

University Teachers for Human Rights (Jaffna)

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The Choice between Anarchy and International Law with Monitoring

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1. Paralysis of State Institutions

Anarchy looms over Sri Lanka. A peace process that was cavalier about protecting basic human rights and standards of decency is being transformed into a war without moderating norms. Each side defines its legitimate military target by the momentary needs of propaganda, which are often contradicted within hours. Two different sets of recent victims of conflict are examples: school girls in the Vanni attending (under LTTE compulsion) a training programme with components that could remotely be termed military, and unarmed naval personnel waiting for transport at a pick-up point. Both were victims of crimes under international law.

The tendency to anarchy is further exemplified by the killings and abductions in Colombo. The Civil Monitoring Committee, an initiative by some political leaders, has reported 9 persons, mainly Tamils, killed and 36 missing. While some of the killings are by the LTTE, the majority appears to be linked to the security forces and groups under their patronage, often for extortion. The Government's inability to curb this despite the mounting publicity is a sign of paralysis.

The ability to change the country's direction rests mainly with the Sri Lankan State. A number of concerned groups have long advocated that Sri Lanka should make an uncompromising commitment to international law and standards with monitoring to give peace with dignity to all our citizens a real chance. The cases considered in this report underline the urgency.

2. Resurgence of Old Ailments

The intensified spate of killings early this year has been widely recognised as the major obstacle to peace and stability in Sri Lanka. Both local and international actors have called for human rights monitoring by the UN or an international body of similar weight to investigate the killings and to check them. For the first time the call has been backed by editorials in several of the country's prominent newspapers.

Although it may be difficult to find agreement on the enormity of what is going on today, people instinctively sense from experience that something is horrendously wrong. They recognise the intensity of killings, most of them now by apparent agents of the state, which are so reminiscent of the late 1980s. Equally familiar is the hard-line rhetoric of extremist forces like the JVP and JHU and their very visible influence within the armed forces and the Government, not to mention the paralysis of law enforcement, and its absence of will to resist the madness. It is as though the country has remained a prisoner of the dispensation of 1956 and all attempts at breaking out of its pernicious grip have proved indecisive. Sri Lanka with enormous potential to offer its citizens a good and creative life has chosen to rot in the slough of communalism, which is at the root of the violence.

Killings by the LTTE, which it justified by pointing to the State's record of impunity and promoting the notion of 'traitor' deployed by Tamil nationalists to silence their critics, have never been seriously challenged. Successive Governments who have interpreted sovereignty as their untrammelled right to bomb and kill their own civilians drew the ire of world opinion and helped to veil the true nature of the LTTE's methods. Even the ceasefire was implicitly conceded to the LTTE as a killing holiday. Now the present Government has taken its turn and we are in a state of anarchy with no point of reference, complete insanity.

The Government has failed to understand that statehood and sovereignty become playthings lacking any substance without a commitment to upholding the law. The lesson of the 1980s is that when the armed forces of the state are licensed to kill an ethnic minority, it debases the state and ultimately brings indiscipline and demoralisation within the armed forces. The doubts over whether the bomb blast that killed General Kobbekaduwe in 1992 was an external or internal job paralysed the Army, and fatally wounded the Premadasa presidency. A country must always maintain a moral reference point.

Nothing is without thorns, but a robust international monitoring mechanism is our only hope of restoring credibility to our badly battered institutions of law enforcement. The Government

in a bid to evade the issue keeps saying that we have our own expert investigators, forensic experts and a competent judiciary. The problem is not with their expertise, but with the current state of ethics, and the highly politicised manner in which they are used. There is almost no one whose integrity has not been crucially undermined at some point to suit the ideological aims of those in power.

Frequently aberrations and excesses speak louder than flawed justice. We give a few instances that illustrate the manner in which law enforcement is clumsily and blatantly subverted.

3. The Pottuvil Massacre

3.1 Accusations and Counter-Accusations

On 17th September, 8 Muslim labourers who went south to repair the bund of Rattal Tank and some others who went in a tractor to bring them back in the evening were abducted. The following morning a search party found 10 bodies blindfolded, tied and hacked to death.

The Muslims in Ullai just south of Pottuvil had a history of problems with the Sastriveli STF camp. They accused the STF OIC Chief Inspector S.N. Gunaratne of helping the Sinhalese to get control of the place at the expense of the Muslims and Tamils. Earlier a dispute had arisen over the STF's attempt to erect a Buddha statue in Ullai, the beach resort next to Pottuvil town, often the first step in pushing out other ethnic groups. There are also traditional tensions between the two communities over the use of the forest near the village. Just a day or two before the incident, the Muslims had a heated exchange with Gunaratne over a dispute involving the Muslim cemetery. According to them, Sinhalese had built houses in the cemetery allocated to them and sought to bury one of their dead in the Muslim cemetery. These sources said that Gunaratne was threatening and abusive in his speech and told them that he knew the Muslims had made representations seeking his transfer and that he would take care of them or teach them a lesson.

According to local sources, when the labourers failed to return home on 17th September, others concerned for them went to the Sastriveli STF camp about 4 miles away the same evening and asked the STF to organise a search party. The STF sent them away saying that the labourers would come back in the morning. Nevertheless some Muslims went independently the same evening and found some liquor bottles not far from the work site.

Four friends and relatives of the missing went to the area on motorcycles the following dawn, 18th, and seeing a corpse with the throat slit near the anicut on which the labourers had been working, went to the Sastriveli STF camp and informed Chief Inspector Gunaratne. The relatives complained that the STF OIC took a very long time to go to the place after being told of the body. According to the *Nation* (24th Sep.), a senior STF officer said that they had to take maximum precautions going to the place about 4 miles away, taking account of possible ambushes. "*When the STF did arrive at the scene of the incident the Pottuvil residents had already collected the bodies and were taking the lone survivor to the hospital,*" the *Nation* said.

This is slightly misleading. It was under the instructions of the Police from Pottuvil that the bodies were removed. A search party that morning found 10 bodies of their colleagues blindfolded, tied and hacked to death in the same area where they found arrack bottles the

previous evening. They rescued a lone survivor, Meera Mohideen (60) with cut injuries. The dead are Abdul Rasool Rizhard (23), Anurdeen (19), Kalandar Jabbar (22), Anees (18), A.M. Samsudeen (20), all from Pottuvil; Firoze (19), Ajeer (19) and Faizal (19) of Akkaraipattu; and Shiyam (20) and A.M.A. Rashid (35) of Addalachenai. They were all daily paid labourers working under a local contractor.

The search party then brought the Police there, who instead of bringing the magistrate, asked for the bodies to be removed. The evidence – the arrack bottles, one of them half full, cigarette butts – and foot prints, was all there. These too the people accused the Police of removing without allowing the Akkaraipattu Magistrate Mr. Manaf to see them. When the STF came to the scene, the people there found them watching indifferently, and for all their zeal about security, they took no action to cordon off the area and search for the perpetrators, nor have they so far claimed to have taken any measures to apprehend the killers.

In the judgment of the local Muslims the area was totally under STF control. They ruled out any possibility of LTTE involvement. They accused the STF and demonstrated demanding the immediate removal of Gunaratne. The SLMC leader Rauf Hakeem reported what the people had told him and called for a UN inquiry. Many still had reservations about excluding LTTE involvement until the widely felt impact of the Government's subterfuge in dealing with it.

Locals pointed out that the nearest LTTE encampment in Kanjikudichcharu was more than 25 miles away and the LTTE had not been responsible for abductions or killings around Pottuvil in more than 10 years. To commit a crime in Shastriveli at 5.30 PM, the LTTE would either need to travel by day or arrive earlier and hide in those parts. Either way, it would have been risky for them. And escape would have been difficult.

Meera Mohideen, the injured man, was sent by ambulance with written instructions from District Medical Officer, Pottuvil, to have him admitted to hospital in Kalmunai. Kalmunai has Ashraff Memorial Hospital and the older base hospital in the Tamil division, both of which were well equipped after the 2004 tsunami. The ambulance had gone past the STF check point in Karaitivu and was in Maliyakkadu on the outskirts of Kalmunai, when the Police there stopped the ambulance and ordered the patient taken to Amparai Hospital. The people in Pottuvil understood that the order for this transfer had come from ASP Jamaldeen of the Kalmunai police. This change was something the victims' families would have been extremely anxious over since Amparai is a Sinhalese town where the STF has its regional HQ and the STF was being accused of the crime. Moreover, the Muslims felt home at Kalmunai that was within easy access of Pottuvil. The move had nothing to do with the interests of the patient to whom it meant a further delay and mental unease.

Soon the story was leaked to the Press on the 19th itself that Meera Mohideen had told the special police investigation team, whose formation the Government had announced, that the LTTE had carried out the killings, having come armed with 'guns, sickles, knives and axes'. The SLMM tried to see the survivor but was turned away by the Police. A Muslim rights group contacted the family of the victim, who said that the victim was in too poor a state to make a statement to the Police team and was practically devoid of speech. He could only grunt incoherently. This was also the Police's rationale for turning away the SLMM and members of the family. It was on the 22nd that the SLMM was allowed to see him. Meanwhile government spokesmen, including Muslim minister Fowzie, blamed the LTTE for the killings.

About 50 Muslims had been killed in Mutur by government shelling in early August and 80 had had limbs amputated in Trincomalee and Kantalai hospitals. Up to then they had received only promises. Tamil victims have not even been acknowledged. But soon after the Pottuvil incident, on the 20th itself, Minister Fowzie rushed to Pottuvil to give Rs.1 lakh each to the families of the 10 who were killed. The wife of the injured man, who is ill and without means remarked that they would want her husband to die for her to get anything. It was three days later, on the 23rd, that a delegation of government ministers, a JVP and a JHU MP visited Mutur to make good an omission. However, they offered only Rs.15, 000 each to the families of those killed by government shelling, which was angrily rejected.

Again on 22nd September, the STF security given to SLMC leader Rauf Hakeem, who persisted in demanding an international inquiry, was outrageously taken away.

Except for angry denials, vague allegations against timber racketeers backed by the LTTE (*Island* 26th September) and a disputable statement from Meera Mohideen not supported by a magistrate, the STF Chief, Mr. Lewke, is yet to provide any evidence to rebut the charges of locals against the STF. Two days later, while repeating almost the same things as Lewke, STF SSP Ranjith Perera added some spice in an interview published in the BBC Sinhalese Service. He claimed that the ten Muslim youth fell into an LTTE trap to discredit the STF, just when they were on an operation, about to over run an LTTE camp. This claim was in sharp contrast to their locally perceived lethargy soon after the incident.

On 29th September, Minister Athaullah went to Amparai Hospital and obtained a video testimony from Meera Mohideen, who was being held virtually incommunicado. The statement belongs in the category of confession under torture or worse. This interview pointing naturally to the LTTE was circulated on the internet by the Defence Ministry. Even for over five days after Athaullah had called, his family was not allowed to see him.

In Pottuvil, community leaders complained that for all his enthusiasm Athaullah never came to Pottuvil, either to commiserate with the victims or to show them the error of their ways, although it was barely 45 minutes away by vehicle.

A Muslim community leader told us that the Magistrate Manaf declined to go outside his jurisdiction and obtain a testimony from Mohideen at Amparai Hospital and told the Police that they could bring him to court in Akkaraipattu when he is fit. We understand that he has received other testimonies that point away from the Government's version.

Mohideen merely told Athaullah that the five or so assailants were dressed in khaki-like wear and spoke good Tamil. He was practically led by the questioner to identify them with the LTTE. Of course many Panama Sinhalese were intermarried among Tamils and spoke excellent Tamil. The man whose burial just before provoked the latest tension, was a Tamil married to a Sinhalese.

An earlier development with a hint of Athaullah's involvement was the claim by the Defence Ministry on 23rd September that several community organisations in the Eastern Province had expressed in writing to Defence Secretary Gothabhaya Rajapakse their conviction that the LTTE was responsible for the massacre of innocent Muslim civilians in Pottuvil. The only organisations named in this connection were the Akkaraipattu Pradesha Fish Vendor's United Credit Co-op Society Ltd, Akkaraipattu Traders Association and the Akkaraipattu Jumma

Grand Mosque. All were from Athaullah's neighbourhood. It would have been far more dignified for the Government to agree to the UN inquiry requested by Hakeem.

Reports from Akkaraipattu say that these organisations, cited for propaganda purposes by the Defence Ministry, have at least partially dissociated themselves from its claim in a leaflet issued subsequently. The Amparai District Federation of Mosques went to Pottuvil on a fact-finding mission. Community leaders there challenged Moulavi Haniff from Akkaraipattu on the statement the Defence Ministry claimed to have received from his mosque. Haniff reportedly remained silent. Other sources of standing said that Haniff was then away in Malaysia and accused ASP Jamaldeen of Kalmunai of going to these societies (including to the secretary of the mosque) and importuning them to come out with their letterheads and the statements credited to them.

Many concerned persons have pointed out that if it were the truth the Government wanted, it should not have used Athaullah in this questionable manner. The most straightforward thing would have been to send a group of respected Muslims to satisfy themselves that Mohideen was not under duress and then talk to him.

Moreover, Mohideen's personal circumstances speak of his utter helplessness. He and his family were tsunami victims. They were very poor and living in a hut with materials like a sari substituting for walls. His wife was very ill.

3.2 Saga of the Principal Witness: Medical and Police Ethics

Mohideen had narrowly survived his assailants, cut on his neck. He was redirected to a hospital not of his family's choice, kept incommunicado and videoed for propaganda by a visiting minister. A feature in the *Daily News* of 4th October, while containing disputable claims, gave some hope that he would be home again: "*P.K.T.L. Jayasinghe, the Medical Superintendent of Ampara Hospital, said, Careem Meera Mohideen was recovering fast from his knife injuries and they allowed the Police, the Sri Lanka Monitoring Mission and the CID to record statements from Careem. "We allowed his family members to visit him at the ICU. Our only concern is about his health and security. There is no other reason for us to prevent people speaking to him", Jayasinghe said. According to Dr. Jayasinghe...no operations could be carried out to insert respiratory tube since there were deep cuts in his neck. "He will be discharged from the hospital by next week once his cut injuries are healed...He is in good mental condition and can identify the people visiting him", Dr. Jayasinghe added.*"

The Amparai Medical Superintendent's claim was contradicted in an affidavit sent to the President on the same day, 4th October (*Thinakkural*, 10th October). Mohideen's only daughter stated in her affidavit that try as they did, neither she nor her husband had been allowed to see Mohideen, violating her fundamental rights. She suspected some improper motives.

On 4th October or in the days following, Meera Mohideen was moved to a paying ward in Colombo Hospital for unknown reasons despite the Medical Superintendent in Amparai saying that he would be discharged in a few days and was fast recovering. According to sources close to his family, Mohideen became insistent that he wanted to go home and the

doctors found it difficult to keep him in Colombo. His son-in-law was summoned from Pottuvil, who pacified Mohideen and persuaded him to stay longer.

A remarkable piece of information from these sources is that when the son-in-law raised Athaullah's interview with Mohideen, he just could not remember giving the interview. He had been put through a propaganda exercise in Amparai Hospital when evidently he was not in a fit condition for it. The problem in Colombo Hospital appeared to be that the Amparai Police had put him there and the Hospital was waiting for the Police to initiate his discharge. The son-in-law had previously been complaining aloud that Mohideen should be allowed to speak the truth and was angry at what Athaullah had done.

After the Government and most of the media went to excesses in touting Meera Mohideen as their principal card to discredit alleged local malice against the STF, he for the same reason became an embarrassment. What now to do with the man? For a humble tsunami victim who received enormous unsolicited publicity for two weeks after the incident, there has barely been any mention of him in the media since 4th October.

Meanwhile the case has acquired such high stakes that a number of claims in the media turn out to be defective upon examination. The *Nation* had reported on 24th September: *The doctor at the Pottuvil Hospital who first received the injured man told The Nation that he spoke to the survivor, Meera Mohideen who was brought in with a severe cut in his throat. "The man only spoke a few words but he told me that the killers spoke fluent Tamil," says Dr A.M.M. Issadeen who also carried out the post-mortems on the deceased. According to Dr. Issadeen, the killings had taken place between 11 and 12 midnight on Sunday, September 17.*

Close relatives of Dr. Issadeen who checked with him said that he denied telling the Press anything of that kind. He saw that Mohideen was in a poor condition and needed surgery, and dispatched him to Kalmunai immediately. Others who saw Mohideen on that day said that he could only grunt incoherently and communicate with signs. Dr. Issadeen, his relatives said, had not seen the press report. They added that he had telephoned Jamaldeen, ASP Kalmunai, the same day and challenged him over his highhandedness in defying his instructions and moving the patient to Amparai, and told him that he should bear the consequences. Jamaldeen reportedly replied that the decision was not his, but the order to switch hospitals had come from the DIG in charge of Amparai.

Taurine Justice: Another ruse used by the State to divert attention from the real issue of murder was to make out that accusing the STF of the killings was a move by timber racketeers, who in connivance with the LTTE were out to blunt the fervour with which the STF and Police had been protecting the environment. Timber thieves are routinely produced in the Pottuvil magistrate's court, and 28th September was such a calling date. After the Police confiscate the timber, the person responsible is produced before the magistrate. This time SP Amparai G.B. Peramanne put on an extraordinary show. Journalists with cameras were summoned for a grand denouement. Instead of producing just the 28 accused, the Police reportedly ordered them to load the confiscated timber that was with the Police into their bullock carts and paraded them before cameras as the bulls and their owners, with the timber, presented themselves before the seat of justice.

3.3 Local Nuances in the Pottuvil Massacre

We learnt through authoritative local sources that on the 18th Muslim labourers who worked for a contractor at Ratthal Tank were puzzled that the Sinhalese labourers had not turned up for work. At 5.30, some persons went to the work site in a tractor to take them home. These sources said that according to some persons who have since gone back on their earlier claim, they saw the STF arrest 11 of the labourers, who were then tied, blindfolded and handed over to some other men. The labourers were apparently killed after their abductors had been under the influence of liquor for a considerable length of time. According to local sources, witnesses saw five Sinhalese persons coming back to the village late in the night. They were, the sources said, persons who go along with the STF OIC as translators.

Further testimony discrediting government claims of LTTE involvement was given by some Muslims who were in the vicinity of the scene of abduction an hour earlier, about 4.30 PM. They had been stopped by Sinhalese home guards, who questioned them and allowed them to leave. This also raises the question whether some particular Muslims were targeted for any reason. Whatever was true or false in Meera Mohideen's testimony given to Athaullah, the bit about the abductors asking for identity cards is striking. We may have to wait for months, as in several other current cases, for the full truth to seep through. A large number of local Muslims who are familiar with the nuances are in no doubt that the STF is complicit in the crime and the Government's actions remove all doubts on this score.

This feeling was reflected by a Muslim community leader, who said, *“Although we would like to keep an open mind on this matter, the Government and its actions will not allow us to do so. Not only this, they add insult to injury by planting stories in the English and Sinhalese papers linking the entire Muslim community in the region with timber racketeers. They insult our intelligence by saying that these protests against an STF officer with a zeal for the environment have been organised by timber racketeers. Those killed had nothing to do with timber racketeering. They were very poor labourers working on an anicut. Timber racketeers cut across all communities and are a small minority. In this case the STF has had unfettered control over a large area for many years, which they feel belongs to them and they impose their own systems of patronage.”*

3.4 Council of Muslim Clergy writes to the President

In a letter to the President in mid-October, the Council of Muslim Clergy in Pottuvil (Pottuvil Jamiyyathul Ulama) clarified matters relating to the propaganda campaign against Muslims of the area and strongly reaffirmed their position with regard to the killings and the demand for an inquiry.

They pointed out that in the four official meetings the people's representatives held with representatives of the Government and the security forces after the incident, their demands were for the immediate transfer of the OIC STF, Shastriveli, and his team, an independent inquiry into the massacre of 10 civilians, a trial-at-bar hearing and security for Muslim farmers. They never asked for the removal of the STF from the area as is widely misrepresented. It was the STF Chief Nimal Lewke who threatened to pull out the STF from the entire Pottuvil area if Inspector Gunaratne were to be removed.

The clergy objected to the propaganda linking Pottuvil Muslims with the LTTE and the *'malicious and unscrupulous campaign by the Government that the protest against the killings was instigated by the LTTE and illegal timber businessmen'* and likened it to an attempt *'to bury an entire pumpkin in a plate of rice'*.

The clergy found it *'ridiculous and unbecoming to criticise and crucify'* SLMC leader Rauf Hakeem *'just because he expressed the views of Pottuvil Muslims with regard to the massacre.'* They found intriguing the position of the STF Inspectors' Union, which *'has called for a full probe on Hakeem's comment rather than asking for a full probe on the massacre.'*

They reiterated the position taken by the Muslim public on the massacre as remaining unchanged:-viz. *'the massacre of 10 civilians wouldn't have taken place without the knowledge of the Sashtaveli O.I.C STF and his men. That is to say that they were directly or indirectly responsible. This contention is fully based on the circumstances that led to the brutal massacre of the 10 Muslim civilians.'* This, they affirm, is the basis under which the people asked for an international inquiry into the massacre.

3.5 The FR Petition against Rauf Hakeem

In a further development CI S.N. Gunaratne of the STF has filed a fundamental rights petition in the Supreme Court against SLMC leader Rauf Hakeem and the former IGP Chandra Fernando who transferred him. He alleges that at a meeting held with the villagers in the presence of former IGP Fernando and the STF Commandant, Rauf Hakeem had accused him of the massacre and had demanded that he be removed immediately. Rauf Hakeem moreover had allegedly accused CI Gunaratne of having gone berserk and shot people at random on 20th September at a demonstration against Gunaratne that became heated, where about 14 civilians were injured.

The case promises to be of interest because the success of the petition would depend largely on impunity and the fear among witnesses in the North-East to testify against the security forces. On the other hand public interest is clearly on Hakeem's side. The Pottuvil clergy's letter to the President says, *"It is the cardinal duty of an MP to voice the concern of the public; furthermore, he never incited and instigated the protest against the killing as is claimed by the STF."*

The landmark October 11th unanimous decision by the Law Lords in Britain in the case of *Jameel v. Wall Street Journal Europe* removes from the Press the constant threat of libel as long as allegations against public figures are made responsibly and in the public interest. Article 10 of the European Convention played an important role in influencing the thinking of the judges. It provides for the freedom to *'impart information and ideas without interference by public authority and regardless of frontiers'*, subject to some duties and responsibilities. Baroness Hale of Richmond said in the judgment, *"The most important is article 10 of the European Convention on Human Rights, because we have not only an international but also a domestic obligation to comply with it."*

Also influencing the judgment was the consideration that one family controls Saudi Arabia with an iron fist, and in the public interest it is unfair to oblige a newspaper to observe more

rigorous standards of verifying the allegations concerning intelligence commitments the Saudi Central Bank made to the United States.

If jurisprudence in Sri Lanka were guided by the ICCPR (especially Article 19), which now seems to have been placed in limbo by a Supreme Court judgment, the case for Hakeem would be clearer.

4. Armtwisting and Tampering with Judicio-Medical Norms

The events surrounding the murders of five students in Trincomalee on 2nd January, and Meera Mohideen's ordeal in September are examples of the flagrant abuse, subsequent distortion of facts, and strong-armed tactics against witnesses and survivors that have become standard under the present government from early this year.

We have earlier written about the Trincomalee students' case, and will give a fuller account of it in a coming publication. In that instance the Government tried to pass off execution by gunshots as death resulting from a grenade explosion. Soon after the incident by 9.00 PM dozens of armed masked men in commando uniform were deployed in the Trincomalee Hospital, including its corridors. Parents of the dead were pressured to sign declarations that their deceased children belonged to the LTTE. Two injured survivors were admitted to the ICU. A doctor previously connected to Trincomalee hospital appeared mysteriously and according to a parent, advised the injured that they would receive proper medical care if they confessed that they belonged to the LTTE, and if not, their future would be uncertain. The following morning, according to parents, the same doctor tried to take over the post mortem examinations from the regular JMO, but the DMO and the JMO stood firm.

Besides being instanced of horrific violence, both cases raise important ethical questions for the medical profession in Sri Lanka. Who decides on the disposal of the patient? Is it the medical profession taking into account the patient's well-being and mental peace, or is it the Police with their need to manipulate the patient for often dishonourable ends? Even on the question of postmortems, there is a need for the medical profession to take a stand so that the calling of the JMO retains its integrity. This is not a new issue. Soon after the Welikade prison massacre of July 1983, the government of the day was very sensitive to what the JMO would find. The JMO, Dr. M.S.L. Salgado, went through a period of intense fear for his safety. But he discharged his duty with integrity. The performance of the medical profession recently has been less impressive.

In Meera Mohideen's case, the Police apparently decided which hospital he should go to, who he should meet while under treatment, and whether and to whom he should speak. His daughter who would have contributed to his mental and physical peace was being kept away on the grounds that he was too ill to see her. The SLMM who would have diminished his sense of isolation was allowed in only reluctantly after a delay.

When Minister Athallah who would have done nothing for his mental peace wanted an interview on videotape to aid a Defence Ministry cover up, Mohideen was before a camera with a medical assistant holding something against his throat, apparently to enable him to make coherent sounds. After the doctors were quoted in the Press saying that his condition

was stable and he would be discharged soon, he was moved to Colombo Hospital apparently on a decision taken solely by the Amparai Police.

There would have been a spontaneous public outcry if the authorities had dealt with Mohideen in this manner in Kalmunai or Ashraff Memorial Hospital, where he was destined earlier. The pressing need for witness protection in the North-East of Sri Lanka has been widely acknowledged. Meera Mohideen is one of those who should be provided conditions where he feels able to speak the truth. More of these problems are evident in the executions of ACF staff.

5. The Case of Executions of ACF staff

5.1 Baffling Orders from Colombo

On 5th August (we will return to the date below) 17 members of the ACF staff were executed during the transition of control of Mutur town from the LTTE to the government forces. Their bodies were removed to Trincomalee on 7th August and the post mortem examinations were due on the 8th. The authorities took an unprecedented step: Mutur Magistrate Ganesharajah who handled the case, issued an order for the JMO Trincomalee Hospital to do the postmortem examinations. The standard procedure in all the hospitals is for the local JMO to do the postmortem examinations or in his absence for the Medical Superintendent (MS) or another MO to do them. The one done in January by JMO Trincomalee and observed by DMO Trincomalee, had not obliged the Government in the cover up of the Five Students' case.

On the morning of 8th August, the Anuradhapura JMO Dr. D.L. Waidyaratne, who we learned also works for the military hospital there, walked in with his assistant and a letter of authorisation to do the postmortem examinations. As far as we know, no independent observer was present. Such an observer would have been desirable in a case with such high stakes as this one, especially when there were conflicting stories circulating. For example, some hospital employees in Trincomalee said that there was haematoma between the legs of the women victims suggestive of rape. If the inference drawn by the employees were incorrect, having an independent observer would have cleared matters. Other sources consulted by us said that they saw the dead victims lying face down in the ACF premises and the women were fully clad. That does not exclude rape.

The most quoted and controversial point allegedly in the postmortem report, was the estimated time of death. According to Defence Spokesman, Minister Keheliya Rambukwelle, the postmortem report gave the time of death of the aid workers as between the night of 3rd August and the 4th morning (e.g. *Daily Mirror* 31 Aug.06), and stated, contrary to his own earlier claim (*Daily News* 4th August), that the LTTE was in control of Mutur town at this time.

We have a number of testimonies that members of the ACF staff were in touch with their families or persons outside throughout the 4th and at least one contact was attempted on the 5th. Evidence available to us (see below) strongly suggests that 17 members of the ACF staff were executed on Saturday the 5th morning. This places it 24 hours after the latest time supposedly given in the postmortem report. There has so far been no independent assessment of this crucial point.

Dr. Clifford Perera, Coordinator for the Working Group of JMOs for Disaster Verification Identification told the *Sunday Times* (1st October) that the Anuradhapura JMO was told that some postmortems had to be done in Trincomalee, without being told the seriousness of the issue. He and his assistant had to conduct postmortems on 17 bodies in less than 5 hours. However, JMO Anuradhapura would not have been unmindful of the fact that the security forces were the chief suspects. Dr. Clifford Perera states contrary to government claims about postmortem findings that the ACF staff were killed on the 4th or 5th August. If the Government has been misquoting the postmortem report of the Anuradhapura JMO, it makes matters even worse.

Surprises did not end there. The Mutur Magistrate fixed 6th September for the Police to file the postmortem reports in the Trincomalee Magistrate's court so that he could deliver the verdict. But on that day he told the court that both the Secretary to the Ministry of Justice and the Secretary to the Judicial Service Commission had informed him by telephone that the case was transferred to the Anuradhapura Magistrate's Court and would be called on 20th September. Apart from the inconvenience, it is scary for Tamil witnesses testifying against the state to hang about Anuradhapura. Proceedings in rape cases brought against Police and Navy personnel by two women in Mannar in 2001 (see Bulletin No.25) were also shifted to Anuradhapura. These dragged on until the victims ceased attending court and practically vanished out of sight.

Rumour went around in legal circles that the Anuradhapura Magistrate, who had previously served the Army in a legal capacity, contemplated falling sick rather than hear the ACF case. Following protests that this transfer was illegal and improper, the difficulty was circumvented by appointing the Anuradhapura Magistrate Wasantha Jinadasa, Additional Magistrate for Trincomalee and Mutur. On 20th September Jinadasa ordered the CID to exhume the remaining 15 bodies and moved the case to the Kantalai Magistrate's court, a place increasingly inhospitable to the minorities after developments this year. The remaining witnesses are mainly in Trincomalee and anyone in Mutur is more familiar with Trincomalee. If the Five Students' case could not progress in Trincomalee, how is the ACF case to proceed in Kantalai?

The Judicial Service Commission comprises the Chief Justice and two other justices of the Supreme Court. The virtual stealth involved in shifting all the medico-legal functions in the ACF case to Anuradhapura, in a separate district from Trincomalee, is without reason or precedent. The change brought about at the behest of the highest levels of the State, with the compliance of the JSC, has the appearance of a cover-up. Exhumation of bodies under international pressure is an admission that the process was defective.

Controversy over the JSC and its actions makes an adverse reflection on the process of justice in Sri Lanka. Kishali Pinto-Jayawardena, Convenor, Rule of Law Centre, Sri Lanka, wrote, *"In early 2006, the two senior judges of the Supreme Court who constituted the Judicial Service Commission along with the chief justice resigned their positions, citing grounds of conscience. The widely-held perception was that the resignations were due to differences with the chief justice, whose actions in dismissing and transferring judges of the subordinate courts had been seen as arbitrary and unfair in past years."*

Under the 17th Amendment to the Constitution, the two members to the JSC apart from the Chief Justice are to be appointed by the Constitutional Council, appointments to which have been deadlocked since last year. The CC has effectively been downgraded. The JSC now

functions by having the two besides the Chief Justice as acting members who are appointed by the President, whose appointments as required by the Constitution are presumably renewed every two weeks.

5.2 Unravelling the ACF Affair

The executions of 17 aid workers in Mutur (see Map of Overview of Mutur) heightened international concern over the situation in Sri Lanka. The Government, some leading columnists and eminent lawyers rushed to adduce proofs pointing to the LTTE as the culprit, based on claims of the belligerents whose principal purpose is propaganda, and the time quoted or misquoted from the postmortem report. They totally ignored or wished away human witnesses, both Muslim and Tamil, who had the most immediate knowledge of the events. It is a symptom of troubled times when the truth is unwelcome.

In the face of the State's attempted cover up, we will try to make an independent assessment of the ACF workers' fate. We must not exclude the possibility that agents in the government machinery cover up wherever they, perhaps mistakenly, believe that the Government is culpable (which is most of the time these days). In several instances however, the story may have complex twists and the truth stranger than appears. Once the gaps are known it is for an international inquiry to address them. Under the present conditions where government is inseparable from killer squads, witnesses would be extremely hesitant to appear before a local tribunal.

5.3 Thursday 3rd August and Friday 4th – Evacuation of Mutur

We add to what we have already said in Special Report No.22 using testimonies recently gathered. The LTTE took over Mutur during the 2nd and asked the people to move into schools. On the 3rd the people experienced intense shelling by the Government using cannon and MBRLs as the LTTE also fired rockets at government positions in the Police station and the 64th Mile Post. The LTTE was seen firing from near the Dialog cell phone tower near the Arabic College (see Map of Central Mutur). One shell fired by the Government fell into the compound of the Arabic College packed with over 10 000 people in a small space, near the wall adjoining where the ICRC used to be. A second shell fell near the junior section and a third fell next to a nearby house. These together claimed over 20 dead. The Government had already been informed that several of these schools housed refugees.

The shelling continued on the 4th morning making it unbearable for the people. A decision was taken by the leaders to evacuate on foot. An orphan boy of twelve who was in the Arabic school was under cover with the shelling going on around him. He thought it was the last day of his life. From his cover he saw two LTTE youths running out dragging the corpse of a dead LTTE cadre and running back. Later the boy with others was given breakfast, and while they were eating, the *Hasrath* (revered teacher) called them, gave the boys a white flag each and walked them towards Killiveddy. The leaders had taken a general decision to evacuate Mutur.

They walked past the 64th Mile Post army camp after which the LTTE made them detour through Kinanthimunai (see Map of Kinanthimunai) saying that the main road ahead was

mined. LTTE cadres in Kinanthimunai gave them biscuits and water. Passing then through Tamil villages, the people spontaneously gave them young coconuts to drink. Back in Mutur, a man sheltering in Arabic College went to his shop in town to collect the money from his till box since they were likely to leave Mutur. A group of LTTE cadres fell upon him and assaulted him badly, accusing him of intending to give the Army information about their positions. The LTTE was definitely in Mutur town over much of Friday the 4th morning, but their visibility was low. Shanthan, a leader prominent on Thursday, for example, was hardly to be seen.

Another shell fell on a tree near Arabic College at 9.30AM (4th) and after that no one wanted to stay there. The injured people who were at Arabic College were taken to Al Hilal School and everyone left on foot along with Tamils who were in the churches. When they passed the hill after the 64th Mile Post, the LTTE diverted them along the Kinanthimunai detour saying that the main road ahead was mined. The Muslims did not argue fearing more trouble if they did. But a Tamil woman in the group loudly accused the LTTE of lying, telling the people that the road was not mined and not to take the detour. It was then that the LTTE revealed that they had something nasty up their sleeve. The LTTE pounced on the woman and according to witnesses, ripped her mouth and shot her. Several persons who witnessed it fled back to Mutur.

At Kinanthimunai a trap was sprung, in spite of earlier assurances of unhindered passage. Earlier, only a few LTTE members had been present. As the large crowd came in, a number of LTTE members who had been hidden converged on them from the shadows. The men were made to file past hooded men apparently to pick out Karuna supporters and the more assertive members of the Muslim community. Some women who were allowed to proceed reached the next army camp and informed the soldiers at the camp that 15,000 men were held up at Kinanthimunai. Nevertheless at the report of a gunshot when the LTTE shot a defiant Muslim man, the Army fired MBRLs into the area killing up to a dozen persons. This was about 1.00 PM. The LTTE and civilians scattered in different directions; out of the 30 or so Muslims detained by the LTTE, 20 who had not been secured also escaped.

Several groups of Mutur residents left on foot at different times. This was because Mutur was a spread out town and people living in different parts made their own plans. Things seem to have quietened down after the Kinanthimunai incident and the evacuation of Mutur continued through the afternoon.

Scores of personal tragedies are woven around the shelling of the Arabic College in Mutur, not least those concerning the ACF staff. At two meetings in Trincomalee on 2nd and 3rd August, the expatriates from INGOs, UN and other agencies evinced the kind of despair and urgency seldom seen. They discussed means of securing the ACF staff in Mutur. A suggestion was strongly made that they should move to the Arabic College, which had the largest number of refugees. Soon after the second meeting, an SMS reported that a shell had just hit the Arabic College. The matter was once more in flux.

Most INGOs had given the GPS coordinates of their offices to the security forces so that these could be avoided during any fighting. The security forces knew the location of the ACF office and the ACF also told them about their staff. For these reasons the ACF probably thought it safe for their staff to stay in their office, although experienced locals thought otherwise. Some ACF staff members were in Pulmoddai when the fighting extended to other parts of Trincomalee. The ACF (see Map of ACF Neighbourhood) reportedly asked them to remain.

But people of the area strongly advised them to leave, and the group leader decided to return to Trincomalee. The group leader in Mutur reportedly lacked the same initiative and was more dependent on his superiors.

5.4 Contacts with ACF on Friday 4th August and Saturday 5th August

The testimony we have so far received makes it clear that the LTTE were moving about Mutur town on Friday 4th morning. We also received several testimonies that confirmed that the ACF staff communicated with relatives and others through much of Friday. The public position of the ACF has been that its last contacts with the ACF office in Mutur were between 6.00 and 7.00 AM on Friday 4th and following this their sets did not respond. Several among ACF family circles strongly believe that at least an indirect or informal contact was made later that morning.

One doubts that they would have confidently remained in Mutur if they had lost all contact with the Trinco ACF office. Around 10.00 AM was a crucial period when several of those quitting Mutur were advising them to leave and they were hard put to make a choice. The Dialog cell-phone tower in Mutur that had gone out of action had been working only since April and previously people knew how to make the best out of the Dialog and Cell-Tell towers in Trincomalee and Kinniya.

According to INGO sources, in Friday morning's message from Mutur, the Trinco office of ACF was told that the LTTE had called on them and told them that they were pulling out of Mutur and could no longer guarantee their security. This was, according to ACF sources, the LTTE's second visit to the ACF office after their entry into Mutur. Some women cadres had called on Wednesday to check who they were.

There was fear among the staff. According to a close relative who spoke to Kovarthani Singanayagam, a young woman on the ACF staff at 6.15 AM on Friday 4th August, Kovarthani had cried and said that everyone was asking them to leave Mutur as the Army was coming in, but they decided to stay as they believed that they would not be harmed. According to this relative, she found it difficult to connect with Kovarthani's mobile phone and got through the third time. The Mutur Dialog tower being out of action, the coverage from the Trincomalee tower is erratic. Sometime cell phones work and at other times don't.

The ACF had been constantly appealing to the Sri Lankan military, the LTTE, ICRC, UN and other agencies to ensure the safety of their workers in Mutur. To many, including the SLMM, the radio silence of the Mutur ACF staff since 7.00 AM on the 4th was inexplicable except as a pointer to the time of their death. Even if there was no electricity supply or one set had gone out of order, their vehicles, which were parked in the offices, were fitted with HF sets and they had batteries and fuel. We learnt from ACF sources that they had later found the wires to the radio set ripped out

A strong possibility is that the LTTE ordered them to keep radio silence and then they would also not have talked about it to others. The beating up of the Muslim man in town later in the morning suggests that the LTTE was sensitive to their movements being communicated. The ACF Trincomalee office had the Cell-Tell hand phone number of Rishikeshan of the staff in

Mutur, and had talked to the staff on this number previously. This phone too had not responded after radio contact was lost. The Trincomalee office and some of the families are not aware of other contacts after 6.30 AM on Friday. These are further reasons why a number of people hold Friday morning to be the probable time of the killings. If it were true, it is very remarkable that no one saw the bodies on Friday when there was considerable movement in the area and where the ACF staff had friends.

Whatever the time of the killing of the Mutur ACF staff, the foregoing raises questions to which answers could now be at best speculative. It is also wrong to assume that the victims' families would communicate freely to each other about their contacts with the loved one now dead. Under a regime of terror, any one family that takes the initiative in leading the rest to fight for justice, would get isolated quickly by the others as trouble makers, and marked by the authorities. This is what happened in the 5 Students' case of last January. An argument commonly advanced is that the family has already lost one, who would look after the children or siblings if they confront the rulers and lose another?

It is rarely and then again only to one in a position of trust and authority that some among the victim families are likely to speak. Then too constantly repeating, '*Now what is the point?*' The following are some of the contacts made by Mutur ACF staff after 7.00 AM on Friday, 4th August that we know from responsible sources who know what is at stake:

1) Before the large crowd walked to Killiveddy, about 8.30 AM, a Christian priest and the DS went to the ACF and advised the workers to join them in going to Killiveddy. The ACF workers said that their Trinco office would send a vehicle for them and had asked them to remain.

2) In the morning, a member of the Mutur ACF staff who lived in Mutur with his family and had sheltered at one of the churches went to a neighbour's and called ACF Trincomalee on a Suntel phone. He had evidently not gone to the office, but possibly heard from the priest and DS who had called and failed to persuade the ACF staff to leave. He told an ACF person in Trincomalee that he too was leaving with his family on foot, and to instruct those at the Mutur office that they too must under no circumstances remain there. This message, we are told, was passed up.

3) Another group of Muslims was to begin the journey in the afternoon after saying Friday prayers which ended after 2.00 PM. A man who was from Mullipotana said that some of them went to the ACF office and asked Mohamed Jaufer of the ACF who was also from Mullipotana to join them. Jaufer said that he must stay with the others. This was around 2.15 to 2.45 PM.

4) Another ACF worker M. Narmathan was asked by his cousin who worked for the DS's office in Mutur to join him and leave on his motorcycle. Narmathan declined saying that a vehicle would be sent to escort them out. This was around 3.00 PM.

5) A professional in Trincomalee received a call from his younger brother among the Mutur ACF staff after he got home from work, about 5.30 PM on the 4th. He said that he had to leave the ACF office and go elsewhere with better reception to get a call through. The professional told his brother to stay in his office and not to court danger by moving around. The brother also said that they were fine, and ACF Trincomalee would be sending a vehicle on Saturday. This professional had spoken to his brother about thrice that day.

6) A relative in Trincomalee said that Ganesh, the ACF driver phoned him late in the evening around 8.00 PM. Ganesh was a native of Mutur who knew the area well. He also said that he went somewhere outside to get the call through, and hoped to be home the next day. Both Ganesh and his daughter Kavitha had cell phones, but there was no phone at home. Their contact with home was through this relative.

We have put these contacts down after repeated checks and are quite confident of their factuality. Even while the fighting was going on during earlier days, the ACF staff had been moving about Mutur distributing food items and water, including to the nearby mosque, and made calls from wherever they could find a signal. There was one contact on Saturday the 5th, which did not connect, and probably two.

7) Ganesh called his relative at 5.30 AM on Saturday morning. Before they could speak the call cut off. Seeing it was from Ganesh's cell phone, the relative tried dialling Ganesh a few times but failed to connect.

7) A leading member of the community in Trincomalee attended the funerals of the ACF staff on 9th September. There he met Miss. R... a friend of Ganesh's daughter Kavitha. Miss. R was crying saying something about having spoken to Kavitha. The community leader called her to a side and spoke to her. She said that Kavitha called her briefly around 6.00 in the morning of Saturday 5th and told her the Army had surrounded them and they did not know what would happen. Kavitha was a steady girl who helped in her brother's shop in Trincomalee that made frames. She was not the type to panic.

Now that we know (see below) the ACF corpses were seen before 9.30 AM, and there was a missed call at 5.30 AM, we are bound to place a high value on the report of Kavitha's call. Kavitha's intention had been to pass a message home. The report of her call falls into place because her father Ganesh had tried and failed and it is reasonable to expect that Kavitha kept trying to get through to some friend in Trincomalee.

Unless one repeatedly asks questions one cannot be very certain of days and times related by witnesses, as all were emotionally or otherwise involved and laden with stress and sorrow. In trying to speak to Miss. R... we were told that the entire family had fled to India by sea through Mannar soon after the ACF funerals. This is today the plight of witnesses who feel they know something dangerous – dangerous in virtue of whom it would expose. In sum, we know the ACF staff in Mutur was alive on the morning of Saturday 5th August, having gone through mixed emotions of hope and despondency.

5.5 Government Retakes Mutur

As to who was in control of Mutur and when, the following picture emerges from cross checking with a number of sources: The security forces were in control of the jetty by early Saturday 5th morning (see Map of Mutur Jetty and Town). By 8.00 to 9.00 AM they were seen around Vattam, Takwa Nagar and Habib Nagar. Despite a large exodus, above a 3000 civilians remained in Mutur. One of the biggest refugee camps was Al Hilal School. The Army's main advance came from the south, from Thoppur, through the 64th Mile Post camp and northwards along the A15 trunk road. Although the LTTE was briefly in control, the army was never far away. When the LTTE attacked Kattaparichchan camp, most soldiers are believed to have withdrawn westward to 64th Mile Post.

Those at Al Hilal School could hear the constant exchange of fire between the Army and the LTTE. At one stage in the morning, they heard the LTTE firing and moving westward to Raal Kuli along the main road quite rapidly. They later discovered that the LTTE's decision to pull back was taken unexpectedly, after their second in command was grievously injured. As evidence of this the LTTE had left behind a sizeable quantity of equipment and also at least two of their dead.

About 10.00 AM a man in Thaha Nagar adjoining Raalkuli, said that LTTE cadres asked him for some young coconuts to drink and then left westward. Those at Al Hilal opine that the Army was in control of the town by about 10.15 to 10.30 AM. At 11.30 AM, a man at Al Hilal received a call from someone at the Jetty that the Army was then in control of Muttur town. According to these sources, it was from then that troops at the Jetty moved southward into Muttur. Troops were first seen at Al Hilal School at 1.30 PM, after which people started moving about.

Peter Apps of Reuters, who was with a group of journalists brought to the Muttur jetty on the 5th by the Special Forces, was kind enough to talk to us from his hospital bed in England. He is recovering from a road accident in Sri Lanka on 5th September. Apps said that they were brought in at 12.00 PM and taken back at 1.00 PM. We quote from his report filed that night: *"There was very serious fighting," said an officer from the elite Commando regiment. "But I think we've pushed them back. I think the town is now safe." But small-arms fire and explosions from mortars and government artillery still hitting nearby Tiger targets could be heard on Saturday...On a walk through the town with the Commandos, Reuters saw only three civilians amid the debris.*" This meant that the LTTE was around in the outskirts of the town.

Thus there was hardly any movement of civilians at this time and the Army was still in the process of establishing control. Apps told us that according to the officer, the Army came into control of Muttur town during the course of Friday. Based on what we have gathered above, the Army was at the jetty on Friday but had not really moved into the town and whether they had expected it or not the LTTE resisted from parts of the town on Saturday, including the main road along which the Army was moving from the south.

We had a further testimony from a civilian whom we refer to as a man of the place. He moved about on Saturday morning from the area of Al Hilal School. He said he saw the Army for the first time on Saturday morning, which was before 9.30 AM, but cannot say when they came in. The Army had thus come into the Hospital area quite early in the morning. This does not rule out groups of commandos who were already present at the jetty making sorties even earlier to get some idea of possible LTTE positions.

5.6 First Testimony: More Questions than Answers

After grappling in the dark about what happened at the ACF, with the help of friends we found eyewitnesses with something remarkable to say: These witnesses said that an army patrol went into the ACF office at 4.15 PM on Saturday, August 5th. They left after a very short time. At 5 PM masked men in commando uniform came in a cavalcade of motorcycles. A senior officer followed in a vehicle with guards and they entered the ACF office. The

witnesses thought they were the STF because of their commando uniform, but are more likely the Special Forces who were in Mutur. In about half an hour they went away. It was then that people curious to know what had happened gathered at the office and saw corpses. The witnesses were emphatic that they would not dare to say this before a court of law, but said that many others also know what happened.

In a case of this nature what one knows may point to a neat answer, but a new fact previously unknown could point to a very different conclusion. The SLMM made this mistake. One problem was who was in control of Mutur at different times. SMS messages received by INGOs on 3rd August said that the Government had launched an operation to take Mutur. Friday 4th morning's papers quoted the government defence spokesman claiming they were in control of Mutur. The same morning's report from the ACF in Mutur also pointed to the LTTE having left. In the face of this the SLMM's case placing the ACF deaths on the 4th morning and holding the Army responsible was neat, but broke down once contacts with ACF staff later that morning were established.

We too in Sp. Rep.22 quoted persons in Mutur saying that the LTTE had left by early afternoon. This too was incorrect. The LTTE claimed on Saturday morning that they had withdrawn to original positions by Friday midnight, again very misleading.

We got back to the witnesses to clarify whether they heard gunfire from the ACF office during the times they saw the security forces come and go from the ACF office during the 5th afternoon. As frequently happens under uncertainty and fear, several of the witnesses became confused. Some asked, "*Are you from the CID (i.e. an investigation arm of the Police)?*" As for the firing noises, some replied, "*Indeed we had been hearing firing noises the whole day!*"

The more people we talked to, it became clear that times given by witnesses amidst a lot of uncertainty had to be treated figuratively and testimony with care. We were left with the knowledge that troops went into the ACF premises some time in the afternoon for a short time and a senior officer with his escort came later and spent a longer time.

5.7 Further Crucial Testimony

While the preceding testimony suggested the possibility the ACF staff was killed on Saturday 5th afternoon, the report of Kavitha's call suggested morning. Eventually, we met a lady who was close to the ACF staff killed and wanted to see justice done. She disclosed that she received an SMS message at 11.53 AM on Saturday informing her that the staff in Mutur had been killed. She checked back with S. of the Trincomalee ACF, who reassured her that the information was authentic and had come from a man of the place who had seen the bodies. Moreover, the time at which he received the information was 9.30 AM.

Through Muslim friends, we were directed to the man of the place who had seen the bodies fairly early on Saturday morning. He confirmed that it was from him the ACF got the news, and we gathered that he was the original source of reports reaching the public domain on Saturday. The number circulated in communications based on his information was 15, but he said that he only did a very rough count and had possibly said 14.

He would thus have seen the corpses some time before 9.30 AM, and it suggests that in Mutur at least there was a strong hunch considerably earlier that something had happened at the

ACF. As late as 6th mid-day, when the Consortium of Humanitarian Agencies (CHA) went to Mutur there had been no acknowledgement of the tragedy from the Government, and the CHA had only unconfirmed reports.

When Peter Apps reported on the 6th after the CHA had seen the bodies, he wrote ‘the military, which says it then controlled most of the town, claimed it knew nothing about the bodies – found close to the army-held hospital and police station – and denied involvement’. “*I don't know anything about this but I know that a lot of people have been abducted by the LTTE,*” he quoted a military spokesman. Apps told us that the previous day, 5th, between 12.00 and 1.00 PM, he had walked with the commandos passing the Hospital and ICRC office close to the ACF office, which is in a lane adjoining the hospital compound (see Map of Probable Route taken by Peter Apps).

Peter Apps wrote on 7th August, “*When Reuters and other media visited Mutur with the military on Saturday as firing continued in its suburbs, local commanders said they had reports the Tigers had killed Muslim civilians. But asked about other civilian losses, they did not mention the dead aid staff...*” In the same report he quoted another military spokesman in Colombo Major Upali Rakjapakse, senior coordinator at the national security media centre, contradicting the spokesman of the previous paragraph, saying that the Army found the bodies after the Tigers had pulled back, suggesting that the killings could have taken place when the Tigers were in control.

5.8 The Beginning of the Cover Up

The ACF had been frantically contacting the Army about the security of their staff. If it was government forces that killed them, it was bound to look like a deliberate action aimed at driving away INGOs. Had there been evidence or other circumstances where the killings could have been blamed on the LTTE, there was no need for the Government to have been so cagey on the matter. It kept quiet. Meanwhile the pro-LTTE web site *TamilNet* announced the killings at 8.30 PM Saturday blaming it on the Sri Lankan forces and scoring propaganda points.

The Government for a start brought in the Anuradhapura JMO for the postmortems, and to further disbelief, the Judicial Service Commission moved the case to the Anuradhapura magistrate. The Government became hypersensitive only after SLMM chief Ulf Henricsson made his report on 30th August, blaming the government forces in conformity with the Government’s earlier claims with regard to its having control of Mutur on the 4th morning and the time in the postmortem report.

The Consortium of Humanitarian Agencies reported after their visit to the Mutur ACF office in the afternoon of 6th August: “*On approaching the office, we came across this gruesome sight of bodies with a very strong stench. The bodies were all face downwards on the front lawn, seemingly lined up and shot at very close range. The sight was too much to handle.*”

We now clear speculation resulting from a widely reported rumour. Joel Charny from Refugees International wrote, “*Two days later the bodies of two more workers were found in a car nearby, suggesting that they may have been killed while trying to escape.*” A representative of CHA dismissed the report of two trying to escape in a vehicle. He said, “*CHA counted only 15 bodies, which were in the front lawn and under the porch. I am not*

sure whether the two bodies we missed were in the vehicles or on the rear west side of the office, within the boundary. What is for sure is that is they were not being chased. Both vehicles were in the compound and would have had to be driven over the bodies if it had to leave the premises.” A source close to the ACF told us that of the two in question, one apparently was killed while trying to scale the wall and one while running into the office. The question arose: were the two bodies simply missed or were their owners killed sometime later, possibly elsewhere?

Persons with an interest in the ACF staff told us after examining the CHA pictures, *“If you see the CHA photo taken from outside the gate with the vehicle in view, you can see a person behind the vehicle. If you count carefully there are 15 in the compound (one almost hidden behind another) plus one on the verandah, therefore there were 16. We think CHA wanted to get out quickly and may have made a mistake. We have looked at it over and over and cannot locate a 17th.”* They added that having also looked over pictures taken by the ACF on the 7th there was blood around all the heads suggesting they all lay where they were killed and none was moved.

An ACF spokesman had told the media that although the bodies had entry and exit wounds, no bullets were found in the compound (Sarasi Wijeratne, *Sunday Leader* 1st October 2006). We referred earlier to testimony that a senior officer, presumably from the Special Forces commandos, went to the ACF office on the 5th afternoon and viewed the scene. The continued silence of the Government and Military suggest the officer knew or believed that persons linked to the security forces were responsible.

5.9 What the Evidence So Far Points To

The sighting of the bodies points to the killings having taken place some time before 9.30 AM on Saturday. Known contacts with the ACF staff in Mutur on Friday and the attempted contact on 5th Saturday 5.30 AM and Miss. R’s report of Kavitha’s call suggest a time around 6.00 AM on Saturday. The latter also points to armed men in military uniform going to the ACF office early in the morning.

The victims’ families and friends are under very great pressure and placing any testimony on a firm footing is a demanding task requiring time and sensitivity. They have no confidence in the Government and state institutions. The cover up being carried out by state institutions is so blatant that witnesses would not want to risk going before the courts as in the January 2nd Five Students’ case. The onus of providing evidence is deliberately and unfairly placed on the civilians, and we never see the security forces being subject to any serious investigation. While such practices are not by themselves proof, they do make the strongest impression about where the guilt lies.

At present it looks as though early on Saturday 5th morning, a combination of one or more of the Special Forces, paramilitary elements, and armed elements under the security forces’ umbrella who knew the area, went south from the jetty to survey the place and decided to vent their anger on the ACF staff.

We may also mention here certain photographs of unknown provenance that would merit close examination. Incidental factors in the photographs, ruling out Friday, suggest that they

were taken a little earlier than 4.00 PM on Saturday where the blood, presumably congealed, is shining and so has the appearance of being wet.

Moreover, attempts made by our friends to trace the fate of the ACF staff strongly indicate that a number of people who stayed on in Mutur have a very good idea how it happened and when. Residents of Mutur avoid going deep into the subject and one detects a reticence based on fear. It is this aspect, the fact that the people knew, which seems to be at the root of the silence of the Government and the Military and subsequent contradictions in their claims after others brought it up. Overcoming local reticence again requires time and some guarantees.

The ongoing cover up by the organs of the state should act as a spur for independent agencies to bring out the truth. Because of its humanitarian implications and because it also concerns ethics and practices of INGOs, a strong obligation to uncover the truth rests with the international community.

5.10 The Responsibility of International Agencies

Soon after the tragedy, INGO representatives met in Colombo to decide what to do about it. Some of those present found the discussion wishy-washy and felt angry that if a foreigner had been killed, they would not simply be talking, they would already have done something. Behind the simple expression that aid workers were killed, a number of tensions remain unresolved. Among these are the different categories of staff, the pressures they face because of their national origins, the fear of saying no to instructions that carry unreasonable risk, and the fear of being accused of underperformance and losing a job that does not come easily to nationals of third world countries.

As for the ACF itself, we understand that they were operating on security level 3 after the troubles affecting Trincomalee last April. When the Air Force bombed Vattam in Mutur killing 4 Muslim civilians, an ACF vehicle distributing water was just 200 yards away. Security level 4 is one that prompts evacuation. At security level 3, all decisions to send the staff away from base, Trincomalee town in this instance, to work in an outlying area, we learn, must be routed through the head office in Colombo. Whether this procedure was followed or the decision taken in Trincomalee itself with regard to the staff sent to Mutur during that fatal week is a question to which the answer is hazy.

ACF in Trincomalee had three expatriate staff attached to the base and other expatriates from a central pool were sent to stations as required. Those at the base were the Head of Base (HB), Programme Manager for food security (FS) and Programme Manager for water and sanitation (WS). There had been a change of expatriate base staff in June. Owing to a delay in finding replacements, the newcomers did not have the benefit of a transition period where they would have worked with their predecessors. The new arrivals had no previous acquaintance with Sri Lanka and no preparation for the kind of problems they encountered in early August. All they had to prepare themselves with was written advice left behind by their predecessors. We understand that one piece of written advice left behind was for them to ask the local staff whether they felt comfortable about going somewhere before sending them.

Those sent to Mutur were normally sent in vehicles on Monday to stay over in Mutur until Friday when the vehicle would return. Those coming back in-between would use the ferry. Fighting between the LTTE and the Army was going on ten miles south of Mutur and there was fear that it could affect Mutur any time. The local staff members who were to go to Mutur on Monday 31st July did not want to go. We are told that two of them applied for leave and were turned down. About 5 food security workers were sent to Mutur on Monday. One supposes that instructions to go were routed through Colombo. Some who were sent expressed a wish that evening to get back.

There was also another reason for their anxiety:

On 21st May grenades had been thrown at the Mutur offices of the Non-Violent Peace Force (NVPF), ZOA and InterSOS, and at Emergency Architects a few days later. From then on, no INGO staff stayed overnight in Mutur until 31st July. Towards the end of July the Police arrested six persons in connection with the bomb throwing. ACF was the first to send back staff to stay overnight and this surprised other INGOs. Despite the improved situation the fighting at Mavil Aru worried them.

Meanwhile, early in the week beginning 31st July, there were warnings, from the Non-Violent Peace Force for one, that it was unsafe to send employees to Mutur. NVPF workers went to Mutur on Tuesday 1st August morning by ferry just to pack up and remove their equipment like computers, and returned by the 11.00 AM ferry. By 12.30 PM the shelling had started and the ferry service stopped. The ICRC too had pulled out leaving behind about two local staff in Mutur, who left with the people on the 4th.

As for ACF, we learn that WS had second thoughts about sending his staff to Mutur on 1st August, but was persuaded to send them by the fact that FS's staff was already there the day before. ACF also had a coordinator, a local man, but he does not seem to have applied himself effectively in ensuring the security of the staff, or was it that those above him did not heed his advice? We do know that the families of the local staff who got stuck in Mutur were very worried by 2nd August.

After contact was lost, ACF in France issued a statement on 4th August only in French, which said among other things: *"The combat in the town of Muttur (district of Trincomalee) - which has continued for several days, led teams of Action Against Hunger who were intervening there to cease all activity. We have been without news from this morning 7h00 (French hour) of a team of Sri Lankan employees of Action Against Hunger. Since Thursday they "had been blocked" in Muttur, unable to evacuate the city by the road or any other means."* It was not the kind of statement that would have alerted the Government and the Military to look sharp and for others to keep up the pressure. Peter Apps of Reuters who was in Mutur on the 5th was not conscious of this issue and its urgency. The Military on the 5th shepherded the journalists to places very close to the ACF office and sent them back without giving any hint of the horror that lay there.

Questions raised by the episode are being quietly buried, like what the Government is doing with the inquiry. The ease with which the Government is getting away with such things as switching magistrates and the postmortem examination raise questions about how seriously the INGOs, the EU and France in particular have pursued this matter. According to European diplomatic sources in Colombo, the French Embassy has been the least forthcoming in

demanding an impartial investigation into the ACF affair, to some extent blunting the strong positions of other European nations.

5.11 Continuing Intimidation

If the Government were serious about its pledge to conduct a thorough investigation of cases where its forces are implicated in atrocities, it had the opportunity to show its good faith by having an honest investigation into the killing of the 5 students on 2nd January.

That was the crucial test, and there is a tragic overlap between that case and the ACF killings:

Yogarajah Hemachandran who was one of the five students murdered in January, was the brother of ACF victim Yogarajah Koneswaran.

What we have seen in both cases is the intimidation of witnesses. And despite international protests the situation has only got worse. Given the cover up of the 5 Students' case, and the official meddling with procedure in the ACF case, hardly anyone would risk implicating the State. Moreover, if an important political personage like Rauf Hakeem could be subject to this level of humiliation and harassment over his stand in the Pottuvil affair, how could one expect an average citizen of Mutur or Trincomalee to come forward in the ACF case? All three cases have much in common.

Most of the ACF victims' families believed that the killings took place on Saturday 5th August. However the Police in Trincomalee who visited several of these families told them insistently that the killings took place on 4th August and the families were afraid to contradict this. Some of them even gave the 4th as the date in memorial notices posted in the press. The one in the *Sunday Veerakesari* of 3rd September for Yogarajah Koneswaran reads "*delivered at the feet of God with 16 other employees of Action Contre la Faim during the Mutur disturbances of 4th August.*"

Apart from trying to fix a date of the ACF killings suited to the Government's purpose there has been steady pressure on the families not to bring out the truth. A number of families connected to the 5 students and ACF staff have left Trincomalee due to fear. They are afraid of talking about what happened even to friends or relatives. One who lost his brother who was in the ACF said, "*I have now to look after my brother's children.*" Yogarajah Koneswaran's family has left for Switzerland. The surviving brother Baskaran said, "*Only I am left to look after our two sisters.*" No real investigation can take place unless fear is removed. Regrettably, the Police who are meant to investigate are also agents of the prevailing fear.

At least four other NGO workers have been victims of targeted killings after the ACF tragedy: One from World Concern in Trincomalee, one from the Red Cross in Vavuniya, one from Sevalanka in Jaffna and one from UNOPS in Amparai. While one is a possible case of personal vendetta, the security forces have been implicated in the first three.

We have continually recorded regular killing and intimidation of Tamils, both persons held in high regard and those of humbler rank, who went out of their way to uphold the dignity of the community. We give below the case of an auto rickshaw driver who was an important witness in the 5 Students' case. A man, who is both a parent and witness in the 5 Students' case, was strongly advised to quit the country by two high-ranking officers from the Police and Navy

who were genuinely concerned about him. One told him, “*Don’t play with your life against the gun.*”

Karuna’s group has been given the old TELO office in Customs Road and let loose in Trincomalee and are seen with arms especially at night. The style of intimidation they inherited from the LTTE is routinely in evidence. They warn the people that that they and the security forces are above accountability, whatever they do. Apart from a number of killings attributed to them, they are also abducting young persons to be confined, trained and sent to fight against the LTTE, as recently happened disastrously in Vaharai, to ease some of the lethal burdens on Sinhalese troops. How could the State conduct an honest inquiry into the ACF and the 5 Students' cases when people live in terror afraid to send their children out? (The implications of this state of affairs is discussed in *Minority Fears in Trincomalee*, Appendix I)

6. The Navy's Role in Child Conscription in Trincomalee

Since the middle of this year, there have been well-authenticated reports of the complicity of the government forces in the conscription of children and adults by the Karuna group. This was extended to Trincomalee in August. The following instance of child conscription took place in Trincomalee on 21st October.

Mas. Selvarajah Rasamanikkam and **Mas. Satyaraj Konam** of 3rd Mile Post, near Anbuvelipuram, Trincomalee, were abducted by the Karuna group in the night of 21st October as communicated by relatives. About 9.30 PM, persons in the neighbourhood saw the Karuna party with arms bringing some boys, stopped at the Green Rd. junction naval check point. A little later Navy men came on motorcycles and escorted the Karuna men and their illicit human cargo to their office. People in the area hear sounds of agony, as abducted persons are tortured to join the group.

This is the level at which the State is safeguarding the rights of the people after years of protesting loudly about child conscription by the LTTE. We have recorded a host of cases of the LTTE doing the same thing and have condemned it as a crime. We expect better standards from the Government. It should know better that there is no justification for expecting Tamils to fight its war when all its actions point to denying them a decent settlement. Abducting Tamils to fight for the Government is slavery according to the ICCPR that has now been dispensed with. The number of persons conscripted in Trincomalee is placed by local sources at over 50.

7. Partly State Aided Conscription for Fratricide Gathers Momentum

With the collapse of the recent second round of Geneva talks, all the parties are making a show of their bankruptcy by taking it out on children. In the LTTE-controlled area of Batticaloa District, especially Vavunathivu and Pattipalai DS Divisions, the LTTE (Vanni faction) has resumed conscription and many conscripts taken on 29th, 30th and 31st October are children. The number taken is about 70 and sources in the area name the leaders of the abduction teams as Raja, Nathan, Muthulingam and Annaseelan. On 2nd and 3rd November, the LTTE hosted the same circus in Vellaveli 14th and 16th colonies and Kakkachivattai.

The Karuna group showed no less zeal in conscripting children and adults in the government controlled areas abetted by the government forces. The Karuna group abducted 15 persons at a Sitthandy temple festival on 26th October. Subsequent reports spoke of large abductions in Batticaloa North from Kalkuda Namahal School, Valaichenai Hindu College, Puthukkudiyiruppu Vani School and Petthalai Vipulananda School. Persons in the area when asked are terrified of talking about it, given the context of ongoing killings by both sides. These are also places where the Army is present. All these conscripts have to be taken to Karuna's bases through several government checkpoints.

The combined LTTE's conscription of children before the 2004 split was terrible enough. Now two factions are conscripting children to kill each other. The international community, Norway and the Government bear a severe responsibility for this state of affairs; which stemmed from their lack of foresight and absence of principle in handling the Karuna split.

8. North-East - A Killers' Paradise

The licence to kill sported by the Military and its Tamil surrogates, underpins the impunity described above. This has rendered life and international standards utterly meaningless here. In areas where the Government is intent on grinding down minority ethnic groups, it has reached the point of banditry. Killing and enrichment are part of the same package. One such area is Trincomalee. The following few cases around Trincomalee reflect a pattern of violence where perpetrators appear utterly devoid of inhibitions. The first is again an attack on an INGO:

Nilaveli, 13th September: Ragunathan Ramalingam, a father of five worked for the International NGO World Concern, a Seattle-based organisation active in this tsunami hit area. Ramalingam had some running problem with the Navy, according to a colleague. On this day he received an unusual call from the Navy asking him to come to their checkpoint and collect something. He was shot dead during this mission.

Anbuvelipuram 17th September: Armed men from a state killer group went in a white van to a house in Ambal Rd. about 2.30 PM. Their target was apparently an auto driver, who had been forced to help during the LTTE's Pongu Tamil shows. This man was in a neighbouring house watching a TV programme. The armed men opened fire killing a **two-year-old girl Ushana**, along with **Jeyaratnam Pratheepan** (22) and **Vivakaran** (22). Nagendran Jeyanthan (28) and Thayaparan Nishanthini (25) were hospitalised with injuries.

Kantalai – Thampalakamam 19th September: V. Mathialagan and **M. Sanoos**, a Tamil pharmacist attached to Kantalai Hospital and his Muslim friend and MLT at the same hospital, were returning home to Kinniya on a motorcycle after signing off that evening. They were shot dead at the 98th Mile Post (Arafa Nagar), Thampalakamam, about 5.30 PM by killers who had followed on a motorcycle. Mathiyalagan was known to be outspoken and a long time supporter of the TULF that was all but swallowed up by the TNA. Local talk is that the Karuna group did it. But reliable sources told us that state intelligence did the killings and the Karuna group comes in handy as a blind. Sanoos is a UNP supporter who just happened to be with Mathialagan.

Trincomalee 24th August: A white van and a green auto-rickshaw went to the house of **Balachandran**, an auto rickshaw driver living in Madathady. He was taken in the white van and shot dead. Local sources say that the notorious naval 'lieutenant' was seen near

Balachandran's house before and after the incident. Balachandran, who had been in the militant group PLOTE, was noted for helping people after incidents such as the killing of the students. Balachandran was an important witness in the Five Students' case. He was providing information to concerned persons on the mysterious green auto-rickshaw from which a grenade was thrown before it disappeared into Fort Frederick, the Army HQ.

Mullipothana 7th August: Sivapragasam Mariyathas (32) of the Socialist Equality Party, a small Trotskyite group that is critical of the Government and was also harassed by the LTTE, moved into Mullipothana a few days earlier with his wife Krishanthi and their 3-year-old child. In the night, after dinner, he was called out and shot dead by experienced assassins who escaped on a motorcycle. The SEP has blamed the security forces or killers allied to them for Mariyathas's murder. They point to the indifference of the Police investigation and the fact that a large number of troops were deployed there with several checkpoints where people and vehicles are stopped. This was during the height of war fever and two days after the ACF staff was killed. The fact that SEP activism cut across communal boundaries also rendered it suspect by extreme nationalists, and dangerous at a time of heightened polarisation.

In the grind of daily killings particularly in the districts of Jaffna, Trincomalee and Batticaloa, by both the State and the LTTE, the former has now left the latter far behind. Some of the killings by the State during the first half of this year were shockingly sensational. The Government and often the President himself condemned these and promised fervently to investigate them. And yet court proceedings are at a standstill and Police investigations have been such as to discredit the evidence or to add to the intimidation of witnesses.

Instructions to cover up came from the highest level for the simple reason that the instigation to kill also came from those quarters. We made this point when writing about the killing of the 5 students in Trincomalee on 2nd January on which we hope to bring out a more complete report soon.

9. Killer Groups – A Brainchild of the Defence Ministry?

A salient feature of the more sensational killings during the first half of this year was that the killer groups of the state were hybrid in their make up. In a number of well-known cases they have been made up of elements from intelligence divisions of the various arms of the security forces (especially Army and Navy) together with Tamils who serve the security forces in their individual capacity or from groups such as the EPDP and Karuna faction. While the Karuna group is used in killings, we so far know of no instance where Karuna members have gone on killing operations with members of the regular security forces. This may just be our ignorance.

Karuna group is however a protégé of the security forces and its members often move out from security forces' camps in the East. An order from Colombo last October (2005) to house Karuna cadres in security forces' camps in Batticaloa was revealed by a senior officer, who warned of more killings to come. We also know that some senior officers in the security forces have been asking Tamil parties to supply cadres for dirty operations.

Nothing reveals the character and provenance of these operations better than their most gruesome instances. Meanwhile, the legal process in Sri Lanka has been spiked by simple administrative fiat and a recent Supreme Court ruling has denied the people of this country recourse to justice through international covenants. We give some instances and earnestly

hope that an international body would investigate these. (A supplement to this report, which would deal with more cases would appear shortly.)

1.) **The murder of the Bojan sisters, 16th January 2006:** In our Special Report No.20, we stated on the basis of testimony received from different sources that a killer group comprising Military Intelligence and some Tamil operatives was involved. One source was a military officer. We received new information that one or two of the Tamil operatives belonged to the EPDP. A brother of the sisters had died serving the LTTE, but the sisters had fallen out with the LTTE and had refused to move to the Vanni as the LTTE had ordered all martyrs' families.

2.) **The Puttur murders, 19th April 2006:** This appeared in Special Report No.20. Two auto rickshaw drivers and three civilians were stopped and killed in the night near an army camp. The three passengers were killed because they were potential eyewitnesses. This too was by a group in which according to information from good sources, the EPDP was also involved.

3.) **The Allaipiddy Murders, 13th May 2006:** Among the 8 victims of Lillimalar Sellathurai's house were 3 men upstairs, and 5 downstairs. The latter were her husband, daughter, son-in-law, and two very young children. Her evidence and that of others identified the killers as naval men, whom they were willing to identify at an identification parade. Despite repeated orders from the Magistrate, the Police failed to hold an identification parade and have tried to confuse the evidence. Other current reports claimed the EPDP was also involved in the killings. We were then unable to find evidence to support this. We can now confirm that the EPDP was involved. Two EPDP cadres involved according to local sources were Kanthan and Ram. According to locals, those who were really targeted were the three men living upstairs. A daughter of Navaratnam Ganesh among them was married to an LTTE functionary. The EPDP went upstairs and killed them. Locals quote sources within the EPDP as telling them that they had no intention of killing those downstairs, but the naval men who had gone with them took it into their heads to kill those downstairs, including the infants.

4.) **Vankalai, 9th June 2006:** Moorthy Martin, his wife Mary Madeline and their daughter Lakshitha (9), and son Dilakshan (7), were brutally killed. The three, except Mary who was on the floor, were found hanging by their necks from the roof of their home. The killers had spent some time in the house. So gruesome it was that the Government insisted that it was the LTTE that killed them because Martin had been the government's informant. Interested people of the locality were in time convinced that it was the security forces. An army camp was not far away and soldiers had been making inquiries about the Martin household the day before it happened. We received information from responsible sources that the deed was done by a state killer group and a leading role was played by persons from Naval Intelligence. Our sources said that Tamil elements of unknown affiliation were also involved. Moorthy appears to have offered resistance with his carpentry tools provoking the intruders' wrath. Over time, obtaining more specific information proved difficult. The sources however added that one of the naval persons involved was among the two who walked into an LTTE sting on 30th June in Mannar town and survived. An intelligence officer de Costa was killed, while the person who accompanied him reportedly shot dead an LTTE man.

According to our sources, these killer groups are not confined to one area, but could move into different command areas as and when they find a target. The existence of these killer squads means that the normal command structures of the security forces have been tampered with. Certain personnel have been in effect removed from the authority of their service

commander and are obviously no longer answerable to their respective commanders for their actions. The persons so removed function in hybrid groups answering to a power above their service commanders, so powerful that there is hardly any pretence of the Police investigating the crimes they commit. This raises some very troubling questions about the President's own responsibility and that of intimates he has placed in charge of the Defence Ministry. In this dispensation there is no recourse to justice. The transfer of the ACF case to the Anuradhapura magistrate by the Judicial Service Commission is a token of complicity at the highest level of the justice system.

10. Holders of Public Office and Crimes against Humanity

A notable feature of Sri Lankan justice is that there are on record a host of crimes against humanity. The persons in authority, whose complicity in the crime is beyond doubt, are well known. Yet no one responsible has ever been punished or barred from holding public office. Among the most glaring was the disappearance of 159 persons abducted in full public view by the Army from the Eastern University refugee camp on 5th September 1990. The names of the senior officers now in blissful retirement are history swept under the carpet.

UNP leader and former Prime Minister Ranil Wickremasinghe's links to the torture chamber at Batalanda in the late 1980s was the subject of a presidential commission of inquiry. It was established that his ministry allocated the premises, he used an office nearby in the complex and chaired security meetings connected to the Batalanda operation. People going into the housing estate had little difficulty in making out the nature of the goings on. This did not bar him from holding public office, nor did it prevent Colombo-based NGOs from backing him enthusiastically for the highest office. Someone less privileged by birth would not have got away with such stigma.

Society, the political establishment and the legal system have resisted command responsibility being firmly placed in our laws. The Jayewardene dispensation was the turning point. Since then the right of those in power to commit crimes and treat the public to breathtaking shows of police sycophancy has become the accepted order of things. By the same token when it comes to the security forces, no matter how grave the crime, the best one could expect is some low ranking minions being sentenced in court as sop to international opinion, as happened in the Krishanthi Kumarasamy rape and murder case, which was part of something much bigger (see Special Report No.12).

President Rajapakse saw no hindrance to appointing now Lt. General Sarath Fonseka commander of the Army despite his record. War broke out in 1990 when the LTTE massacred at Rufus Kulam 300 policemen taken prisoner and then defected to the jungles from the coastal towns of Amparai District as the Army advanced, giving the Tamil youths of the area unenviable options – "Join us or get killed". When Colonel Fonseka entered Kalmunai, Karaitivu and Akkaraipattu there was no LTTE resistance. But under his command, hundreds of Tamil youths from these areas were taken by the Army and arbitrarily massacred.

The following was told to us by a leading citizen of Kalmunai about a professional man and his wife who pleaded with Colonel Fonseka for their son who was among scores taken by the Army, nearly all of whom disappeared. The following appeared in our Report No.7 of early 1990: "*The officer finally replied, "I will release him because he is your only son. If you had another son, I certainly would not release him."* There was no question of whether he had

LTTE connections. All that mattered was that he was a Tamil. In judging the officer, it must be kept in mind that in an affair of low humanity, he came up at least to this level.”

An appointment of this kind for the highest position in the Army is not just bad in principle; it becomes an inducement for other officers to take the law into their hands. If command responsibility had been given practical effect in our law, we would have been less likely to see state killer groups running riot in the North-East. A service commander would have to think hard before releasing his men for such activity at the instigation of some defence ministry bureaucrat, who when it comes to the crunch, would simply deny giving such instructions. In this way a bureaucrat enjoying political patronage could meddle in the command structures of the security forces to their ultimate detriment.

A classic instance of the Defence Ministry’s involvement is the Five Students’ case in Trincomalee, referred to above. In that case, a grenade was thrown at the students from a green auto-rickshaw which then drove into the Army HQ, the Navy blocked the exits from the location, checked the identities of the students and withdrew into the background, and the STF unit which was under the supervision of SP (now SSP) Kapila Jayasekera moved in for the kill. It was a calculated operation to intimidate Tamils.

This level of complicity between three arms of the security forces could hardly have come about without instigation from the Defence Ministry. The action has its roots in the ideological aims of Sinhalese extremism and was a precedent for the killing of the ACF workers in Mutur seven months later.

The Defence Ministry, and indirectly the President, once they decided on a campaign of terror, had to protect criminal elements within the security forces: SP Kapila Jayasekera and STF Inspector Vas Perera in the Five Students’ case and the Navy men responsible for the Allaipiddy massacre (men from the same camp were later responsible for the disappearance of the parish priest Fr. Jim Brown) to begin with. The problem of individual criminal elements thus threatens to infect the whole.

Under this dispensation it is hardly surprising that ruling interests have resisted command responsibility becoming part of Sri Lankan jurisprudence. Its absence has made a mockery of the rule of law and gravely impaired the character of our institutions. Implicitly it also leads to resistance to international norms, which forward-looking democratic nations increasingly comply with to the benefit of their peoples. A pretext that gives this state of mind the nature of a necessity is what now has the appearance of a perennial war against the LTTE’s obduracy. The real need is to look beyond the LTTE and confront it with a higher culture.

11. The Importance of Command Responsibility

The resistance to international norms is exemplified in the recent Supreme Court judgment, which ruled that the ICCPR, which Sri Lanka acceded to in 1980, does not have ‘internal effect’ for the lack of enabling parliamentary legislation. We discuss some issues arising from this in ‘*Sri Lanka, UN and the Supreme Court Judgment*’ (Appendix II to this report). The roots of this approach are also seen in the Supreme Court’s overturning of the convictions in the Bindunuwewa Massacre case on appeal, where there was an undeniable case of command responsibility pointing to persons superior to those convicted in court. The judgment sealed the doors to justice in what was indeed a horrendous crime against humanity. Comments from

the bench suggested to observers present that the judgment was guided by an unjustified perception that the Tamil victims were terrorists (UTHR-J, Special Rep. No.19 Part-I).

This is a state of mind that is allowed to dominate due to the lack of public discussion of what really the security and long-term interests of the country entail. It begets the kind of leadership it deserves and promises to keep the country in the doldrums for generations.

Both the ICCPR and the doctrine of command responsibility are part of customary international law. The latter was codified nearly 30 years ago in 1977 in the Additional Protocol I to the Geneva Conventions, relating to the International Armed Conflicts, which Sri Lanka has not ratified. The UN source document *International Norms and Standards Relating to Disability* says, “*The human rights values embodied in the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights are all elements of customary international law that are rapidly establishing themselves as jus cogens, if they have not already achieved their status.*”

Customary law gains strength as a common standard by adoption into treaties setting out associations such as the International Criminal Court and the European Union and special international tribunals such as for Rwanda. The judiciary of a country would serve it well when it sees international customary law as non-derogable standards to be upheld and creates precedents through interpreting domestic laws to meet these standards. The issue about the ICCPR was not whether it was incorporated into domestic law. It was a treaty obligation that Sri Lanka was bound to uphold, thus making it a powerful tool for the courts to extend human rights norms in local practice.

Trying to run away from customary international law would prove very costly. These norms by improving the quality of justice help to mellow conflicts. If we fail to act wisely today these norms would one day be imposed on us from outside. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were set up by the UN after their internal conflicts brought them to utter ruin.

The words of United Nations Secretary General Kofi Annan, during his visit to the ICTY in 1997 should be a wake up call to Sri Lanka:

“By holding individuals accountable regardless of their position, the ICTY’s work has dismantled the tradition of impunity for war crimes and other serious violations of international law, particularly by individuals who held the most senior positions, but also by others who committed especially grave crimes...”

“Thanks to the ICTY, the question is no longer whether leaders should be held accountable, but rather how can they be called to account.”

One dearly hopes that an international tribunal for crimes against humanity would not be the route by which command responsibility is brought to Sri Lanka. We need to be more reflective in addressing a problem such as the LTTE where the utterly unjustifiable is linked to real political issues.

12. The Special Nature of the LTTE

Although we have drawn particular attention in this report to the State, we have been always clear that the Tamils will be denied peace and dignity as long as the LTTE remains functional. Its brutal murder of the Tamil woman who alerted the people of the LTTE's plans at Kinanthimunai, and the recent murder in Jaffna of the retired principal of Mahajana College, Mr. Nagarajah, simply on the grounds that he had worked for the Ministry of Hindu Affairs, are recurring reminders. The LTTE is the only force that has killed Tamil school principals in the North, including Mr. Sivakadatcham (see forthcoming supplement).

With the Government having fallen into a course that has left it looking as bad as the LTTE, the LTTE knows that it only has to lower its public profile as a gross violator and sit it out while the major attention for violations is focussed on the Government. Over and over again Sri Lankan governments have bailed out the LTTE.

This is one reason why many who were also concerned about neutralising the LTTE, wanted the Government to show exemplary respect for human rights and to become signatory to the Rome Statutes pertaining to the International Criminal Court. Measures of this kind would have made it very difficult for the LTTE to conscript children and carry on the way it did. Instead the Supreme Court has virtually taken Sri Lanka out of the ICCPR and drawn attention to Sri Lanka as a gross violator indifferent to world opinion. There is a prevailing illusion that the problem is going to be settled by the indiscriminate use of Kfir bombers and MBRLs.

The same illusion proved self-defeating several times before when the LTTE was in an unmistakable position of weakness. When the LTTE chased the people out of Jaffna in 1995 and put them through intolerable hardship purely to suit its military objectives, large numbers quietly but fervently appealed in temples and churches to be rid of the LTTE. The feeling remained deep down that no good would come to them through the LTTE. Indeed, but for the fickleness of the Sinhalese polity and its outbursts of insanity, the days of any organisation of this kind would have been numbered.

For a generation now, this organisation eliminated thousands of committed and decent members of the society it claimed to protect, used contrived civilian deaths for propaganda, abducted their children, extorted their wealth, made the people abject refugees deprived of land and livelihood, and left them literally starving under trees without any hope of peace for another generation. Further, the leader of this organisation besides killing and shrinking his people has made a good section of them his sworn enemies, treated persons who served his organisation faithfully and went into civil life as no better than 'traitors', and has been poor at keeping the few friends he had because of his intolerant destructiveness. Age takes its toll on all of us, and the days of such an organisation are surely numbered. History will see the organisation as having by a long shot outdone the Sinhalese extremists in decimating the Tamil community.

During the recent Geneva talks, when the whole world looked for some wisdom from the LTTE at this late hour and for it to discuss the framework for a political settlement, which is what the people want, it played the tired old record of the day to day needs of the people. For twenty years now the LTTE's humanitarian concern meant nothing other than the military needs of the LTTE.

Thus the worsening of the humanitarian crisis in Jaffna has many sides to it. It is possible to keep Jaffna supplied by sea as was done during the 1990s. But the LTTE does not want this

because it wants the A9 trunk road open, and that too only for its extortion and intelligence needs. Even the goods reaching Jaffna today are barely reaching the people due to both the corruption brought into the administration by direct and indirect LTTE control for many years and also because people at all levels, the coop managers for example, are terrified of taking the initiative to transport the available goods from government stores and supply the people. Some private traders said, *“We can make a phone call to Colombo and get two shiploads of goods down whatever the obstacles. But who would guarantee our life afterwards?”*

So sugar that costs Rs.60/= per Kg in Colombo must sell for Rs.800/= in Jaffna and the poor especially must starve. The LTTE’s campaign to starve the people and force the A9 road open is backed by a rise in its killings to get its message home, and has also led to a rise of counter-killings and disappearances reaching into Colombo as well.

The A9 road must be opened because the people have the right to travel and to trade and it has been Jaffna’s main lifeline for 65 years after barriers were imposed on sea borne trade with India. The LTTE’s abuse of this lifeline is an issue one that must be tackled separately.

And surely, there are relatively painless ways of dealing with such malignancy as the LTTE without destroying the people. Many like us have advocated bringing the force of international law to bear on the organisation, give the people a political settlement that is fair by international standards, and allow LTTE members a viable alternative to leave the organisation and go into civil life. Given such measures the organisation would crack.

Instead what this government has done is to unleash its killer squads and corner everyone trying to shake off the LTTE’s hold on their lives. The Bojan sisters, whose connection with the LTTE came from their deceased brother, were targeted by a killer group after they had given the LTTE a telling off. Starting from the killing of five innocent students in Trincomalee under a licence to kill ‘whomever they suspected’, the killings reached new heights of barbarity and arbitrariness, once more blackening the country’s name.

Bombing or shelling civilians anywhere is a crime, but doing this to one’s own civilians is sheer lunacy. The Government’s use of MBRLs and Kfirs in the North-East has reached a point of addiction. They are no doubt a source of rich commissions to some in good positions. With the reputation of the Government at a point where it is hardly ever believed, if that matters at all, its persistent ‘defensive’ use of these toys has brought its standing even lower. In this game the LTTE becomes a pretext for decimating the Tamil people and their areas of habitation. Along with this outpouring of impunity and chauvinist sentiment, the Government has invariably lost its balance in dealing with the International NGOs and Muslims. All this makes nonsense of the President’s pledge of maximum devolution and human rights. Does not the country need a rest from 50 years of this attitude?

We believe that the majority of the Sinhalese want a saner approach and a just political settlement. The Defence Ministry must be placed in the hands of persons committed to the rule of law. The way to put things right is not to stretch our laws to licence impunity, but to adopt the best traditions of international law. This is the most promising means to bring command responsibility into our system in a meaningful manner, and bring an end to the repeated scandal since the 1970s of mass murderers getting away scot-free. A state that requires periodic resorts to mass murder, whatever the pretext, is terribly sick and will never allow its citizens to attain their full potential as human beings.

Appendices

Appendix I

Minority Fears in Trincomalee

Both the Government and the LTTE conducted their military operations without the slightest concern for the civilians, who in the affected areas were mainly Muslims and Tamils. The Government's bombing and shelling, claimed more than 100 civilian lives and injured about thrice that number. It knew of the presence of the displaced in Mutur schools, but nevertheless shelled them. The LTTE shelled government positions from civilian concentrations. It paid back the civilians in the village of Sampur by using it to direct cannon fire at the naval base in Trincomalee, without any thought for them.

Little reaches the public domain about the plight of the Tamil refugees of the area that is almost beyond belief. Many of the displaced were already living in Eechilampattu when troubles started in July. They fled to Vaharai and Panichchankerny in the LTTE-controlled part of Batticaloa District to escape the exchange of missiles by the Government and the LTTE. From the beginning of October Vaharai and Panichchankerny have been regularly bombed and shelled by the Government. Many of the refugees have fled back across the Verugal River into Eechilampattu, where there is absolutely no access to any relief agency.

The LTTE's publicity campaigns too have made very little of the plight of these refugees. Their thrust at Geneva was the humanitarian crisis in Jaffna, to a large extent engineered by them, with a view to having the A9 trunk road open for their own ends.

Muslim Refugees

Muslim refugees from Mutur fled to Kantalai because of shelling by the Government. But the Government's attitude to its humanitarian obligation evinced a mindset that was revealing. The authorities there were intent on getting the Muslim refugees out as quickly as possible irrespective of their fatigue and sense of insecurity. They arrived in Kantalai on 4th August. Many relief workers felt that the disused Sugar Corporation premises would have been an ideal place to house them. According to relief workers who attended a meeting with the local Divisional Secretary (DS), the latter said explicitly that Kinniya is the place to which the Muslims should go, as "*those people have a different culture*".

Muslim refugees were put up in mosques and Muslim schools, while large Sinhalese schools, which were free because of the holidays, were denied to them. The available camp space for the Muslim refugees being grossly inadequate, a number of them were forced to put up tents in the paddy fields. At the end of the month came the rains, and Muslim refugees living in tents were flooded out.

By the end of the first week of September, the Muslim refugees received virtual orders to move back to Mutur and buses were brought to take them. In some instances the Police physically threw them out of refugee camps in Kantalai in pouring rain; the authorities even gave notice of cutting off their water supply. The LTTE was just outside Mutur and many of

them had real security fears. Children who suffered burn injuries from MBRLs fired recklessly by the Government were too traumatised to go back.

For a town of about 50 000, 46 Muslims and 10 Tamils in Mutur had been killed by shelling (11 of them children and 13 women). Out of the 113 Muslims and 13 Tamils injured, above 80 had limbs amputated. All this was being swept under the carpet by the Government so that it could create an appearance of normalcy by just physically bringing the Muslims back to Mutur. As would be seen below the relief being offered for the damage the Government had done was a pittance in relation to what was spent on the shells that caused it.

On 22nd Sept. the Mutur residents received leaflets purportedly from the LTTE, asking them to leave temporarily because they planned to retake Mutur. Civilians began leaving once more particularly to Kinniya and this time the security forces tried to turn them back forcibly. On the same day 800 Muslim families reached Kinniya. On the 24th Many Muslims planned to sail for Trincomalee in their fishing boats. Their licences were confiscated making it impossible for them to leave.

The following message was received from relief groups on 25th September: *“Today Kinniya police stormed into Al-Aksha and Al-Hirah schools that have been sheltering around 1000 IDPs from Muthur and moved them forcibly from the school premises. Assistant Superintendent of Police of Kinniya then locked the schools and asked the people to move back to Mutur. From 3.30 PM onwards these people (particularly women and children) stood on the street. Today is the first day of Ramadan fasting and these folk were compelled to breakfast on the street. Around 7.00 PM some angry IDPs broke the gates and entered into the school compound again. The Government Agent (GA) of Trincomalee has ordered local people of Kantalai and Kinniya not to feed or shelter these IDPs and local NGOs are also being asked not to get involved in any relief work in these areas. Only a Mosque based organization is taking care of these IDPs now.”*

The heavy hand of the GA Trincomalee, Rtd. Major General T.T.R. de Silva was felt during this whole crisis, making it evident that his role was not civilian but military. Under the present administrative structure, unlike the former AGAs, the DS can act independently in his division and the GA is strictly redundant. But there have been constant reports of the GA ordering DSs of other divisions not to accommodate or give dry rations to displaced Muslims fleeing Mutur; thus forcing them to return where they risked a rain of shells anytime the LTTE chose to intrude and the Government retaliated.

The Police using force to expel displaced Mutur Muslims from Kantalai and Kinniya back to Mutur is contrary to all international covenants dealing with civilians displaced by war. Having started its humanitarian war over water, the same Government was giving orders to cut off water and electricity for displaced Mutur Muslims in Kinniya and Kantalai. What was the ultimate aim behind this?

The Unacknowledged Tamil Refugees

A large number of Tamil refugees had also been displaced by the Government’s reprisal violence in the Allai Scheme, its bombing of Sampur in April this year and then on a larger scale after it began a ‘humanitarian offensive’ over the LTTE’s closure of the Mavil Aru anicut. Many of them fled to the LTTE-controlled area in Batticaloa District. Much of the Government propaganda over Mavil Aru was as misleading as Tiger propaganda. A

humanitarian crisis with critical food shortages due to severe restrictions placed by the Government was already in evidence in the LTTE-controlled Mutur East before the closure of the anicut. An external observer wrote:

“What happened in Mavil Aru needs to be seen in a slightly larger context. After the attack on Sarath Fonseka, the army commander, massive artillery and aerial bombing attack was directed on the LTTE-controlled areas west and east of Muthur, and every time something happened, the area was attacked again 'defensively'. Some of these shells fell 10 km inland, near villages that I know and where I don't know of any LTTE base nearby, and so the defensiveness of these actions is questionable.”

A number of witnesses have commented on the abject condition of these Tamil refugees spread over the Batticaloa District from Valaichchenai to Verugal, some of them earlier described as living under trees.

The Army subsequently launched a battle to capture Sampur, whose people the LTTE had thoroughly abused. On 4th September President Rajapakse declared, *“Our armed forces have captured Sampur for the welfare and benefit of the people living there.”* Yet there was no announcement of intention or effort on the part of the Government to resettle the Tamil people of Mutur East. Many of the people had indeed been forcibly used by the LTTE. The Government can therefore not be serious about resettling them with its killer groups running amok with complete impunity where the Tamils are concerned.

There were two hints of what was in store for the displaced Tamils. On 23rd September, a government team led by the President's brother and advisor Basil Rajapakse, Minister A.H.M. Fowzie, Deputy Minister Amir Ali, Governor Alavi Moulana, JVP Propaganda Secretary Wimal Weerawansa and JHU parliamentarian Ven. Athuraliye Rathana Thero visited Mutur, where the majority of displaced Muslims had returned. Persons who suffered injuries were offered Rs. 5000 and those who suffered deaths Rs. 15 000. This was angrily turned down by the people who pointed out that Rs. 1 lakh each was given to families of Kebitigollawa and Pottuvil that lost a member, and the last only three days earlier.

More significantly Basil Rajapakse spoke to the Muslims. He told them that the Muslims must cooperate with the Army, and if the LTTE should take control, life for them would be very difficult.

On 3rd October the Government announced that the country's biggest thermal power station to generate 1000 MW is to be built at Sampur with Indian capital. According to Power and Energy Minister John Seneviratne, the Army and Navy have given security clearance for the project and acknowledged that there would be a high security zone around the project. He had not discussed the matter with the people of the area he told the BBC Sinhalese Service. Indeed, the people of the area have been driven away as refugees and dare not come back with the kind of security the Government now provides for Tamils.

One fears a repeat of the Welioya example which displaced more than 15 000 Tamils by military terror just to the north of Trincomalee District in December 1984 and put in their place a military garrison protected by Sinhalese settlements. It was a dangerous precedent. The Tamil inhabitants were chased away to disappear into the poverty and vagrancy. This should not become the fate of Sampur.

There is something very unhealthy here. Kantalai is a colonised area whose present Sinhalese dominance is zealously preserved by the authorities. Muslims and Tamils who earlier felt comfortable in Kantalai are now fearful after killer groups targeted a number of them in recent months. The displaced Muslims who sought refuge there were grudgingly accommodated and got rid of in an indecent hurry. But when it comes to so-called development projects, perceived security needs, erecting Buddha statues or preservation of Buddhist relics, the minority ethnic groups are unceremoniously pushed aside.

In the case of Sampur, the Muslims in Mutur being asked to cooperate with the Army, to act as cover or buffer for the Government's aims, comes at a time when they feel beaten and their spirit broken. In representing what they feel and need, SLMC leader Rauf Hakeem said in Parliament on 27th September, *"An environment of normalcy does not arise by creating the impression and ground conditions where the imminent security threat does not exist. It also requires the resettlement of the Tamils in and around Mutur and enabling normal trade and other social activities between communities to resume."*

Meanwhile, the displaced from Mutur East live under subhuman conditions:

- 1) Only the UNHCR and ICRC are allowed to go into LTTE-controlled areas in the Batticaloa District; NGOs are not allowed into the LTTE-controlled areas.
- 2) The Military has placed severe restrictions on the items allowed in. For example tents are forbidden. Most people live in cadjan huts with plastic sheets for a roof.
- 3) Water is allowed in and to some extent mobile clinics. Food is issued once in two weeks, however in insufficient amounts. In Vakarai, rice is rationed at about 700 grams per person per week and only for the IDPs, along with some dhal, flour, sugar and tea.

These conditions also reflect the worsening situation in the other LTTE-controlled areas of Batticaloa District – e.g. Paduvankarai. There is hardly any economic activity or cultivation because of restrictions on agricultural inputs. Mobile clinics operated by the ministry of health have stopped functioning because the staff is too scared to go into LTTE-controlled area. Some parts of Paduvankarai have not had access to a mobile clinic for two months. This has also meant that an increasing number of people are dying of snakebite for the lack of timely medical attention. The areas are also now subject to regular bombing and shelling. The Karuna split and the manner in which the Government uses the Karuna group, give these people little option but to starve in the LTTE-controlled area rather than move into the government-controlled area, fearing being either killed as a suspect or conscripted – which could now happen in either area.

The belligerents for their own reasons will not acknowledge the urgency of the problem. It falls to the world community to force the two sides to resolve what is truly an atrocious state of affairs. A government, which espouses a commitment to sovereignty, could not be serious unless it is matched by a sense of responsibility towards the people.

Antipathy towards International NGOs and External Witnesses

INGOs in general have a difficult role to play in a conflict situation. Humanitarian organisations have to deal with all the parties to the conflict. Further, in the North-East where the social and political space is controlled by the LTTE, these organisations find it difficult to

navigate between the security forces, the LTTE and other groups. It takes international relief workers a year or two to come to grips with the ground situation and then it is time for their replacements to come in and begin all over again.

Apart from the general mandate of each NGO, the commitment and ability of individuals working in them matter a great deal. Some go along with a superficial understanding of the situation, seeing only the adverse characteristics of the State and its manipulations and ignore the nature of the armed groups. They fail to come to terms with the crucial intricacies of the conflict. Their failure to come out openly against the LTTE's blatant violations of the CFA was used by the State and other extreme elements in the South to mount a self-serving vilification campaign against them based on caricatures. There are grounds for legitimate criticism of local and international NGOs, and many in these organisations may themselves readily accept the need to correct these flaws.

In recent times the antipathy towards INGOs in the East stems from sections of the Government and forces like the JVP and JHU, who want to crush the minorities in the East and impose a Sinhalese hegemonic order. They do not want witnesses to what is going on in the East and INGOs in particular could become an obstacle to them. The little relief that displaced Tamils from Mutur East are receiving in the face of government-imposed embargoes on food and medicine owes a good deal to the role of outsiders who keep up the pressure. In the case of the Government trying to dictate to the displaced Muslims from Mutur using relief as a weapon, it took publicity to restrain it.

The JVP, which has been very vocal against foreign organisations on the ground, was until recently given an opening to voice its vituperation within the armed forces. Besides voicing what are in effect its Sinhalese hegemonic positions, the JVP has tried to use its leverage in the Government to establish itself in the East through relief work. The fact that it has not said one word condemning state atrocities against the minorities and its vocal support for military action involving bombing and MBRL attacks on Tamil and Muslim areas, is the ultimate test of its intentions.

JVP doctors were the first to go into Mutur for relief work after the August incidents and the JVP was also managing a camp for Mutur Muslim IDPs in Seruvila. Why those of this ideological ilk see the INGO presence as an obstacle is understandable.

Appendix II

Sri Lanka, UN and the Supreme Court Judgment

By the middle of last year, there were disturbing signs that provoked by the LTTE's abuses extremist sentiment in the South was gaining ground. Coincidentally or otherwise, some rulings of the Supreme Court too supported the impression that it was bending to the populist reaction articulated prominently by the JVP and JHU to the souring of the internationally backed CFA of 2002. There was first the crisis over the illegally erected Buddha statue in

Trincomalee in May 2005 where the Chief Justice advised the Attorney General that the matter does not fall within his purview. In a judgment on 27th May 2005, the Supreme Court overturned the convictions in the Bindunuwewa massacre case.

Nallaratnam Singarasa who had been sentenced to 50 years in prison (reduced to 35 on appeal) on the basis of an alleged confession, was given a ruling in his favour by the UN Human Rights Committee (HRC), which the Government ignored. Singarasa petitioned the Supreme Court for a revision or review of earlier decisions of the Supreme Court and other courts. R.K.W. Goonesekere, the lead counsel in this case said in the *Nation on Sunday* (22 Oct.06) that the petition gave a number of reasons for a revision with reference to Sri Lankan law, and *'the views of the HRC were relied on solely to seek to persuade the Court to take a fresh look at the facts and the law in Singarasa's case'*. He added, *"There is no reference in the judgment to these other arguments and they had not been considered."*

The Supreme Court judgment of 15th September, dismissing the petition as *'misconceived and without any legal base'*, contends that the President of Sri Lanka acceding to the ICCPR in 1980 *'is not per se inconsistent with the provisions of the Constitution'*, but *'does not have internal effect and the rights under the Covenant are not rights under the law of Sri Lanka.'* It further says that the Optional Protocol to the ICCPR which the President of Sri Lanka (Chandrika Kumaratunga) acceded to in 1997 is *'a purported conferment of a judicial power on the Human Rights Committee at Geneva'* contrary to the Constitution. And it further purported *'to give a remedy through the Human Rights Committee in respect of the violation of rights that have not been enacted to the law of Sri Lanka'*. The remaining four judges gave their assent to the judgment written by the Chief Justice.

While rejecting the Human Rights Committee's recommendation, the judgment added, *"The upshot of the resultant incongruity is a plea of helplessness on the part of the Government revealed in the response to the Human Rights Committee cited above, **which does not reflect well on the Republic of Sri Lanka.**"*

Indeed, doubt has been cast on the status of a number of international treaties entered into by Sri Lanka since the current constitution came into force in 1978. Sri Lanka acceded to the ICESR and ICCPR in June 1980. During the 26 years since then Sri Lanka had a number of eminent lawyers advising governments from within and without the cabinet of ministers. During this period, adopting these treaties into domestic law by parliamentary legislation was not the universal practice. The Supreme Court judgment would suggest that the Sri Lankan state as an institution and its leading representatives have been intentionally deceitful in international treaty obligations while awarding their citizens worthless rights on paper.

It was Foreign Minister Lakshman Kadirgamar who signed the accession to the Optional Protocol in 1997. For a man of enormous legal acumen and international experience, this judgment accuses him of enacting a tawdry charade. During this time the author of the recent Supreme Court judgment, as Attorney General and then Chief Justice, was in the inner circle of the Government. He and senior hands at the Attorney General's Department were bound to be abreast of treaties entered into which had a bearing on the legal process in Sri Lanka and to caution the Government to correct long standing anomalies with parliamentary legislation.

International customary law is rich in principles, which if introduced into practice would place this country on a far firmer footing to meet the challenge of the LTTE. Jurists of such a mind would look for principles in domestic law and precedents to incorporate customary

human rights law principles into local practice. The Supreme Court upholding a plea of helplessness with regard to a recommendation based on the ICCPR, a treaty that has passed into international customary law, which Sri Lanka ratified and is bound to uphold, is strange indeed. Against the current climate of impunity, such an attitude risks reducing the judiciary to rubber-stamping dreadful violations by the State.

One would like to remember Lakshman Kadirgamar who signed the Optional Protocol to the ICCPR on behalf of Sri Lanka as a progressive intellectual who sought to improve and modernise jurisprudence in Sri Lanka and, moreover, was in no doubt that he followed correct procedures established by practice.

Experienced Sri Lankan commentators have pointed out that this position cannot be rejected. Their view is that accession to a treaty such as the Optional Protocol is a political statement of intention. The views of the HRC are not binding on local courts and the HRC does not act as a superior court. *'It is therefore up to the State to determine how the views of the Human Rights Committee are to be implemented at national level in a manner consistent with the Constitution'* (D.L. Mendis, *Island*, 27 Oct.06)

One sees a cyclical pattern in Sri Lanka's accession to international treaties, which signifies that Sri Lanka is stuck in a groove in its approach to the ethnic problem. During certain periods governments found it useful to accede to international treaties related to human rights to clean up their image. From 1980 to 1982 the Sri Lankan government under President J.R. Jayewardene acceded to the ICESCR, ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. However, in 1983 Amnesty International became anathema in Sri Lanka almost coinciding with the harrowing communal violence of July 1983.

Then followed 10 years when Sri Lanka had an abominable human rights record. In February 1994, at a time when Sri Lanka was badly in need of a facelift, President D.B. Wijetunge, in a manner too good to be true, acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. President Kumaratunge was popularly elected in November 1994 on a twin platform of Human Rights and a political settlement to the ethnic problem on federal lines. On the 25th of the very same month the Sri Lankan Parliament passed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act.

This may be among the few instances the Parliament passed enabling legislation to adopt a treaty into domestic law. It points to the understanding that the failure to pass enabling legislation did not nullify the treaty obligation. The Act of November 1994 was rather a demonstration of a strong intention to get Sri Lanka out of the doldrums.

However the LTTE did not have the sense of responsibility to use this opportunity. It provoked another war and by the end of 1996, Sri Lanka's commitment to end torture was in shambles when war let loose suppressed institutional inertia in the armed forces. Nevertheless, Sri Lanka's accession to the Optional Protocol to the ICCPR in October 1997 showed a continuing public commitment to human rights and a solution to the ethnic problem as its main platform in the international arena.

In March 1999 and September 2000 respectively, Sri Lanka signed two treaties, the International Convention for the Suppression of Terrorist Bombing and the International Convention for the Suppression of Financing Terrorism. These also include commitments to the treatment of suspects in accordance with the law. They became meaningful only in the context of accession to other international treaties pertaining to Human Rights.

Sri Lanka ratified two conventions, one dealing with child rights and a second on the elimination of worst forms of child labour, almost routinely in 1991 and 2001 respectively. But almost certainly out of deference to the LTTE, Sri Lanka did not ratify the Optional Protocol to the Convention on the Rights of a Child on the involvement of children in armed conflicts, which came into force on 12th February 2002. This was 10 days before the now infamous MoU between the new UNP government and the LTTE. Both the Government and Norway were then opportunistically denying child conscription by the LTTE, which was in full swing. Today the Government is itself a major violator.

In October 2002, during the early part of the Norway-led peace process, just before the LTTE began embarrassing the international community and the UNP government (of course child conscription did not count), Sri Lanka acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Thus from 1994, under the guidance of Lakshman Kadirgagar, Sri Lanka had rather painstakingly built up a platform to project itself to the world as a modern civilized nation needing help to contain the LTTE, but at the same time committed to Human Rights and Accountability. In its second periodic report to the Committee Against Torture in August 2004, Sri Lanka stated in conformity with this outlook, “*The Government of Sri Lanka having ratified the International Covenant on Civil and Political Rights (ICCPR) in 1980, also acceded in 1997 to the Optional Protocol to the ICCPR providing for individual complaints. Sri Lanka is one of the few countries in Asia that has adhered to the Optional Protocol to the ICCPR.*” One thus sees that commitment to the ICCPR was pivotal to Sri Lanka’s credibility.

The election of Mahinda Rajapakse as president in November 2005 was followed by intense nervousness about the LTTE starting a war. Gratitude to the international community reached a peak in May 2006 when the EU banned the LTTE. This gratitude wore off quickly in the wake of international criticism of Sri Lanka’s worsening human rights record and a reminder that with the international community having done its part in isolating the LTTE, it was now the turn of the Government to show good faith and offer a meaningful political settlement.

The LTTE has always seen strengthening Sinhalese extremism and frustrating the moderate sections as the way out of the *cul-de-sac* of continuous social, institutional and military decline its politics brought about. Its determination to foment anarchy by claymore mine attacks on the armed forces, in complete contempt of the ceasefire agreement, left the security forces looking like sitting ducks.

Combined with this the Government’s ambivalence about a political settlement and failure to talk about looking beyond the LTTE, aided the mobilisation of Sinhalese extremist sections led by the JVP and the JHU. The latter whipped up artificial euphoria among the Sinhalese masses and the armed forces that it was time to throw away all human and humanitarian inhibitions and go all out to crush not just the LTTE, but also the Tamils and their aspirations. By conflating the grievances of the minorities with appeasement of the LTTE, a climate was

created for callousness towards minorities. Human Rights treaties entered into by Sri Lanka became an embarrassment and a burden.

This is the context in which the Supreme Court ruled against the Optional Protocol to the ICCPR on 15th September and invalidated the North-East merger on 15th October – the latter in support of a petition brought by the JVP and argued by eminent lawyers supportive of the chauvinist line that conflates the Tamil people with the LTTE and thus holds even a recognition of their political grievances to be dangerous.

With regard to the Supreme Court's unanimous ruling on the Singarasa case, there is the notable fact that the justices went out of the way to rule on a matter that did not arise, ignoring what was at issue – the petitioner's plea for justice. They ruled on the legality of Sri Lanka's accession to the Optional Protocol to the ICCPR, which Goonesekere says (ibid) "*did not arise in this case, was never raised by Court and was never argued. Indeed, the time given to make oral submissions was limited and an application on behalf of the petitioner for a further date of hearing was ignored.*" Moreover, Article 26 of the Vienna Convention on the Law of Treaties (the Vienna Convention) holds that every treaty is binding on state parties and must be performed by them in good faith. Such treaties, Goonesekere submits, are not subject to judicial review.

The judgment could not have come at a worse time than now, when the law notably as concerns the North-East, where the minorities dominate, is in total eclipse and is compounded by a worsening situation in Colombo. The LTTE's killings were a condemnation of itself in the eyes of the world. But here we have a situation where the State that should be protecting life has unleashed killer squads, has abetted the Karuna group's abduction of children and displayed its contempt for life and the spirit of the law.

Sri Lankan sovereignty is the catchphrase of those, like the JVP, who wax enthusiastically about the trend supported by the Supreme Court ruling of throwing out Sri Lanka's treaty obligations to be subject to international scrutiny. To them as for a number of international actors, Lakshman Kadirgamar was approvingly or disapprovingly associated with the defence of national sovereignty. Where they characteristically failed is to understand the clarity of his approach, which comprised several tiers, and misrepresented him as in effect a fellow chauvinist.

Kadirgamar saw that for a small nation to preserve its sovereignty, it must strengthen and become part of truly multilateral arrangements to foster democracy, human rights and security. It was in this context that he signed the Optional Protocol to the ICCPR. Moreover, he advocated a federal solution to the ethnic problem, independently of the LTTE, to give this country peace with dignity. He also saw the uncontrolled internationalisation that came with the Norwegian MoU as inimical to the country's interests and sovereignty. Under the MoU, a host of international actors, the World Bank, and local and international NGOs with their illusions were let loose to 'engage' with the LTTE, giving it the airs of a state and its endemic misrule, murder and abduction a semblance of legitimacy. Equally harmful was the reaction this engendered.

The Supreme Court judgment devaluing the ICCPR strikes at the heart of a rational and clearly thought out course to make Sri Lanka's sovereignty meaningful through a multilateral approach. In exchange Sri Lanka's present leaders have taken on the fragile crutches of

subservience to the US-led war on terror and were indeed cocky about burying the Tamil problem.

One is intrigued by the JVP becoming strange bedfellows with the war on terror lobby, which is contemptuous of multilateralism and the sovereignty of small nations. What remains of their left legacy appears to be just their red shirts. All they seem to have of a political programme is to hector the Army into taking real estate in the East and establishing a fiefdom in competition with the LTTE and the Karuna group.

The present government is privileged to have a seat on the UN Human Rights Council and has a special obligation to promote and uphold human rights. It needs to do some sober reevaluation of where Sri Lanka is heading. Do we want to remain in the cycle of cockiness and unbridled violence as the means to resolve the ethnic problem, which is inevitably followed by panic and disillusionment? After the Supreme Court judgment the Government cannot remain silent on the status of Human Rights treaties. It needs to convince the UNP and pass legislation promptly giving effect to all treaties in domestic law.

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