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Torture and Lawless Law Enforcement in Sri Lanka¹

A shadow report to the UN Committee Against Torture
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¹ . This report has been prepared in cooperation with Asian Indigenous and Tribal Peoples Network.

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1. Introduction and Executive Summary

In its second periodic report (CAT/C/48/Add.2 of 6 August 2004), the government of Sri Lanka paints a rosy picture about its efforts to combat torture. If one were to go by the report of Sri Lankan government, the government has been successful to combat torture in the country, which has further been bolstered by the stalled peace process with the Liberation Tigers of Tamil Eelam (LTTE).

In reality, torture forms an integral part of lawless law enforcement in Sri Lanka. Impunity further institutionalises torture. Attempts to establish accountability are sabotaged. Nothing could prove it better than the failure of the Sri Lankan government to identify the culprits for the attempt to burn down the headquarters of the Human Rights Commission (HRC) of Sri Lanka on the intervening night of 11 and 12 October 2005.² The needle of suspicion primarily pointed towards the police as over a hundred police officers - mainly from the Western Province - including senior officers, have been under investigation by the HRC.³

This was not the first instance to destroy evidence with the acquiescence of the State. During the hearing on 14 June 2005 of the Kumarapuram massacre of 11 February 1996 in which 24 Tamils were shot dead by the Sri Lankan Army,

State Counsel Mr. S. Halimdeen told the Trincomalee High Court Judge that all material evidence, including weapons allegedly used in the killing of Tamil civilians in the Kumarapuram massacre, were destroyed when the office of the Government Analyst in Colombo was gutted by fire in 2004.⁴

Certainly, State of Sri Lanka showed unprecedented flattery by enacting a law having the same name as the Convention Against Torture i.e. the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (CATA), No. 22 of 1994 of Sri Lanka. Yet, the definition of torture under the CATA does not conform to Article 1 of the Convention Against Torture. Among others, it excludes inhumane and degrading treatment as a form of torture, but torture is allowed under different laws.

Sri Lanka also extended invitation to the members of the UN Committee Against Torture to visit the country in 2002. But it has failed to withdraw reservations to Article 21 and 22 of the CAT or take adequate legislative, administrative and judicial measures to stamp out torture.

The Supreme Court continues to remain out of reach of those who are victims of human rights violations in view of the restrictions imposed by Article 126 of the Constitution. Under this article, petitions against violations of fundamental rights can only be filed with the Supreme Court, which is based in Colombo, thereby restricting the access to justice to the poor, as many simply cannot afford to hire a Supreme Court

² . Sri Lanka: Launch Independent Inquiry into attack on National Human Rights Commission, <http://www.alertnet.org/thenews/newsdesk/HRW/d68eaa7209c26a2ecc4937974725>

³ <http://www.ahrchk.net/statements/mainfile.php/2005statements/361/>

⁴ . Kumarapuram massacre case inquiry fixed, Tamil Net, 9 November 2004

lawyer. There is also one-month time bar, which depends on the interpretation of an individual judge or bench, to file petitions. And a human rights complaint may be made to the Supreme Court only by the victim or by an attorney-at-law on his/her behalf. This excludes the possibility to pursue justice for violations of fundamental rights on behalf of the dead and the missing.

When the judiciary takes action, the police do not take appropriate measures. The Inspector General of Police opined that 106 police officers, who have been charged for serious criminal offenses and interdicted before Sri Lanka's high courts should be allowed to continue at their posts until they are proven guilty.⁵

The Human Rights Commission remains spectacular on paper. But it has been hamstrung by the lack of transparency about the complaints, inadequate powers and resources. On 27 September 2004, Mr. Ruwan Chandrasekera, an officer of the Human Rights Commission office at Jaffna, was assaulted by police from the main Jaffna Police Station while investigating a complaint from a detainee's family about incommunicado detention.⁶ When the staff of the HRC can face such assault, how would the common citizens be treated?

The National Police Commission (NPC) established in 2002 has also failed to address human rights violations by the police. It is none other than the Chairman of National Police Commission, Mr. Ranjith Abeysuriya who complained that Sri Lanka's police

chief had not been cooperating with the authorities to investigate complaints against police officers. Mr. Abeysuriya also lamented that the NPC does not have powers as that of the Human Rights Commission to investigate complaints against police officers.⁷ The NPC serves as a glorified post box whose effectiveness depends on the goodwill of the police administration, and not its effectiveness.

The use of torture including rape and other sexual violence, to extract admissions and confessions is common in Sri Lanka. The methods of torture commonly used by the police in Sri Lanka include beatings, often with wire or hose, electric shock, the suspension of individuals by the wrists or feet in contorted positions, burning, slamming testicles in desk drawers, and near-drowning. The victims are also forced to remain in unnatural positions for extended periods. The police also place bags laced with insecticide, chili powder, or gasoline placed over their heads. In 2004, 13 deaths occurred in police custody.⁸

Torture is also linked with disappearances. In its fourth periodic report to the UN Human Rights Committee, Sri Lanka stated that over 27,000 persons have disappeared at the hands of the Sri Lankan security forces.⁹ The government has failed to take effective steps against the perpetrators. In its second periodic report to the

⁵. <http://www.ahrchk.net/statements/mainfile.php/2005statements/357>

⁶. <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

⁷ . Police torture: 200 complaints, The BBC Sinhala.com, 19 July 2005 http://www.bbc.co.uk/sinhala/news/story/2005/07/050719_npc_igp.shtml

⁸. <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

⁹ . CCRP/C/LKA/2002/4

Committee Against Torture, Sri Lankan government states that only 12 security personnel have been convicted out of the 2095 cases that were recommended for action to the Attorney General.

Many of the Tamil asylum seekers who were refouled to Sri Lanka from European countries have been subjected to torture during their detention.

There are few mechanisms for a prompt and impartial investigation into allegations of torture. When a few cases are taken up, there is willful delay by the police.

There is also no protection for witnesses. Witnesses have been targeted.

The mechanisms for redress depend on the whims of individual judges. Courts have granted awards ranging from approximately \$142 (14,200 rupees) to \$1,825 (182,500 rupees). In some cases, the government did not pay fines incurred by security force personnel found guilty of torture.¹⁰

Conclusions and recommendations:

On the surface, Sri Lanka cooperates with the Committee Against Torture but it has failed to take up appropriate measures to implement the recommendations of the CAT. Ultimately, the government uses the cooperation with UN mechanisms to show its commitment without taking concrete measures to improve the ground situation.

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¹⁰. <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

Network make the following recommendations to the Committee Against Torture for possible inclusion into the Final Concluding Observations.

Subjects of concern:

The Committee Against Torture should express concern about the following matters:

- a) Inordinate delay in the submission of the second periodic report;
- b) Non-recognition of the competence of the Committee Against Torture to consider communications made in accordance with articles 21 and 22 of the Convention;
- c) The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (CATA), No. 22 of 1994 of Sri Lanka does not conform to the definition of torture as provided under Article 1 of the Convention;
- d) The lack of constitutional reforms and restrictive access to the Supreme Court under Article 126 of the Constitution of Sri Lanka;
- e) The lack of adequate powers, resources and transparency of the Human Rights Commission of Sri Lanka and attempt to burn down the office of the Sri Lankan Human Rights Commission;

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- f) The lack of adequate financial resources and investigative powers of the National Police Commission established in 2002;
- g) The declaration of the State of Emergency on 13 August 2005;
- h) The lack of prosecution for alleged perpetrators of human rights violations including torture, disappearances and sexual abuse;
- i) The failure of the State party to provide in every instance prompt, impartial and full investigations into the numerous allegations of torture reported to the authorities, as well as to prosecute alleged offenders, as required under articles 12 and 13 of the Convention;
- j) The lack of effective mechanisms for redressal; and
- k) The absence of statistics and other information regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender, ethnic group, geographical region, and type and location of detention.
- Network also make the following recommendations to the Committee Against Torture for possible inclusion into the Final Concluding Observations:
- a) Withdraw the reservations against articles 21 and 22 of the Convention.
- b) Amend CATA to ensure that definition of torture complies with article 1 of the Convention and absolutely prohibit torture;
- c) Amend Article 126 of the Constitution of Sri Lanka to enable the High Court and the Magistrate's courts to deal with the complaints of violations of fundamental rights, to repeal 30 days time bar to file petitions and to enable filing of petitions on behalf of those who might have died or disappeared; and if necessary, consider developing Technical Cooperation Projects with the Office of the United Nations High Commissioner for Human Rights to train the High Court and Magistrate Court judges for dealing with petitions on the violations of fundamental rights;
- d) Provide adequate powers and resources to the Human Rights Commission of Sri Lanka and identify the culprits who tried to burn down the HRC office in Colombo and ensure their prosecution;

Recommendations:

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- e) Ensure that interrogation methods prohibited by the Convention are not utilized by the security forces;
- f) Strengthen the NPC by providing adequate resources and investigative powers to prevent the crime of torture and other acts of cruel inhuman or degrading treatment or punishment, and institute effective complaint, investigative and prosecution mechanisms relating thereto in view of the numerous allegations of torture and other ill treatment by law enforcement personnel;
- g) Grant effective access to appropriate rehabilitation and compensation measures to all victims of torture and ill-treatment;
- h) The State party should report on the prosecution of the persons responsible for disappearances;
- i) The State party should ensure that those who are returned or extradited to Sri Lanka are not subjected to torture; and
- j) The State party, in its next periodic report, should provide statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, *inter alia*, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation.

2. Article 1

Nothing could be more flattering than enacting a law having the same name as the Convention Against Torture i.e. the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (CATA), No. 22 of 1994 of Sri Lanka. Yet, flattery could be deceptive.

The definition of torture under the CATA does not comply with Article 1 of the Convention Against Torture. The CATA defines torture as “*any act which causes severe pain, whether physical or mental, to any other person, being an act which is - (a) done for any of the following purposes that is to say - (i) obtaining from such other person or a third person, any information or confession; or (ii) punishing such other person for any act which he or a third person has committed, or is suspected of having committed; or (iii) intimidating or coercing such other person or a third person; or done for any reason based on discrimination, and being in every case, an act which is done by, or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity*”.

The CATA therefore does not include “inhuman or degrading treatment or punishment”.

Although CATA of 1994 makes torture a punishable offense, the government of Sri Lanka does not implement several provisions of the CAT. While torture is prohibited under specific circumstances it is allowed under others. The use of police torture to extract admissions and confessions is routine and conducted with impunity. In addition, the Prevention of Terrorism Act made confessions obtained under any circumstance, including by torture,

sufficient to detain a person until the individual is brought to court.

Sri Lanka also has not recognized the competence of the Committee Against Torture to consider communications made in accordance with articles 21 and 22 of the Convention.

3. Article 2

Article 2 of the Convention urges the State parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and absolutely prohibit torture.

However, the government of Sri Lanka has failed to take adequate and effective administrative, judicial and other measures.

i. Administrative Measures:

The government of Sri Lanka has taken administrative measure of establishing National Police Commission in 2002. However, NPC has been hamstrung by the lack of adequate financial resources, investigative powers and the lack of cooperation from the police department.¹¹

Since its establishment the NPC has reportedly received 1327 complaints. It reportedly received nearly 200 complaints on torture and killing in police custody between July 2004 and July 2005. Chairman of NPC, Mr Ranjith Abeyesuriya stated that Sri Lanka’s police chief had not been

¹¹ . Police torture: 200 complaints, The BBC Sinhala.com, 19 July 2005 http://www.bbc.co.uk/sinhala/news/story/2005/07/050719_npc_igp.shtml

cooperating with the authorities to investigate complaints against police officers. He lamented that the NPC does not have powers as that of the Human Rights Commission to investigate complaints against police officers.¹² The NPC is a glorified post box whose effectiveness depends on the goodwill of the police administration, and not its effectiveness.

ii. Judicial Measures:

The judiciary is marked by lack of independence and biases against the Tamil minorities. Not a single security personnel has been prosecuted for the organized massacre of the Tamils.

There have been a few reports of disciplinary actions and indictment against some police officials accused of perpetrating torture. But the State party fails to provide adequate information about the prosecutions under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Even when the judiciary takes actions, the police do not take appropriate measures. The country's Inspector General of Police (IGP) recently stated that 106 police officers, who have been charged for serious criminal offenses and interdicted before Sri Lanka's high courts should be allowed to continue at their posts until they are proven guilty.¹³ The fact that these accused police officers can influence the trial by intimidating the victims, witnesses and relatives if they are allowed to continue in the office has been ignored.

¹² . Ibid

¹³ <http://www.ahrchk.net/statements/mainfile.php/2005statements/357>

iii. Quasi-judicial measures: HRC of Sri Lanka

On paper, the Human Rights Commission of Sri Lanka (HRC) appears spectacular. However, it has been hamstrung by the failure to establish transparency in its work, lack of powers and financial resources. The HRC has also failed to provide justice to its officer, Mr. Ruwan Chandrasekera who was assaulted by police from the main Jaffna Police Station on 27 September 2004 while investigating a complaint from a detainee's family about incommunicado detention.¹⁴

Resource crunch:

Lack of adequate finances remains one of the major factors contributing to the inefficiency of the Human Rights Commission of Sri Lanka. According to the HRC, complaints of torture had more than doubled from 294 to 607 cases in 2002 and a total of 220 cases of torture and 158 of harassment were reported in the first quarter of 2003.¹⁵

However, the important work of promptly visiting the police stations and victims for recording of evidence by the HRC official in such cases, has severely suffered due to lack of funds owing to the heavy cuts imposed on the HRC budget in terms of the government's budgetary policy. The HRC was severely constrained during this period in carrying out its routine duties such as visiting police stations and this often hampered the Commission in performing a deterrent role as efficiently as it ought

¹⁴ <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

¹⁵ . HRC Annual Report-2003 - <http://www.hrc-srilanka.org/docs/ar3e.pdf>

to have.¹⁶ In 2003, the Treasury allocated only Rs 1.6 million although the HRC had requested for Rs 40 million. In 2002, the HRC's budget was further slashed by Rs 9 million.¹⁷ Despite HRC's request for 32 million rupees for recurrent expenditure and 6 million rupees for capital expenditure during 2001-02, the government sanctioned 23 million rupees for recurrent expenditure and 500,000 rupees for capital expenditure.¹⁸

Allegations of bias:

There have been consistent allegations of HRC officials trying to protect police officials accused of torture. In April 2005, an inquiry officer of HRC deputed to investigate the allegations of torture of one Bernard Janapriya by a sergeant and 2 policemen on 10 February 2005 had allegedly harassed the victim with his 'hostile manner and of asking irrelevant questions'.¹⁹

On 6 November 2003, over fifty persons representing ten different human rights organizations demonstrated before the Human Rights Commission of Sri Lanka headquarters in Colombo demanding the immediate sacking of its Kandy coordinator, Mr Sumannasekara. The human rights organizations accused him of being in close co-existence with perpetrators of torture (policemen), helping the perpetrators and not the victims, and allegations of rape.²⁰

¹⁶ . Ibid

¹⁷. <http://brcsproject.gn.apc.org/slmonitor/March2003/panic.html>

¹⁸ . National Human Rights Institutions in the Asia Pacific Region, Asia Pacific Human Rights Network, New Delhi, November 2002

¹⁹. <http://www.ahrchk.net/ua/mainfile.php/2005/1046/>

²⁰. <http://www.ahrchk.net/statements/mainfile.php/2003statement/133/>

Earlier, Colombo based Law and Society Trust accused the HRC of failing to distinguish in its records between reports of 'missing people' and reports of people who may have disappeared in custody. According to it, "HRC was unable to provide information on the number of complaints of disappearances it had received during 2000. Given Sri Lanka's horrific record of disappearances, it is astonishing that the HRC fails to distinguish in its records between reports of 'missing people' and reports of people who may have disappeared in custody. The only figure that the HRC could provide in response to this request was that during year 2000, 1,146 persons had been reported to the Commission as missing, of whom 912 had been traced. Yet [the] HRC could not say whether the remaining 234 should be characterized as disappeared. Repeated requests for a reply failed to get any response from [the] HRC."²¹

Lack of powers to enforce its recommendations:

In its Annual Report-2003, the HRC recommended that the Human Rights Commission Act (of 1996) should be amended to make the recommendations of the Commission enforceable. Under the existing Act, if a Head of the Department against whom a recommendation is made decides not to implement it by giving some reason, the HRC can only report the case to the President with a request to forward the report to the Legislature. This is not an effective method and the outcome of this process is also not clear. Moreover, section 15 (8) under which a case of

²¹. Sri Lanka: State of Human Rights 2001, Law and Society Trust, Colombo.

non-compliance of HRC recommendation is made to the President does not include the Governor and Provincial Boards of Ministers where the complaint is against an institution or officer coming under them. And in certain cases, even the President as well as Parliament may not enjoy the power to give directions to these bodies.

During the intervening night of 11 and 12 October 2005, unidentified miscreants reportedly attempted to burn down the five-storey headquarter buildings of the Human Rights Commission of Sri Lanka situated at 36 Kinsey Road, Borella, Colombo.²² The needle of suspicion primarily turns towards the police because over a hundred police officers - mainly from the Western Province - including senior officers are currently under investigation by the HRC. Special inquiries into gross human rights abuses by the police have now been launched by a committee chaired by former High Court Judge Farook.²³ The government has handed over the case to the Criminal Investigation Department of the Police and it is unlikely that the culprits will be identified.

This was not the first instance to destroy evidence with the acquiescence of the State. During the hearing on 14 June 2005 of the Kumarapuram massacre of 11 February 1996 in which 24 Tamils were shot dead by the Sri Lankan Army, State Counsel Mr. S. Halimdeen told the Trincomalee High Court Judge that all

material evidence, including weapons allegedly used in the killing of Tamil civilians in the Kumarapuram massacre, were destroyed when the office of the Government Analyst in Colombo was gutted by fire in 2004.²⁴

iv. Legislative Measures:

Despite the recommendations of the Committee Against Torture, CATA remains defective. There has not been any attempt to bring conformity on the definition of torture.

a. Restrictive accessibility of the Supreme Court:

"Although there is a complete chapter on human rights in the Constitution, complaints on violations of human rights could be lodged only in the Supreme Courts. The law of the country does not permit resolution to be sought at a lower court. Therefore, the opportunity for a poor, innocent person with no high social status to obtain relief in the violation of human rights is very limited. This situation is neither realistic nor practical. Thus, it has become the duty of the Ministry of Constitutional Affairs to take steps towards fairness to all." - Prof. G. L. Peiris, Minister of Constitutional Affairs, delivering his address at the "Udaanaya" programme conducted with the objective of enhancing the knowledge of the

²² . Sri Lanka: Launch Independent Inquiry into attack on National Human Rights Commission, <http://www.alertnet.org/thenews/newsdesk/HRW/d68eaa7209c26a2ecc4937974725>

²³. <http://www.ahrchk.net/statements/mainfile.php/2005statements/361/>

²⁴ . Kumarapuram massacre case inquiry fixed, Tamil Net, 9 November 2004

police officers on law and human rights.²⁵

The restrictions imposed by Sri Lankan Constitution are telling.

Article 126 of the Sri Lankan constitution provides:

Article 126. (1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV.

(2) Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two Judges.

(3) Where in the course of hearing in the Court of Appeal into an application for orders in the nature of a writ of habeas corpus, certiorari, prohibition, procedendo, mandamus or quo warranto, it appears to such Court that there is prima-facie evidence of an infringement or imminent infringement of the provisions of Chapter III or Chapter IV by a party to such application, such Court shall forthwith refer such matter for determination by the Supreme Court.

(4) The Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstance in respect of any petition or reference referred to in paragraphs (2) and (3) of this Article or refer the matter back to the Court of Appeal if in its opinion there is no infringement of a fundamental right or language right.

(5) The Supreme Court shall hear and finally dispose of any petition or reference under this Article within two months of the filing of such petition or the making of such reference.”

There are three serious shortcomings with Article 126 of the constitution of Sri Lanka which has serious implications on the enjoyment of fundamental rights by the citizens.

First, under Section 126(1), the petitions against violations of fundamental rights can only be filed with the Supreme

²⁵ . Relief for violation of human rights for average citizen limited: GL, The Island, Colombo, April 3, 2003

Court, which is based in Colombo. This restricts the access to justice to the poor, as many simply cannot afford to hire a Supreme Court lawyer. Those who are living outside of Colombo cannot regularly follow up the cases in the Supreme Court.

Second, under Section 126(2), there is one-month time bar to file petitions. The Sri Lankan government in its fourth periodic report stated that “courts in interpreting the above provision have taken a liberal view. In *Edirisuriya v. Navarathnam* and *Navasivayam v. Gunawardena*, the Supreme Court held that the time bar on petitioning was not a mandatory one but rather a discretionary one, therefore if the petitioner provides an adequate excuse for the delay in filing the petition it would not become operative.”²⁶

The interpretation of the time bar depends on the predilection of any individual judge or bench. With the Supreme Court being based in Colombo, it may not be possible for the victims to approach the Court within one month given the illegal methods used by the security personnel to hush up the violations of fundamental rights. Since most Tamils living in the LTTE held areas and High Security Zones did not enjoy the right to freedom of movement and were required to take “passes”, they could not effectively approach the Supreme Court for violation of their fundamental rights.

Third, under Section 126(1), a human rights complaint may be made to the Supreme Court only by the victim or by an attorney-at-law on his/her behalf. This excludes the possibility to pursue

justice for violations of fundamental rights on behalf of the dead and the missing.

Therefore, it is clear that while the Sri Lankan Constitution guarantees fundamental rights and freedom under Chapter III (Article 8-31), in one stroke it creates procedural obstacles and limitations under Article 126, which effectively restricts access to justice for violations of the fundamental rights and freedom.

The parliament has established a *Select Committee of Parliament to review the functioning of the Human Rights Commission and the time constraints in respect of the Constitutional Jurisdiction of the Supreme Court* on 10 April 2002.²⁷ But nothing substantive has come out of the process.

v. Stalled Peace Process

The Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) signed a formal cease-fire arrangement on 22 February 2002. The agreement set the stage for negotiations for the settlement of the protracted 19-year-old civil war that has claimed the lives of more than 60,000 people.

The first talks were held on 16 –18 September 2002. Since then, six sessions of peace talks were held till date. In April 2003, the LTTE withdrew from the peace process citing the alleged lack of initiatives to rebuild the war-shattered north and east.²⁸ There have been occasional meetings between officials of

²⁶ . CCPR/C/LKA/2002/4

²⁷ . http://www.parliament.lk/humanrights/interim_report.htm

²⁸ . Donors wary over ongoing Lankan crisis, The Statesman, 24 January

the Sri Lanka security forces and the LTTE on the facilitation of the Norwegian Ceasefire Monitors to keep the ceasefire going. But, the peace process has been effectively stalled, with both the LTTE and Sri Lanka government violating the cease-fire agreement.

Since February 2005 there has been an escalation of violence resulting in the killing and injuring of persons associated with the Government of Sri Lanka, the Liberation Tigers of Tamil Eelam and other political groups.²⁹ A fresh spell of uncertainty hit the stalled Sri Lankan peace process with the Liberation Tigers of Tamil Eelam asserting that the killing of E. Kousalyan, the LTTE's political wing leader of Batticaloa and Amparai would "have a serious impact" on the "recommencement of peace talks".³⁰ The emergence of Vinayagamoorthy Muraleetharan (Col. Karuna) allegedly with aid and abetment by the Sri Lankan security forces³¹ and the failure of the Post-Tsunami Operational Management System (P-TOMs) have been threatening the peace process.

The assassination of then Sri Lankan Foreign Minister Mr. Lakshman Kadiragamar on the night of 12 August 2005 by the suspected Tamil Tigers has further deteriorated the situation.

Peace is on a clip hanger in Sri Lanka and human rights violations continue to be reported.

a. Restrictions on the freedom of movement

Case 1: Military's attempt to evict 113 families at Trincomalee village

Sri Lankan military has allegedly been trying to evict 113 families living in the Linganagar area in Trincomalee district, on the pretext that the village is an impediment to its military exercises. According to the LTTE, many complaints lodged by the villagers with the authorities have been to no avail. Some of the landowners have taken the case to the courts but even the court cases are in a state of limbo for some time. People who are living in this area are barred from taking even palm leaf used as roofing material to repair their roofs.³²

Some people reportedly left the area earlier out of fear. However, those not having anywhere else to go have continued to live there. The Government's promise of giving compensatory allotment of 3 acres of land in the same area to the families that were evicted remained unfulfilled, as no such land has been given to the evicted families.³³

Case 2: Harassing of devotees by SLA soldiers at checkpoints

On 4 August 2005, Jaffna residents attending to celebrate "aadi amavasai" (Hindu festival of commemorating death anniversary of fathers) festival at the Keerimalai

²⁹ . <http://www.peaceinsrilanka.org/>

³⁰ . Uncertainty over Sri Lanka peace process, The Hindu, 9 February 2005

³¹ . Tigers accuse Sri Lanka military-BBC news, 21 June 2004

³² . Military trying to evict 113 families from Trincomalee village, claims LTTE, The Lanka Academic, 13 February 2005

³³ . Ibid

Naguleswarar temple and at Keerimalai seas were reportedly subjected to severe checking and harassment at the Tellipalai and Senthankulam Sri Lanka Army (SLA) checkpoints in Jaffna. Journalists who went to cover the event were not reportedly admitted to cross the checkpoints.³⁴

In early March 2005, in a complaint to the Sri Lanka Monitoring Mission (SLMM), Jaffna district Head of LTTE Political Wing, C. Ilamparithi, has complained that harassment and intimidation by soldiers of the Sri Lanka Army (SLA) at Muhamalai checkpoint on civilians has increased. He reportedly requested the SLMM to take immediate steps to stop this trend.³⁵

b. Restrictions on mobility of essential commodities

Case 1: Ban on transport of torch batteries, cement etc to eastern Sri Lanka

On 22 April 2005, following representations from residents of Eastern Muttur division, in a complaint with the Sri Lanka Monitoring Mission (SLMM), Mr. S. Elilan, Trincomalee district political head of the Liberation Tigers of Tamil Eelam (LTTE) alleged that Sri Lanka Army soldiers stationed at the Kaddaiparichchan Camp were preventing people from taking torch batteries to and from LTTE controlled Muttur east villages. Kaddaiparichchan SLA camp is located on the border of the

SLA and LTTE controlled areas in the Muttur division.³⁶

The security forces also allegedly imposed a ban on transporting cement, sand and other building materials to the LTTE controlled areas to rebuild houses destroyed in tsunami.³⁷

Demanding the removal of embargo on the transport of essential commodities like cement, building materials, petrol and diesel urgently needed for tsunami reconstruction work and agricultural purposes, about five thousand Tamil civilians reportedly held a protest march from Poonagar in the LTTE controlled Eachchilampathu division in the Muttur area to the Mahindapura Sri Lanka Army (SLA) camp.³⁸

iv. The Evidence of Torture in Sri Lanka

Torture is a part of lawless law enforcement and administration of justice.

a. Torture linked with disappearances

Disappearances in Sri Lanka have been endemic and are a part of war strategies against the LTTE. The murder of suspects or civilians has been an acceptable means of combating the violence of the LTTE.³⁹ The Committee Against Torture in its Concluding

³⁴ . SLA soldiers harass devotees at Jaffna checkpoints, TamilNet, August 04, 2005

³⁵ . Soldiers harass civilians at Muhamalai army checkpoint, TamilNet, March 11, 2005

³⁶ . SLA bans transport of torch batteries to Muttur east, TamilNet, April 22, 2005

³⁷ . SLA ban on cement spotlighted at Trinco tsunami event, TamilNet, April 28, 2005

³⁸ . Muttur Tamils protest against SLA embargo, TamilNet, May 11, 2005

³⁹. <http://www.achrweb.org/reports/srilanka/ccpr-03.pdf>

Observations in 1998 expressed grave concerns about “information on serious violations of the Convention, particularly regarding torture linked with disappearances”.⁴⁰

The Sri Lankan government established a series of Commissions – Presidential Commission of Inquiry into Involuntary Removal of Persons (PCIHP) of 1991, Regional Commissions of Inquiry in 1995, A Board of Investigation of the Ministry of Defence of 1996, All Islands Commission of Inquiry in 2000 – to inquire into disappearance of thousands of people.⁴¹

In its fourth periodic report to the UN Human Rights Committee, the Sri Lankan government stated that Presidential Commission of Inquiry into Involuntary Removal of Persons (13.11.94 to 03.10.97) had concluded that a total of approximately 16,800 persons had disappeared during the period. The All Island Commissions of Inquiry “reported that further 10,400 persons had disappeared” during the relevant period”. The Sri Lankan government states, “With this new addition the total number of persons who had disappeared during the period 1988-90 currently remains approximately at 27,200”.⁴²

In December 2002, a Committee was appointed under the Human Rights Commission of Sri Lanka to investigate reports of over six hundred cases of "disappearance" which took place in Jaffna district during 1996 and 1997.

⁴⁰ . *Concluding observations of the Committee against Torture: Sri Lanka of 19/05/98 (A/53/44, paras.243-257)*

⁴¹ . CCRP/C/LKA/2002/4

⁴² . Ibid

According to complaints received by the National Human Rights Commission, there is no information about 42 people in Batticaloa and four in Amparai disappeared in 2002. In the past, thousands of people disappeared in both districts, after arrest by the security forces.⁴³ Six hearings into a total of 327 cases were held and a report of the findings of the Committee of the SLHRC is expected.⁴⁴

Although there were not many reports of disappearances since the signing of the cease-fire agreement between the LTTE and Sri Lankan government, the prosecution of the culprits has been abysmal. The impunity given to the security forces is clear. In its second periodic report to the Committee Against Torture, Sri Lankan government states that only 12 security personnel have been convicted out of the 2095 cases that were recommended for action by the Attorney General.

b. Torture as part of lawless law enforcement

Torture is part of lawless law enforcement in Sri Lanka.

Case 1: Severe beating of Mr. Iruthayarajah Jesuthas and Mr. Arulprahasam Anton

In the last week of August 2005, soldiers of the Sri Lankan Navy (SLN) allegedly arrested two fishermen of Polykandi, Mr. Iruthayarajah Jesuthas, 28-year-old, and Mr. Arulprahasam Anton, 34-year-old and severely assaulted both while they were fishing in Myliathanai Sea

⁴³ . The Sri Lanka Monitor, British Refugee Council, United Kingdom, December 2002

⁴⁴ . Ibid

along the coast of Kankesanthurai in Vadamadachchi division in Jaffna district. After arrest, SLN soldier allegedly took these fishermen into the SLN craft, which was patrolling in the area and damaged the fishermen's boat. The soldiers reportedly allowed the fishermen to return to the shore in the afternoon of 2 September 2005. Both fishermen sustained injuries due to the assault and had to be admitted in the Valvettithurai government hospital.⁴⁵

Case 2: Assault of R. Selvarajah Pragalathan

At around 3:00 p.m. on 21 August 2005, Special Task Force (STF) soldiers stationed at Kanjirankuddah checkpost in Thirukkivil allegedly attacked Mr. R. Selvarajah Pragalathan, a 22 year-old cloth dealer. He had come from the Liberation Tigers controlled area to Sri Lanka Army controlled Akkaraipattu town to purchase cloths. At the time of the attack, Mr. Pragalathan was reportedly returning to his native village.⁴⁶

STF soldiers allegedly beaten Mr Pragalathan with gun-butts, accusing him of transporting cloths to the LTTE.⁴⁷

Case 3: Baton charging of students including female

On 11 August 2005, police reportedly baton charged on students protesting against a World Bank-sponsored educational reforms program in Sri Lanka's capital Colombo. One female

student was hospitalised with injuries and three student leaders and two student Buddhist monks were arrested. More than a couple of thousand university students had reportedly attempted to march to President Chandrika Kumaratunga's residence opposing the reforms package, which they claimed would lead to privatization of Sri Lanka's largely state-controlled education system.⁴⁸

Case 4: Assault of Mr Sathees

In a complaint to the Sri Lanka Monitoring Mission (SLMM), Mr. Atheeswaran Master, Political Head of the LTTE Veeramunai Koddam in Amparai alleged that at around 9.30 am on 6 June 2005, STF soldiers allegedly hit Mr. Sathees, a political division official of the Liberation Tigers of Tamil Eelam (LTTE) from Veeramunai Navithanveli, with gun butts while he was standing in front of the Veeramunai LTTE political office.⁴⁹

Case 5: Assault of the fishermen

On 17 March 2005, a group of about fifteen fishermen from Mathakal, a coastal area in Jaffna district were allegedly beaten up by personnel of the Sri Lankan Navy while fishing in sea. The Sri Lanka Navy (SLN) personnel who were patrolling in a Dora boat stopped the fishermen and beat them up. Earlier on 16 March 2005, navy personnel had also allegedly assaulted

⁴⁵ . SLN soldiers assault Polikandi fishermen, Tamil Net, September 03, 2005

⁴⁶ . STF soldiers attack cloth dealer in Thirukkivil, TamilNet, August 21, 2005

⁴⁷ . Ibid

⁴⁸ . Police use force to scatter students protesting education reforms, The Academic, 11 August 2005

⁴⁹ . LTTE official attacked by STF soldiers in Amparai, TamilNet, June 06, 2005

two fishermen who were fishing in catamarans.⁵⁰

On the same day, Sri Lanka Navy (SLN) soldiers were caught by officials of the Human Rights Commission of Sri Lanka (HRCSL) near Crow Island in Jaffna with fish forcibly seized from local fishermen. HRCSL officials caught the SLN personnel by surprise when they visited the site unannounced after complaints were made by fishermen that navy soldiers regularly plunder their catch when they return to shore after fishing in Crow Island sea area.⁵¹

In a memorandum to the Sri Lanka Monitoring Mission (SLMM) in May 2005, ten thousand member strong Jaffna District Fishermen Co-operative Unions' Federation (JDFCUF) reportedly protested against Sri Lanka Army's (SLA's) decision to issue special identity cards to their members. In its memorandum, the JDFCUF pointed out to the SLMM that fishermen in the district already had two identity cards, one given by Divisional Secretary and the other by Department of Fisheries and as such making it compulsory to have another ID card from the SLA was harassment.⁵²

In a memorandum on 21 June 2005, fisheries societies in Thenmaradchchi division in Jaffna district has reportedly complained that the Sri Lanka Army (SLA) has extended its firing practice in Chavakachcheri lagoon in Jaffna district thus depriving the livelihood of more

than one hundred fisher families in the area.⁵³

Case 6: Torture of K. Nihal Rupasena Silva

35-year-old Mr K. Nihal Rupasena Silva of Sagara Mawatha, Paiyagala was on a visit to his sister-in-law's house at Kaluwamodera with his family. A police team comprising the OIC, SI Prasanna Ratnayake, Police Constable (PC) Lalith, PC Amarasiri, PC Almeida with two others forcibly entered their premises at midnight of 27 July 2002 and arrested Mr Silva without giving any valid reason.

He was assaulted on the way to the police station. At the police station, the OIC threatened to assault him further. When the other occupants of the house asked why they were doing so, they too were abused in filthy language. On the same day at around 10 a.m., the police tortured him by tying his legs together and hanging him from the roof with a nylon wire.

Thereafter, SI Prasanna Ratnayake having thrown chilli powder in his eyes assaulted him further with a club for nearly 45 minutes. Then they questioned him about a house theft in Paraththa.

The whole day on 27 July 2002 he was detained in the cell without food and water. On the following day when his wife visited him he could not get up as a result of the torture. Sgt. Palitha gave his wife Rs. 20 to bring Siddhalepa balm. She refused the money and brought Wintogeno and applied on his body. After she left, once more, the police

⁵⁰ . Mathakal fishermen protest against navy assault, TamilNet, March 17, 2005

⁵¹ . Jaffna SLN misdemeanors laid bare, TamilNet, March 18, 2005

⁵² . Jaffna fishermen oppose SLA issued ID cards, TamilNet, May 09, 2005

⁵³ . SLA accused of harassing Chavakachcheri fishermen, TamilNet, June 21, 2005

officers brought him out of the cell and beaten him with a house pipe and pole. When his wife brought his lunch on that day he told her of the assaults. Once she was gone, SI Prasanna Ratnayake manacled his hands and legs and tied him to a table till late night.

At dawn on 20 July 2002, he was awoken when someone flashed a torch at him. Then he heard OIC saying, "We don't know whether he is dead or alive", while examining him. On that day police constable, Amarasiri and another person physically carried him to the cell when his wife visited him in the morning.

On 2 August 2002, he was taken to the crime branch and assaulted again. Thereafter, the police also made him sign some documents under threat and duress. Later when he was produced before the Magistrate seven days after his arrest he was sent to the Welikada remand. There he had learnt that strangely the charge made against him was possessing 40mg. of heroin.

Also during the seven months between 04.08.2002 to 26.03.2003, he had been produced in court on 21 occasions until the High Court granted him bail. His wife had reported the incidents to the Human Rights Commission.⁵⁴

Case 7: Torture of Reserve Police Constable, E.M.K. Ekanayake

A Reserved Police Constable (RPC), Mr E.M.K. Ekanayake attached to Settikulam police went to visit his village Galnewa in order to attend a

funeral on 3 November 2001. At the end of his five days leave while he was returning to work on 8 November 2001 around 6.45 pm, Reserve Sub Inspector (RSI) Hewawasam and SI Dharmadasa of the Galnewa police station abused and attacked him. As Mr Ekanayake was walking past the Galnewa police station RSI, Hewawasam who was standing near the parked police vehicle questioned as to where he was going. However, even before he could reply, they started abusing and assaulted him. He was kicked on the chest and slapped on the face. Thereafter he was taken to the backyard of the police where several civilians were also present. Later when two other RPCs had identified Mr Ekanayake as an RPC, he was chased out of the police station.

Following the incident, Mr Ekanayake had been warded in a hospital between 10th to 13th November 2001 and again from 20th to 28th November 2001. The medical reports indicated that Mr Ekanayake had several lacerations on his body. He filed a petition for violation of fundamental rights before the Supreme Court.

Reserve Sub Inspector Hewawasam and SI Dharmadasa in their response before the Supreme Court stated that E.M.K. Ekanayake was heavily under the influence of liquor and had tried to throw something at the parked police vehicle. Having detained him until he was sober the police had released him.

The Supreme Court at the conclusion of the hearing on 20 March 2003 held that the police personnel had acted in violation of the petitioner's fundamental rights and ordered Rs. 50,000 as compensation of which RSI Hewawasam

⁵⁴ . Police assault of labourer challenged in SC, The Daily News, Colombo, May 15, 2003; Labourer says police assaulted him brutally, The Island, Colombo, May 21, 2003;

was ordered to pay Rs. 10,000 out of his personal money.⁵⁵

Case 8: Torture of Mylvaganam Ramnath

In a fundamental rights application, mobile phone dealer, Mylvaganam Ramnath stated that he was arrested on 2 August 2001 in Colombo by the Criminal Investigation Department (CID). At the time of the arrest, he was not informed of the reasons. He was severely beaten in custody and forced to sign a confession, the contents of which he did not understand. He was held without being produced before a court until 12 September 2001.⁵⁶

Case 9: Torture of Thangarasa Krishanthan

In a fundamental rights application to the Supreme Court, Jaffna resident Thangarasa Krishanthan, 19, stated that he suffered torture at the hands of the security forces. The police arrested him at Kirillapone suburb in Colombo on 8 August 2000. He was not given any reason for the arrest and his relatives were not provided an arrest receipt. His eyes were covered and he was hung by the toes. He was beaten with batons and wires and burned with cigarettes. His head was smashed against a table. He was accused of having LTTE links.⁵⁷

Case 10: Torture of Gopalapillai Jegatheeswaran

Gopalapillai Jegatheeswaran from Vanni was arrested in July 2001 by the police Counter Subversive Unit in Vavuniya District, while waiting for a bus. He was not informed of the reasons for the arrest. His head was repeatedly immersed in water. He was beaten and his head was covered with a plastic bag dipped in petrol. He was forced to sign a confession in Sinhalese under torture.⁵⁸

c. Torture and Custodial Death

The use of torture to extract admissions and confessions often leads to custodial death. The methods of torture commonly used by the police in Sri Lanka include beatings, often with wire or hose, electric shock, the suspension of individuals by the wrists or feet in contorted positions, burning, slamming testicles in desk drawers, and near-drowning. The victims are also forced to remain in unnatural positions for extended periods. The police also place bags laced with insecticide, chili powder, or gasoline placed over their heads.

In 2004, there were 13 deaths in police custody.⁵⁹

Case 1: Custodial death of Helwala Langachcharige Susantha Kulatung at Rakwana police station

On 18 April 2005, five officers from Rakwana Police Station in Colombo allegedly took one Helwala Langachcharige Susantha Kulatung, a father of four, into custody and detained him at the Rakwana station. A day after

⁵⁵ . Assault by Galnewa Police: SC awards RPC Rs. 50,000 compensation, The Daily News, Colombo, March 21, 2003

⁵⁶ <http://brcsproject.gn.apc.org/slmonitor/November01/dete.html>

⁵⁷ <http://brcsproject.gn.apc.org/slmonitor/December01/atto.html>

⁵⁸ <http://brcsproject.gn.apc.org/slmonitor/January02/deten.html>

⁵⁹ <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

the arrest, the officers allegedly warned the detainee's children that they would not see their father alive again. On the same day, they also approached the victim's mother and enquired into his whereabouts despite the fact that they had detained him and he was still in their custody. On 20 April 2005, the detainee's brother visited him at the police station and was informed that Helwala Langachcharige Susantha Kulatung had hung himself in his cell, despite being taller than the height of the cell itself. A post mortem conducted on the body on 27 April 2005 following a complaint by the deceased's brother and sister reportedly revealed no injuries to the neck, but reportedly found more than 107 injuries spread over most parts of the victim's body.⁶⁰

Case 2: Custodial death of Mr Wijeratne Gunasinghe

On 10 April 2005, some policemen from Maharagama police station including constable bearing ID No. 22728 allegedly took Mr Wijeratne Gunasinghe, a three-wheeler driver into custody and severely beat him up overnight using cricket stumps resulting in his death within days. According to Dr. Hulandawa, who held the post mortem on the deceased's body on 17 April 2005, Gunasinghe had internal injuries.⁶¹

The repeated pleadings by the victim's wife who was also travelling in the three-wheeler to the police not to beat

him as he had a heart condition fell on deaf ears.⁶²

Case 3: Custodial killing of Quintus Perera

On 3 October 2004, four police officers including a Sub Inspector of the Polonnaruwa police station reportedly asked for liquor from Quintus Perera, 40-years-old restaurant manager but he declined to sell liquor to them, as it was Temperance day. Irked by his denial of liquor, the policemen quarreled with Quintus Perera and his colleagues and returned to the station only to come back with more colleagues. On their coming back to the restaurant, the policemen started beating the attendants and manager Quintus Perera. They later arrested him along with three others staff of the restaurant for not selling liquor and allegedly severely tortured them in custody resulting in the death of Perera.⁶³

On 5 October 2004, Kurunegala Judicial Medical Officer reportedly conducted the inquest of the deceased's body and concluded that the death was due to internal haemorrhage caused by assault with a blunt weapon.⁶⁴

Case 4: Custodial death of Sunil Hemachandra

Mr Sunil Hemachandra, a 28-year-old rubber tapper, was arrested from his home at approximately 12:15 am on 24 July 2003 by police officers from the

⁶⁰ . Man dies under police torture, family threatened - AHRC, TamilNet, May 17, 2005

⁶¹ . Police accused of killing again, The BBC Sinhala.com, 17 April 2005
http://www.bbc.co.uk/sinhala/news/story/2005/04/050417_police_killing.shtml

⁶² . Ibid

⁶³ . Four police officers sacked over killing, The BBC Sinhala.com, 5 October 2004
http://www.bbc.co.uk/sinhala/news/story/2004/10/041005_polonnaruwa-killing.shtml

⁶⁴ . Ibid

Moragahahena station. The officers did not give a reason for the arrest to Mr. Hemachandra or to his family. When the family went to the police station on 25 July 2003, they found him lying in a police cell, unconscious and bleeding from the nose. He was brought to a local hospital and then transferred to the general hospital in Colombo. He died on 26 July 2003. Reports indicated that several days before his arrest Mr. Hemachandra, who had won a Rs 300,000 (US\$ 30,000) lottery two weeks before, was approached by several police officers attempting to extort money from him.

The Moragahahena police claim that Mr. Hemachandra was arrested when he protested the arrest of a wanted man, identified as Chanaka, who had taken refuge in his home. The men were reportedly brought to the police station and jailed. An officer from the station reported to the BBC Sinhala Service correspondent that Mr. Hemachandra had developed epilepsy and collapsed upon his arrival. Mr. Hemachandra, however, has no history of illness.

A complaint made to the Assistant Superintendent of Police (ASP) of Horanam regarding these events did not yield any results. According to reports, the ASP was assigned to investigate the case, along with the officers from the Moragahahena station who are suspected of causing Mr. Hemachandra's death. Reports indicated that the ASP made statements exonerating the police, causing the victim's family and human rights groups to fear that the evidence would be destroyed and the case would not be properly investigated. Complaints had been made to the National Human Rights Commission, the National Police Commission and other judicial agencies,

but the perpetrators have not been caught or brought to justice.⁶⁵

Case 5: Custodial death of ex-soldier Lasantha Jagath Kumara

In June 2002, ex-soldier Lasantha Jagath Kumara was arrested by the police of Paiyagala and died while he was in remand custody in the Magazine Prison in Welikada on 20 June 2002. The widow of the victim filed petition alleging that her husband died of torture during the detention. On 8 August 2003, the Supreme Court ordered the State and two Police Officers to pay Rs. 800,000 as compensation and legal cost.⁶⁶

Case 6: Custodial death of R.A. Ajith Premalal

Mr R.A. Ajith Premalal, was arrested by plain clothed policemen led by Officer-in-Charge, Mr Rohan Pushpa Kumara on 15 June 2001. He was taken to the Ganemulla Police station and kept there for three days without being produced before a Court of Law. He was subjected to torture and hung by his thumbs. At around 4 am on 19 June 2001, a policeman came to the residence and informed Mr Ajith Premalal's mother that her son had escaped from police custody. Around 7.30 a.m. the police informed Mr Premalal's father that his son had committed suicide by jumping in front of a train and asked him to identify the body. It was found out that both the fingernails and middle fingers of Mr Ajith Premalal were missing. There were white scars and bruises on

⁶⁵ . OMCT, Geneva, Sri Lanka – Case LKA 290703: death in detention of Sunil Hemachandra

⁶⁶ . SC orders Rs. 800,000 compensation for widow of ex-soldier tortured by police, The Daily News, Colombo, August 9, 2003

his hands, cuts and bruises on his feet and marks of burns on the body. The Gampaha Magistrate after the inquest held that the death was due to a train accident! The Supreme Court awarded compensation of Rs. 25,000 to the mother of the victim.⁶⁷

d. Sexual violence

Rape has been a common phenomenon in Northern and eastern parts of Sri Lanka in the war against the Tamil rebels.

Case 1: Assault on Tamil refugee women

In a complaint to the Mannar Citizens committee on 9 September 2005, a group of Sri Lankan Tamil refugees alleged that they were beaten, robbed and molested on a sandbank in the seas off Mannar on 5 September 2005 by five men suspected to be Sri Lanka Navy personnel. They also alleged that the sailors raped several refugee women. On 8 September 2005, Thalaimannar Police reportedly admitted Ms. Rajitha Rajan, 25 years old, one of the rape victims, to Mannar Base Hospital, for medical tests.⁶⁸

In their complaint to the Citizens' Committee, the refugees submitted that the gunmen suspected to be SLN sailors raped five women and molested others. There were 27 females in the group of refugees, including small girls. The woman's husband, Mr. Mylvaganam Rajan, said that his wife was raped at

gunpoint by men whom he suspected to be Sri Lanka Navy personnel.⁶⁹

Case 2: Attempt to rape by SLA soldiers

Protesting the alleged attempt to rape of 63-years-old women by four soldiers of the Sri Lankan Army in the morning of 10 March 2005 crowds reportedly blocked the Jaffna-Pt. Pedro main road that afternoon and stoned the Sri Lanka army's (SLA) Villu Mathavady camp. Protesting residents alleged that the woman was alone when a soldier from the Villu Mathavady camp in Neervely had entered her home, gagged her and attempted to molest her while three of his colleagues stood guard outside. The soldiers had run away when neighbours, hearing the woman's scream, came to her rescue. Some civilians in the area were beaten up by troops from the camp as the unrest spread in the area.⁷⁰

In an identification parade held in the Jaffna acting Magistrate Mr. Kanagaretnam Kesavan's Court on 14 September 2005, the sixty three year old Tamil woman reportedly identified the soldier of the Sri Lanka Army (SLA) who attempted to rape her.⁷¹

Case 3: Rape of Ms Sathasivam Rathkyala in police custody

On 24 November 2001, twenty three year old Sathasivam Rathykala, a Batticaloa Tamil woman was arrested by four police persons under the Prevention of Terrorism Act from her parent's

⁶⁷ . Ibid

⁶⁸ . Refugees allege were raped, robbed by Sri Lanka Navy men, TamilNet, March 09, 2005

⁶⁹ . Ibid

⁷⁰ . Sri Lanka army camp pelted over rape attempt, TamilNet, March 10, 2005

⁷¹ . Woman identifies SLA soldier in attempted rape case, TamilNet, March 14, 2005

house at No 23, Shory Street Mannampitiya in the Batticaloa district. She was accused by the Attorney General of obtaining arms training from the LTTE and causing deaths to army soldiers stationed at Vadamunai camp. The police brutally tortured and raped her at the Polonaruwa police station. According to Judicial Medical Officer's (JMO) report, Ms Sathasivam Rathykala was subjected to severe torture and sexual assault by twelve police personnel during the night of 24 November 2001. On the orders of the Eastern High Court, the Judicial Medical Officer examined the victim and submitted a report.⁷²

The medico-legal report of the JMO, Batticaloa district stated the following: -

“History given by the suspect:

She was arrested by four male police officers from the Medigiriya police station on 24.11.2000 around 12 noon when she was on duty. She was then taken to CID office in Polonaruwa in a police jeep. While in jeep she was scolded by policemen in filth and was threatened that she would be killed. One policeman stamped on her right foot forcefully with shod foot.

At about 12.30 p.m. she was handed over to the Polonaruwa CID office. There she was detained for two days. Thereafter she was produced before a doctor in Polonaruwa hospital. At that

time they did not assault her. Later she was detained in the hallway till about midnight and was interrogated whether she was a member of the LTTE.

She was accused of being involved in the attack of military camps in the past and was ordered to show rest of the LTTE members in her area. They also told her that she printed some names of the LTTE members in her body. She denied all these accusations.

Thereafter the Police officials ordered her to take off all the clothes except her panty and bra. She begged them not to force her to remove her clothes. Subsequently she was subjected to body search by police officials touching her whole body including her genital area and breast. She was not given lunch. Police officers from Medigiriya Police arrived with CID officials and started interrogating her. She was given a gun to operate. Around midnight the Police detained her in a cell alone. She asked the police to provide a matron for her security. But the police refused to do so. She asked the Police to inform her parents about her arrest. The Police did not accede to that request. Later she was threatened and assaulted by the police inside the cell. She then fainted. When she regained consciousness she found herself lying on the bed in another room.

The police officers forced her to remove her bra and panty. She

⁷². <http://www.tamilnet.com/art.html?artid=7564&catid=13>

begged and pleaded with them not to harm her. The police officials then threatened her that she would be killed and her body would be disposed after cutting her neck. Subsequently one by one twelve police officers had sexual intercourse with her until next morning 5 'clock. As a result she had many scratch marks on her breasts. She also had severe abdominal pain. She was given two tablets to swallow which she identified as contraceptive pills.

The next day morning she was taken to her village in a police jeep and was asked her to show the members of the LTTE. She was blindfolded and the arms tied on the back. She denied having contacts with the LTTE. She was then handed over to the Kaduruwela Police on 26.11.2000. There she was detained for about a month. For the first ten days she was not allowed to take bath. Police officials there did not assault her but continuously questioned her.

She was taken to Magistrate on 29.11.2000. She was later handed over to the Anuradhapura prison and remanded there for about a month. She was then transferred to Welikada prison on 3.2.2002. Finally she was transferred to Batticaloa prison on 23.07.2002 and up to now she is detained at Batticaloa prison."⁷³

Case 4: Torture and rape of Yogalingam Vijitha

Yogalingam Vijitha is a 27-year-old Tamil woman from Kayts, Jaffna district. She was tortured and raped in custody while in detention in the Negombo police station between 21 and 27 June 2000.⁷⁴

Yogalingam Vijitha was beaten with poles on her knees, back, chest and the lower abdomen. She was trampled with boots on. She was forced to lie on a table and pins were inserted under the nails of her fingers and toes. She was slapped on her ears. On another occasion all her clothing, except her underwear, was removed and her face was covered with a polythene bag filled with chilli powder and petrol. Then she was asked to sign a statement written in Sinhalese, but when she refused, a plantain tree flower sprinkled with chilli powder was inserted into her vagina. After about 15 minutes, she fainted.⁷⁵

Yogalingam Vijitha claimed that she could identify at least one of the policemen who tortured her in the Negombo police station. She was produced in the Colombo Chief Magistrate Court, on 21 July 2000, and the magistrate ordered that she be examined by the JMO, Colombo North. The medical report confirmed that there had been vaginal penetration, that there were "many scars on her limbs and torso" and that she was suffering from post traumatic stress disorder and depression, all of which could have

⁷³. <http://www.tamilnet.com/art.html?artid=7526&catid=13>

⁷⁴ . SRI LANKA: Rape in Custody, AI INDEX: ASA 37/001/2002, 28 January 2002

⁷⁵ . Ibid.

resulted from the torture inflicted on her as alleged.⁷⁶

Yogalingam Vijitha was unconditionally released on 26 April 2001. In a fundamental rights case in late August 2002, the Supreme Court ordered Rs 250,000 (\$2,600) compensation to Yogalingam Vijitha. The judges described the torture as barbaric, savage and inhuman.⁷⁷

Case 5: Rape of Sivamany Veerakone and Vijikala Nandakumar

On 19 March 2001, security forces gang raped and tortured two Tamil women, Sivamany Veerakone, 24, and Vijikala Nandakumar, 22, at the police Special Investigation Unit (SIU) in Mannar after arresting them from a lodge in Mannar town. They were taken to the SIU office where they were subjected to degrading treatment and rape. Thereafter they were hung naked by their hands and legs; and beaten. They were also forced to confess under torture that they were LTTE members and warned not to reveal their ordeal to anyone.⁷⁸

Case 6: Rape Ms Arshadevi in police custody

In a landmark judgment, the Sri Lankan Supreme Court awarded Rs 150,000 (\$1,560) as compensation to Velu Arshadevi on 25 January 2002 for rape in custody of the Sri Lankan security forces. Ms Arshadevi, a Tamil woman from Badulla in the Hill Country was gang-raped at a security force

checkpoint in Colombo on 24 June 2001.⁷⁹

4. Article 3: Non-refoulement

The issue of extradition, return and expulsion has been a critical issue between Sri Lanka and a number of European countries where ethnic Tamils seek asylum. Sri Lanka has signed a pact for the repatriation of rejected asylum-seekers 'in conditions of safety and dignity' with five European countries - Switzerland (9 June 1993), Netherlands (24 October 1997), Denmark (18 August 1998) Norway (6 March 2000) and Italy (24 September 2001).

A large number of Tamils have been repatriated from these countries. However, the deportees face high risk of violations including torture. Tamils are arrested at the airport under the Immigrants and Emigrants (Amendment) Act 42 of 1998, which disallows bail, provides for mandatory sentence and removes discretion of courts against the concept of a fair trial.⁸⁰

By March 2001, 185 people were detained under the Immigrants and Emigrants Act. A 1998 amendment to the Act denies bail to people arrested while attempting to leave the island illegally.⁸¹

On 5 October 2001, Italy returned 200 Sri Lankans to Colombo, all of whom were taken into custody by the police

⁷⁶ . Ibid.

⁷⁷ <http://brcsproject.gn.apc.org/slmonitor/August02/cour.html>

⁷⁸ <http://brcsproject.gn.apc.org/slmonitor/March2001/crim.html>

⁷⁹ . The Sri Lanka Monitor, British Refugee Council, United Kingdom, January 2002

⁸⁰ <http://www.gn.apc.org/brcsproject/slmonitor/March99/rep.html>

⁸¹ <http://brcsproject.gn.apc.org/slmonitor/March2001/nego.html>

Criminal Investigation Department (CID) for enquiry. Six days later, a further 88 people were deported to Sri Lanka. The CID took them also into custody at the Colombo airport.⁸²

The British Refugee Council in its report, *Human Rights and Return of Refugees*, of December 2001 succinctly described the problems of returnee refugees:

“1) All Sri Lankans must produce the National Identity Card (NIC) on demand by the security forces. Those without NICs may be arrested. The security forces sometimes confiscate NICs or the identity documents issued by the departing country, at the airport.

The travel documents of 20 Tamil asylum seekers, deported from Germany and arriving in Sri Lanka on 16 March 2000, were confiscated. Two of them were arrested at the airport, despite the protest of the German Border Police who accompanied them. Varadakumar Varadarajah was produced before the Negombo magistrate on 17 March and was released on bail. He went to stay with relatives in Chilaw, north of Colombo, but the police refused to register his name. Another German deportee Visvanathan Paramasivam, was also released on bail on 17 March. He was arrested again in the Kollupitiya suburb of Colombo. The police refused to accept the court

documents relating to bail and detained him for three days.⁸³

2) Tamils in Colombo and other urban centres were required to possess proof of police registration under Emergency regulations. The regulations required only the householder to register with the police, providing details of residents in the house. But in practice, the police demanded proof of registration from all Tamils. Although the regulations had general application, they were implemented only in the case of Tamils. Many Tamils in possession of the NICs and police registration have been arrested. Despite a prohibition by the Committee of Inquiry into Undue Arrest and Harassment (CIUAH), the security forces continued to demand proof of police registration. The regulations requiring police registration became void when the state of Emergency lapsed in July 2001. However, Colombo human rights agencies have expressed concern that the police continue to demand proof of police registration without any legal basis.

3) Deported Tamils arriving in Colombo come under pressure from security forces to return to their home areas in the north-east, where fighting continues. This creates huge difficulties for the deportees. They cannot stay in Colombo in order to obtain

⁸². <http://brcsproject.gn.apc.org/slmonitor/oct2001/italy.html>

⁸³ . Sri Lanka Monitor, British Refugee Council, UK, March 2000

NICs or other documents and they cannot travel to or within the north-east without these documents.

4) Many Tamils returned from other countries have been taken into custody at the airport under ER, the PTA or the Immigrants and Emigrants Act. Arrests have been also made after entry, while staying in Colombo.

5) Bail is disallowed under the PTA. Under ER, bail was allowed only after three months. As money must be paid or a 'surety' had to be found for bail, detainees were not able to obtain bail, if they did not have relatives in Colombo willing to pay the amount. Under an amendment to the Immigrants and Emigrants Act, in June 1998, bail can be disallowed, whereas bail is available even to the accused in murder cases. The Act says that 'notwithstanding any provision in any other law, every offence under the prescribed section of this Act shall be non-bailable and no person accused of such an offence shall in any circumstance be admitted to bail'.⁸⁴

The amendment also disallows suspension of sentence or conditional release, has increased punishment by a huge margin and provides for mandatory punishment, thus removing the discretion of courts, against the concept of a fair trial. Before July 1998, the punishment for an

offence under the Act was a fine of Rs 5,000-Rs 50,000 and/or imprisonment of 1-5 years. The amendment increased the fine to Rs 50,000-Rs 200,000.⁸⁵

According to the British Home Office, the amendment was introduced in response to pressure from European nations who want to clamp down on human smuggling. However asylum seekers have been targeted under the Act. Between 13 January and 23 March 2001, 149 people were detained under the Immigrants and Emigrants Act, on arrival at the Colombo airport, including Tamil asylum seekers deported from other countries.⁸⁶ In September 2001, 190 people remained in detention at the Negombo prison under the Act without bail.

Balakrishnan Thanarajah, who was deported from Britain on 8 April 2001, was arrested at the airport. The police have stated in their report to the Negombo magistrate that he was interrogated, fingerprinted and his statement recorded. The police had also requested reports about him from the Crime Records Division (CRD), Internal Intelligence Directorate (IID) and the Terrorist Investigation Division (TID).

Ratheevan Krishnasuriyan was deported from Norway and

⁸⁴ . Section 47 of the Immigrants and Emigrants (Amendment) Act No 42 of 1998

⁸⁵ . Section 2 of the Immigrants and Emigrants (Amendment) Act No 42 of 1998

⁸⁶ . List provided by Attorney-at-Law Ramiah Shadagopan dated 23 July 2001

arrested at Katunayake airport by the IID on 5 February 2001. He was handed over to the Criminal Investigation Department (CID) and fingerprinted. The CID sought reports from the CRD, IID and TID. He was released on Rs 50,000 (£400) bail and ordered to appear again at the Negombo court. Mahalingam Chandramohan, deported from Germany, was handed over by immigration officers at Katunayake airport to the CID on 21 February 2001. He was released on 30 March 2001 on Rs 50,000 bail and ordered to appear again in Negombo court.

Thulasi Gnanakrishnan and her two children, deported from Canada were arrested at the Colombo airport on 28 February 2000. She was released on bail and ordered to appear in court on 30 May 2000, but the police denied her permission to stay in Colombo. The Canadian High Commission in Colombo told her lawyers that she was detained overnight at the police post in the airport to allow time for the police to 'confirm their identity' and that 'she was free to go about her business in Sri Lanka'.⁸⁷

Lawyers have stated that her identity certificate had been issued by the Sri Lankan High Commission in Ottawa and in addition Ms Gnanakrishnan had an old Sri Lankan passport. They also said that Slave Island suburb police in Colombo had denied

her permission to stay in Colombo. According to Sri Lankan newspaper *Sunday Leader*, the family was interrogated by the security forces for over four hours and harshly treated.⁸⁸

6) Security forces often demand bribes. People arrested and detained have been released after relatives paid large sums to the authorities. Refugees returning from foreign countries are suspected of having large amounts of money and this may lead to their arrest. It is unclear as to what happens to the police records of arrest and detention after detainees are released on paying bribes.

7) Returning refugees are suspected of raising funds for the LTTE, which is now a banned organisation in Sri Lanka, India, Britain, Canada and the US. The LTTE was banned in January 1998 in Sri Lanka under the Emergency regulations. The state of Emergency lapsed in July 2001. President Chandrika introduced regulations on 4 July 2001 under the PTA banning the LTTE.⁸⁹ These regulations specifically provide that contributing or collecting funds for a proscribed organisation is an offence punishable by imprisonment of 7 to 15 years.

⁸⁷ . Sri Lanka Monitor, British Refugee Council, March 2000

⁸⁸ . DBS Jeyaraj - *The Sunday Leader* (Sri Lanka), 5 March 2000

⁸⁹ . Prevention of Terrorism (Temporary Provisions) Regulations No 1 of 2001 - Government gazette No 1191/12 of 4 July 2001

Kathiresan Sivalingam was arrested by the IID at the airport on 18 June 2001, after he was deported from Norway, and handed over to the CID. He was interrogated, fingerprinted and information was sought about him from other agencies. The CID, in their report to the Negombo Magistrate say that information has been received from the Embassy of Sri Lanka in Norway about Mr Sivalingam that 'assistance has been given regarding Tamil terrorist activities'. But the court found no evidence to substantiate the allegation and he was released on 22 June 2001.

8) Prison conditions are extremely poor and Amnesty International has stated that torture occurs regularly, particularly at police stations and military camps. The UN Special Rapporteur on Torture has recorded the torture of at least two returned asylum seekers. Muthuthambi Vanitha, who was deported from France in October 1998⁹⁰ and Thambirajah Kamalathan, who was returned from Senegal in February 1998⁹¹ were arrested and suffered severe torture at the hands of the security forces.

Mr Kamalathan was assaulted with a rod at Colombo's Pettah police station. Chilli powder was rubbed into his eyes and his

genitals were squeezed. After two or three days he had difficulty walking. One of his legs was apparently swollen below the knee.⁹²

Ratnam Suresh was deported from Sweden in March 1994 and disappeared after arrival in Colombo. In February 1997, the ICRC confirmed that he was among the 21 Tamils killed in police custody.⁹³ Most of them had been murdered by strangulation at the police Special Task Force headquarters in Colombo. The case relating to these killings was abandoned in March 1997.⁹⁴

9) People with scars on their bodies are vulnerable, as security forces suspect that they are members of the LTTE and sustained wounds in fighting. Regarding scars, UNHCR says as follows:

“UNHCR is aware that young returning Tamils in certain circumstances are potentially open to risk upon return. This risk may be triggered by suspicions (on the part of security forces) founded on various factual elements such as, the lack of proper authorisation for residence or travel, the fact that the individual concerned is a

⁹⁰ . Sri Lanka Monitor, British Refugee Council, December 1998

⁹¹ . Amnesty International - Urgent Action 6 August 1998 ASA 37/19/98

⁹² . Amnesty International - Urgent Action 6 August 1998 ASA 37/19/98 and 28 August 1998 ASA 37/21/98

⁹³ . ICRC letter dated 11 February 1997 to the German Red Cross

⁹⁴ . Amnesty International - Annual Report 1996; *Sri Lanka Monitor* March 1997

young Tamil from an “uncleared” area or the fact that the person has close family members who are or have been involved with the LTTE.

“In UNHCR's view the presence of torture-related scars on the body of a returnee should be a relevant consideration in assessing the likelihood of danger upon the return of Sri Lankan Tamil asylum seekers. Where such scars are related in human rights abuses and they are discovered by security personnel, they could draw adverse attention to the individual and thus enhance the likelihood of danger. While every case should be assessed on its own merits, UNHCR would reiterate its view that special care must be taken in relation to the return of failed asylum seekers to Sri Lanka.” A large number of returnees have been arrested on arrival or taken into custody while staying in Colombo. Most of them have been granted bail but some remain in custody under the Immigrants and Emigrants Act, which falls below international standards. The risk of returned asylum seekers deported from abroad being arrested in Colombo and other southern areas, remains. The security forces constantly raid lodges where returned asylum seekers reside. They carry out search operations almost daily in Colombo and other southern areas, particularly at nights.”

5. Article 4: Torture as a criminal offence

While torture is prohibited under specific circumstances it is allowed under others. The use of police torture to extract admissions and confessions is routine and conducted with impunity. In addition, the Prevention of Terrorism Act made confessions obtained under any circumstance, including by torture, sufficient to detain a person in custody until the individual is brought to court.

After examination of Sri Lanka's periodic report in May 1998, the United Nations Committee Against Torture regretted “that there were few, if any, prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims”.⁹⁵

Amnesty International stated on 1 November 2002, “No perpetrators of torture have so far been convicted in a criminal court, despite the reported filing of some cases.”⁹⁶

The lack of accountability is caused by the unwillingness of the government to take action even when there is evidence of torture. Sri Lanka's Police Chief, Inspector General of Police stated that 106 policemen who have been charged for serious criminal offenses before Sri Lanka's high courts be allowed to continue at their posts until they are

⁹⁵ . Concluding observations of the Committee against Torture : Sri Lanka. 19/05/98. A/53/44,paras.243-257. (Concluding Observations/Comments

⁹⁶ . Sri Lanka: Amnesty International urges the government to stop torture, AI Index: ASA 37/017/2002, News Service No: 197, 1 November 2002

proven guilty. The IGP was also of the opinion that the police force may become ineffective due to the interdictions of these officers.⁹⁷

6. Article 12: Prompt and impartial investigations

The Convention Against Torture provides that each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Unfortunately, torture in Sri Lanka has been institutionalized by impunity accorded to the security forces. There is a tendency on the part of the investigating officers, happen to be police officers, to protect their colleagues. When some cases are taken up, the investigative agencies or officers resort to delay-dallying tactics.

Case 1: Delay in taking legal action against ASP accused of torturing detainee

Following alleged inaction by Attorney General Department against Assistant Superintendent of Police (ASP) Ranmal Koddithuwaku for allegedly attempting on the life of and fabrication of charges against torture victim, Mr. Nimal Silva Gunaratne, in April 2005, the victim reportedly moved a complaint to the National Police Commission for appropriate action.⁹⁸ The accused

Assistant Superintendent of Police is a son of a then Inspector General of Police (IGP) and allegedly enjoyed tremendous clout in the police department.

Gunaratne was reportedly arrested on 22 May 2000 by the Panadura police and severely tortured by ASP Ranmal Koddithuwakku and fellow officers from the Panadura Police Station. He lost his eyesight in one eye and suffered from several other serious injuries due to this torture. Since making complaints against the police officers, Gunaratne has been allegedly receiving imminent threats on his life by the said ASP.⁹⁹

Case 2: Willful delay in investigation of complaints of torture against police officers

Inquiry into the complaint of torture of one Suresh Pradeep Kumara by IP Indrajith of the Mt. Lavinia police station, and PS Bandara of the Kantale police station has reportedly been continuously deliberately delayed by the concerned Investigation Officers. It was alleged that since the beginning of investigation, it has been delayed on at least nine occasions till 19 April 2005. Each time Suresh appeared for the inquiry, he was told, after several hours of waiting, that inquiries needed to be postponed because of either the absence of the accused, the absence of the inquiring officer, or the absence of the defence officers of the accused. On these occasions, the police have allegedly coerced and threaten Suresh, his mother and other complainants to withdraw the charges against the accused. Unable to

⁹⁷. <http://www.ahrchk.net/statements/mainfile.php/2005statements/357>

⁹⁸ . NPC inquiry on police threats, The BBC Sinhala.com, 18 April 2005

http://www.bbc.co.uk/sinhala/news/story/2005/04/050418_police_ranmal.shtml

⁹⁹. http://www.bbc.co.uk/sinhala/news/story/2005/04/050412_court.shtml

withstand such pressure, all the complainants, except Mr Kumara, have withdrawn their complaints against the accused and have handed in letters to this effect to the inquiring ASP. Disillusioned with such delay, Mr Kumara has also reportedly informed the inquiring police officer that he will no longer appear for the inquiry.¹⁰⁰

7. Article 13: Protection of witnesses

There is no witness protection programme in Sri Lanka. The witnesses are threatened.

Case 1: Killing of Gerard Mervyn Perera by police inspector through hired killer

At about 11.45 a.m. on 21 November 2005, an identified gunman shot at Gerard Mervyn Perera, a torture victim who was due to testify in a fundamental rights case against seven police officers of Wattala police station before the Negombo High Court on 2 December 2004. At the time of attack Gerard Mervyn Perera was travelling in a bus at Mabola opposite the Samarasinghe Oil Mill. He was critically wounded in the shooting and was rushed to the National Hospital Colombo where he succumbed to his injuries three days later.¹⁰¹

Perera was a cook employed at the Colombo Harbour and was a resident of 52/ B, Mihindu Mawatha Makawita Jaela. Except the four police officials-

Inspector Gunawardena, Sub-Inspector Suresh Gunesena, Police Constable, Nalin Jayasinghe, and Police Constable Perera of Wattala police station, Gerard Mervyn Perera reportedly did not have enemies, who would try to liquidate him. Following a fundamental rights petition by Perera at the Negombo High Court, the said police officials have been directed by Court to pay Rs.150, 000 jointly apart from Rs 650,000 plus the hospital bill of Rs. 854,871.70 to be paid by the State. Another fundamental rights petition against Inspector Suresh was reportedly pending disposal before the Negombo High Court and Perera was due to testify in that case on 2 December 2004. The police investigators were reportedly baffled and clueless about the assassin and the motive for killing Perera.¹⁰²

After much hardwork, the CID was able to arrest the assassin from the Teak plantation in Chillaw. He reportedly confessed to police that he was ordered by the Inspector to shoot Gerard Mervyn Perera and he escaped in the inspector's car after shooting at Perera. He also told police that the Inspector had taught him to use a 9.mm. pistol. Investigators from the CID stated that the Inspector had feared being convicted and being sentenced to jail for torturing Perera and that perhaps would have led to his killing.¹⁰³

8. Article 14: Redress and fair and adequate compensation

There is no uniformity for the award of compensation to the victims of torture.

¹⁰⁰. <http://www.ahrchk.net/ua/mainfile.php/2005/1047/>

¹⁰¹ . Breakthrough in Gerard Perera case, The Daily News, 13 February
<http://www.sundayobserver.lk/2005/02/13/new20.html>

¹⁰² . Breakthrough in Gerard Perera case, The Daily News, 13 February

¹⁰³ . Ibid

Under fundamental rights' provisions in the Constitution, torture victims may file civil suit for compensation in the high courts or Supreme Court. Courts have granted awards ranging from approximately \$142 (14,200 rupees) to \$1,825 (182,500 rupees). The guilty party paid fines based on the decision of the judge hearing the case. In some cases, the Government did not pay fines incurred by security force personnel found guilty of torture.¹⁰⁴

Appendix I: The acquittal in the Bindunuwewa Massacre case: An example of the systemic failure of the Sri Lankan State

In its judgement on 21 May 2005, the Supreme Court of Sri Lanka acquitted the remaining four accused of the Bindunewa massacre - civilians M.A. Sammy, D.M.S. Dissanayake, R.M. Premananda and policeman, S.J. Karunasena. The Bindunuwewa massacre of 25 October 2000 is the only massacre of the Tamil minorities in Sri Lanka, which exhausted all the judicial processes available in Sri Lanka. It went upto the level of the Supreme Court but the government failed the Tamil minorities.

The fact that the Supreme Court failed to prosecute a single police officer for the custodial massacre of 28 inmates and serious injury of 14 others reflects the systemic failure of the Sri Lankan state. It was failure of the Human Rights Commission of Sri Lanka which failed to release its final report, failure of Presidential Commission of Inquiry whose report has not been made public as yet despite the submission in early 2002, the willful failure of the Attorney General to frame correct charges and the failure of the Supreme Court of Sri Lanka which was manifestly biased against the Tamil witness. All these pillars of the Sri Lankan state were more interested to protect 60 fully armed police personnel who either remained mute witness to the orgy of violence or shot at the fleeing inmates.

i. The Massacre

On 25 October 2000, 28 inmates were murdered and 14 others were seriously

¹⁰⁴. <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

injured at the Bindunuwewa Rehabilitation Centre by a Sinhalese mob and the Sri Lankan police personnel. The victims were ethnic Tamil minorities.

The Bindunuwewa Rehabilitation Centre was jointly run by the Presidential Secretariat, the Child Protection Authority, the Ministry of Defence, the Ministry of Rehabilitation and Reconstruction, the National Youth Services Council, and the Don Bosco Technical Centre. Nestled in the mountains of central Sri Lanka, the Bindunuwewa Rehabilitation Centre was intended as a showpiece for the outside world where former rebels of the Liberation Tigers of Tamil Eelam (LTTE) were rehabilitated rather than punished. A large number of the detainees were child soldiers.

According to the nine survivors who gave their account of the events of the 24 and 25 October 2000 to the Sri Lankan Human Rights Commission (SLHRC), the detainees had raised the following issues with the Officer-In-Charge (OC) Capt. Y.K. Abheyratna of the detainees rehabilitation centre on 24 October 2000: letters received for the detainees were not delivered to them; telephone calls/messages received for them were not transmitted to them; they were being detained for unduly long periods such as one year or more when they should be held for shorter periods of three to nine months.¹⁰⁵

When the OC explained that it was not within his power to release them early, as orders have to come from the

authorities that dealt with such matters, the detainees became agitated and surrounded the OC. They demanded that he should take immediate action to expedite their release. Observing this melee, one of the police officers fired his gun in the air. This had caused further agitation among the detainees who caused damage to fluorescent-lights, the police post etc. The accounts given by the survivors also mentioned that they objected to the police party entering the Centre. However, after some time, the detainees allowed the Headquarters Inspector of Bandarawela to come in without any arms. The survivors stated that the detainees had told the Headquarters Inspector that they would not follow the vocational training classes till the OC expedited the release of the detainees who were in the Centre for long periods.¹⁰⁶

Thereafter conditions returned to normal. The detainees retired to their halls and went to sleep. According to them, the police personnel and the others who came to the center had left the place by about 11.30 pm.¹⁰⁷

On the morning of 25 October 2000, when the detainees got up they saw a large number of civilians surrounding the centre and a number of police officers standing by. The crowd started to pelt stones and came into the centre and attacked the inmates with knives, machetes, clubs, iron rods etc. According to the survivors, they were attacked in the halls of residence which were then set on fire by the mob. Two or three inmates were thrown into the fire. Many were clubbed to death. They said that the police officers did nothing to

¹⁰⁵ . Sri Lankan Human Rights Commission's interim report dated 01.11.2000 on the Bindunuwewa detainees' massacre

¹⁰⁶ . Ibid.

¹⁰⁷ . Ibid.

stop the crowd. When some of the detainees tried to run for safety, one of them was shot down by the police officers. One of the survivors had lost two fingers in one of his hands as a result of gunshot injuries. According to statements made by some of the survivors, when they had tried to hide in the police truck, the mob came in and attacked them. Two police officers were watching while they were being assaulted and did nothing to stop the assault.¹⁰⁸

The Presidential Commission of Inquiry headed by Appeals Court Justice P. H. K. Kulatilaka reported that “The Judicial Medical Officers who had conducted the post-mortem examination on the deceased persons had observed that most of the deceased persons had injuries in the head area causing damage to the skull and the brain and cause of death was due to cardio respiratory failure resulting from shock and haemorrhage. Most of the injuries had been caused by heavy cutting weapons and blunt weapons. The medical experts also have expressed the view that most of the deceased persons had been burnt while they were unconscious after receiving injuries in the head and brain regions”.

In total, 28 Tamil youth between the ages of 14-23 years were massacred while approximately 14 other Tamil youth were seriously injured.

Following are the names of the 19 victims of the Bindunuwewa massacre released by the police on two occasions. While the 13 victims¹⁰⁹ (No.1 to 13) were identified on 25 October 2000,

other 6 victims¹¹⁰ (No.14 to 19) were identified on 31 October 2000. Nine victims remained unidentified as the bodies were charred beyond recognition.

Names of the victims killed:

1. Gunapalan Jeyavarthanam, Mannar
2. Antony John, Kallady, Batticaloa
3. Karunakaran Ramasamy, Santhacholai, Vavuniya
4. Rubeshkumar Visvaparan, Vepankulam, Vavuniya
5. Senthuran Vinayakamoorthy, Vanthrumoolai, Batticaloa
6. Mohan Sinnathurai, Aanathapuram, Trincomalee
7. Ravitharan Kanapathipillai, Lingapuram, Manalaaru
8. Vijeyenthiran Visvalingam, Navatkadhu, Batticaloa
9. Balakumar Marimuththu, Pullaveli, Batticaloa
10. Mathiyalakan Puniyamoorthy, Mutur, Trincomalee
11. Selvarajah Thurairajah, Thampanai, Jaffna
12. Mukunthan Sivayokarajan, Karaveddi East, Jaffna
13. Vipulanantharajah Sivayokarajan; Thirukovil, Amparai
14. Kokulamani Sajeewan, Kallady, Batticaloa
15. Perinpanayagam Nimlaraj, Batticaloa
16. Somasuntharam Sellarasa
17. Sivan Kubendran, Arayampathi
18. Vaisvaparam Rubeshkumar alias Siinathamby, Urmila Kottam, Vavuniya and
19. Ramasamy Karunakaran, Santhasolai, Vavuniya

¹⁰⁸ . Ibid.

¹⁰⁹ . Police name massacre victims, TamilNet, October 27, 2000

¹¹⁰ . Four more bodies identified, TamilNet, October 31, 2000

ii. The pattern of impunity against the Tamil minorities

In its judgement on 21 May 2005, the Supreme Court of Sri Lanka acquitted the remaining four accused of the Bindunewa massacre - civilians M.A. Sammy, D.M.S. Dissanayake, R.M. Premananda and policeman, S.J. Karunasena.

The Bindunuwewa massacre is the only massacre which went upto the Supreme Court of Sri Lanka. The fact that not a single person could be held guilty for the mass murder of 28 Tamils in the protective custody of the State at Bindunuwewa confirms the ethnic biases which have plagued the administration of justice in Sri Lanka. It has been almost impossible for the ethnic minority Tamils to obtain justice against organized violence since the infamous massacre of 48 Tamil prisoners at the maximum-security prison of Welikeda in the capital Colombo in July 1983.

After 19 years, in July 2002, President Chandrika Kumaratunga announced the formation of a three-member “truth commission” to investigate incidents of ethnic violence between 1981 and 1984, including anti-Tamil riots in July 1983 that killed nearly six hundred people.¹¹¹ The report has been made public but none was prosecuted.

In the Kokkuvil massacre, about 184 Tamil civilians including pregnant and elderly women, infants and children from Sathurukkondan, Kokkuvil, Panichchayadi and Pillaiyarady were butchered at Saththurukkondan Army camp on 9 and 10 September 1990. The

Sri Lankan government even denied the occurrence of the massacre. However, later the Human Rights Task Force that was appointed by President Ranasinghe Premadasa recorded evidence and mentioned the Sathurukkondan-Kokkuvil massacre in its report published in April 1994. In early 1997, the Special Presidential Commission to Inquire into Disappearances in the East under Justice K. Palakidnar also recorded evidence about the Sathurukkondan -Kokkuvil massacre.¹¹²

According to the report of Justice K. Palakidnar of the Special Presidential Commission of Inquiry, 5 infants, 42 children under ten, 85 women and 28 old persons were among the 184 villagers murdered by the Sri Lankan Army on 9 September 1990 in the Sathurukkondan army camp. The judge in his report to the Sri Lankan President stated that there was strong evidence that the massacre had taken place and recommended legal action against the perpetrators. But so far neither has a police investigation been conducted nor legal proceedings instituted against those responsible for the massacre.¹¹³

Captain Warnakulasuriya, the Sri Lanka army officer who was in charge of the Saththurukkondan Boys' Town camp where the 184 villagers were hacked to death told the commission in his very brief evidence that no one was arrested by his men from the area on 9 September 1990. The Sri Lankan government did not investigate the massacre further.¹¹⁴

¹¹². <http://www.tamilnet.com/art.html?catid=13&artid=7375>

¹¹³. <http://www.tamilcanadian.com/eelam/hrights/html/article/SU001022145704N2018.html>

¹¹⁴. <http://www.tamilnet.com/art.html?catid=13&artid=6308>

¹¹¹ . <http://hrw.org/wr2k2/asia10.html>

Soon after the Kokkadicholai massacre of January 1991 where military personnel went on a rampage killing innocent civilians, President R. Premadasa immediately appointed a commission of inquiry but the commission was empowered only to inquire into the incident and recommend compensation wherever suitable. The commission did just that.¹¹⁵ No one was prosecuted.

In the Kumarapuram massacre on 11 February 1996, Sri Lankan Army from the 58th Mile Post army camp arrived in army trucks at the Tamil village of Kumarapuram in the Kiliveddi area of the Trincomalee district and shot dead 24 Tamils because of their ethnic origin.¹¹⁶ The security forces retaliated against the death of two SLA soldiers at the 58th Mile Post junction on the Kiliveddy-Muttur road, which leads to the Kumarapuram village, located half a mile from the scene. The soldiers ordered all civilians to come out of their dwellings and lined them up for questioning. Then soldiers started mercilessly beating them irrespective of their gender and age. Two Tamil girls were gang-raped by several security personnel and later killed. On the spot, 12 males, 13 females and 13 small children were reportedly killed at night.¹¹⁷ About twenty soldiers were arrested by the police immediately after the massacre¹¹⁸ but only seven of them had been indicted by the Attorney

General on several charges including the murder of 25 Tamil villagers including men, women and children and causing grievous hurt to another 24 Tamil villagers on 11 February 1996. All the accused have been released on bail. Meanwhile one of the accused soldiers died.¹¹⁹ During the hearing on 14 June 2005, State Counsel Mr. S.Halimdeen told the Trincomalee High Court Judge that all material evidence, including weapons allegedly used in the killing of Tamil civilians in the Kumarapuram massacre, were destroyed when the office of the Government Analyst in Colombo was gutted by fire in 2004.¹²⁰

Impunity remains a serious obstacle to peace and reconciliation in Sri Lanka.

iii. The conspiracy of the acquittal

“At no time there were any incidents among the detainees and the management. There were no incidents with the neighbours either.... It is clear from the information now received by the authorities that provocation from external forces had led to this situation,” - thus spoke President Chandrika Kumaratunga immediately following the Bindunuwewa massacre.¹²¹

The acquittal of the accused in the Bindunuwewa massacre was foretold.

¹¹⁵. Will the Bindunuwewa commission be effective? The Sunday Leader, 3 December 2000

¹¹⁶. <http://www.tamilnation.org/indictment/genocide95/gen95035.htm>

¹¹⁷. Kumarapuram massacre victims remembered, The Tamil Net, 11 February 2005

¹¹⁸. Ibid

¹¹⁹. Kumarapuram massacre case inquiry fixed, Tamil Net, 9 November 2004

¹²⁰. Kumarapuram massacre case exhibits destroyed in fire, [TamilNet, June 14, 2005 19:58 GMT] available at <http://www.tamilnet.com/art.html?catid=13&artid=15154>

¹²¹. http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

All efforts of the Sri Lankan government on the massacre have been half-hearted and aimed at addressing international outrage rather than establishing justice.

a. Inquiry by the Sri Lankan Human Rights Commission

Immediately following the massacre, a team of the Sri Lankan Human Rights Commission consisting of Chairman Faiz Musthapha and members Godfrey Gunatilleke, Manouri Muttetuagama and Sarath Cooray visited the massacre site on 27 October 2000.

The Sri Lankan Human Rights Commission interviewed nine of the ten survivors who had been hospitalised in the army Hospital. One of the survivors could not speak as he was very badly wounded. Of the ten survivors, one was aged 11 and other 12 years. There were three others who were below the age of 18 years.¹²²

According to the accounts of the nine survivors whom the SLHRC examined in detail, when some of the detainees tried to run for safety, one of them was shot down by the police officers. One of the survivors who testified before the SLHRC had lost two fingers in one of his hands as a result of gunshot injuries.¹²³

In its interim report of 1 November 2000, the Sri Lankan Human Rights Commission, amongst others, stated that it was clear that the police officers, approximately 60 in number, have been guilty of a grave dereliction of duty in not taking any effective action to prevent

the acts of violence that resulted in the deaths of 28 inmates and injury to several other inmates of the Bindunuwewa centre. In any event the crowd that collected had not possessed any firearms and were armed only with knives, poles and implements. The police, on the other hand, were fully armed and could have easily brought the crowd under control and dispersed it. At least some of the persons who were leading the crowd could have been arrested. The Commission also found that the action taken by the local police to arrest the persons from nearby villages was totally ineffective to identify the culprits.¹²⁴

The Interim Report of 1 November 2000 implied that there would be a final report. But the SLHRC never released such a report.

Rather than ensuring justice, the investigation by the SLHRC only helped to scuttle international criticisms.

a. The Presidential Commission of Inquiry

In order to counter mounting international criticisms, on 8 March 2001 President Chandrika Kumaratunga established a Commission of Inquiry by Appeals Court Justice P. H. K. Kulatilaka.

The Commissioner was mandated to inquire and report on the following matters:-

- (a) The circumstances that led to the incidents that took place at Bindunuwewa

¹²² . Sri Lankan Human Rights Commission's interim report dated 01.11.2000 on the Bindunuwewa detainees' massacre

¹²³ . Ibid

¹²⁴ . Ibid

Rehabilitation Camp on 25.10.2000 in the course of which 27 inmates died and 14 persons were injured.

- (b) The administration of the Rehabilitation Camp at Bindunuwewa and the conduct of public officers in so far as it is relevant to the said incident;
- (c) The person or persons, if any, directly or indirectly responsible, by act or omission for:-
 - (1) bringing about the said incidents;
 - (2) causing injuries to persons, or the death of the inmates.
- (d) Criteria applicable to the admission of persons to rehabilitation centres and the location of such centres.
- (e) Methods adopted in the rehabilitation of persons admitted to such centres.
- (f) The measures necessary to prevent the recurrence of such incidents and the remedial measures if any, to be taken in this regard, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant”.

It is clear that Justice Kulatilaka Commission of Inquiry was mandated to investigate and recommend on extraneous issues but not for the prosecution of the culprits. By the time Justice Kulatilaka Commission of Inquiry was formed, the Criminal Investigations Division (CID) of the police and the Attorney General’s Department had already initiated independent action. In effect, Justice Kulatilaka Commission of Inquiry had no use for the prosecution of the culprits. President Chandrika Kumaratunga had no interest to ensure justice.

Yet, Justice Kulatilaka Commission of Inquiry, which had completed its inquiry in November 2001. The government has not yet made the report public.¹²⁵

iv. Orchestrated Trials

Before the establishment of Presidential Commission headed by Justice Kulatilaka, investigations by the Criminal Investigations Division (CID) of the police and criminal proceedings by the Attorney General’s Department had started. The Kulatilaka Commission of Inquiry was a mere eyewash. Not surprisingly, the most important findings of the Commission were ignored while filing the indictments.

The story of the massacre proposed by the prosecution in its indictments and in the trial followed the general outlines of what the government sought to tell: it told the story of a massive crowd spurred into action by fear and rumours of marauding Tigers, and of police who failed miserably in their job of protecting

¹²⁵ . Bindunuwewa: Justice Undone? State of Human Rights 2004, Law and Society Trust, Colombo

the camp and its inmates, becoming a part of the mob they were supposed to control. Yet, crucially, there were no indictments of Assistant Superintendent of Police Dayaratne and Headquarters Inspector Seneviratne, despite all the evidence uncovered by the Commission. Nor was anyone prosecuted for any planning or foreknowledge of the attack. It was, instead, a story of rage and hatred and fear getting out of control and police getting caught up in violent forces they should have kept in check.¹²⁶

On 25 March 2002, the Attorney General's Office indicted the following 41 suspects¹²⁷, among whom 10 were policemen:

1. Kangana Mudiyansele
Dhammika,
2. Prabath Mangala
Wickremasinghe,
3. Vidiyagedara Sumith Kumara,
4. Munasinghe Arachchige Sami,
5. Attnayaka Mudiyansele
Sudubanda,
6. Rajapaksa Arachchilage Sisira
Saman Rajapaksa,
7. Rajapaksa Mudiyansele Nimal
Rajapaksa alias Namal,
8. Jayweera Mudiyansele
Priyantha Jayaweera,
9. Ratnayaka Mudiyansele
Sugath Chaminda,
10. Ratnayaka Mudiyansele
Nawaratne,
11. Mutukuda Wijesinghe Archchige
Namal Yasakirithi Wijesinghe,
12. Herath Mudiyansele Gunapala
alias Daya,
13. Dissanayaka Mudiyansele
Sepala Dissanayaka,
14. Aparakka Jayasundara
Mudiyansele Chandana Wasantha
Bandara Jayasundara,
15. Herat Mudiyansele Jayantha,
16. Rajapaksa Mudiyansele
Gamunu Rajapaksa,
17. Heenkenda Mudiyansele
Jayatunga alias Podi Mahatun,
18. Rajapaksa Mudiyansele
Ajantha Rajapaksa,
19. Samarawickrama Don
Samarasekara,
20. Attanayaka Mudiyansele
Bandula Attanayaka,
21. Rajapaksa Mudiyansele
Premananda,
22. Rajapaksa Mudiyansele
Nuwan Nanda Kumara,
23. Hennayaka Mudiyansele
Nilantha Wijayarathne Bandara,
24. Adikari Jayasundara
Midiyansele Nishantha Indika
Bandara,
25. Palitha Warnasuriya,
26. Sathira Warnasuriya,
27. Ranjith Rupasinghe,
28. Don Anil Samarawickrama,
29. Keerthi Batuwatte,
30. Asela Gunawardana,
31. Harsha Gunarathna Bandara,
32. Senaka Jayampathy Karunasena,
33. Raigala Dasili Lekamlage
Jayaratne,
34. Malapatirannehalage Samudu
Sudesh Wijesinghe,
35. Kalamulla Waduge Chintaka
Nuwan Abyenarayana,
36. Hettiarachchi Mudiyansele
Thilina Damsith Hettiarachchi,
37. Ranamuka Arachchilage Sudath
Senarath Bandara,
38. Nakathi Gedara Sujeewa
Walpola,
39. Ranasinghe Arachchilage
Premalal Wijesiri,

¹²⁶ . Alan Keenan, Making Sense of Bindunuwewa – From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

¹²⁷. http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/145/

40. Narissa Mudiyansele
Amarasiri Upali Milton and
41. Tyrone Roger Ratnayaka.

a. Trial-at-Bar of the High Court:

In the indictments filed by the Attorney General's Office in March 2002, the accused were charged with 83 counts including unlawful assembly, committing the murders of 28 persons and attempted murder of 14 others at the Bindunuwewa Rehabilitation Centre. The 83 counts were composed of five categories: 1) one count of belonging to an unlawful assembly with the common object of causing hurt to the detainees (section 140 of the Penal Code); 2) twenty-seven counts of murder in prosecution of the common object of the unlawful assembly (section 296 read with section 146 of the Penal Code); 3) fourteen counts of attempted murder of the surviving inmates in prosecution of the unlawful assembly's common object (section 300 read with section 146 of the Penal Code); 4) twenty-seven counts of murder "on the basis of the Common Intention shared among the doers of the acts of offence" (section 296 read with section 32 of the Penal Code); and 5) fourteen counts of attempted murder on the basis of Common Intention (section 300 read with section 32 of the Penal Code).¹²⁸

The trial of the 41 suspects¹²⁹ began in July 2002 in the form of a trial-at-bar comprising of High Court Judges Sarath Ambepitiya (President), Eric Basnayaka

and Upali Abeyratne.¹³⁰ The prosecution had given a list of 31 productions and 228 witnesses for the trial.¹³¹ Testimony ended in January 2003, and all hearings had concluded by early May 2003.

Of the eighteen who remained accused when the trial concluded and the judges began their deliberations, nine were residents from the local area. Of these, the court convicted three - Sepala Dissanayake, M.A. Sammy and R.M. Premananda. Each was convicted of being a member of an unlawful assembly through their sharing in the crowd's common motive of death and destruction. Each was held responsible for multiple counts of murder, one count of attempted murder, and multiple counts of assault. Each was sentenced to death. The three convicted local residents were those whom the court was able to find some convincing evidence of having actually been involved in the attack within the camp, rather than simply being part of the larger crowd surrounding the camp, which the Court held was not sufficient to make one a part of the unlawful assembly. Instead, they held, some more active manifestation of one's criminal intention was required: in all three cases it was that of being seen within the camp premises while the attack was ongoing; in two cases, the accused was seen with a weapon.¹³²

Of the nine police officers still charged when the case went to the bench for judgment, only two were convicted.

¹²⁸ . Alan Keenan, Making Sense of Bindunuwewa – From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

¹²⁹ . Curiously, this is also the number of Tamil inmates present in the Bindunuwewa camp on the day of the attack.

¹³⁰ . High Court at Bar Case No. 763/2002.

¹³¹ . Ibid

¹³² . Alan Keenan, Making Sense of Bindunuwewa – From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

They were Inspector S.J. Karunasena (the 32nd accused) and Sub-Inspector T.R. Ratnayake (the 41st accused). Both officers were convicted in large part because the Court was convinced that they were stationed at the main gate throughout the attack and therefore were at the center of the action: their failure was manifest.¹³³

The High Court convictions were held under “unlawful assembly”. According to this law, any member of an “unlawful assembly” with “common object” is liable for prosecution for any crime committed by that assembly.¹³⁴

b. Supreme Court:

After the High Court awarded death sentences, which was not implemented in Sri Lanka since 1976, the confirmation of the death sentence automatically went to the Supreme Court.

The convicts in their appeals requested the Supreme Court to set aside their convictions as ordered by the High Court Trial-at-Bar and to acquit them. The petitioners stated in their appeals that there was no evidence to prove that they had committed the offences. They contended that the judgment was contrary to the evidence and the Trial-at-Bar judges had erred in law in dealing with the charge of being a member of an unlawful assembly. They maintained

that the court had not paid sufficient attention to their statements.¹³⁵

In June 2004, Chief Justice of Sri Lankan Supreme Court, Sarath Nanda Silva appointed a bench of five Supreme Court justices comprising of Justices T.B. Weerasuriya, Nihal Jayasinghe, N.K. Udalgama, N.E. Dissanayake and Raja Fernando to hear the appeals of the five accused.¹³⁶

Out of the five accused, the Supreme Court acquitted Tyrone Roger Ratnayake in June 2004 after the Solicitor General C.R. De Silva PC informed that he would not support the conviction because of the lack of evidence against him.¹³⁷

The High Court convicted civilian M.A. Sammy on the basis of two eyewitnesses - Piyasena and Ariyasena. Piyasena told the court she had seen him with a club in his hand about 100 metres from the camp around 9 a.m. on 25 October 2000. Ariyasena, who had been helping two injured detainees, testified that he had seen Sammy with a club in the playground of the camp premises. Sammy claimed he had not attacked anyone, but had only gone to see what was happening. The defence did not challenge Ariyasena’s evidence. The High Court convicted Sammy declaring that he “assisted others who were carrying out that crime, through his

¹³³ . Ibid

¹³⁴ . Sri Lankan Supreme Court overturns convictions in Bindunuwewa massacre by Deepal Jayasekera, 30 June 2005 available at <http://www.wsws.org/articles/2005/jun2005/sril-j30.shtml>

¹³⁵. <http://www.tamilnet.com/art.html?catid=13&artid=12213>

¹³⁶. Court to hear appeals of Bindunuwewa massacre accused, TamilNet, June 07, 2004

¹³⁷ . All four accused acquitted, The Daily News, 28 May 2005

actions by staying at that place with a club in his hand”.¹³⁸

The Supreme Court, however, declared that the High Court decision had been “erroneous for the reason that there was no evidence to that effect”. The Supreme Court gave its decision primarily on the assertion that the prosecution had failed to prove Sammy was present prior to the attack.¹³⁹ The pertinent question is what was Sammy doing in the camp after the event with a club in his hand? The Supreme Court maintained silence.

D.M.S. Dissanayake was convicted by the High Court based on the testimony of Wickramasinghe Bandara, a technical officer at the teachers’ training college adjoining the camp. Bandara testified that he had seen Dissanayake leaving the camp via the main entrance with a club in his hand. Dissanayake admitted being at the scene but like Sammy denied attacking anyone. The High Court found him guilty, beyond reasonable doubt, of being “a member of an armed unlawful assembly operating at that time”.¹⁴⁰

The Supreme Court, however, noted that Bandara had “admitted that he gave false evidence in Court for fear of reprisal by the villagers” although “at a subsequent stage of his evidence he stated that he actually witnessed the incident and that his evidence was not false or hearsay”. The Supreme Court ruled that it was

“not prudent” to rely Bandara’s evidence and threw the conviction out.¹⁴¹

The High Court convicted R.M. Premananda on the basis of the testimonies of Sugath Jayantha and two doctors. Jayantha testified that he, Premananda and another man Padmananda had driven to the camp after hearing that the detainees were attacking the nearby village. Premananda went into the camp and emerged about 15 minutes later with a bleeding wrist. He claimed that he had cut his hand on an aluminium sheet and sought treatment from Dr Rick Anderson under a false name -”Siripala”. He received further treatment from Dr. Wijeratne.¹⁴²

The High Court decision pointed out that, although he denied harming anyone, Premananda did not challenge Jayantha’s evidence or provide any explanation as to how he was injured. It concluded that he “had a clear want to cover up the fact related to how he got injured” and that his evasion established that he was involved in the attack on the camp. The Supreme Court, on the other hand, dismissed Premananda’s evasions and concluded that his suspicious behaviour was not sufficient to establish a strong prima facie case.¹⁴³

The overt police support for the attackers was so obvious that the High Court convicted S.J. Karunasena and T.R. Ratnayake for their failure to take action against the mob, for shooting at the fleeing inmates and for the removal of bodies from the crime scene. But the Supreme Court exonerated the police of

¹³⁸ . Sri Lankan Supreme Court overturns convictions in Bindunuwewa massacre by Deepal Jayasekera, 30 June 2005 available at <http://www.wsws.org/articles/2005/jun2005/sril-j30.shtml>

¹³⁹ . Ibid

¹⁴⁰ . Ibid

¹⁴¹ . Ibid

¹⁴² . Ibid

¹⁴³ . Ibid

all wrongdoing. The Supreme Court held that “In the circumstances it is highly probable that the detainee who succumbed to gun shot injuries was accidentally shot when the Police were firing in the air.” In dismissing charges that the police had destroyed vital evidence, the Supreme Court declared: “ASP Dayaratna conceded that he was instructed by the D.I.G. [Deputy Inspector General] to remove the bodies to preserve the peace in the area as there was a large concentration of Tamil estate workers in the surrounding area.” The judgement affirmed that the police and armed forces had the “right” to remove the bodies.¹⁴⁴

v. Facts that were ignored to ensure acquittal

From day one, the prosecutors had little intention to prosecute the culprits and systematically destroyed the evidences to ensure acquittal of the accused.

a. The charge of unlawful assembly

The pertinent question is whether the charge of being members of “unlawful assembly” with a “common object” and therefore, being responsible for the crimes committed by members of the “unlawful assembly” was appropriate?

How could the police whose responsibility is to deal with “unlawful assembly” be themselves part of unlawful assembly? The police could have been charged with dereliction of duty.

If indeed, police and the villagers were to be charged together, the conspiracy

angle for organizing the massacre was required to be investigated. But this was never done despite the fact that the police could not arrest a single person!

Consequently, defense taken by Karunasena, Ratnayake, and their police colleagues was to challenge the fairness of prosecuting them for illegal omission that rendered them part of the unlawful assembly. To convict someone of murder and attempted murder should require direct evidence of specific actions by specific individuals. Instead, they argued, first, that they were merely following orders and, second, that they were unable to control the crowd - in large part because the HQI and the ASP hadn’t given them the necessary resources: anti-riot equipment, rubber bullets, tear gas, or enough men.¹⁴⁵ The first question is connected with the second one concerning the failure to examine the degree of involvement of the HQI and the Assistant Superintendent of Police. But ASP Dayaratne and HQI Seneviratne were never charged.

b. “Feed Tiger flesh to our dogs”: Posters that were ignored

The prosecution and judiciary completely ignored the posters such as “Feed Tiger flesh to our dogs” that were pasted in and around Bindunuwewa on 24 October 2000. Therefore, the conspiracy angle was never investigated.

¹⁴⁴ . Ibid

¹⁴⁵ . The Court states on p. 42 of their judgment that the police were armed with tear gas. But the Commission report seems to hold that no tear gas was available until reinforcements from the Bandarawela station arrived after the attack was over.

The Sri Lankan Human Rights Commission reported that “a large number of posters had appeared in Bandarawela town, allegedly on the night of the 24th inciting people to violence against the inmates and the rehabilitation camp”. It further stated, “a statement made by one of the suspects who has been arrested had identified and named some of the persons who were responsible for the posters. He has further identified those who instigated the violence and led the attack on the camp”.¹⁴⁶

The Sri Lankan Human Rights Commission strongly recommended that this line of investigation be pursued. ... “as all the information we (SLHRC) have been able to gather so far does not suggest that what occurred on the 25th was an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack”.¹⁴⁷

Justice Peduru Hewa Kankanange Kulatilaka’s Presidential Commission of Inquiry also revealed some details which indicated the organised nature of the massacre. It reported:

- (1) The fact that Lt. Abeyratne was attacked by the inmates of the Rehabilitation Centre had been conveyed to the villagers by Lt. Abeyratne himself.

- (2) The evidence led before the Commission also revealed that soon after Lt. P. Abeyratne told the inmates of the two houses what was happening at the Rehabilitation Centre rumours began to spread in the village.In fact rumours that spread in the village was one factor which prompted the people to gather in large numbers at the Vidyapeetaya playground, cemetery and also the main gate. Evidence of Samurdhi Niyamaka Kumarasinghe, a villager from Kandegedera, revealed that he was drawn towards the Rehabilitation Centre on 25 October 2000 morning around 8.30 on an information given to him by his sisters that inmates of the Rehabilitation Centre were about to “come out”.

- (3) Evidence elicited from Mr. Wijepala, Divisional Secretary, Bandarawela that when he went to his office on 25.10.2000 around 9.15 a.m. he found a telegram, addressed to him by “Sapugasulpatha villagers” which read as follows: “We inform that a demonstration will be held on 25.10.2000 agitating for the removal of Bindunuwewa

¹⁴⁶ . Sri Lankan Human Rights Commission’s interim report dated 01.11.2000 on the Bindunuwewa detainees’ massacre

¹⁴⁷.http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

Rehabilitation Camp”. The time of dispatch was 8 a.m. This telegram is marked P84. On his way to the Rehabilitation Centre he saw some posters. He could remember some headings, e.g. “Remove the camp”; “Chase the Captain”.

Nandakumara in his evidence told the Commission that when he left home around 5.40 a.m. on 25.10.2000 on reaching Maduwelapatana junction, 3 kilo meters from the Rehabilitation Centre he observed a poster titled “Remove Bindunuwewa Rehabilitation camp immediately”. He saw two more similar posters on his way to the Centre. Nandakumara also spoke of seeing about 25-30 posters hung at the Bindunuwewa junction the contents of some read as follows: “Why is the big man feeding the tigers with milk”; “Good water for tigers and muddy water for us”; “Tigers flesh to our dogs”.

Lt. Balasuriya in his evidence told the Commission that on 24.10.2000 night when he did his rounds on the perimeter of the Centre to disperse the crowds he met a group of people who were making

preparations to stage a demonstration. The above evidence would suggest that a section of the villagers would have been drawn to the Centre on 25.10.2000 morning to stage a demonstration agitating for the removal of the Rehabilitation Centre from Bindunuwewa. Inspector Karunasena mentioned to the Commission how people had stopped Kirioruwa bus and induced the school children and other passengers to agitate for the removal of the Rehabilitation Centre. In fact Nandakumara’s testimony reveals that about 15 among the people who gathered near the main gate were holding posters.

In fact, it was elicited from Sisira Saman, a young villager from Aluthgama that on 25.10.2000 early morning he had joined some villagers who were in the process of making posters agitating for the removal of the Rehabilitation Centre from Bindunuwewa. He admitted that he himself wrote the slogans contained in two posters. The evidence to the effect that his handwriting has been identified by the EQD too was led in

evidence. According to Sisira Saman they had made 15 posters.

(4) The fear, hatred and anger that had been instilled into the hearts of the villagers owing to the gruesome crimes committed by the LTTE appeared to be one factor which aroused villagers to converge on the Vidyapeetaya playground. I recount here an utterance made by the villagers who had gathered at the Vidyapeetaya playground on 24 October 2000 night to Lt. Balasuriya. "They are tigers, they have come here after murdering Sinhala soldiers. Why are they being treated in this way?"

(5) There is also evidence that crowds were transported from outside to the Vidyapeetaya playground in buses, private vans and also three wheelers. That evidence was elicited mainly from Sunil Wickramasinghe Bandara. He had seen 10 to 15 vehicles parked along the road at the entrance to Vidyapeetaya. Ravindralal too had seen people being transported to the main gate side as well. This may well be the work of extremist elements to exploit the

situation to achieve their own objectives.

(6) Withdrawal of the police post from the Rehabilitation Centre at the behest of the inmates by the Head Quarters Inspector on 24.10.2000 was an act of betrayal in the eyes of the villagers. When Lt. Balasuriya ordered the villagers to disperse they said: "Police are scared, the police are running away". On the other hand the utterance made by the ASP to the effect that "People have surrounded the camp, they do not listen to us, they are armed with katties and clubs disperse them" looks like a "cry in despair". This attitude of the police made the villagers come prepared to defend their villages."

Despite existence of evidence of prior organization of the massacre, Justice Peduru Hewa Kankanange Kulatilaka concludes that "Factual position that the inmates had staged a revolt in the Centre, fact of Capt. Y.K. Abeyratne and his deputy Lt. P. Abeyratne being kept as hostages in the centre appear to be the proximate factor which had aroused the wrath of the people".

This is false considering that the revolt by the inmates on 24 October 2000 was brought under control. Under the Chapter "Revolt in the Rehabilitation Centre", in fact, Justice Kulatilaka concluded "It is appropriate at this stage

to reiterate the dogmatic and arrogant attitude of Capt. Y.K. Abeyratne which prevented Lt. Balasuriya from “settling matters” inside the Rehabilitation Centre. When Lt. Balasuriya returned to the gate around 11.30 p.m. after dispersing the crowd Lt. Balasuriya had spoken to Capt. Y.K. Abeyratne. He said, “I have sent the villagers back to their houses. Can I come to the Rehabilitation Centre to speak to the inmates”. Capt. Y.K. Abeyratne’s reply was “there is no problem inside. The problems came from the villagers. If villagers went away there is no need for you to come in”.

Regrettably, the High Court accepted the interpretation of the events that it were the inmates who were responsible for the riots. It stated, “there was displeasure within the villages about maintaining the Bindunuwewa Rehabilitation camp. The evidence presented has proven that this displeasure was due to the fact that the inmates of the camp were known to be members of an organization called the L.T.T.E, better known as Tigers. The evidence shows that the villagers had a significant fear of the inmates who were kept at the camp for rehabilitation. Also disclosed was the fact that the villagers were angry at the inmates for cracking unnecessary jokes at young women who pass by the camp. Evidence has also disclosed that the day before the incident, on the night of 24.10.2000, a false rumour had been spreading that the Tigers in the camp had entered the village and taken weapons belong to police Officers, and that a crowd of people had attacked the camp due to this reason.”¹⁴⁸

¹⁴⁸ . Alan Keenan, Making Sense of Bindunuwewa – From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

The Supreme Court of Sri Lanka went a step further. It urged that the crowd was made up only of “villagers” who had gathered to stage “a peaceful Sathyagraha” calling for the removal of the camp. The Supreme Court held that on the morning of the 25th, only the inmates held weapons and that the actions of the crowd posed no threat to the inmates, despite the 41 young men being completely surrounded by large, hostile, armed, and entirely Sinhala crowds and Sinhala police armed with guns. The Court ignored the displaying a banner that announced that the detainees had no quarrel with the villagers, only with the camp authorities.¹⁴⁹

The Supreme Court held that “it was evident that the immediate cause for the attack by a section of the crowd was the provocative act of the detainees, in charging into the crowd with clubs, rods, and stones in their hands. There is in fact no evidence that the inmates charged “into” the crowd, only that some of them rushed toward the crowd, evidently in a counterproductive attempt to show they shouldn’t be bothered. The crowd having retreated for a moment, which reflected a moment of having got frightened, nevertheless broke into the camp with all their fury... It is from this point one could assert with justification the commencement of the unlawful assembly with the common object of causing hurt to the detainees.”¹⁵⁰

It is nothing but figment of imagination. The evidence clearly indicated the involvement of the hierarchy of the Bandarawela police, their foreknowledge of the attack, and falsification of

¹⁴⁹ . Ibid

¹⁵⁰ . Ibid

evidence afterwards. It was not a case of mere dereliction of duty.

c. Criminal complicity of the police

“If not for the complicity of police officers, this would have been avoided...When the victims went running to policemen seeking protection, they were fired at by the police.” - stated Chairman of the three-judge bench of the Trial-At-Bar, Sarath Ambepitiya, in a 94-page judgement.¹⁵¹

Of the more than 60 police personnel stationed at the detention centre at the time of the attack, only those of medium rank officers - Sub-Inspector and Inspector - were charged. The senior officers ASP Dayaratne and HQI Seneviratne were not charged despite the fact that they were the senior most officers present. Even those police officers who ordered shooting at the fleeing inmates were not charged.

Justice PHK Kulatilaka's Presidential Commission of Inquiry stated the following about the conduct of the police:

“Conduct of the Police

The evidence placed before the Commission in no uncertain terms establish the following factual position relating to the police involvement, namely,

(1) That on 25.10.2000 around 8.30 a.m. there was a large gathering of people armed with

clubs, axes, swords, knives and iron rods at the Vidyapeetaya playground. With the numbers increasing they became aggressive and started throwing stones at the Rehabilitation Centre. They were making utterances of provocative nature. They were getting prepared to launch an attack on the Rehabilitation Centre. That was the scenario at the Vidyapeetaya playground. On the other hand even though there is hardly any evidence to ascertain how people in the cemetery side conducted themselves there is evidence that soon after the Vidyapeetaya mob broke into the Rehabilitation Centre, there was a flow of people coming from the direction of the cemetery as well. Therefore, undoubtedly the assembly of people both on the Vidyapeetaya side and the cemetery side was an unlawful assembly, assembled with the intention of launching an attack on the Rehabilitation Centre. That is a lapse on the part of the ASP and HQI by their failure to send sufficient reinforcement to guard the perimeter. The police Officers detailed on the Vidyapeetaya playground and the main gate had miserably failed to take any meaningful steps to disperse the unlawful assembly by using such means provided by law.

(2) That no meaningful steps had been taken by the police to prevent the mob from the Vidyapeetaya side breaking into the Rehabilitation Centre and also to stop people from the

¹⁵¹. http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/151/

cemetery side coming into the Rehabilitation Centre from that side.

(3) That once the mob invaded the Centre, acts of setting fire to the buildings, attack on the inmates and the massacre of inmates continued unabated while the police were just looking on.

(4) That the police had opened fire on the unarmed inmates who were running for protection towards the police trucks parked outside the main gate, thereby causing death of one inmate and injuring two others.

(5) That the police had failed to arrest any offender even though the assailants were seen moving about freely carrying weapons while the policemen were standing nearby.

Police shooting

It is manifestly clear from the testimony of Perumal Gnaneshwaran that whilst the inmates who escaped from the Kovil hall (Hall No.4) were in the process of running towards the police truck that the police had opened fire. He stated that the person who ran ahead of him was shot and fell. Another person received a gun shot on his leg and Gnaneshwaran himself had received gun shot injuries on his fingers. He described that it was while they jumped through the barbed wire fence towards the police truck that they opened fire at them. None of the inmates carried any weapons at that time.

He said they ran towards the police for protection. According to the evidence of Inspector Karunasena and Perumal Gnaneshwaran the shots were fired by the police from a downward position in an upward direction. The medical evidence relating to the post-mortem on the body of the deceased who had died of gun shot injuries is consistent with the description given by this witness. Inspector Karunasena admitted that he ordered the three policemen who were near him to shoot and that they complied. That was the maximum he could do in that situation he said. As I stated earlier the evidence of Perumal Gnaneshwaran is very clear on this point. The inmates were running towards a police truck. They were unarmed. They were being chased after by the assailants. While they were jumping out from the barbed wire they were shot at. There is no evidence to the effect that any of the assailants or civilians received any gun shot injuries. Police shooting was not an act done to prevent the mob running into the Centre or while they were running in the direction of the billets. These circumstances did not exclude Inspector Karunasena's duty to warn the crowd by first firing in such manner as to avoid striking any of the persons. Hence I have to report that the order to shoot by Inspector Karunasena and the act of shooting by three policemen consequent to that order were more than what was warranted in the circumstances.

Having considered the totality of evidence led before me, I have come to the conclusion that the conduct of the following officers on 25.10.2000 should be the subject of a disciplinary inquiry, for the reason that their inaction, and attitude at the time of the incident is indefensible. There is ample evidence that they were present at the time of the incident and made no effort either to avert the attack or to disperse the mob and arrest the offenders.

1. A.W. Dayaratne (Assistant Superintendent of Police)
2. R.M.T.K. Jayantha Seneviratne (Chief Inspector)
3. S.J. Karunasena (Inspector of Police)
4. N.G.S. Walpola (Sub Inspector)
5. P. Ratnayake (Sub Inspector)
6. K.W.C.N. Abeynarayana (Sub Inspector)

Ample evidence has been elicited at the inquiry to the effect that the administration was partly responsible for the creation of the situation and as such it is desirable that the conduct of the following officers also is enquired into at such inquiry.

1. Capt. Y.K. Abeyratne former Officer-in-Charge, Bindunuwewa Rehabilitation Centre.
2. Lt. P. Abeyratne Second Officer, Bindunuwewa Rehabilitation Centre.”

During his examination by the state counsel before the Trial-at-Bar, one of the survivors, Thambirajah Nawarajah

stated that he was hacked by an axe inside the police canter by a group of about 7 persons. Two or three police personnel were only a few yards away from where he was standing.

“I was in the rehabilitation camp on this particular day. At about 8.30 in the morning, stones were hurled at us. We could no longer stay inside the camp so we came out of it and ran towards the iron fence by the main road. I saw a blue police vehicle (we call it a canter) parked on the road and there were about 200 people holding axes and poles ...I then jumped over the fence to the road and got into the canter parked behind the camp,” Nawarajah said.

“I was hiding inside the camp for about half an hour. Then a group of about 7 armed persons came and hit me on my head. There was one inmate being killed inside the canter. The police were just a few yards away from us. I didn't know what happened after that. I was taken to the Bandarawela Hospital and then to the Diyathalawa Army Hospital. And I was finally taken to the Colombo General Hospital,”- he testified before the trial court.¹⁵²

According to a witness who gave evidence in the case, a boy, who was attacked with machetes by policemen and the mob, extricated himself from his attackers and fell at the feet of a senior police officer who had come to the

¹⁵² . Hacked by axe inside police canter – witness, the Island, 28 September 2002

scene, begging that his life be spared. Nevertheless, the boy, according to the witness, was hacked to death while he was pleading with the Police officer to save his life. The police officer had looked on while the boy was done to death.¹⁵³

Another witness said that he saw a policeman standing by the body of a victim that had been set on fire at the camp's main entrance when he went there on the day of the massacre.¹⁵⁴

The police claimed that they had fired to stop the rioters.¹⁵⁵ However, the fact remained that not a single Sinhalese was found injured, let alone be injured or killed in police firing. The report of Justice Kulatilaka clearly indicated that the police only shot the unarmed inmates and not at those who were attacking them with arms, clubs etc.

That the police were part of the organized massacre has been established beyond reasonable doubt.

d. Identification of the culprits

During the identification parade that was held in the last week of November 2000 before the Bandarawela magistrate, survivors identified three teacher trainees from the Bindunuwewa teacher training college who had been allegedly involved in the massacre.¹⁵⁶ This was ignored by the judges.

¹⁵³ . Bindunuwewa massacre accused receive death sentences, TamilNet, July 01, 2003

¹⁵⁴ . Ibid

¹⁵⁵ . OIC Crimes describes the attack on Bindunuwewa Camp, 23 August 2001, The Island , Colombo

¹⁵⁶ . Will the Bindunuwewa commission be effective? The Sunday Leader, 3 December 2000

e. Destruction of evidence and bias against the Tamil witnesses

There have been systematic efforts to destroy evidence. Immediately following the massacre, the police arrested about 250 villagers.¹⁵⁷ These villagers were released after sit-down protests at the front of the police station.

Mr. Premaratne, the Senior Superintendent of Police of Bandarawela commenting on the arrest of the villagers admitted before the Sri Lankan Human Rights Commission that “the manner in which large numbers of villagers resident in the neighbourhood of the camp had been arrested had only had the effect of thwarting any purposeful process of investigation”.¹⁵⁸

From day one, there were efforts to erase all evidence. The prosecution ignored the shooting of the fleeing inmates. One of the inmates who was shot to death had six bullet wounds on his body from three separate bullets - yet none of the bullets could be entered into evidence. According to testimony given to the Presidential Commission by Mrs. K.K. Joowzir, who was the Assistant Judicial Medical Officer who performed the autopsy, she gave the three bullets to “an investigation officer” whom she later failed to identify.¹⁵⁹ It goes without saying that the shooting hardly seems a typical case of accidental shooting.¹⁶⁰

The Trial-at-Bar of the High Court held the police responsible for removing the

¹⁵⁷ . <http://www.hrw.org/wr2k1/asia/srilanka.html>

¹⁵⁸ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

¹⁵⁹ . 94 Commission Hearings, 17 May 2001.

¹⁶⁰ . Bindunuwewa massacre accused receive death sentences, TamilNet, July 01, 2003

dead bodies of the detainees from the scene to destroy the evidence.

While dismissing the High Court's charge that the police decision to remove the bodies of the murdered detainees was an attempt to conceal evidence, the Supreme Court simply referred to the testimony of ASP Dayaratne that "it was so done as instructed by the DIG to preserve peace in the area as there was a large concentration of Tamil estate workers in the surrounding area".¹⁶¹

The eyewitness testimony of the surviving detainees, on the other hand, doesn't seem to have quite the same status as to the testimony of ASP Dayaratne. The Supreme Court rejected the testimony of two survivors - accepted as true by the Presidential Commission of Inquiry - that they were each attacked by the mob while they were inside a police vehicle within sight of numerous police officers. Instead, the Supreme Court argued that their stories are contradicted by a sole Sinhala witness who "claimed that when a detainee who came running towards the Police truck near the turn off to the camp was attacked, there were no police officers at that point." Even if the Sinhala witness is to be believed, his testimony doesn't necessarily contradict the survivors' claims, as it is not clear that they were all speaking of events that took place at the same time. Finally, the Supreme Court also dismissed the claims of the survivor Perumal Easwaran that his two fingers were blown off by a gunshot wound when the police shot towards a group of inmates fleeing attackers. While they cite the evidence of a Judicial Medical Officer that

"clearly showed" his wounds were caused by sharp weapons, they make no mention that an earlier JMO report, submitted as part of the prosecution's case, referred to Easwaran being sent to Badulla hospital after the attack for treatment of "gunshot wounds." The Presidential Commission of Inquiry held that at least three inmates were shot by the police.¹⁶²

The prosecution used photographic evidence reportedly taken after the attack had taken place to show no specific crimes being committed. While considering the question of the police failure to arrest any of the attackers, the Supreme Court made no mention of the photographs, taken by a police photographer who arrive at the camp around 9:30-9:45 am, that clearly show senior police officers including Karunasena and Ratnayake milling around the camp alongside armed attackers, as a dead or injured detainee lies at their feet.¹⁶³

The Court also failed to take into consideration an important piece of evidence that the High Court made much of: the fact that the attackers were able to burn the bodies of many inmates beyond recognition suggests that the attack was not over and done with quickly. For the bodies to be burnt so completely, the High Court argued, would have required the acquiescence of the police. This was an apparently minor, but nonetheless devastating and detail, especially when considered in the context of the shocking ferocity of the attack as a whole and the particularly gruesome ways in which the

¹⁶¹ . All four accused acquitted, The Daily News, 28 May 2005

¹⁶² . Alan Keenan, Making Sense of Bindunuwewa - From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

¹⁶³ . Ibid

inmates were killed - all of which was a far cry from the Court's initial presentation of the attack as a spontaneous response to the provocative actions of the inmates.¹⁶⁴

f. Identifying the real culprits: The chain of command

“The main reason why the police was not able to save the lives of the innocent inmates of the Bindunuwewa Rehabilitation camp was because the senior officers like the ASP and the HQI did not send baton charge and tear gas teams to prevent the rioters from harming the inmates. They did not give any order to prevent this tragedy and now they are trying to dump the whole blame on innocent officers like us. I did my best to prevent them and even shot at some of them, but the investigators did not find any wounded among the civilians we shot at, simply because they did not search for them in the neighbourhood.” - stated Inspector Jayampathi Karunasena, who was in charge of Bandarawela police crime branch during his examination before the High Court.¹⁶⁵

There were about 60 fully armed policemen present at the site of the massacre who did nothing to stop the rioters. Not a single arrest was attempted or made. As the Justice Kulatilaka Commission argued the police could, as a last resort, have shot at the relatively small number in the crowd who did have weapons - what the report calls “the

criminal elements.” Instead the only shots fired seem to have been at the inmates - and the death of the one inmate who died from gunshots seems hard to read as accidental, as he had seven bullet wounds on his body.¹⁶⁶

Inspector Karunasena in fact ordered the police to shoot at the fleeing inmates: “the order to shoot by Inspector Karunasena and the act of shooting by three policeman consequent to that order were more than what was warranted in the circumstances.” Karunasena admitted before the Presidential Commission of Inquiry that he had ordered his men to fire in the direction of a number of inmates as they were running towards his officers in an attempt to escape their pursuers. But what he intended by this order is not clear. He was not charged.¹⁶⁷

Karunasena also testified that both ASP Dayaratne and HQI Seneviratne were there at the camp from 7:30 am onwards on 25 October 2000. Another police officer, Sub-Inspector N.S. Walpola (who along with Karunasena, was later indicted and put on trial), identified the ASP as being near the barracks before the attack. Of course, the interests of both Karunasena and Walpola would be served if it was accepted that their superior officers had been on the scene. But other, less interested parties also identified the ASP and the HQI as being there at least by the time the attack was in full swing. Captain Abeyratne stated in his testimony before the commission that he had seen ASP Dayaratne there at the very early stages of the attack, before

¹⁶⁴ . Ibid

¹⁶⁵ . LakBima, 4 September 2001

¹⁶⁶ . Alan Keenan, Making Sense of Bindunuwewa - From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005

¹⁶⁷ . Ibid

the crowd had had a chance yet to set fire to the camp (many of the inmates were either burnt to death or had their bodies burned afterwards). And according to an even more reliable witness, the Bandarawela Divisional Secretary, W.N.R. Wijeyapala, the ASP and the HQI were both well inside the camp when Wijeyapala arrived, soon after 8:30 am, as the attack was actively underway.¹⁶⁸

Thus, if Captain Abeyratne's and the Divisional Secretary's testimony were correct, the ASP and the HQI were there early enough to be as responsible for the shootings and killings of the inmates as any of the other police officers. And indeed, the Presidential Commission of Inquiry accepted that the ASP and the HQI were at the scene while the attack was going on: "I have no doubt that ... both the ASP and HQI were present in the Rehabilitation Centre while the crimes were still taking place and assailants were freely moving about carrying weapons inside the Rehabilitation Centre." According to the testimony of SI Chintaka Abeynarayana, the ASP allowed an inmate to be attacked and beaten at his feet, even as the inmate was pleading for his life. The ASP did nothing to help the inmate other than to eventually order the police to drag the inmate away. The exact fate of the inmate is left unclear in Abeynarayana's testimony.¹⁶⁹

The acquittal was set. It was a collective failure of the State of Sri Lanka.

¹⁶⁸ . Ibid

¹⁶⁹ . Ibid