasinghe**, earlier army commander and then defence secretary promised a prompt and thorough investigation, but nothing happened. So here it is, 184 villagers taken by the Army just disappeared into thin air and some bones turned up later in the nearby Boy's Town, then used by the army. The army captain, **Warnakulasooriya**, then in charge, who was questioned by the N-E Commission, completely denies it. **General Wanasinghe** to whom the **AI** wrote and **Brigadier Lohan Gunawardene** in Batticaloa to whom (in 1994) it fell to inquire, did not deny it, but never reported their findings.

The Brigadier in charge of Batticaloa HQ 3 during the Sathurukondan massacre was **A.M.U. Seneviratne**, later major general and now retired. One might also mention here that **General Gerry de Silva**, who was in charge of the East then, visited the Eastern University the previous day (8th September 1990) and implicitly justified the disappearances. He would also have passed through Sathurukondan on his way there from either Batticaloa or the airport, a village not knowing the harrowing fate that awaited it the next day.

In Pottuvil, where the Commission lists 154 disappearances from this area, the refugees who fled to Komari were given assurances and asked to return by the STF at July end 1990. Shortly after they returned 120 persons were taken in a round up by the STF and Police [our Special Report No.3 of October 1990]. Thereafter billows of heavy smoke were seen rising from the local police station. One person who should be held directly answerable for this outrage is **Lionel Karunasena** (SP, later DIG), Commandant STF. The STF was then directing operations from its centre in Arugam Bay, just south of Pottuvil. The victims were from a community of farmers and labourers, who are still living under oppressive conditions. No one speaks for them. If they cannot bear it, the **LTTE** is there to use them. As for the outrage - no investigation, no case.

All these cases from the North-East are similar to the disappearances in Jaffna, well-documented and for the most part well-witnessed. The ones in the East have the additional feature of being the disappearance of more than a hundred people in each case, within a matter of hours. In Sathurukondan, many of the 184 who disappeared were women and children (69 of them 12 years and under). As public as the incidents were, and the agents identified, the main legal drawback appears to be that no bodies have been found (only a handful in Jaffna till now). Burning bodies now is asking for trouble, but in the early 90s in the East, it was common. Unlike in the South, information from inside the Forces may be long in coming. During the 1995 peace talks, a member of the Forces came to a Sinhalese weekly and unburdened himself on cannibalistic orgies with prisoners in the East that he had witnessed, in which he associated the famous man from NIB Batticaloa. But once the war resumed he stopped visiting the weekly.

Another case of mass graves in the North that has not received much publicity concerns those in the Islands, especially Mandativu. This area was taken by troops under **General Kobbekaduwe** in August 1990, and has since been under the control of the Government. Up to

125 civilians were killed after capture (our Special Reports 1 & 2 of September 1990). Civilians who went back to their homes near a church in Mandativu (Philip Neri's Church), found bodies in wells. The area was then sealed off.

By present trends all these cases of mass killing will never have a judicial hearing and will go unpunished, but the Government will never say so openly. To try them may require new laws which would lead in effect to a war-crimes tribunal. These cannot be treated as individual crimes, although a small handful of those missing may have survived by some freak chance (see appendix to this volume). But after four or five years there can be little hope. Some procedure similar to those for issuing death certificates for disappeared persons must also be made applicable for judicial hearings.

Neither should the failure to locate and identify the corpses allow the security forces to make a plea for the benefit of the doubt in the cases where arrest or abduction is established beyond doubt. There had always been agreed procedures for the release of those detained. In Batticaloa the Peace Committee used to be called to witness a release. This was well before the Eastern University abductions. In Jaffna it used to be village headmen or the courts. When an agreed procedure for release was not observed the onus of proof rests with the State. Failure of the Forces to maintain records of arrest should be made punishable rather than allow it to become a means of evasion.

4.1 Concerns about investigations into graves in Jaffna

Since the disclosure made in Court on 3rd July 1998, a press release from the Presidential Secretariat was published in the Press on 16th July '98. It said that the investigations into alleged mass graves at Chemmani had been handed over to the Human Rights Commission.

It is also well known in Human Rights circles around the world that the Human Rights Commission of Sri Lanka (**HRC**) had written to **Mrs. Mary Robinson**, UN High Commissioner for Human Rights (and former president of the Irish Republic), seeking the assistance of the Office of the High Commissioner for Human Rights in the identification of human remains in the context of investigations currently undertaken by the **HRC**.

In its reply of 27th August the **OHCHR** in Geneva had expressed its willingness to assist in this matter, 'with a view to ensuring that the identification and investigation of corpses are carried out in accordance with the established international practices and standards'. The **OHCHR** however wanted the **HRC** to ascertain the following: Approval from the authorities of Sri Lanka; Free access, protection and safety of personnel on the site of excavation and elsewhere; Guarding of the sites and equipment; Responsibility for the mortal remains of victims after identification including burial. The letter was signed by **Rita Reddy**, Chief, Activities and Programmes Branch.

Following this there was much talk and speculation about the **OHCHR** not having heard again from the **HRC** for close upon 8 months. We reliably understand that the **HRC** had written to **President Chandrika Kumaratunge** in September, conveying the **OHCHR**'s offer and calling for her response in respect of the conditions. **President Kumaratunge**'s office was sent reminders, but to no avail. Letters and reminders were also sent to the Minister of Foreign Affairs and the Attorney General, without receiving anything concrete.

Here we have a situation where the President's appointment of a Human Rights Commission is negated by apparent obstruction from her own office. The purpose and credibility of the **HRC** are placed in question if the mere fact of failure to receive a reply from the President can throw it into limbo, after having done its preparatory work.

This is the first time there has been testimony about the remains of disappeared civilians in the North - East, and delay could place the

location of remains in jeopardy. Corporal **Rajapakse's** terms are unambiguous : *"Take me to Jaffna and dig where I point in my presence"*. This too would ensure that there would be no digging in the wrong place and finding nothing. Delay also opens the possibility of something happening to him, or for some reason his going back on his earlier resolve - a resolve he had expressed two years ago in early 1997 before the trial commenced. This too was no doubt known to the state apparatus quite early.

On 5th March a team including a magistrate, a forensic scientist, and a representative from the AG's office went to Jaffna and collected a soil sample, but without **Rajapakse**. It has now been announced that **Rajapakse** will be taken to Jaffna on 15th June. There are bound to be further inexcusable delays. The forensic scientist from Galle who went on 5th March has said that he would not be able to go to Jaffna on 15th June owing to an engagement abroad. In the meantime willing foreign experts have been prevented from coming, who would also have provided valuable training to practitioners in Jaffna who are quite cut off. No word has yet been given in response to the offer of foreign assistance. Admittedly, the task of collection and identification would be a delicate one, and local forensic practitioners could only gain by having those from abroad with wide experience. Another group suggested has been the Boston based "**Physicians for Human Rights**", whose teams of pathologists, physical anthropologists and archaeologists have worked on grave sites in El Salvador, Argentina, Bosnia, Cambodia and elsewhere. This gives a picture of the task involved.

There are also some very real concerns about the Attorney General's department handling the matter of Jaffna graves. We have no problem with their academic credentials. But we have a problem with their job description, training and mental habits that have set in over the years. This particular combination of attitudes to Tamil civilians, Tamil suspects, the security forces and interests of the State go back to the PTA of 1979.

In the two Welikade prison massacres of July 1983, the evidence at the magistrate's inquests was led by **DSG Thilak Marapone** assisted by Senior State Counsel **C.R.de Silva**. Many important and obvious questions were not posed, and the evidence was led in a selective manner to support the conclusion that the Tamil suspects were killed in spontaneous prison riots. The case was not pursued. At present **C.R.de Silva** in the DSG (Deputy Solicitor General) dealing with criminal matters. Among the routine tasks of the AG's department is to prolong the detention of Tamil suspects by framing charges which any judge with professional self-respect should throw out in the first instance. A common one is that the suspect knew the whereabouts of some terrorist, but failed to inform the Police. It is the sort of charge that the suspect confesses to, whether true or not true, after being harassed by a series of detention orders under the PTA, and a trial that the prosecution drags on indefinitely.

We now take some cases pertaining to Tamil victims that we had earlier touched upon. We give below observations from Justice **J.F.A.Soza's** 2nd HRTF Report (10th August 1993 - 10th August 1994). **Justice Soza's** remarks pertain to inaction regarding cases investigated by him and presented in his 1st report :

Eastern University disappearances of September 1990: *"The perpetrator's of this dastardly crime have been identified and named by me in my previous report, and although credible evidence is available, no inquiry whatsoever has been initiated into this incident, where as many as 158 persons were arrested and have disappeared and must be presumed to have been killed extrajudicially. Parents and relatives and the public of this area are living in anguish over the loss of their loved ones. The State remains unmoved and as inscrutable as the Sphinx."*

Sathurukondan, 9.9.90, 5.30 PM, where among the 184 victims were 9 babies, one as young as 3 months: *".... One of the victims claimed he saw the women and children being separated from the*

men. The men including himself were lined up and shot and then burnt... The Chairman of the Batticaloa Peace Committee is one of those who initiated the inquiry. But he had been overawed into signing a statement [by Colonel Percy Fernando] that no such incident took place... It is said that 68 children in all were killed. It was a veritable massacre of innocents. The International Community and Amnesty International have expressed grave concerns about it and have alerted the Government. How can we claim to be a civilised society and allow this incident to pass without a credible investigation?"

It is close to 5 years since **Justice Soza's** comments were written, and their application remains unchanged. They are a stinging indictment of the legal process in this country for which the AG's department must take a considerable part of the responsibility.

The case of Bodies in Lakes strangled at STF HQ, mid 1995: The revelations by detained personnel were presented at a press conference by the IGP. In February 1996 the suspects were released on bail. Later in the year the Attorney General told the Press (Sunday Leader 1.9.96) that foreign experts had been engaged to identify the bodies and that the matter would be concluded soon.

About the last press reference to the matter was made in a Sunday Times report of 4th May 1997 by Shyamal Collure and **S.S.Selvanayagam** under the title 'Government Analyst's Department report available shortly'. It said that the case involving 22 STF personnel had been taken off the roll call at the Colombo Magistrate's Court recently. **Vasudeva Nanayakkara MP** was quoted accusing the AG's department of non co-operation in the proceedings. The AG's department, the report said, maintained that the delay was due to the non-availability of two reports. One from the GAD and the other from forensic experts of the University of Glasgow. Other sources were quoted saying that the proceedings could have been expedited only

if one or more of the AG's department, the Police and the Courts, had requested it. The GAD, it said, did not in general do an 'out of turn' investigation unless a request was made.

All this suggests that the Attorney General had been misleading when he said 8 months earlier that the matter would be concluded soon. Now it seems to have gone out of the window.

We now take up a case where things moved exceptionally fast at the AG's department and the Police even if justice was left limping way behind. It is a case of a powerful interested party.

4.1.1 The Casino Murder:

In the early hours of 1st May 1997, two Papua New Guineans **Joel Pera**, the expatriate rugby coach of Havelocks, and his friend Gideon Raka joined some local high society youths at Carlton Casino, Colpetty. The local boys who included **Deputy Defence Minister General Anurudha Ratwatte's** son **Lohan**, all apparently a bit high in spirits, quarrelled with **Joel Pera** on a trivial matter. Suddenly Pera was on the ground being attacked by a gang of local youth and security men including two from the casino security. Someone pulled out a gun and shot Pera dead.

It was a case of immense diplomatic interest. **Justice Minister G.L.Peiris** promised to expedite matters by holding a trial-at-bar. But the Police started doing funny things from the start. Although **Lohan Ratwatte (LR)** was named as being on the scene of the crime by several witnesses, **T.B.Dissanayake**, DIG Colombo, was very reluctant to record a statement from him. Witnesses who mentioned **LR's** presence at the scene were abused by the Police interrogators. **Srilal**, a detained witness, in his fundamental rights application described

LR as a tall person wearing a T-shirt who was at the scene of shooting. **Gideon Raka** described the gun man as tall 28-29 years and wearing a striped T-shirt. But, being himself shot at and assaulted, he soon had to flee.

Daniel, an electrician called in for some repairs, who was able to observe as an outsider, placed **LR** on the scene, but described the gun man as balding and not tall. The description suited **LR**'s security guard, **Jagath**. Several of those at the scene of crime left with **LR** shortly in his car. They were **LR**, **Jagath**, Bobby, who was another youth at the scene of crime, and three security men of **LR**'s. No one else there was known to have had weapons apart from **LR**'s party. There was no suggestion that **Pera** who was being attacked by a mob in a cowardly manner was in any position to fight back, leave along having a gun. What had transpired was in general terms fairly clear. **Daniel** upon giving his testimony was assaulted by the Police.

LR surrendered to the Police more than three weeks later. Although **LR** and his security man **Jagath** were principal subjects for investigation, there was no attempt to apprehend **LR** early and subject him to standard tests for the use of weapons. An identification parade was held in early June, where **Kumar Ponnambalam**, the lawyer representing **Pera**'s family complained that he had been shut out. Certain questions, he said, were posed to the witnesses, and the answers were recorded, but not the questions, which evidently were of a leading nature. But other essential questions were not posed. The file is said to have been sent to the AG in a matter of hours, who recommended **LR**'s release. The case has now gone out of the window, leaving another huge blot on Sri Lankan justice. [Most of the facts of the case can be found in the Sunday Leader, 11th and 18th May 1997.] Well, if **Joel Pera** had been a Westerner, the Police and the AG's department could hardly have acted in this way. This is one murder for which no one will be hanged.

In the Chemmani case, several top brass of the Army and the Deputy Defence Minister are interested parties. Given the record above, there

is serious concern as to whether the Police and the AG's department will do a professional job. One is after all more likely to look for aspects of the evidence to make the connections, if one is motivated to do so. If not, connections are unlikely to be found, even if they are staring at one's face.

Another mass grave has recently been discovered at Duraiappah Stadium in Jaffna. The bodies could hardly have been buried there before late 1987. The Indian Army was there until the end of 1989. The **LTTE** was in control of the area from September 1990 to October 1995. Since then the Sri Lankan Army has been in control. A crucial factor in the determination of the perpetrators is the age of the remains. The victims too need to be identified. We cannot claim the dignity of being a people unless we are interested in questions of our recent history and in questions of justice. The vocal elements in Jaffna are for the most part silent on this first of mass graves to come to light. They will become vocal only when they are sure that these remains are not those of victims of the **LTTE**.

At present who the perpetrators are is a very open question. The investigation too must be seen to be open-minded. The Magistrate has been allowed to exhume. But one of the very basic steps which should have been taken was to have issued a public notice calling upon persons who have reason to believe, or even suspect, that the graves may contain the remains of persons in whom they have an interest, to come forward. This was not done. In the absence of such a step the field has been left open to interested speculators. The forensic tests alone will not be satisfactory since the gaps between the departure of one armed party and the arrival of the next are small. It is public knowledge and testimony that will be the determining factor. Thus the present excavations at Duraiappah Stadium are neither satisfactory nor professional.

Moreover the situation in the North-East is one where the ordinary people can speak out only at their own peril. They know who killed

the elderly widow whom the people elected mayor of Jaffna, her successor, and many other harmless persons who were elected as local councillors. The Magistrate who is handling the exhumations at Duraiappah Stadium can work when the **LTTE** allows him to work, and must stay at home when the periodic warning letter comes.

There are several more mass graves in the North-East. The dignity of the people demands that they should be investigated impartially. If the manner of investigation of the Chemmani graves is called into question, there can hardly be a credible investigation of the other graves afterwards. There is no alternative but to accept the offer of the **OHCHR** and also invite others with experience and a reputation for professionalism.

4.2 Unanswered Questions About 1990 Operations in The East

If there can be no justice, it would make a mockery of accountability and the rule of law. And it is bound to happen again, as what was deemed over in 1993 when the worst in the East was past, happened again in Jaffna in 1996. Moreover, if bringing the killers to book turns out to be an elusive quest, future generations may see these events as an epic ghost story.

A particular gut reaction to the claims of a mass grave in Chemmani came from some normally balanced writers in the South. This was a demand to parallelly excavate the mass grave at Rufus Kulam, off Thirukkivil, where about 300 policemen, who surrendered to the **LTTE** on assurances, were cynically murdered in cold blood and buried as a calculated provocation. This was on 12th June 1990. The predictable brutality towards the people unleashed by the State sent a windfall of recruits into the **LTTE**'s depleted ranks. This gut reaction also shows how difficult it is for many in the South to see issues for what they are.

There is no mystery about the Rufus Kulam graves. The bodies were found. A procession of trucks with security personnel, religious personages and local community leaders went into the interior to conduct observances at the site in early 1991. On the way security personnel in one vehicle pulled in some peasants they were passing and knifed them. This had held up the procession for some hours.

The Chemmani graves are an entirely different matter. The gut reaction mentioned loses sight of the State as one that ought to be multi-ethnic and uphold the law impartially. If one tries to avoid the issue of Sinhalese troops having unlawfully killed Tamil civilians by trying to balance it with Tamil Tigers breaking their word and killing Sinhalese, then the argument for a united Sri Lanka is lost.

During the early 90s when violations by the State seemed part of government policy, we did also record instances where officers of the security forces maintained discipline and acted with concern for the civilians. Among these are :

- * **Colonel Halangoda in Kaluwanchikudy** (1990 end and early 1991 in Report No.7) : This was about the first time reprisals against civilians were avoided as a matter of policy.
- * **Major (now Brigadier) Rockwood** was posted to Monkey Bridge camp on the Trinco-Colombo Road about September 1990, after which disappearances at that point stopped (our Report No.10).
- * **Inspector Vahalathanthri** of Akkaraipattu Police (early 1991) : He took over a police unit where discipline was at a low ebb, enforced respect for civilians and had to live through a mutiny. (See Report No.7)
- * **Brigadier Srilal Weerasooriya** (Mannar, February 1991) : Notable improvement of discipline. (Reports 7 & 9)
- * **Brigadier Kalupahana and Colonel Tennekoon** in Vavuniya : Notable enthusiasm shown by civilians, with tremendous easing

of tension during their tenure in 1992 & 93. During this time Colonel Tennekoon's reputation became the reverse of that during his Plantain Point days. His subsequent reception in 1995 as Brigadier in Mannar too was enthusiastic. On occasions **Brigadier Tennekoon's** direct intervention at tense moments ensured the protection of civilians. There was considerable anxiety at his impending departure. (See Report No.12)

We now come a particular question which highlights the lack of information, objective journalistic coverage and analysis of events. For example we do know that during the **JVP** uprising in the late 80s, lists of persons (often democratic opponents) were given to coordinating officers of regions who had been told, "*Those involved in subversion must attain 'Nirvana'*". The Army and STF advanced into the East in June 1990, after **President Premadasa** declared that what happened to the **JVP** will happen to the **LTTE**. What then happened strongly suggests that the security forces were acting on instructions to thin down the Tamil youth population. Against the **JVP** the Government had several sources of information. But this was not possible against the **LTTE**, and massacres of youth picked up at random were quite regular. The **LTTE's** calculated attacks on Muslims enabled the Government to make the Muslims scape-goats for the killing of Tamils, by taking armed Muslim home guards on round ups. We also do know that **Deputy Defence Minister Ranjan Wijeratne** was again closely involved with the developments.

We may also mention here the observation made by a member of one of the Southern disappearance commissions. She commented on the steep rise in killings by the State forces when the tide turned against the **JVP** during the final five months of 1989. Little or no discretion was employed in the choice of victims in selected rural areas. It was deliberate terror, a way of asserting control and showing who is boss.

Thanks to the **LTTE's** machinations, these same troops entered the East almost immediately afterwards, with no possibility of employing any discretion in arrests.

But we know very little about the inner workings, the role of the cabinet, who decided strategy and what orders were given. We do also know that it was a bloody fiasco of incompetence which left the **LTTE** much stronger. In any self-respecting democratic country journalists and analysts would have tapped inside information and written books. Yet in this country where papers are full of articles about ancient history and historical claims, we are almost equally in the dark about insidious developments in the South itself. This silence about crucial events in recent history is part of the pathology representing post-independence political culture which encourages impunity. This will be taken up in a coming series commemorating 50 years of the Universal Declaration of Human Rights. ◆

Appendix

Two cases of Disappeared Persons Subsequently Seen

STANLEY ARUNACHALAM

Stanley Arunachalam was the minister (pastor) at Grace Faith Church, Trincomalee. During the outbreak of war in June 1990 he was visiting his parents in Pusellawa in the Hill Country. He had recently married and his wife was expecting their first child. He tried to return to Trincomalee, and was last seen near the Kandy bus stand from where there are direct buses to Trincomalee. He has since been missing, though he had absolutely no **LTTE** affiliations.

In late 1992 **M** (18 years) was travelling from Valaichenai to Colombo by train. This was after the **LTTE** had attacked the Muslim village of Alinchipotana, and there had been reprisal attacks on a Tamil village. He was arrested by the Police who claimed that he had been pointed

out by a Muslim, and they accused him of taking **LTTE** hit men to Colombo. They found in his bag a group photograph taken with Minister S. Thondaman at a school function at St. Joseph's, Maskeliya. Claiming that Thondaman was an **LTTE** agent, he was taken off the train at Mannampitiya, questioned, and then sent to prison in Anuradhapura.

According to him when the **ICRC** once came, he was sent to the kitchen, as was done earlier, when they arrived, but he surreptitiously contacted them by going to the toilet. The **ICRC** came again in the afternoon, took his particulars and informed his periamma (mother's elder sister).

After that **M** was allowed out to clean the prison compound. Once his companion pointed to a building they knew as 'Upparima' and said that proven **LTTE**ers were held there, and told him not to look in that direction, for a mean, unpleasant man would come out of the kitchen with a knife and threaten them.

One day while cleaning the compound, **M** rested under an 'Aalai' tree, when he was joined by a man who, after cleaning toilets, came with bucket and a wire brush. He was about 5ft 2 inches in height and explained that he was **Pastor Stanley** from Trincomalee and that he had been taken in during 1990 when his wife was expecting a child. According to him, he was pointed out as **LTTE** by someone who had a grudge against him after leaving Kandy railway station.

Stanley wanted **M**'s help when he got out of prison and explained that he had been badly tortured and had no hope of being released. He told **M** that if anyone saw them speaking and questioned him, he should say that they were discussing the food. Stanley also said that whenever the **ICRC** arrived, he was in a group of persons who were always taken into hiding. Another thing he said is significant: that there were many Tamils who were brought there and taken away within a few days. When they parted, **Stanley** told **M** that he would give him a letter to be delivered to his wife when he is released.

M was released five days later. For two days before his release he was not allowed out into the compound, and so left without seeing **Stanley** again. **M** later met people close to **Stanley**, and his story tallied with **Stanley's** background. He also identified Stanley from a photograph shown to him. All this was communicated to the **ICRC** who tried hard. **M** was never seen again. His widow and eight year old daughter, whom he never saw, now reside in Trincomalee.

The Slave

S was a youth detained by the Army in a provincial town in July following the outbreak of war in June 1990. About a year later, in October 1991, his father saw him near an army vehicle that was parked outside a doctor's dispensary. The father who went towards his son, was signalled by the latter to stay away. The parents have reliable information that the son is being used as a slave craftsman.

In this instance the name of the NCO who arrested him, the number of the vehicle in which he was seen and the name of the officer using the vehicle at that time are all known. His probable domicile now is said to be an army camp in the South.

Such cases are not isolated. There was the case of **Kumar**, a domestic of Hill Country origin, who was detained in early 1997 in Jaffna. The Army announced through the newspapers that he was in their custody and would be released. When a relative of his employer went to collect him, the Army said that they had not taken him.

The late **Trincomalee MP A. Thangathurai** had received complaints from ex-detainees that they had been taken to the South to work on a new house being built for a one-time brigade commander for the area. In some of the cases, such as **Stanley's** above, their problem may be that they had seen too much. ♦

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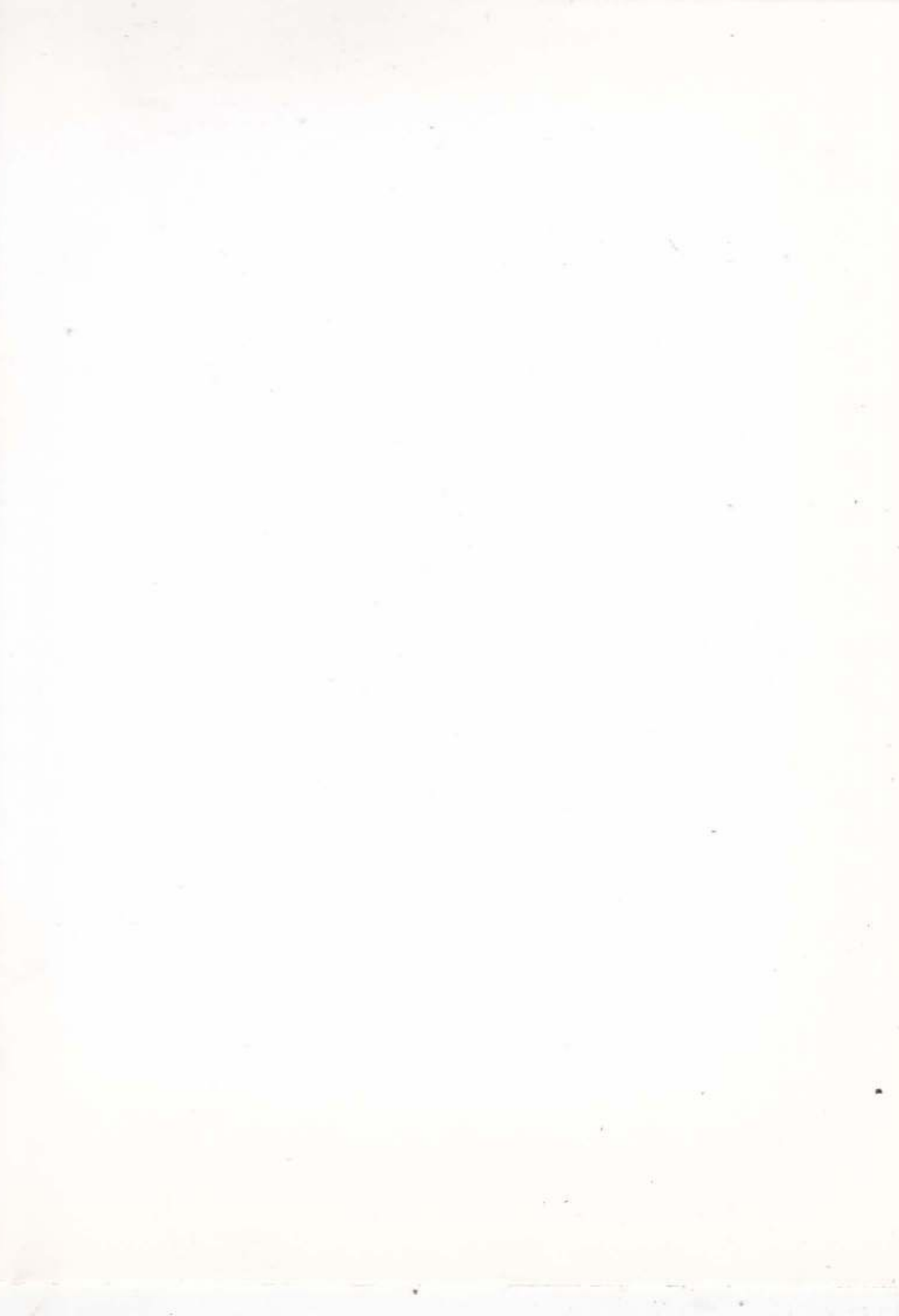
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.....The **Krishanthu Kumarasamy** case was one where, for those who care to see, far too much was revealed than the Defence establishment bargained for. Primarily it was not a case of a few bad apples, but mainly the result of institutionalised violence of the State, which did not understand the limits of impunity that could be covered up.

The victims of the incident were not just **Krishanthu**, her friends and relatives, but also the families of servicemen implicated in the case - wives and mothers denied support, whose lives had collapsed in shame, and children too young to understand the stigma they would have to live with.

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