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**From Welikade to Mutur and Pottuvil: A Generation of Moral Denudation  
and the Rise of Heroes with Feet of Clay**

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### **0. Summary**

This report examines efforts to secure justice for human rights violations in the North-East of Sri Lanka in the context of a profound breakdown in the separation of state powers. UTHR is particularly concerned about evidence of interference with magistrates through executive control of the Judicial Services Commission to suppress effective investigation of human rights violations. This report deals in detail two instances of removal of magistrates and interference with the judicial process where gross violations of human rights have been alleged: the case of the killing of 17 Action Contre La Faim aid workers in Mutur, and the “disappearance” of Fr. Jim Brown in Allaipiddy both in August 2006.

An effective system of governance capable of checking human rights abuse and preventing humanitarian debacles requires that the judiciary and parliament function independently from the executive branch; it also requires independent law enforcement agencies. But in Sri Lanka these checks have broken down, rendering all these institutions playthings of the executive. Particularly insidious is the apparent compact between the executive and judiciary to undermine the 17<sup>th</sup> Amendment to the Sri Lankan Constitution. The 17<sup>th</sup> Amendment was intended to restore a measure of independence to the system, but it has been subverted. The two together control the Supreme Court and the Judicial Services Commission (JSC) and have dismantled all meaningful checks on abuse of power. There has been disappointingly little protest from the parliamentary opposition, which presumably hopes to take control of the existing system, with all its permitted abuses.

This is perhaps the first time the Chief Justice has been personally and directly involved in subverting the course of justice when it comes to grave violations that are a matter of international concern. Magistrates' efforts to expose and punish serious crime by agents of the State should be appreciated and supported; instead they face potential removal from controversial cases and exile in professional limbo. This effective arm-twisting by the executive has the power to push most magistrates to toe the line in a cover up.

As serious as the human rights implications are in the ACF case and the case of Fr. Jim Brown, both have even graver humanitarian consequences, as each occurred in a context where military strategy appeared to have included, or even relied upon, violations against civilians. The relationship of the uninhibited shelling of Mutur civilians to the ACF case parallels the shelling of civilians in Allaipiddy and Mankumbaan to the Jim Brown case. The fact that the security forces had been encouraged to operate without inhibitions and to kill on suspicion appears to have sealed Fr. Brown's fate and the fate of the 17 aid workers as well.

This report also examines several other cases illustrating the North-East experience, where ethnic politics dominates. The role of ethnicity in the working of institutions of justice needs to be faced squarely -- something the Government establishment has so far failed to do. The very fact of Sinhalese nationalism pervading state institutions, and the constant appeals to the

Sinhalese to support the security forces, ensures that institutions of justice become corrupted and the minorities are systematically denied justice.

The need for international (UN) monitoring is inescapable. The report examines conditions in Vavuniya, and particularly the pattern of recent claymore mine attacks in the area. It concludes that local mechanisms are unable to make any impact on investigating and checking this sort of violence, and that a UN monitoring mechanism may be the most promising means to arrest the slide into anarchy war, hold all sides to account, and ensure that civilian existence remains possible in the North-East.

On a broader political front, UTHR believes that the conditions described in this report are evidence that in their current state Government institutions are not capable of dealing with the ensuing social and economic strains without cracking. The ruling SLFP's package for a political settlement runs in gross defiance of the minimum considered adequate by Tamils and world opinion. It leaves the Government with little room to manoeuvre, virtually dooming it to a course of total war. Equally, the LTTE's record of crimes and its very ugly methods of conscription, which are described below, enjoy by default a semblance of legitimacy. It is simply the way war is fought in Sri Lanka.

In addition to the war, the militarisation of state and society over the last three decades has led to the steady weakening of democratic institutions in Sri Lanka. Political interference by the Executive in the Judiciary, which has escalated over the last few years, in particular, threatens the very democratic fabric of Sri Lanka.

International pressure that includes a UN Human Rights Field Operation that includes monitoring and technical support for local institutions and parallel efforts to get the Government to put into effect a workable federal arrangement may be the only means to get Sri Lanka to work. Before such intervention, there is a need for some rigorous heart searching. The international community and the UN were also a part of what went wrong under the CFA. Their naïve illusions about working with the LTTE are ones for which a heavy price was exacted from the Tamils. There has been no accounting so far.

## **1. Meltdown of Democratic Safeguards and Forgotten Heroes**

A few days before the communal violence of July 1983 President Jayewardene gave notice in a *Daily Telegraph* (12<sup>th</sup> July 1983) interview that the laws would sleep while the Government gives priority to dealing with terrorism '*without any quarter being given*'. Human rights advocates became the target of concerted attack and on government-instigation the media launched a carnival of India bashing for its expressions of concern. That was a generation ago and we are back where we were. The same arguments are back in vogue. Inconvenient facts are being buried.

Among the Jayewardene Government's singular outrages were the Welikade prison massacres of July 1983. Far from defeating terrorism it was the making of Prabhakaran. Prabhakaran could not have crushed dissent in Tamil society and become what he is, were it not for the Government's gift of eliminating prisoners Kuttimani and Thangathurai at Welikade. The latter two were Prabhakaran's peers in the militant movement, who aired a strong suspicion that Prabhakaran had betrayed them to the security forces after they had all taken part in the Neervely bank robbery in 1981. Behind the current arguments for a continuation of the bogus

and costly fight against terrorism, all that makes for a united and civilised nation protecting cherished values is being dismantled.

All that is certain is death and destruction for elusive ends amidst lies in a moral and political vacuum. Those wielding arms, often under duress are being called upon to kill and be killed in dishonour for leaders and demagogues with feet of clay, who would no sooner turn their backs on the lives they deceived and desecrated.

The petulance and self-pity among Sri Lanka's ruling establishment is reflected in the reply authorised by the Chief Justice to the ICJ's criticism of the Judicial Service Commission's purported interference in the ACF case. It complained: "*It is now a common occurrence for persons who come from outside to judge and pontify on the action of lawfully established authorities in this country.*" An inconvenient fact is being lost sight of in the current mood of suicidal jingoism. 'Persons who came from outside' no more than gave support, often in mild and polite terms, to legitimate concerns that were already raised by Sri Lankans from within that were repeatedly brushed aside.

While the ethnic conflict is the base on which a host of abuses have been justified and covered up, what is easily forgotten is that there is a long line of Sinhalese who have suffered persecution, isolation, terror and whose careers have suffered for standing up for what was right and honourable. Two of them of whom we will have more to say in the supplement to this report are Leo de Silva, Superintendent of Welikade prison during the 1983 prison massacres, and Lt. Nuvolari Seneviratne who was on guard duty outside the prison during the second massacre.

Issues that have been regularly raised by Sri Lankans themselves concern the meltdown of democratic safeguards, which require the independence of the three arms of government – parliament, judiciary and the executive. Parallely, the three arms of law enforcement are the judiciary, police and the attorney general's department. When the independence of the three functions is subverted in either case, we have creeping totalitarianism. Disturbing signs of this today in abuses by the executive and paralysis of parliament, have their roots in the South itself and are veiled by the noise of events in the North-East.

Symbolic of current trends is the fate of the democratic safeguards contained in the 17<sup>th</sup> Amendment that is being openly flouted by the executive president. Parliament is asleep on the matter. A citizen wanting redress could go to the Supreme Court with a fundamental rights petition. But what could one expect from a chief justice all-powerful in the judicial sphere, whose own excessive power is underpinned by the President's flouting of the 17<sup>th</sup> Amendment? The latter provided for wider franchise in key appointments that are now being effectively made by the President in breach of the law. The result of this system has been a host of abuses by a clique in the judicial establishment impacting on the independence of magistrates, supporting in turn a regime of systematic human rights abuse.

Notable bias has been in evidence in the way fundamental rights petitions before the Supreme Court are given leave to proceed and are prioritised in the absence of written principles. Of particular concern is the manner in which cases involving grave violations in the North-East are moved to courts in areas where the victims feel vulnerable often after unconscionable delay during which time the victims have faced intimidation. Cases taken up below on the rape of women are being quietly buried. We also deal with two telling cases of moving the

magistrate – the ACF and Fr. Jim Brown cases. We have a system in which the judicial hierarchy actually protects human rights abuse and fosters a flawed system of investigation.

We would only touch on a few aspects and give the link to a fairly exhaustive interview given to the [Sunday Leader \(31 Oct.2004\) by Justice C.V. Wigneswaran](#) upon his retirement. His experience as a magistrate in the early 1980s exemplifies how an independent magistrate exercising his powers creatively could advance the cause of justice and the dignity of the citizen in the face of state terror and impunity, even where prosecution is thwarted by the State. We would have occasion in the sequel to refer to the work of several bold magistrates in service. Wigneswaran, in the interview cited (hereafter CVW), points to matters most of us paid little attention to, but whose destructive impact at present, even the blind cannot ignore:

*“The executive presidency need not directly interfere nor influence. Close relationships that had preceded appointments to the higher judiciary if continued would necessarily assist the executive presidency. If further benefits for the future are looked forward to by these judges, the executive presidency need not even move its fingers. Its interests would be adequately looked into!”*

*“Any attempt to cow down judges to suit the hierarchical perception of some members of the higher judiciary would affect the judicial process. Unless those who understand and empathise with the judges of the original courts run the administration of the original courts the judicial process will suffer tremendously.”*

## **2. Moving the ACF case from the Mutur to the Anuradhapura Magistrate**

17 members of the ACF were killed on 4<sup>th</sup> or 5<sup>th</sup> August 2006, the day the LTTE left Mutur, which it held for nearly 3 days, and the Army moved in. Mr. Manickavasagar Ganesharajah, the Mutur magistrate, heard the case until 4<sup>th</sup> September and was preparing to deliver an inquest verdict the following day, when he received a telephone call from Suhada Gamlath, Secretary to the Ministry of Justice, instructing him to transmit the case to Magistrate Jinadasa who sits in the Anuradhapura court, purportedly on a decision made by the Judicial Service Commission. Instead of the verdict, Ganesharajah announced the order the following day in the Trincomalee court where he was sitting as most civilians in Mutur had been displaced.

On 10<sup>th</sup> March 2007, Michael Birnbaum QC said in an ICJ statement, *“To appoint a new magistrate to hear a case that is well under way is virtually unprecedented. In my view, this mid hearing substitution of magistrates by the JSC was unlawful under Sri Lankan law and without justification. Worst of all, the way it was done might well undermine the confidence of the Tamil minority in the system of justice.”* The JSC statement (referred to above, which was authorised by the Chief Justice) took strong exception to Birnbaum, charging that he has *‘conjured a racial twist by unnecessarily describing the Magistrate Muttur as being a Tamil’* and protested that there has not been a hint of racial bias on the part of the JSC.

The JSC statement giving reasons for removing the Mutur Magistrate from the case, suggested that because he was caught up in the fighting in Mutur, he was *‘not in a fit state to continue with his judicial work in that area’*. It gave two other reasons for the transfer. Both pointed to the CJ (JSC) having acted on the advice of the political executive – namely Secretary, Ministry of Justice – who allegedly brought the following to his notice:

One was that Magistrate Ganesharajah had only recorded statements from those who had identified the bodies and not from anyone who could shed light on the circumstances of the deaths. Besides, the Ambassadors of Australia and France had expressed concern at the delay in recording the causes of death and concluding the inquest. (The April 2007 ICJ report on the case cites Secretary/ Justice having told Birnbaum that a reason for the transfer was that Magistrate Ganesharajah could not, according to the Police, be contacted although he had been hearing the case and had issued some good orders.)

Second, the CID had informed Secretary/ Justice that Magistrate Ganesharajah having been in Mutur during the events would have vital information to aid the investigation.

The first holds no water. Magistrate Ganesharajah was conducting the inquest according to due process and on 15<sup>th</sup> August 2006, he issued two orders stating his intentions of conducting ‘*serious and effective investigations into the killings*’ which involved suspicious circumstances that were also grave violations of the Geneva Conventions. We have also verified from legal sources involved in the case that complaints of delay attributed to the two ambassadors is complete fiction and that on the contrary they were happy with the Magistrate’s commitment. Ganesharajah himself told the court while announcing his removal from the case that he had fixed that day in order to enable the Police to file post mortem reports of the 17 dead persons and for delivering the verdict (*Daily Mirror* 7 Sept.06).

The reference to the CID in the second is also a ploy. The CID itself obtained clearance to visit the scene only on 17<sup>th</sup> August 2006 and neither they nor the Police have made any progress in identifying the killers nine months after removing Magistrate Ganesharajah from the case. Deputy Solicitor General Yasantha Kodagoda seconded from the Attorney General’s (AG’s) Department to assist the Commission of Inquiry (CoI), briefed the commissioners that the removal of Magistrate Ganesharajah is to do with his being protected from the LTTE as he had complained to the Police of his house having been robbed during the LTTE’s brief foray into Mutur. Official reasons for Ganesharajah’s removal from the case seem to be as endless as they are mutually contradictory.

This brings us to a convenient procedural deficiency in the system of justice that opens up enormous potential for abuse. While so many have given reasons for Magistrate Ganesharajah’s removal, nowhere is there any record of reasons being minuted, leave alone argued. The matter is replete with procedural improprieties, an important one being the Secretary/ Justice communicating to Ganesharajah by phone the purported decision of the JSC removing him from the case, which was fortunately minuted by Ganesharajah.

The JSC is wrong to brush the matter aside as something Birnbaum raised in ignorance. It had been raised locally as early as 10<sup>th</sup> September 2006 by Kishali Pinto Jayawardena in her regular column ‘*Focus on Rights*’ in the *Sunday Times*:

*“The fact that the transfer was by political order (i.e. Justice Secretary) shows the manner in which the court proceedings are sought to be subverted and very blatantly at that. Anuradhapura is situated in the North Central province (a predominantly Sinhala area) where the perception as well as the reality being that, given the extraordinary sensitivity of this case, witnesses will be reluctant to attend as opposed to the matter being continued in Trincomalee.”*

Subsequently Suhada Gamlath, Secretary/ Justice, contacted the lawyer-columnist and offered the explanation that he had tried to minimise administrative inconvenience. The columnist challenged him to send in his position to the paper and she reserved the right of reply. The Secretary reportedly backed off. The lawyer columnist holds that he should not have made the call to the Magistrate under '*any circumstances*'.

One could even go further. The JSC's reply suggests that it was Secretary/ Justice who approached the CJ with his concerns about the ACF case and the two agreed on the desirability of removing the Mutur Magistrate Ganesharajah from the case; whereupon Secretary/ Justice communicated the transfer to Ganesharajah by phone as the decision of the JSC. It is the alacrity with which the latter improper action was advanced that points to Secretary/ Justice as the prime mover in the drama. This reading is also suggested by what Secretary Gamlath told the ICJ (report of April 2007). His phone call to Ganesharajah sits strangely with his giving the Police's not knowing Ganesharajah's whereabouts as a reason for taking him off the case.

The SLMM made headlines four days earlier (31<sup>st</sup> August 2006) by pointing to the security forces as the likely perpetrators of the crime and Ganesharajah was to deliver a routine inquest verdict on the causes of death the following day (5<sup>th</sup> September) and had by his orders evinced a determination to thereafter exercise his wide investigative powers as a magistrate. Removing him at the latter stage would have attracted even stronger adverse attention. This explains why the Secretary/ Justice was in a great hurry to communicate the order for removal before the inquest verdict, be it on a risible pretext of minimising administrative inconvenience.

Had the transfer emanated from the inner counsels of the JSC, it would properly and naturally have been the Secretary of the JSC that communicated it. We note that the JSC had neither conducted its own inquiry (no record of its having checked with the Mutur Magistrate) nor had documented any cogent reasons for the decision, but found itself taking refuge in absurdities, in response to Birnbaum. While asserting the existence of a document detailing the JSC's reasons for taking Ganesharajah off the ACF case, Secretary/ Justice declined to show it to Birnbaum, saying it was confidential. Given the arbitrary manner in which the JSC has acted against magistrates not toeing the line sketched in the 2001 International Bar Association (IBA) report, one would be surprised if such a document existed. Had not this case been so high profile, the issue of moving a magistrate off a case without proper procedure, may not even have arisen. Indeed, the precipitate removal of the magistrate from the case of Fr. Jim Brown the very day she showed a determination to investigate, passed largely unnoticed.

What these amount to is gross interference with the judicial process. Where Secretary/ Justice and the AG's department are concerned, such interference has a glaring precedent in the Welikade Massacres case of 1983. The difference is that the Colombo Magistrate at that time was willing, unlike Mutur Magistrate Ganesharajah and Acting Kayts Magistrate Mrs. Nandasekaran. While the JSC cites its and Secretary/ Justice's concern with the expeditious conclusion of the ACF inquest as the main reason to remove the Mutur Magistrate from the case, it skirts the fact that he was about to conclude the inquest the next day and the Anuradhapura Magistrate himself went on for several more months. The JSC statement stipulates very minimal functions for a magistrate holding an inquest according to Section 370 of the Criminal Procedure Code (CPC):

*“...an Inquest is generally done by an Inquirer who is not a judicial officer but an official appointed by the Ministry of Justice. A Magistrate is also empowered to carry out an Inquest. The purpose of such Inquest is only to record the opinion of the inquirer with regard to the cause of death, and note the marks and injuries found on the body and the manner in which they appear to have been inflicted.”*

This is a gross understatement of the role of magistrates in the North-East. If the Police and the AG’s department could be relied upon to investigate and prosecute, then the minimal functions opined by the JSC are adequate. Where the main suspects behind a crime in the North-East are from the State, the only evidence that is ever bound to get on record is what the Magistrate is able to coax out of frightened witnesses at the inquest. The investigative function begins at the inquest as with the 5 students case, where the security forces executed five students on the sea front in Trincomalee on 2<sup>nd</sup> January 2006 and tried to pass it off as due to a bomb carried by the students.

In practice the Magistrate at an inquest where the state forces are the leading suspects to a crime, plays a dual role. Birnbaum in the ICJ report speaks of *‘the comparatively wide power of investigation conferred on a magistrate and his comparatively limited powers in conducting an inquest’* and draws attention to Section 138(1) of the Criminal Procedure Code (CPC) which *‘provides that, even where nobody has been accused of an offence, a magistrate may examine on oath any person who appears to be able to speak to the facts of the case’*. While what the Magistrate places on record does not constitute evidence, it could be used by a criminal court to guide its deliberations.

It is not hard to see that the two roles of the Magistrate are intertwined. It is at the inquest that the Magistrate identifies potential witnesses and wins their confidence to undertake the investigative role. While it is Magistrate Ganesharajah’s orders concerning investigation that evidently alarmed the authorities into moving him out, Magistrate Jinadasa too continued in the same spirit and postponed the conclusion of the inquest in the expectation of some witnesses and evidence of test results. We will return to this in the next section.

There were early indications that Magistrate Ganesharajah was not going to get much help with the orders he issued, calling also for help from the AG’s Dept. by sending counsel to assist the Magistrate as in the Trincomalee 5 Students case. Such help was not forthcoming for the ACF case. We thus see the absolute need to protect the magistrate from arbitrary interference and protect and support the quality and integrity of his functions.

In what may have been the Chief Justice’s first brush with unwelcome outside interference, protecting the independence of magistrates was among the early issues that surfaced. This came up in a report by the International Bar Association in November 2001 titled *‘Sri Lanka: Failing to Protect the Rule of Law and the Independence of the Judiciary’*. The report followed a visit by Lord Brennan QC, Justice Malimath and Mah Weng Kwai, three eminent barristers from Britain, India and Malaysia respectively (hereafter referred to as the IBA Report).

The Judicial Service Commission is headed *ex officio* by the Chief Justice and is joined by two judges from the Supreme Court appointed by the President, who according to earlier practice were the two most senior. This practice was breached in 1994 when the newly elected President Kumaratunge did not reappoint Justices Mark Fernando and A.R.B. Amarasinghe, the two most senior, to the JSC. The JSC is vested with authority over the appointment,

transfer, dismissal and discipline of the judiciary, except of the Appeal Court and Supreme Court.

The IBA delegation met with six judges who testified that they were effectively terminated or punished in most cases for political reasons after Chief Justice Sarath Silva assumed office in 1999, without a hearing and without any transparent procedure. The two other members of the JSC then, Justices Ismail and Edissuriya, were not the most senior Supreme Court judges at the time of their appointment. The IBA Report noted:

*“It is not for the delegation to decide the merits of the disciplinary action. It was concerned, however, with fair procedures. Although the delegation took a careful note of the reasons given by the judges and former judges for the disciplinary action, it was especially concerned with the apparent lack of accountability, the breach of natural justice, the potential for undue influence and disregard of appropriate and equitable procedures shown by these disciplinary measures.”*

The fears expressed in the IBA Report, which are a reflection of what many Sri Lankans have said over the years, anticipate the prospect of a politicised JSC that could be used by the political executive as a slot machine to move a magistrate from a case where he or she evinces an unwelcome interest in justice. The 17<sup>th</sup> Amendment provided for a non-partisan Constitutional Council to nominate members to commissions including the JSC. Unfortunately the President with little protest has subverted the measure.

In February 2006, Justices Shiranee Bandaranayake and T.B. Weerasooriya resigned from the JSC citing ‘reasons of conscience’. The third member and ex-officio chairman of the JSC was Chief Justice Silva. The two vacancies should have been filled by the Constitutional Council created by the 17<sup>th</sup> Amendment of September 2001, which has been quietly disregarded by the executive after the term of the first CC expired in March 2005. The CC comprises the Speaker, Prime Minister, the Opposition Leader, 5 persons of eminence selected jointly by the latter two, one presidential nominee and one nominee of the minority parties (excluding the Opposition). The latter seven are formally appointed by the President.

The Civil Rights Movement pointed out in April 2006 that the executive’s pretext for disregarding the CC – a disagreement between the smaller parties on a nominee – does not hold water. The CRM pointed out, *“The position therefore is that today there are in place three or maybe four members of the Council. There is no question of the Council having gone out of existence or having to be totally “reconstituted”; it is a question of filling vacancies, which have occurred... Common sense dictates that if these small parties fail to select a member they will simply forfeit, for the time being, a place in the Constitutional Council.”*

This sound piece of reasoning fell on deaf years of persons who would not brook any democratic challenge to their power. The JSC continues a tool of the executive. The JSC’s protest that Birnbaum had introduced ‘a racial twist’ into its action of switching magistrates on the ACF case runs counter to the reality of Sri Lanka. Not to accept that reality and be sensitive to it, leads to actions that exacerbate it. And indeed, it is a fact that the minorities have lost faith in Sri Lankan justice. Further, the attempt to degrade magistrates and make them creatures of the executive (through a politicised JSC) deprives them of the initiative called for in critical situations and leads to such horrific parodies of justice as in the Pottuvil case which we will return to below.

### 3. Ethnic Realities and the Justice System

On 27<sup>th</sup> May 2005 a five-member bench of the Supreme Court appointed by the Chief Justice acquitted unanimously the accused in the Bindunuwewa massacre, who were already sentenced to death in a High Court hearing. 27 Tamil inmates of a rehabilitation centre were brutally massacred on 25<sup>th</sup> October 2000 with the connivance of the Police (Special Rep. No.19 Part I). In its statement on the event, Human Rights Watch observed:

*“Impartial observers of the Supreme Court hearing said the justices were openly hostile to the prosecution, and seemed to have decided beforehand that the accused were unfairly sentenced. One justice publicly reminded the courtroom to remember that the inmates who had died were members of the LTTE, suggesting that this might mitigate the guilt of the accused.”* HRW added, *“The judgment of the Supreme Court calls into question its impartiality in dealing with cases related to the Tamil Tigers. The Court must put aside politics and personal feelings when dealing with criminal offenses involving Tamils.”*

This is not to say that the all-Sinhalese bench was anti-Tamil in any crude sense. But we are living in a fractured Sri Lanka where patriotism has come to be identified with ethnic loyalties. People get their news from different media, they talk to different sets of people and propaganda pushes people in diverse directions. Judges are not necessarily enlightened persons in this respect. Perhaps, one Tamil judge being on the bench would have cautioned the others not to jump to conclusions. The victims were not terrorists, but surrendeers and persons, including children, detained on mere suspicion against whom nothing was found. And besides, what happened was cold-blooded murder. There has been no Tamil among the Supreme Court judges since C.V. Wigneswaran, who was notably outspoken, retired in late 2004. This is not due to discrimination. There are two Tamils in the Appeal Court who would have to await their turn by seniority.

At provincial level, minorities who testify against the State are much more comfortable giving evidence to magistrates whom they know, who speak their own language and in surroundings they are familiar with. Further, as we mentioned, given the disposition of the State, Police and AG's department to suppress, all the evidence that is ever likely to get on record is that which the Magistrate is able to coax out of witnesses. This is clear in two well-known cases.

In the 5 Students Case in Trincomalee (Special Rep. No.24), the only substantive civilian testimony on record is that given in court in Trincomalee before Magistrate Ramakamalan, a Tamil, by Dr. Manoharan and Subashini Chitravel on the first day of hearings and what he obtained from the two injured students in the ICU of Trinco Hospital. Immediately upon the first day of court hearings, intimidation by the security forces was mounted against Dr. Manoharan and the witnesses dried up. The two injured students had been afraid, but others who knew the magistrate persuaded them to talk to him. Ramakamalan urged people to meet him in his chambers and testify in confidence. But people are too frightened.

This case is something of a law enforcement wonder. There is absolutely no doubt that the killings were done by security personnel who dominated the beachfront at that time and the place was bristling with them. There were scores of civilian witnesses. Yet the authorities have made zero progress with the case citing a lack of evidence although the case is called regularly in the Trincomalee court, the last time on 23<sup>rd</sup> April 2007. Delivering the inquest verdict on 18<sup>th</sup> January 2006, the Trincomalee Magistrate affirmed that based on the evidence, there is reasonable suspicion that a crime had been committed. He ordered the Police to

investigate, arrest suspects and furnish a report of inquiry to the court. Owing to lack of progress and international pressure as well as pressure from the AG, a second CID inquiry was ordered in July 2006. Every month, as we understand, the court is told that the investigation is incomplete. Knowing the cost, a number of witnesses have one by one left the country.

In Allaipiddy, intruders from the Navy murdered a family including two sleeping children during May 2006 (Bulletin No.40). Because of the confidence they had in the Kayts Magistrate Mr. Trotsky, a mother and daughter came forward to testify that the perpetrators were the Navy and they were willing to identify the culprits at an identification parade. From that time a combination of the Police's failure to produce evidence, an apparent lack of interest by the AG's department and the Navy's reluctance to cooperate have stalled the proceedings. Although the Magistrate continually expressed his dissatisfaction with the Police, he had no choice but to repeatedly postpone hearings. The court was to meet on 30<sup>th</sup> August, but sittings were postponed several times, partly due to the fighting in August. The court met on 14<sup>th</sup> March 2007 after the Magistrate had appealed to the AG's Dept. for help given that the CID had been delaying its report, the Police failed to assemble suspects from the Navy for an identification parade, and the Navy was stalling by wanting the identification parade in Trincomalee or Amparai claiming rather absurdly that security did not warrant assembling 60 or so men for a parade in Jaffna, where there was a large concentration of security forces.

Two women Vijikala Nanthakumar, who was pregnant, and Sivamani Weerakoon, a mother of three, were arrested by the Navy allegedly as LTTE accomplices in Mannar on 19<sup>th</sup> March 2001 and were raped and tortured by the Counter Subversive Unit of the Police (Bulletin No.25). From the very start, Anuradhapura, a Sinhalese garrison town 65 miles to the south east of Mannar, had traumatic associations for the victims. As soon as District Medical Officer, Mannar, confirmed the rape after a second medical examination upon Bishop Rayappu Joseph's intervention, the Police moved the two women from the Mannar jail to Anuradhapura jail, the only purpose of which was to intimidate them. (The authorities tried to discredit the charges using the fact that the Police took the women to the same DMO once before and obtained a report from him, but without examination after merely showing the women.) After the Mannar Magistrate released them on bail on 9<sup>th</sup> April, the women had to live under constant threat. The Defence Ministry attempted a blatant cover up, but the women showed exceptional courage in identifying the perpetrators.

Nothing moved until 16<sup>th</sup> December 2003, after the Council for Human Rights and Development helped the two women victims to file a fundamental rights petition before the Supreme Court in 2002, demanding compensation and requesting that the accused be tried under the Torture Act. The Attorney General (K.C. Kamalaseson, a Tamil) communicated to the Court that indictments would be filed against the accused the following month in the Anuradhapura High Court. It was 23<sup>rd</sup> August 2005 when indictments were filed against three CSU men, including Inspector Suraweera, and nine from the Navy, in the Anuradhapura High Court and the case was to be heard on 21<sup>st</sup> September 2005. Given the long history of threats neither of the women turned up for the case in Anuradhapura. A women's group in Mannar that wanted to reopen the case found that Vijikala has since fled to India as a refugee. Sivamany who lives in a rural area in the North told the group that she would go through with reopening the case only if Vijikala is also willing.

If the judicial authorities were serious, the indictments should have been filed much earlier in the Vavuniya High Court, as they automatically would have been, were preliminary hearings concluded by the Mannar Magistrate. Vavuniya is a Tamil-dominated town 57 miles east of Mannar that people in Mannar are familiar with and the court language is Tamil. Security forces officers have answered summons at the Vavuniya HC without complaining about security. Inspector Suraweera, one of the accused, had filed a petition in the Appeal Court on 18<sup>th</sup> April 2001 asking for the case to be transferred to the Colombo Magistrate's Court, alleging that the Mannar Bishop, an LTTE supporter according to him, had instigated the women to frame his men for rape. While reports are not clear on this point, if the Appeal Court had transferred the case to the Anuradhapura Magistrate as seems likely, the indictments would have been automatically filed in the Anuradhapura High Court. The Judicature Act also gives the AG the discretion to file indictments in a High Court of his choice.

On 12<sup>th</sup> July 1999, a 21 year-old- girl Ida Carmelita of Pallimunai, once with the LTTE, was raped and killed by members of the security forces in a climate of extreme impunity where about 53 persons had been killed around Mannar Island over the previous year, out of whom at least 27 were identified as innocent civilians. When confronted with this fact Brigadier T.T.R. de Silva, who was in charge of Mannar, plainly justified the killings saying the people killed were smugglers (our Bulletin No.21). In 2006, Major General T.T.R. de Silva Rtd. was posted as GA Trincomalee, a post normally held by a civil administrator, and is now part of the government apparatus in the area renowned for abuses and cover-ups.

The case was handled by Mannar Magistrate M. Illancheliyan, who looked at the body the same morning and left for Jaffna to deal with the Krishanthi Kumarasamy case. He directed Actg. Magistrate Mr. Feldano to deal with it during his absence and deliver the inquest verdict. The medical Officer Dr. Peiris in the meantime reported 18 injuries and rape. Illancheliyan ordered an identification parade at which two suspects from the security forces were identified. The investigation at that time had President Kumaratunge's backing. Since Dr. Peiris was not a qualified JMO, on a suggestion made by Dr. L.B.L. de Alwis, JMO Colombo, Illancheliyan ordered Carmelita's body to be exhumed and sent to Colombo. De Alwis discovered a bullet in Carmelita's chest that was not spotted earlier. 11 weapons had been sent to the Government Analyst Dr. M.A.J. Mendis, who found that the bullet matched the gun of the second accused.

Meanwhile, the security forces intimidated local witnesses who fled to Mandapam in India. The accused were remanded in Mannar prison until Illancheliyan was transferred to Vavuniya in August 2000 on President Kumaratunge's request, to deal with complaints by human rights agencies about killings linked to the State and its associates. Thereafter on the request by the accused to the Appeal Court, the case was transferred to the Colombo Magistrate and died a natural death, the accused being out on bail.

The US State Dept. Country Report on Human Rights Practices for 1999 released in February 2000 said, *"In July Ida Carmelita, a young Tamil girl, allegedly was kidnaped, gang raped, and killed in the Mannar area by five soldiers. At year's end, the case still was being investigated."* The US Embassy in Colombo kept up the pressure over the next two years by similarly highlighting the case in its Country Report. After a new Ambassador took over in July 2003, this source of pressure was also lost.

In the gruesome case of the murder of the Martin family in Vankalai, near Mannar, on 8<sup>th</sup> June 2006, witnesses and potential witnesses, in the area dominated by the security forces were so intimidated, that within a month the Magistrate's inquiry practically fizzled out (Supplement to Special Report No.23).

One might say that the system of justice was more honest in the early 1980s when CVW as Mallakam magistrate found on good evidence that two soldiers had murdered a driver in cold blood and the Attorney General (V. Pasupathy, a Tamil) declared a *nolle prosequi* (we shall no longer prosecute) and ended the matter. More recently, while those in authority hold that there is a justice system that works without ethnic bias, cases by Tamil victims are suppressed, 1.) By delay that allows for intimidation, 2.) Harassment where the victims have to eke out a living amidst trauma and misgivings as to whether the uncertain wait for justice is a practical proposition and 3.) Filing indictments in a court where the victim is at a distinct disadvantage.

Having Tamil attorney generals was good sales promotion, but they were mere figureheads. It was under Siva Pasupathy that two AG's department men, including the current AG, were sent to manipulate the evidence at the 1983 inquest into the massacre of Tamil political prisoners in Welikade. The recently retired AG Kamalaseson was humiliated (see below) over the Buddha statue affair in Trincomalee. He also tried to get some movement in the case of the 5 students executed in January 2006 by the security forces in Trincomalee, but absolutely to no avail. He left his job 2 years early in April 2007 aged 58. One rumour held that he was ill and decided to retire. Another knowledgeable source said that after the age of 57 the AG, like the IGP, should apply for yearly extensions that are normally routine. If the 17<sup>th</sup> Amendment providing for a Constitutional Council were observed, it fell to the CC to grant the extension and that would not have been a problem. As things are, the extension rests with the President and strong hints from his circle let it be known that the former Solicitor General C.R. de Silva would soon be AG. Kamalaseson did not apply for an extension.

Against this background one could have no illusions about the State's intentions in transmitting the ACF case to the Anuradhapura magistrate who does not speak the witness' and victims' language and to a location where they are distinctly uncomfortable.

It is especially the higher judiciary, the Supreme Court and the JSC that ought to be most sensitive to these realities. The bizarre fate of the man whom government propaganda boasted as their star witness in the Pottuvil case should open our eyes to even grimmer realities about the system and the role of ethnicity.

#### **4. Pottuvil Case: The Singular Fate of the Acclaimed Star Witness for the State**

On 17<sup>th</sup> September 2006, 10 Muslim labourers were hacked to death allegedly with the involvement of the STF (see Special Rep. No.23). The lone survivor Meera Mohideen who had a gash on his throat was the following day dispatched by ambulance to Kalmunai Hospital that is in a predominantly Muslim area. From almost the doorstep of Kalmunai Hospital, the Police on the order of DIG Amparai, re-routed the ambulance to Amparai Hospital in a predominantly Sinhalese area. From Amparai Hospital the Police claimed that Mohideen had testified to the LTTE being the perpetrators of the crime. Further, a Muslim Minister Athallah was sent to obtain a video testimony from Mohideen to implicate the LTTE, which was posted on the Defence Ministry web site. The video showed a medical man in overalls holding something against the throat of the injured victim as he spoke haltingly.

The Press, especially the government media, went to town with the 'evidence' against the LTTE. The Amparai Hospital authorities told the media that the victim was almost recovered and would be discharged in a few days. This was reported in the *Daily News* of 4<sup>th</sup> October 2006. In the normal order of things the Police should have reported to the Akkaraipattu Magistrate Mr. Manaf the testimony he supposedly gave them implicating the LTTE and it would have been the Magistrate's duty to summon him, test the evidence in court and put to shame all those misguided Muslims who had been accusing the STF of the massacre. But, lo and behold, the star witness became the victim of an astounding disappearing act. The media who had elevated him to stardom simply forgot, after 4<sup>th</sup> October, that he ever existed.

Inquiries by interested persons in Pottuvil revealed that producing him before the Akkaraipattu Magistrate was the last thing the authorities had in mind. The Police had taken him to Colombo Hospital and placed him in a paying ward. Once when his son-in-law went to see him, he was again missing. Alarm was raised and Muslims of influence started making frantic inquiries.

A senior Muslim, with very good contacts in the security forces, said authoritatively that Meera Mohideen, who was irritated with his placement in Colombo Hospital, had been taken to the Amparai District and held for a few days in an STF camp, possibly Sastriveli Camp, which allegedly masterminded the massacre of Muslims.

Meera Mohideen is now back with his daughter in Pottuvil, thoroughly intimidated by the experience. He was never produced before a magistrate. In his present state of mind his value as a witness is in doubt and is yet to be tested.

Mohideen's saga is reminiscent of tales from other totalitarian states, where dissidents and inconvenient persons used to be locked up in psychiatric wards. What is rather remarkable is that doctors and hospital authorities have cooperated in this charade, which is contrary to all professional norms. This too is made possible by the daily propaganda they, even as medical professionals, encounter, appealing to their patriotism defined in Sinhalese hegemonic terms with constant calls to support the security forces. Meera Mohideen's story shows what the latter involves. It is the same mindset that guided the Welikade cover up.

Mohideen's story also gives an idea of the extent to which the magistracy has been degraded, including by real fears of arbitrary punishment by the JSC and the ruin of magistrates' careers. Normally the magistrate would have enjoyed considerable powers to protect a key witness like Mohideen and to advance strong action against those who tried to tamper with his evidence. Apart from being criminal, those who connived in attempts to hide Mohideen and his evidence would have been guilty of contempt of court. The point is that the patient had to be diverted from Kalmunai Hospital where he would have been at home to a Sinhalese administered system that was more conducive to tampering with the judicial process.

One needs to confront the reality that ethnicity has pervaded crucial aspects of our life, giving the lie to slogans in Colombo that we are one nation and one people. Presently there is no doubt in Pottuvil who was behind the massacre. Among those in the region who feel very angry over the cover up are Muslims who served in the security forces. Underlying the Pottuvil massacre is the thrust of advancing Sinhalese ideological claims to land in the East.

An activist working closely with Muslims of the area told us: *“In the last two years there have been many attempts to grab Muslim farmers’ land under the cover of the new Ministry for Environment and Natural Resource’s campaign of restoring and protecting cultural heritage and animal sanctuaries in the Eastern Province. This ministry is led by the parliamentarian from the Jathika Hela Urumaya (a political party led by Buddhist priests) – Champika Ranawakka who openly entered into an agreement with the Karuna Group (TMVP) to protect the cultural heritage of the Eastern Province. Now this ministry is using the Karuna Group to prevent the Muslims from using their agricultural lands, which will deprive the Muslim community of its vital livelihood.*

*“A justification given by the LTTE to evict the entire Muslim community from the North in 1990 was that the eastern Muslims grabbed Tamil land with the help of the Sinhalese government. It is ironic that a Sinhalese-Nationalist government is using a Tamil paramilitary group to terrorize and drive away Muslim farmers from their lands in Amparai - a Muslim majority district.”* We will now move on to some lesser-known features of the ACF case with a view to placing in context the political interference.

## **5. Against Humanitarian Agencies**

The Sinhalisation of the East agenda of the Government and its extremist partners, which seemed merely speculative nine months ago, is an ugly reality today that has also tremendously alarmed the Muslims. The East has now over 150 000 displaced in the Batticaloa District alone – purely the result of inhuman and inconsiderate bombing and shelling by the government. The influx has overtaxed humanitarian agencies. The Government spends a bare pittance on the victims and uses its funds for more destruction. A notable disability suffered by the displaced is the dire shortage of water and sanitation.

The ACF was just such an organisation specialising in water and sanitation and food security, geared to helping out in such exigencies. Yet the Government was often openly hostile to these organisations that would meet the needs of the human debris left in the wake of its carefree triumphalism. What is therefore at stake in getting to the bottom of the tragedy of the 17 ACF workers, executed in Mutur on 4<sup>th</sup> or 5<sup>th</sup> August 2006, is the continuance of basic humanitarian services.

A recent visitor to the now defunct ACF office remarked: *“Something which I found deeply saddening when I noticed it was that ACF had painted up the wall around a building in front of their office after a post tsunami debris cleaning programme. The saddest part was in the slogan that was painted on it – ‘Give life to Muthur’.”*

Adding to the seriousness of the matter is the report in the *Sunday Times* (22 Apr.07) of the Government’s intention to throw out the UN’s Office for the Coordination of Humanitarian Affairs (OCHA) on the novel charge that it is involved in human rights monitoring in what is actually a scandalous situation of humanitarian catastrophe. We will trace the events from new information available to us from a variety of sources.

On the morning of Tuesday 1<sup>st</sup> August 2006, it was known in Trincomalee that the ferry service was going to be stopped after the last ferry left Mutur for Trincomalee in the afternoon. This was when Sea Tiger activity posed a threat to the troop ship Jetliner. It was the general consensus among INGOs that Mutur was no longer safe and all except the ACF

pulled out their remaining personnel by that last ferry. The following day the LTTE entered Mutur town and 17 ACF workers were stranded.

On 2<sup>nd</sup> and 3<sup>rd</sup> August the ACF sought the ICRC's help to evacuate its staff. The ICRC tried to evacuate them by boat from Trincomalee, but did not get guarantees of security. On 3<sup>rd</sup> morning, the ACF in Trincomalee contacted a colonel in the Army who advised them to ask their Mutur staff to stay in the office as fighting was going on.

On the 4<sup>th</sup> afternoon Frank Kano of ACF/ Trincomalee spoke to an army major from its civil affairs office. The Major responded that he was aware of the problem and is working on it and would get back if he had any information. On the same afternoon, Frank Kano went to the office of Nihal Samarakoon, SSP Trincomalee, to hand over a list of their staff in Mutur. Although the SSP was not in, the list was handed over to an assistant who promised to pass it on.

Also on the same (4<sup>th</sup>) afternoon another expatriate staff member Elias went by land with 9 staff members in three vehicles to try to evacuate those in Mutur. When they reached Pachchanoor, near Mutur, there was shelling. The Army told them that they cannot use the main road, but could try a short cut and advised them that the Muslims and Sinhalese must be offloaded if they proceed. Elias decided to abort the mission.

On Saturday 5<sup>th</sup> August morning, after receiving a phone call from Mutur that their colleagues had been killed, 5 local members of the staff dejectedly went with Elias up to Thoppur where they also met the SLMM trying to get into Mutur. The Army not allowing them they went back, reaching Trincomalee about 7.30 PM. The following day, 6<sup>th</sup>, two ACF vehicles went with Elias and members of the local staff along with the ICRC, but were turned back by a Sinhalese mob threatening their Sinhalese driver. But the Council of Humanitarian Agencies got through to Mutur. Rushing back to Trincomalee, the local staff tried to get to Mutur by the ferry, which left at 3.45 PM. When the ferry was about to dock in Mutur at 4.30 PM, shells fell in front and behind the ferry. The ferry did a U-turn and returned to Trincomalee.

## **6. The ACF Bodies are brought to Trincomalee**

On Monday 7<sup>th</sup> August, the ACF team comprising expatriate officer Frank Kano, ACF staff Kannan, Jeyakanth, Anthony, Shan, Sutharsan; relief drivers Karuna and Sathis and two relatives of the woman victim Romila, proceeded from Trincomalee to Mutur. Two policemen from Trincomalee accompanied them.

Before they set off, an uncle of one of the women victims, Kohila, who was a doctor in the Mutur area, called at the ACF office and told some of the staff that he had received calls from Mutur saying that the authorities were planning to burn the bodies. At the bridge on the border of Seruvila and Mutur Divisions, the two policemen who accompanied the team stayed back saying their orders from Trincomalee were not to enter the Mutur Division. The Army refused to let them proceed until they removed all their ACF gear and antennas and went as mere civilians reaching Mutur about 3.00 PM.

They went to the Police in Mutur who were surprised to see them, and being told that they came for the bodies, the Police came with them, videoed them and the premises and warned them not to take pictures or make calls. To the amazement of those who went, the Police had made no attempt to protect the scene of crime and mark it off, although they had known about

it for two days, from the 5<sup>th</sup> morning. The ACF team had to start off by chasing dogs. They also managed to sneak a few photographs using camera-phones. The local politician who had first informed them of the deaths called over and asked why they had not come earlier and that the authorities were planning to remove or dispose of the bodies.

The cell phones of the victims had been robbed. Cash worth about 3 to 4 lakhs of rupees, which the victims would have collected as pay, was also missing. Their three four-wheel vehicles were intact except for an attempt to remove a CD player from one. Of the motorcycles, two of the new ones had been stolen. The state of the bodies was deeply upsetting to the colleagues who saw them. The male victims were generally in sarongs and the four women in dresses, suggesting to their colleagues that they were killed either in the morning or evening, as also evident from one of the victims, Narmathan, dressed in a towel to bathe. For reasons of communication the victims had all moved from the guesthouse to the office.

An important observation made by the colleagues was that the authorities had no intention of producing the bodies at a hospital for forensic examination. This is one of the duties of the Police. But they apparently intended to leave the bodies exposed and destroy them as a health hazard. This belief was strengthened by the information they had received in the morning that the bodies were to be destroyed and also by the obstructive attitude of the authorities to the ACF collecting the bodies.

The ACF team took from a garage a tractor-trailer used in their work and loaded the bodies onto it. Such was the state of decay that the head of one of the corpses came off when the body was lifted. The convoy on its return journey was stopped at several checkpoints where their details were recorded. When they reached Trincomalee Hospital, it was 12.30 AM on 8<sup>th</sup> August, Tuesday.

The team arrived thoroughly exhausted and hungry. The Police at the Hospital were very strict and allowed only four of the nine persons inside. The doctors argued with the Police to let the other five in, and the Hospital staff served them tea. One of the team telephoned several people including the ICRC and the Medical Superintendent Dr. (Mrs.) Gunalan's residence about the post mortem examinations. Her husband, Dr. Gunalan, told the caller that Mrs. Gunalan had returned tired from duty and was asleep and the Hospital was not equipped to do post mortem examinations at midnight, and Mrs. Gunalan would come in at 8.00 AM and do the post mortem examinations.

Meanwhile Mutur Magistrate Ganesharajah who was in Colombo had asked his colleague Trincomalee Magistrate Ramakamalan to act for him. Ramakamalan called at the Hospital, took down statements from those who brought the bodies and issued an order to the Medical Superintendent of Trincomalee to do the post mortem examinations. (The JSC's response to Birnbaum referred to says: "*On 7th August 2006 the Magistrate, Trincomalee directed that post mortem examinations be done by the Medical Officer [MS] and on 8th August 2006, he permitted the burial of the bodies.*") We also reliably understand that Ramakamalan was unaware that JMO Anuradhapura was doing the post mortems and was astonished upon hearing about it later.

## **7. The Post Mortem Drama**

In a manner unprecedented and totally unexpected, Dr. Waidyaratna, JMO Anuradhapura, and his team came from Anuradhapura before 8.00 AM and began doing the post mortem examinations. This could have no connection with any order issued on behalf of the Mutur Magistrate, which would have been around 1.00 AM or later. The order for the Anuradhapura JMO to do the post mortems must have been made earlier the previous day 7<sup>th</sup> not long after the bodies were collected late afternoon, since he had to start off for Trincomalee very early the next morning.

A senior doctor attached to Trincomalee Hospital confirmed that the post mortem arrangements had nothing to do with the hospital administration in Trincomalee. The doctor suggested that the arrangement was made by the Police, and added that Trincomalee does not have a fully qualified JMO, although they do all post mortems that come their way, and that in the ACF case which has attracted worldwide interest it may be understandable to have a fully qualified JMO. Dr. (Mrs.) Gunalan was seen in the Hospital dealing with other casualties while the post mortem examinations were going on. We were told by judicial sources that when facilities are lacking in a hospital that has to do a post mortem, the body is dispatched to Colombo, but that would require an order from the Magistrate. The legality of the Anuradhapura JMO doing the ACF post mortems is unclear, as it apparently did not have the authorisation of either the Trincomalee or the Mutur Magistrate.

We could be sure of two things. The Government was far from thinking of the ACF case as one where the best scientific resources should be used and no stone left unturned to bring out the truth. The scene of crime was left unprotected though the Police were around and the military were posted at the Hospital nearby and yet the bodies were left to rot with apparently no plans to do anything. The ACF had tried several times to get to Mutur and finally made it on Monday 7<sup>th</sup>, and that too almost by chance. Their police escort of two constables had left them and rejoined them on their return from Mutur to Ali Oluwa. Any support for their mission was at best token and the Police at Mutur were surprised when they arrived.

The Government well knew that the ACF workers had been killed. The person in Mutur who informed the ACF in Trincomalee on the 5<sup>th</sup> morning, we are quite certain had also told the security forces, if they were unaware of it. The news was out in NGO circles and the Tamil media by noon. Frank Kano of the ACF met Gen. T.T.R. Silva, GA/ Trincomalee, in Kantalai on the 5<sup>th</sup> afternoon. The GA, a military man, told Kano that the area was not secure for the troops to go to the ACF office. But only an hour or two ago, the Special Forces had taken journalists to Mutur Hospital, which almost borders the lane in which the ACF office is situated. On the 6<sup>th</sup> the CHA had seen the bodies, and it was only on the 7<sup>th</sup> that the Government began realising the need to do something and Minister Samarasinghe promised a 'free and fair' investigation.

As though on impulse, Defence Spokesman Keheliya Rambukwella told CNN on the 7<sup>th</sup> that the LTTE was responsible for the killings and claimed there were eyewitnesses to it. The next day, a Media Centre for National Security (MCNS) press release quoted the IGP as saying *'there is no evidence whatsoever available at present'*. Half an hour later the MCNS put out another press release which was almost an admission that there was no evading the culpability of the security forces: *"The Government has stated that it will take stern action at the earliest against anyone involved as responsible, irrespective of their position for the death of these innocent civilians based on the findings of the inquiry."* The Government appeared confused on how to deal with it.

We might infer that it was also on the 7<sup>th</sup> afternoon when the bodies were on their way to Trincomalee that fresh alarm bells started ringing in high places. Were it a free and fair investigation the Government wanted, the wisest course would have been to let Trincomalee Hospital do the post mortems and request help if needed. There was already considerable public suspicion resulting from the security forces seven months earlier trying to pass off gunshot injuries as bomb blast injuries in the 5 Students case, which Dr. (Mrs.) Gunalan allayed by being present at the examination. In the ACF case it appears that some in the Government felt they could not take chances.

The Police could not have directly arranged for the JMO Anuradhapura to do the postmortem examinations. A JMO would not do it without an order from the Magistrate, and the JMO could not have had the Magistrate's order when he left Anuradhapura. JMOs come under the joint supervision of the ministries of Justice and Health. It would thus appear that the secretaries of one of these ministries, probably on the initiative of the Ministry of Justice, asked him to go to Trincomalee early in the morning, assuring him that the formalities would be taken care of.

## **8. Post Mortem Controversies**

While we cannot question the professionalism of the team from Anuradhapura, some facts seem to point to the team being under enormous pressure from the Government. On 30<sup>th</sup> August 2006 SLMM Chief Ulf Henricsson blamed the security forces for the killing. Refuting the SLMM, Minister Rambukwelle quoted the Anuradhapura JMO's report as saying that the killings took place either on the 3<sup>rd</sup> night or 4<sup>th</sup> morning when the LTTE was still present in much of the town. When the post mortem reports were released in March 2007, the time read: *'Most likely in the early morning of 04 August 2006'*.

A strong indication that the JMO had been under pressure to report a time different from that determined by them scientifically appeared in a Reuters report of 8<sup>th</sup> August 2006 filed by Peter Apps, where he stated, *"The pathologist said they likely died later on Friday [4<sup>th</sup> August]"*. Apps clarified in a note recently, *"I was able to move around the hospital pretty freely. I see from the story I wrote at the time that the pathologist told me after the first couple of autopsies that the likely time of death was Friday afternoon, based on the decay and maggots in the body. I got the impression that was his honest opinion and it still seems to me the most likely scenario."*

The latter is in line with other strands of information we have received recently, which point to the killings very likely having taken place sometime during Friday (4<sup>th</sup>) evening, after the LTTE had withdrawn from the eastern sector of the town. It had left the western sector the day before, Thursday. Accounts from civilians with connections in Mutur are generally consistent in agreeing that the LTTE withdrew from most of Mutur town sometime during Friday afternoon. The CID report quotes 4 of 5 Muslim residents questioned as saying the LTTE was in control of the "area" until Friday evening (ICJ report). Also importantly, Peter Apps said that by the end of Friday 4<sup>th</sup> August, *'Colombo was clearly confident enough to arrange a trip for media the following day to demonstrate that the town was once again in government hands'*.

Discrepancies in records of collection and organisation of productions from the site of killings and unprofessional procedures in transmission could be put down to incompetence. More serious are those pertaining to the discrepancies in the 7 bullets and 3 metal fragments

recovered from within the bodies of 7 of the 11 bodies exhumed by the Anuradhapura JMO Dr. Waidyaratna observed by the Australian forensic pathologist Dr. Malcolm Dodds on 24<sup>th</sup> – 25<sup>th</sup> October 2006, and the test results from these by the Government Analyst.

Of the 7 bullets recovered in the presence of Dr. Dodds, the ICJ report says, only one was described as deformed and another as relatively intact. Of three of these 10 items the Analyst's report describes one as a portion of a distorted bullet case, and two as distorted pieces of metal and has nothing further to say on these. Of the other 7 items the Analyst describes 5 as distorted bullets, one as a distorted pivot of a bullet and the last as a bullet case. While saying the bullets were not in a suitable state for comparison, the Analyst went by weight size and shape to conclude that the bullets and the distorted pivot of a bullet were of 7.62 x 39 mm type, and by size and shape the bullet case also belonged to the same type of bullet.

The main discrepancy, it appears, is that two bullets originally described, one as relatively intact and the other as deformed upon recovery in the presence of the Australian Pathologist, appear in the Government Analyst's report as a distorted pivot of a bullet and a distorted piece of metal.

Adding to the doubts is the breach of procedure, where the JMO Anuradhapura transmitted the recovered projectiles to the Magistrate through the Police in a sealed envelope rather than directly as required. Further, contrary to the understanding reached between the governments of Australia and Sri Lanka and as ordered by Magistrate Jinadasa, the CID failed to enable the Australian expert to observe the ballistic tests, allegedly in order to expedite the proceedings.

The discrepancy is made clear in the report of Dr. Malcolm Dodds, Victorian Institute of Forensic Medicine, Monash University. On 24<sup>th</sup> October, the 11 bodies exhumed were X-rayed in Colombo under Dr. Waidyaratna's supervision. Whenever an object showed up, Dr. Dodds printed out enlargements of the bullets and fragments.

The radiology findings, as reported by Dodds, on victim Miss. Romila Sivapragasam stated: Examination of cranium disclosed three (3) discrete metal objects comprising of a 7.62 calibre full metal jacket projectile, a 5.56 calibre projectile and an additional amorphous metallic fragment.

The second post mortem on Romila done by Dr. Waidyaratna next day, 25<sup>th</sup> October 2006, located the 5.56 calibre projectile within the cranium. The 7.62 calibre bullet had not entered her body and was enmeshed in her hair, suggesting that it had passed through another victim or had ricocheted into her hair. The objects recovered were, 1.) A deformed 7.62 calibre projectile, 2.) A relatively intact 5.56 calibre projectile from her brain and 3.) A metal fragment possibly related to the former. All projectiles were submitted to the CID represented at the inquest by SI Sanjaya Perera.

What is missing from the Government Analyst's test results is any reference to the 5.56 mm bullet, probably of the kind used in an M-16 automatic. Apparently what was photographed and recovered as a 5.56 mm bullet in October has been transmuted into a distorted piece of metal in the Government Analyst's report of February 2007. Dr. Dodds' report was submitted to the Anuradhapura Magistrate on 25<sup>th</sup> April 2007. The bullets and bullet cases featuring in the Government Analyst's ballistic report of 19<sup>th</sup> February 2007 are of the 7.62 mm variety. While the use of an M-16 is not decisive evidence, the Government's sensitivity is indicative.

Peter Apps told us: *“If there really was a 5.56 round in one of the bodies, that changes everything. Almost everyone I saw in Mutur carried an AK-47/T56, which of course fired 7.62 mm rounds. The only fighters I saw carrying 5.56 mm firing M-16 s were a handful of naval infantry who I believe were some kind of Special Forces. None of the army commandos I saw carried M-16s.*

*“Elsewhere in the east, Special Task Force troopers often carry the M-16 but I saw no evidence of STF operating anywhere on the battlefield south of Trincomalee during this period.*

*“In the interests of balance, I should point out that I know there are photos of some LTTE fighters using the M-16 and I did once see a Tiger fighter with an M-16 in Batticaloa district.”*

We also confirmed independently that among the state forces and home guards, the only group then seen in Mutur having M-16s was the naval Special Forces. Thus if we could exclude the Tigers, the presence of a 5.56 calibre bullet in one of the ACF bodies points to a unit of the Special Forces from the Navy, who presumably had earlier landed at the jetty, as the leading suspects to the ACF killings. Our independent attempts to fix the time of killings also point to Friday 4<sup>th</sup> evening and the perpetrators as a group that included the security forces and Muslim home guards. This is also the likely reason why the Government did not want Trincomalee Hospital to do the post mortem examinations. The first post mortem examination did not look for bullets.

In the 5 Students case of 2<sup>nd</sup> January, JMO Trincomalee did remove one bullet and send it for tests. Dr. Manoharan told us that a bullet was removed from his son’s spine. All other shots that were fired at close range that night had entered and exited. It was HQI Zawahir under SSP Kapila Jayasekera who was sent to search the site for productions in the 5 students case as well as the ACF case.

The SSP is reputedly the hatchet man behind the killing of 5 students. Zawahir who searched the scene of the crime the same night managed to miss the bullets and bullet casings that were seen on the road and photographed by a parent of one of the victims, and found instead a planted grenade. The latter was meant to pass off the executions as death due to accidental explosion of a bomb carried by the victims to attack the security forces. Zawahir did find bullets two days later after the Trincomalee JMO exposed the true cause of death as due to shooting (see Special Rep. No.24).

Why the JMO Anuradhapura sent specially to Trincomalee to deal with an important case did not look for bullets, has not been satisfactorily explained, when the medical staff at Trinco may have done so. No one has explained who sent him and what his instructions were. In a *Sunday Times* report (1 Oct.06) a fellow JMO Dr. Clifford Perera suggests, *“Usually, the JMO carries with him a portable X-ray machine [to look for metal pieces], if the circumstances are made clear to him.”* Dr. Perera also said that controversy could have been avoided by appointing a JMO for the job through the system of disaster victim identification (DVI) put into place by the JMOs of this country a month earlier. Executive interference in the case began on 8<sup>th</sup> August 2006, when it bypassed the Magistrate and imposed a JMO.

The JMOs of this country, going by press reports, were unhappy about foreign forensic expertise being sought for the ACF case. In today’s world, professional organisations of

nation states are jealous about protecting their turf. But that should also be backed by high standards, not simply technical expertise. When a 5.56 calibre bullet, photographed, physically extracted and duly recorded could simply disappear, one would expect local JMOs to be up in arms trying to find out what went wrong. Only then would their protestations command respect.

It would appear that sometime after the post mortem examinations on 8<sup>th</sup> August and the SLMM's report on 30<sup>th</sup> August, the Government decided that it was going to cover up at any cost. This course meant systematic intimidation of all witnesses in a position to unravel the truth. The 5 Students case had given the security forces experience into mistakes not to be repeated. The judge and the JMO could not be allowed a free hand. The impact of the SLMM report raised the stakes. In the next few days government propaganda went full throttle throwing abuse at SLMM Head Ulf Henricsson. It was in the immediate wake of this desperate bid that the Mutur Magistrate was removed from the case.

The Government had prevented the SLMM from visiting the scene of crime although journalists were taken to Mutur on 5<sup>th</sup> August. Henricsson later made the point that had the LTTE been responsible, the Government would have eagerly taken them there at the earliest opportunity. To this, the ever-acerbic Minister Rambukwelle responded that the journalists came at their own risk, but they could not guarantee the safety of the Monitors for whom they were answerable. Going to Mutur could not have been more dangerous for the Monitors than the times when they, on their legitimate business, encountered government shelling.

The SLMM report was based on solid information and they were right in pointing to the security forces as the probable culprits. We now know that on the 3<sup>rd</sup> August afternoon, by about 1.30 PM the security forces who had gone west from the jetty arrived at the Police station. On the same Thursday evening, a group of commandos went probably through Court Road up to the Hospital, 150 yards short of the ACF office, and did some checking among those who had taken refuge there. While they were leaving, some persons in Muslim caps opened fire killing three of them. This appears to be the context of the order reported in the France5 documentary, where we reliably learn, a commando major was heard at the police station at 8.30 to 9.00 AM the following (Friday 4<sup>th</sup>) morning, giving orders to his men to shoot anyone speaking Tamil regardless of whether he appears a Muslim. The commandos, because of the shooting perhaps, had some inhibition about going east of the Hospital in the direction of the ACF, which lies about half a mile from the Police Station. That was why to civilians, the LTTE seemed to be in control of the eastern sector on the 4<sup>th</sup> morning. The western sector of Mutur was almost empty.

Describing the route by which the journalists were taken, Peter Apps said: *"We were then handed over to the Commando Regiment for a tour of the town, moving by foot along a road parallel to the coast in a westerly direction as far as the police station, then coming round onto the main road past the Bank of Ceylon as far as the hospital. We saw perhaps two to three civilians in this time. As we reached the hospital, firing could be heard getting closer and moved into the hospital compound. The military had a small post there, but the rest of the hospital was abandoned and we were told it might also be booby-trapped. After around 20 minutes, we began to move back towards the police station and the jetty area, by which time there was both outgoing army mortar and RPG fire into neighbouring rebel areas and small arms firing could be heard from relatively close by. After another spell at the jetty, we returned to the beach and were extracted by assault boats and returned to Trincomalee naval base."*

This is different from the more direct and shorter route we described in Special Report No.23 as the likely route. The actual route taken went west and south and eastwards along an arc of a circle. It also means that the journalists were taken along the route by which the commandos got to the police station and also kept a safe distance from the ACF lest they smelt something. We will return to this later in another bulletin.

In retrospect none of the reasons coming from the JSC or other government parties for the Mutur Magistrate's removal from the case have any merit. If he were slow in pronouncing the cause of death, which he was on the verge of doing a month after the incident, the Anuradhapura Magistrate who took his place did so, and with good reason, only 6 months afterwards. If the Government were protecting Magistrate Ganesharajah from the LTTE, transferring him to Valaichchenai, another town like Vavuniya, is ridiculous. This too was done 7 months after the ACF killings and contrary to his request to be transferred to Colombo. If it were because he was a potential witness, his testimony has, so far as we know, not been recorded in court. Moreover, he was using his investigative powers to investigate over a dozen security related killings and had on this account, well before the ACF affair, been the regular recipient of threatening calls. Such calls, we learn from good sources, increased after he took on the ACF case, but stopped after he was moved out of Trincomalee District.

The fact is that once the witnesses are deprived of the familiar and given in its place something suspect and unfamiliar, they are going to clamp up. That has in fact happened, although the Anuradhapura Magistrate Jinadasa has done his impartial best and expressed dissatisfaction with the Police investigation.

A case of intimidation concerns the 5 ACF workers who fetched the bodies of their dead colleagues, whose courage, dedication and loyalty deserves the highest commendation. Instead they faced the hostility of the security forces. They received several anonymous threatening calls on their cell phones. One came from a ground line number in Polonnaruwa. Some came from blocked out numbers. One caller spoke English, some Tamil with a heavy Sinhalese accent. These members of the staff were forced to leave Trincomalee. The ACF put them up in their Colombo guesthouse. On 19<sup>th</sup> January, two days after one of the court hearings in Kantalai, a CID group came to there in the night and threatened them with abduction, now a licensed activity, telling them, "*We know who you are and why you are here*". They were also frequently followed. Although they received several visits from the CID last year, there have been none since January.

By now the real reasons for the Mutur Magistrate's fate should be fairly evident. The Government had a post mortem report in hand which said that the ACF workers were killed early in the morning of 4<sup>th</sup> August, when also the ACF radio went off the air. They had a police report that quoted witnesses saying that the LTTE was in control of Mutur town until the 4<sup>th</sup> August evening or 5<sup>th</sup> morning and the Army came in on 5<sup>th</sup> morning. They had it all wrapped up to put the blame on the LTTE. Any evidence or eyewitness testimony that would say otherwise had to be stopped.

Interestingly, the AG's Dept. briefing of the Commission of Inquiry given by Yasantha Kodagoda, a member of the 'panel of counsel' assisting the CoI, on 14<sup>th</sup> May, said nothing of value and suppressed the salient fact that the security forces had reached the Mutur Police Station on the 3<sup>rd</sup> afternoon and had got close to the ACF office by evening. He also claimed misleadingly that ACF Trincomalee was informed of the deaths in Mutur by an 'anonymous' caller on 6<sup>th</sup> August. The pace and quality of the briefings is hardly promising.

The Government would also have known or sensed that Mutur Magistrate Ganesharajah would not go along with a cover up. The Magistrate told a witness who testified before him in his chambers in Trincomalee, “*I know what happened. I must find the evidence.*” That was something the Government would not tolerate. The Welikade Prison Massacre of 1983 shows clearly that the patterns of interference by the political executive were already part of the system. (See Supplement to this report.) More revealing by way of interference concerns the shelling of Allaipiddy Church on 13<sup>th</sup> August killing dozens of civilians and the disappearance of the parish priest Fr. Jim Brown a week later.

## **9. The Saga of Fr. Jim Brown and the Shelling of Allaipiddy Church**

The disappearance of Fr. Brown is a matter both of enormous human rights and humanitarian concern. He was the parish priest in charge of hundreds of displaced who had sheltered in his church. His disappearance has been relegated to the Commission of Inquiry in the hope that it would be buried. A chilling aspect of the story is that a bold magistrate, a mother of three, set about the matter determined to unearth the truth. No sooner was she seen as a threat, the Chief Justice in his role as head of the Judicial Service Commission, whose decisions are evidently never contested by the remaining two members, relieved her of responsibilities for the area (Kayts) – chilling because the Judiciary at the highest level was actively covering up crimes by the security forces. The Chairman of the CoI looking into the case was a member of the JSC that effectively stymied the inquiry by removing the magistrate, which was also a warning to any magistrate who would follow up.

On 11<sup>th</sup> August 2006, the LTTE made an abortive attempt to overrun Jaffna. On 12<sup>th</sup> August about 11.00 AM a party of the LTTE arrived in boats from the Vanni, bypassed Mandativu and landed near St. Anthony’s Church near the border of Allaipiddy and Mankumbaan, 500 yards west of St. Philip Neri’s Church, Allaipiddy. The latter, which was about 75 yards from the beach, was teeming with refugees who sheltered there because of the prevailing tension. The people saw the church as a place of refuge where they gathered from May 2006 after vigilantes from the Army Intelligence, Navy and the EPDP killed about a dozen persons in the area including eight persons in one house that included a young couple and their two children.

Navy and other security personnel, who were spread out along the coastal area facing the Vanni, including at the church, withdrew to the Allaipiddy navy camp nearby. As a cover they invited the youth at the church to join them promising to send them on safely to Jaffna. About a hundred or so youth went with them, but upon reaching the junction the youth were ordered to go back to the church and stay there and it then dawned on them that they had been used as a shield and were being kept there for that purpose.

When a small group of the LTTE arrived at St. Philip Neri’s they told the people, “*We are here, now you don’t have to worry*”. The people were relieved. They were non-political and from the poor classes, who just eked out a living. To them as long as someone was in control and left them alone, they dared not ask for more. The LTTE also warned them that the area would soon be shelled. Shells fired from Palaly, often from MBRLs, began falling in the area. The LTTE quit the church about 3.30 PM without informing the people and were spread out and barely visible. The sound of small arms firing from both sides was audible. A lady who left the church around 4.30 PM and went to her house about a 100 yards away to collect some belongings saw only two or three LTTE men.

The LTTE it turned out had come with several auxiliaries drawn from Allaipiddy folk who had gone to the Vanni over the years owing to insecurity resulting from problems with the Navy. But the total number of LTTE persons was at best a few dozen. Because of the intensity of the shelling some from the LTTE party were killed or injured along with civilians. According to a person from the area, the LTTE collected some of the injured, both their own and civilians, put them in a van with the intention of taking them to the beach and then by sea to the Vanni. The plan was abandoned because of the intensity of shelling, and according to this person, the injured bled to death.

Perhaps because the LTTE's main offensive into Jaffna from Pallai had run out of steam, the LTTE quit Allaipiddy under cover of the night in their boats. But the shelling of the area continued until morning. Judging the church to be a safer place, the people had stayed on.

The young slept in the bunkers that they had dug while the elderly and children who were averse to cramped conditions slept outside. About 4.30 AM on the morning of August 13<sup>th</sup>, shells fired from Palaly (as judged by the people) hit the church, leaving large parts of it rubble. The parish priest had spent the night in the vestry, a small room functioning as the church office where ceremonial garments are also kept, by the side of the altar. Providentially, the east end of the church that houses the altar was spared, as was Fr. Jim. Many of the people there regarded his escape a miracle. The casualties were among those who slept outside.

There occurred in the morning a notable incident, which exemplified the Navy's hostility to the civilians who survived and to Fr. Brown in particular. When the 13<sup>th</sup> dawned, Fr. Brown was faced with the task of getting the injured to hospital. According to a civilian who was there, Fr. Brown placed the injured most urgently needing attention in a vehicle and drove towards the junction to proceed to Jaffna Hospital, which was the nearest with adequate facilities. The Navy at Allaipiddy junction were very angry and refused to let the injured pass.

Fr. Brown went on his knees and pleaded with the Navy to let them pass. A navy man advanced and made as though to kick the priest. An officer moved up and stopped the would-be-assailant and let the party proceed to Jaffna. That was how the plight of the civilian injured needing urgent care reached Jaffna. Having taken some of the injured to hospital, Fr. Brown came back with three other priests but the Navy did not allow them to enter Allaipiddy.

Meanwhile through a police message, Mrs. Srinithy Nandasekaran, Acting Magistrate, Kayts, was informed about the civilians in Allaipiddy. She proceeded to Allaipiddy in the afternoon with three ambulances, one each from Jaffna Hospital, Sri Lanka Red Cross and the St. John's Ambulance Brigade, to rescue the injured from the Church. According to a witness who went with the party, the four fathers, including Jim Brown, had been waiting at the junction for hours, prevented by the Navy from going in.

Magistrate Nandasekaran's party was also refused, but she insisted on going past to rescue the injured, telling the naval personnel that if they thought it the right thing to do, they could shoot her. At the church the party took the elderly and children most urgently in need of medical care, dropped them at Jaffna Hospital, and returned. At the church an elderly woman came running to them and told them that further west at Mankumbaan, three children were lying badly injured and their parents had been killed by shelling. Although there had been a lull, the sound of shelling had begun again at 4.30 PM and continued.

Since it was 5.30 PM, the Magistrate decided to go to Mankumbaan without delay. A unit of the Special Forces was there. Bandara, who was the officer in charge, refused to let the party go in. During the exchange he complained that they would come to rescue injured Tamil civilians, but not their injured. The Magistrate immediately told him that she makes no such distinctions and if he had any injured on his hands she would gladly take them. Bandara replied that would not be necessary and thereafter became friendly. He did not allow them in, but took their stretchers and detailed his men to fetch the three injured children. They all had shrapnel injuries. The eyes of a four-month-old infant were covered in blood. The soldiers brought water and helped to clean the blood off the infant's eyes. The Magistrate placed the infant on her lap. When told that there are more injured persons in Mankumbaan, Bandara replied that he would bring the injured to the same point and they could pick them up on the next trip.

It was after 10.00 PM when the mission was completed and the team left the Hospital. On the third trip they had also brought an injured elderly lady from Mankumbaan whom Bandara had brought to the point as he had promised. The Army and Police in Jaffna had been cooperative. The four-month-old infant survived and now lives with an uncle. The inquest was held on the 16<sup>th</sup> of August. There were 15 dead bodies in the Church. But there were dead bodies scattered everywhere. The LTTE was there for around 12 hours. Not knowing the size of the group, where they were and when they left, the security forces let loose their shells and MBRLs not caring an iota for the civilians. Reports of dead bodies being found surfaced from time to time, six in one instance, in the coming weeks and often in strange ways. The final count was about 36 dead.

Two young boys and two young girls were warded at Kayts Hospital. One girl was 16 and the other 19, whose parents and sister had been killed by shelling. They also said that four other young persons known to them were missing. The Navy and EPDP were regularly visiting these youths suspecting them to be LTTEers and were not allowing them to be taken to Jaffna for surgery and removal of shrapnel. The District Medical Officer (DMO) informed the Acting Magistrate Mrs. Nandasekaran about this. She approached Navy's Northern Command, and told them that if they suspected the youth they should get the Police to file charges and she would remand them. But the naval chief, Rear Admiral Ranaweera, asked her to take the youth if she could vouch for them. She did not think that a satisfactory solution. She took them to Jaffna unofficially as remandees, had them warded in Hospital under the care of the prison department and later asked the Police if they were filing charges. No charges were forthcoming and they were free.

## **10. Disappearance of Fr. Jim Brown and Abrupt Transfer of the Magistrate**

Following the incidents in Allaipiddy on the night of 13<sup>th</sup> May when 8 persons in one house were among those killed, the parish priest Fr. Amalraj to whom the people turned for help came under threat from the Navy, accused of being a Tiger supporter. Bishop Savundaranayagam moved out Amalraj for his safety and Fr. Jim Brown was posted in his place. In the course of events leading to his disappearance, 34-year-old Fr. Thiruchelvam Nihal Jim Brown earned the highest respect from the people as both priest and leader.

When the Magistrate met the priests on 16<sup>th</sup> August, including Fr. Jesudasan, Rector of St. Anthony's, Kayts, she learnt that Fr. Jim Brown felt threatened by the local naval commander in Allaipiddy, who was known by his first name as Nishantha, or Commodore Nishantha. His second name sounded something like Koggala. On the 20<sup>th</sup> afternoon, Fr. Brown went to

Allaipiddy on a motorbike to see the church along with Wenceslaus, father of six and a parishioner. Fr. Peter Thurairatnam parted company with Fr. Brown and Wenceslaus at the Allaipiddy checkpoint at 2.15 PM. That was the last seen of Fr. Brown and Wenceslaus. An eyewitness also saw armed men on two motorcycles following Fr. Brown as he went towards the church.

It was on the 22<sup>nd</sup> that alarm was raised that Fr. Jim and Wenceslaus were missing and Magistrate Nandasekaran was informed about this by one of the fellow priests. She asked the priests to file an entry with the Police and went to Allaipiddy herself in the afternoon. She ordered the Police to take custody of the logbook maintained by the Navy guard at the entrance to Allaipiddy which had a record of movements in and out. The Navy refused to hand over the book.

When the Magistrate was on her way back to Jaffna, there was a huge explosion and firing noises from the Allaipiddy navy camp. The Policemen who accompanied her understood this as a warning to her.

The very next day, the 23<sup>rd</sup>, Magistrate Mrs. Nandasekaran was told of the order by the Chief Justice under the auspices of the Judicial Service Commission, to transfer her responsibilities as Acting Magistrate Kayts to the Jaffna Magistrate. Kayts Magistrate Trotsky was on leave from early August. The decision had nothing to do with her safety. Having been active in Jaffna she was thereafter confined to civil cases as Additional District Judge, Jaffna. In January 2007, she was transferred to the Juvenile Courts in Colombo. While the transfer of a magistrate is within the powers of the JSC, to do so in a manner that seems calculated to interfere with the investigation into a crime is questionable in law and an abuse of power.

After the Magistrate Mrs. Nandasekaran was taken off the case, the progress of the investigation is zero. According to a senior Catholic layman, the logbook at the Allaipiddy entrance, which Mrs. Nandasekaran had ordered the Police to take custody of, was never produced in court. This appears to have been a touchy issue, besides her determination, which triggered her removal from the case. The layman said that when Bishop Savundaranayagam subsequently visited Allaipiddy, naval officials had told him that according to their record Fr. Jim Brown entered Allaipiddy at 1.50 PM and left at 2.10 PM. But it was at 2.10 PM that Fr. Thurairatnam parted from Fr. Brown at the entrance to Allaipiddy, suggesting that the Navy's times were an afterthought.

The local naval commander, Commodore Nishantha, is answerable for several murders, including the murder of the young family on 13<sup>th</sup> May. On the night of 30<sup>th</sup> April after an LTTE claymore mine attack near Allaipiddy junction, troops from the same navy detachment went into a nearby house, shot 74-year-old man Ramasamy Sangarapillai and injured his wife (Special Rep.21). The man died from medical attention withheld overnight. His wife and his daughter who witnessed the atrocity have since moved to the LTTE-controlled Vanni according to local sources.

After the brief LTTE-foray on 12<sup>th</sup> August, Nishantha was very suspicious of Fr. Brown. Naval men according to locals thought there was something sinister about Fr. Brown having survived the shelling without a scratch. They thought he must have helped the Tigers to dig bunkers and was himself in a bunker with the Tigers. The fact that he was in the Vestry and had a narrow escape did not seem to make an impression on them. They were also evidently suspicious of the fact that he was originally from the Vanni. **The fact that they had been**

**encouraged to operate without inhibitions and to kill on suspicion appears to have sealed Fr. Brown's fate.** The Navy subsequently transferred Nishantha, apparently to get him out of an area where he was a focus of legal attention. Reports suggest that he is now in Vavuniya where killers are given a free licence.

On the larger issues, there is something very alarming about these developments with grave implications for both human rights and humanitarian prospects. One concerns military strategy and practices, where security forces are quite happy about shelling and bombing indiscriminately, and denying timely medical attention to the injured. The second is of even greater concern and must now be regarded as the pillar supporting the outgrowth of impunity. This is the readiness of the Judiciary at the highest level – the Chief Justice and the JSC – to transfer magistrates who attempt to investigate abuses, where the Government feels threatened by the truth coming out. Such actions give the signal to the security forces that they could get away with anything.

### **11. Mutur and Allaipiddy – Military Strategies Turning the North-East into No-Man's Land**

Events at Mutur, Allaipiddy and the Government's military conquest of Sampoor and Vaharai have much in common and are revealing of the present strategic thinking (if we may use such a glorified term tentatively) which relies on blind firepower, taking no thought of civilian protection. Allaipiddy brings this out most clearly. The coastline, which is just a hop across the sea from the Kalmunai promontory west of Pooneryn, is guarded by naval troops stationed in several units. The LTTE sent a small party in a few boats. The likely intention was to set up a beachhead where a larger party could land once secured.

However the LTTE party did not stay much longer than 12 hours, and just a handful were near the church for a short time. They very likely quit because the main advance into Jaffna at Muhamalai had been stalled and plans of a second front in the islands were abandoned. How the government naval troops conducted themselves is instructive. There were several companies of naval troops in the area with the prospect of calling reinforcements, but they did not confront the LTTE directly as far as we know. They abandoned all smaller positions and withdrew to larger camps like Allaipiddy. The number of LTTE cadres with auxiliaries who came into the area was of the order of a few dozen in a few boats.

How the security forces deal with such contingencies is not to engage the intruders and prevent them from establishing themselves, but to withdraw to a few camps and call for the artillery to plaster the area. Not only was there no attempt to warn the civilians to quit the area, but they were also in fact prevented from leaving. Thus at the beginning they took along civilians promising to send them on to Jaffna and after using them as a shield forced them back to the church for possible use later.

The security forces did not know the number of the LTTE cadres who came, where they were and when they left. They simply kept shelling the area until they thought it safe for them to move out of the large camps where they had sheltered. The Allaipiddy church was shelled when there was hardly any LTTE presence in the area. Once the security forces came out they suspected everyone who had survived. Fr. Brown was suspect because he was born in the Vanni and was uninjured – to his parish it was a miracle that the altar near which he spent the night was not hit when the rest of the church collapsed.

There was also another factor, which made the troops angry. As they abandoned their smaller camps, some among the half-starved, out-of-work civilians had helped themselves to the Navy's chocolates and other miscellaneous items as they did when the LTTE quit Jaffna in 1996.

One could see similar factors at work when the LTTE moved into Mutur. The security forces were in several camps in and around Mutur. The number of LTTE cadres who took the town is placed by security sources themselves at around 150. They withdrew into camps and then the area was shelled killing over 50 civilians. The LTTE notably did not try to overrun the Police station after testing its strength. When the security forces came out later every Tamil they saw was suspect. Such factors no doubt played also a role in the killing of ACF workers. Despite the relatively small numbers the LTTE is able to deploy in any operation, the often-used response of the security forces is to pull back, saturate the area with shelling until they think they had incapacitated the resistance and then move back inside. It is blind, takes absolutely no account of the civilians and is frequently indeed nasty to them. Everybody else could run, but frequently not the civilians.

The government strategy is brilliant if the aim is to destroy the North-East. Damaging as it is to the civilians, from a purely military point of view, it makes laughing stock of the Sri Lankan forces, allowing the LTTE to inflict maximum disruption and earn propaganda points with limited resources. After all, an important purpose of the security forces is to protect life, maintain order and protect property! If they are not doing this in the North-East, and are invariably doing the opposite, some hard accounting needs to be done.

## **12. When the Chill Wind Blows: North-East Magistrates Against Impossible Odds**

Until 1983, it was mainly MPs and political parties that represented complaints of the civilians in the North-East and tried to find redress. Since then in government-controlled areas the magistrates became passive observers, conducting routine inquests when someone was killed, after which the family could collect the death certificate, and ordering the police to conduct investigations and produce the culprits. The matter ended there, whether the killing was by the security forces or a militant group. As long as the magistrates stuck to this role, since there was not much more they could be expected to do, few took notice of them.

Exceptionally, some magistrates have made an issue of killings by the state forces when witnesses gave them additional information and the story given by the security forces was palpably false. Magistrate Anton Balasingham (now High Court Judge, Trincomalee) did this in 1996 when the STF shot two innocent students Rameshkumar and Sivanandarajah in Kalmunai on 15<sup>th</sup> September 1996 and gave a story absurdly inconsistent with the facts. Notwithstanding, the Government rewarded two STF men for supposedly saving the life of two visiting ministers Ashraff and Fowzie from the deceased, allegedly LTTE assassins (Bulletin No.22 and Arrogance of Power). The matter did not move far. Magistrate M. Illancheliyan made his mark in the Krishanthi Kumarasamy case of 1996 and then as District Judge Mannar (Bulletin No.21).

The CFA of 2002 brought about an entirely different situation in the North-East. Until December 2005, killings were almost entirely by the LTTE. The LTTE conscripted children, forced people out for their Pongu Thamil (Tamil Resurgence) celebrations, rigged elections and painted stripes on all and sundry. This was not an issue for the Government. The magistrates played again a passive role. The Police did no investigations in the North-East.

From January 2006, the Defence Ministry's assembled killer groups went on a spree. Those who helped the LTTE's propaganda under duress became targets. The MPs who were elected by LTTE rigging were of no use to the people. Hardly anyone took them seriously and they became targets for government-sponsored killer groups. Most of them now do not live in their electorates. In many areas prominent citizens who raised issues against the State and whom the LTTE hoisted onto their Pongu Tamil platforms had to flee or be killed. In Vavuniya, which has over the last year seen scores of killings, no one who took a notable part in Pongu Tamil celebrations remains.

It is in this context that magistrates have been called upon to play a far more active role. People in distress frequently write and appeal to the magistrate to intervene and they are often alone with no support. A magistrate has significant powers, to summon people and question them and to order the Police to take certain measures. Their work becomes easier if there is a good local security forces' commander who would cooperate. Several have to some extent asserted their position by telling the security forces and Police, "*We are all government servants. If we cannot work together and give the people a fair deal, we are cheating them.*" Some take the standpoint, "*They are our security forces, and we must correct them.*"

It is from this standpoint that magistrates feel they have a right and duty to assert themselves and hold the security forces to account as they could never dream of doing against the LTTE. During August 2006, the University of Jaffna was closed and several students from outstation were stuck in the hostel. An anonymous group tried to push them into an anti-government demonstration and the military was very sensitive at that juncture. It was left to Magistrate Mrs. Nandasekaran to intervene, talk to the students, then to the Army and arrange for the students' transport out of Jaffna. She had told the students, '*Whoever is pushing you into this demonstration should be willing to protect you to the last*'. She was fortunate in finding police and army officers who were willing to listen and Maj. Gen. Chandrasiri, the army commander for Jaffna, was cooperative.

Magistrate Nandasekaran came to be involved in a further incident of interest, which too may have contributed to a section of the security forces' annoyance with her. We learnt that some leading citizens in Kayts had brought to her notice complaints from civilians in Velanai and Kayts, which came under the Allaipiddy naval commander, that naval men had been collecting *paalai* knives used by toddy tappers. There had been, according to locals, such a collection of knives by navy men in Nainativu once the LTTE's massacre of nearly 150 Sinhalese civilians in Anuradhapura on 14<sup>th</sup> May 1985 became public. The following day naval personnel from Nainativu boarded *Kumudini*, the passenger ferry between Delft and Nainativu islands, forced the passengers below the deck, called them out one by one and chopped about 23 of them.

Knowing the reputation of the officer in charge at Allaipiddy, the civilians feared another *Kumudini* massacre. Magistrate Nandasekaran communicated this public fear to Rear Admiral Upali Ranaweera of Northern Command and told him that she did not expect him to have the *paalai* knives returned, but only to ensure that no incident takes place. There was no incident.

A number of magistrates maintain regular communication with the Chief Justice, and most often the CJ takes a concerned, avuncular attitude and does intervene and resolve problems. Recently one or more of the host of paramilitary outfits who run loose in Vavuniya, made extortion demands on the local bar association. We reliably understand that the Chief Justice

spoke to the Secretary/ Defence and most of the open extortion stopped. Thus ultimately how far the magistrates could go depends on the political backing extended to them through the Chief Justice.

Up to a point the Chief Justice looks good helping the magistrates out, and it is also in the interests of the executive to curb visible unruliness. We could also say from recent experience that there is a line where magistrates, from being useful to the image of the State, cross into territory exposing its deeply entrenched Sinhalese ideological character, enforced ultimately by violence.

When they cross that line and take up a position the Government or the Chief Justice simply would not tolerate, the avuncular disposition vanishes, and instead they experience a Siberian chill. Ganesharajah was Trincomalee magistrate in May 2005 when the issue of the Buddha statue illegally planted on Urban Council land, leading to public agitation for its removal by Tamil citizenry backed by the LTTE and for it to stay by a JVP-backed Sinhalese organisation, came up before him. The Magistrate issued an order that was widely commended. On 18<sup>th</sup> May 2005, he ordered the Urban Council to remove four Kovils and the Buddha statue cited as “unauthorised structures” by the Police. The Sinhalese organisation went to the Appeal Court, praying that the Magistrate’s order was contrary to the law and against Buddhism. The Appeal Court on 17<sup>th</sup> June 2005 placed a restraining order preventing the Trincomalee Police and UC from carrying out the Magistrate’s instruction.

Previously, on 25<sup>th</sup> May, a government delegation including Ministers Dilan Perera and Maitripala Sirisena visited Trincomalee, had discussions with Sinhalese and Tamil groups and decided to seek the Attorney General’s assistance to implement the court decision. AG Kamalaseson on 1<sup>st</sup> June 2005 filed action in the Trincomalee District Court seeking the removal of unauthorised religious structures with the aim of maintaining social peace.

A Buddhist priest Piyatissa Thero filed a fundamental rights petition against the AG in the Supreme Court alleging that the Magistrate’s order was issued ‘*on the advice of the AG, Mr. Kamalaseson, who is a Hindu and a Tamil, and who also was a former resident of Trincomalee*’. This petition, which amounted to a personal attack on the AG citing his minority affiliation, when in fact he was carrying out a task assigned by the Government, should simply have been refused leave to proceed. In fact when it was taken up for leave, Justice Gamini Amaratunga pointed to the monk the irony of his putting up a statue illegally and coming to the Supreme Court with a petition. What then happened is even stranger.

The Chief Justice advised the AG to withdraw the case filed by him in the Trincomalee District Court and in return for the monk from China Bay to withdraw his petition. The AG, who struck observers as having been shaken, gave in. The exchange was done on 18<sup>th</sup> July 2005. Legal sources read this as the AG being arm-twisted with the threat of giving the petitioner leave to proceed. Then the AG is likely to have been left isolated with the hounds baying for his blood. The Kumaratunge government got the AG involved in the first place for the want of courage in taking a stand, beyond transferring Sarath Weerasekera, the naval officer in charge of Eastern Command who aided the erection of the statue. And so the petition that should never have been entertained was terminated at the leave stage, but the object was achieved.

The drama contains all the ingredients driving the fate of Tamils and Muslims in Trincomalee. It is a typical example of how things done illegally and surreptitiously in pursuance of

majoritarian ideology are made permanent. The CJ also transferred Magistrate Ganesharajah to Mutur in August 2005. Although the Buddha statue was not mentioned, the message was clear. The ACF case was the second instance Ganesharajah fell foul of the Chief Justice. The AG did not heed Ganesharajah's request for help with this case. The fate of Magistrate Nandasekaran after she got involved in the Jim Brown case is similar.

This was the period during which the CJ, whose position evidently hinged on the presidential immunity enjoyed by his patron Kumaratunge (see below), had also by a surprise judgment spelt an abrupt end to her career by precipitating a presidential election. To many observers, it was a case of political timing where the CJ needed new allies and a new patron, even those who in 2001 supported his impeachment.

This phenomenon we are seeing in the open today has existed for a long time. The interests of the security forces often associated with Sinhalese ideology, have long been taken care of by a network involving lawyers in the legal divisions of the security services, their counterparts in the Attorney General's Dept. and the Justice Dept., birds of a feather, who together fix the evidence, possibly with the help of an amenable magistrate. The Welikade massacre case in the Supplement gives an example. In the ACF and Jim Brown cases, we could make a fair guess that the lobbying started with legal officers in the security forces who smelt serious trouble. This is perhaps the first time that the Chief Justice personally is a member of the network, using also his position in the JSC, for nipping embarrassing cases in the bud.

The threat of arbitrary action against magistrates and the loss of backing when they cross the line, carries its own message. The Trincomalee Magistrate who succeeded Ganesharajah has been very cautious in his handling of the 5 Students case. Almost immediately afterwards there was information in the police grapevine alleging that SSP Jayasekere was the prime mover in the executions. Even the testimony given by the security forces in court provides strong reasons to question him. But he was never summoned to the court. An omission in the Magistrate's Court proceedings is the investigation of the green auto trishaw from which the bomb was thrown. The security personnel at the checkpoint it would have passed were also not summoned. (See Special Rep. No.24).

A particularly disturbing factor, we reliably learn and see in practice, is that 'interference in the work of the security forces' is now being advanced as an adequate reason for moving a magistrate off a case. This work presumably includes putting up Buddha statues and cold-blooded murder.

### **13. The Executive and Judiciary: A Costly Compact**

While the 1978 constitution has retained the forms of an independent judiciary, the trend has been one of judicial subservience to the executive. Chief Justice Samarakoon and likeminded judges of the old school fought a rearguard action, but found themselves in a minority. Nothing illustrates its destructiveness more than the present anarchy. Today the Chief Justice, effectively both the Supreme Court and the Judicial Service Commission, enjoys arbitrary power within his own sphere by having become the legitimising tool that sanctions the exercise of arbitrary power by the executive.<sup>i[i]</sup>

The following extract from the IBA Report says a good deal: "*Soon after the President appointed Sarath Silva as Chief Justice on 16 September 1999, three fundamental rights petitions were presented to the Supreme Court challenging his appointment. The principal*

*contention in all these cases was that the President acted arbitrarily in appointing Sarath Silva during the pendency of the two complaints against him for inquiry by judges of the Supreme Court into serious allegations about his integrity, and the commission of serious acts of professional misconduct. Chief Justice Sarath Silva, who is impleaded as party respondent in all these cases, himself chose the three judges to constitute the bench to hear the cases against him.”*

The complainants asked for a larger bench strictly in order of seniority. The CJ appointed a bench of seven excluding the three senior most. The complainants objected to the bench on grounds of natural justice. The same bench overruled these preliminary objections in February 2001 and four months later refused leave to proceed. The bench held that no issues of violation of fundamental rights arose in the President’s appointment of the Chief Justice, in view of the immunity she enjoyed under Article 35 of the Constitution.

The Supreme Court thus established a novel principle according to which the Chief Justice’s standing is tied to the immunity the President enjoys. To challenge any wrongdoing by the President one must go to the same Chief Justice. Such an arrangement borders on tyranny.

Supreme Court rulings in the three most politically contentious cases over the last two years, by all-Sinhalese benches of five appointed by Chief Justice Sarath Silva, left deep resentment among especially the Tamil minority. They were 1.) The Bindunuwewa Massacre case (verdict on 27<sup>th</sup> May 2005), 2.) Singarasa case against an excessive sentence under the PTA (15<sup>th</sup> September 2006) and 3.) The North-East de-merger case – brought as a fundamental rights case involving the franchise at provincial elections of three individuals – (16<sup>th</sup> October 2006). The Judges on the bench were respectively:

- 1.) 1.) Justices Nihal Jayasinghe, N.K. Udalgama, N.E. Dissanayake, T.B. Weerasuriya, and A.R.N. Fernando
- 2.) 2.) Justices Nihal Jayasinghe, N.K. Udalgama, N.E. Dissanayake, Gamini Amaratunga and Chief Justice Sarath Silva
- 3.) 3.) Justices Nihal Jayasinghe, N.K. Udalgama, Gamini Amaratunga, A.R.N. Fernando and Chief Justice Sarath Silva

Justice CVW observed, “...if you ask any lawyer in Hulftsdorp who has some understanding of what happens in the Higher Judiciary today, he would tell you looking at the constitution of a bench and the subject matter coming up before that bench, as to what the outcome would be.” CVW describes an incident where over a chat at a party, President Jayewardene who sought a particular outcome for a case, named to Chief Justice Samarakoon those whom he should appoint to the bench. Samarakoon disregarded these wishes and later courted impeachment in an extraordinary parliamentary drama.

On what happens to members of the Supreme Court who do not toe the line, CVW observed, “And it was a fact that Justice Mark Fernando was kept out of important cases. Since I was more often accommodated with Justice Mark Fernando I was also spared the distinction of hearing socially or politically sensitive cases. Even if I was accommodated on a bench at the leave stage [where it is decided whether or not a petition would be heard], once my views were known to be contrary to certain others, I would never be given that case thereafter.” Mark Fernando retired prematurely in 2003.

Having disregarded the Constitutional Council with surprisingly little protest from Parliament, the current president has proceeded to make unconstitutional appointments to commissions

that are blatantly partisan. The two members appointed by the President to fill the vacancies in the JSC on the advice of the Chief Justice, after two justices resigned from the JSC in February 2006, were Justices Nihal Jayasinghe and N.K. Udalgama. The latter retired around the end of 2006 and was appointed Chairman of the Commission of Inquiry, going into a number of prominent cases of human rights abuse. In his place the President appointed the CJ's nominee Justice N.E. Dissanayake. The system happily goes on without any inquiry into the reasons of conscience why the two judges who resigned could not work with the CJ on the JSC.

We see that from the time two judges resigned from the JSC, the Chief Justice has virtually run the show (hearings of important cases and the JSC) with just 5 of the 10 judges available (apart from himself). This trend has been in evidence from the time Sarath Silva was made Chief Justice disregarding Mark Fernando, the most senior judge, when he appointed judges from the most junior level to hear petitions against himself. After Chandrika Kumaratunge became president in 1994, Mark Fernando who was on the JSC was not reappointed and was thereafter kept out of it.

An active woman member of the bar said, “[Sarath Silva] constituted benches to hear important constitutional/political matters wholly ignoring the three most senior judges on the SC at that time, namely Mark Fernando, A.R.B Amarasinghe and R. Dheeraratne. Mark retired two years prematurely precisely due to this. These were all issues that a few of us relentlessly took up at that time but were disregarded by the senior bar and the ‘legal intellectuals’ of the day, with only a few exceptions. I will always remain bitter about this.”

By no stretch of the imagination could the Supreme Court in Sri Lanka now be judged independent. The executive has secured a compliant Parliament by enticing crossovers and being munificent with the perks of cabinet. Power is exercised recklessly without regard for the spirit of constitutional government. With words having no relation to facts, the Government could simply remove a magistrate who was doing his utmost to get at the truth. Both the President and the Chief Justice appear to dismiss any outside or multi-lateral criticism of their actions from a human rights and rule of law standpoint as unwarranted interference, though all such criticism originated from within Sri Lanka.

The Chief Justice has been checked a number of times. Following the IBA, Dato Cumarasamy, UN Special Rapporteur on the Independence of the Judiciary and Lawyers, ticked him off in 2003 for the arbitrary imprisonment and torture of trade unionist Michael Fernando, who protested in court against the CJ ruling on his petition against the very person of the CJ. As though in reply to such irritations, the CJ ruled largely out of context in the Singarasa case in 2006 that the Optional Protocol to the ICCPR, which Sri Lanka acceded to, was unconstitutional. The other four judges simply signed, ‘I agree’.

In this and the North-East de-merger case the Supreme Court was entering deep political waters. If the President did not want the merger or the ICCPR he should have acted himself and faced the consequences. He should not use the Supreme Court as a blind in a game of ‘good cop – bad cop’. The merger and ICCPR arose through political decisions involving local and international actors. Indo-Lanka relations cannot be reduced to the rubric of one way Indian interference, the rhetoric of which the CJ mockingly weighed in from the bench in the merger hearing (“*Are we worried about Madhya Pradesh joining with another state?*”). What happened during and after July 1983 and more than 200 000 Tamils seeking refuge in India

for which India has not sent the bill to start with, led to a complex aggregate of political dilemmas involving both countries requiring a responsible approach.

Supreme Court decisions on controversial questions with the other judges contributing a mere 'I agree' to the CJ's rulings contrasts sharply with the Appeal Court decision of 3<sup>rd</sup> March by Justice S. Sriskandarajah, where the JVP, JHU and the Sinhale Jathika Sangameya challenged the validity of the Norway-brokered Cease-Fire Agreement; which though signed by Prime Minister Ranil Wickremasinghe and V. Prabhakaran was tacitly accepted by two successive presidents.

In rejecting the petition, Justice Sriskandarajah said, "...from the preamble of the CFA it is clear that this document is a policy document on a political issue. It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. **Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations.**" Politicians should sort out political questions. They should not take cover behind the courts and involve the Judiciary in damaging controversy.

Justice Wigneswaran observed, "*If we do not shed our bias and prejudices, cliquism and factionalism, our esteem would most certainly suffer. Let me make a simple observation. In the earlier days, not so long ago, many a Supreme Court judgement would have all three judges stating their views either approving or dissenting from the main author of the judgement. It is very rarely that such an activity takes place today. Lethargy of judges may have long-range consequences.*" Once delivering judgments to wishes of the executive becomes the norm, what could a judge say besides 'I agree'?

This background raises some thorny questions about the ongoing Commission of Inquiry. Its Chairman Justice Udalagama was chosen for the bench and concurred with the three controversial judgments listed above and served without a murmur on the JSC to which the President appointed him after two judges quit for reasons of conscience. As Chairman of the Commission of Inquiry he has to adjudicate on the disputed removal of the Mutur Magistrate from the ACF case allegedly by the JSC of which he was one of the three members. He must also answer for the stifling of the investigation into Fr. Jim Brown's disappearance by removing the Magistrate who commenced investigations. Even more worrying is the heavy dependence of the CoI on the Police and the Attorney General's Dept., which have a skewed record particularly in cases where the victims are from the minorities. This was blatant in the Welikade massacres scandal. It is left to the CoI to prove that these legitimate fears are unfounded.

#### **14. The Want of Process**

How the escape from norms, standards, basic courtesy and processes encapsulating these, so evident today in the executive and the apex court, infect the whole edifice of the State is best exemplified in the conduct of the President's brother. He marked a new milestone in Sri Lanka's flight from civilised norms by being the first cabinet secretary to threaten an editor of a major newspaper – a woman in this instance – in the crudest terms. Prompting this were two items in the *Daily Mirror* at which the Defence Secretary took offence. One on 16<sup>th</sup> April dealt with the displeasure in Pottuvil against the Karuna group, which the Defence Ministry patronised and used in several ugly affairs. The second item the next day titled '*Mutur IDPs: Battling a manmade tsunami in the guise of war*' was an exceptionally bold piece reflecting

the misery of the displaced Tamil families and debunking the war the Government unashamedly lauds as 'humanitarian'.

The writer Uditha Jayasinghe, a Sinhalese, said in closing: *"It is still a mystery and pipeline plans for IDPs from Mutur and Trincomalee remain as murky as the skies overhead. Without even food in their bellies it is at best difficult to predict when these people will have a place to call home and if their lives will ever be rebuilt to include hope and happiness."*

The President's brother Gotabhaya Rajapakse, according to well-placed journalistic sources, used filthy language threatening the editor with some misfortune from the Karuna group and Uditha Jayasinghe with a scarier prospect.

This baring of tooth and claw in Colombo's elite establishment with worldwide connections is just the thin end of the wedge as regards the Government's draconian efforts to muzzle opinion under the guise of fighting terrorism. Six persons working for the media have been killed in Jaffna from May 2006, most of them by killer groups enjoying government patronage.

Also of note is the forced closure of Colombo-based papers the *Maubima* (Sinhalese) and *Sunday Standard* of the Standard Group. Parameswary Munusamy, a Tamil woman journalist working for the former was held for four months from November 2006, accused and slandered of helping the LTTE and released on a fundamental rights petition to the Supreme Court for the lack of a shred of evidence. Dushantha Basnayake, Finance Director and spokesman for the Standard Group, which is close to critics of the President within the ruling party, was arrested last February and being detained under wide-ranging anti-terrorism laws.

The present anarchy, the prevalence of unchecked human rights abuse and the humanitarian catastrophe in the East, have principally their roots in one simple fact – the absence of process. Having three ministers for Disaster Management and Human Rights (Mahinda Samarasinghe), Disaster Relief Services (Ameer Ali Sihabdeen) and Resettlement and Relief Services (Rishad Badurdeen) simply adds to the irony. In the absence of process within the Government, they merely add to the confusion, and the President's defence secretary brother who is not even a minister could create a Darfur without any checks.

Cries of external interference have become a way of deflecting the fact that what outsiders are saying had been said repeatedly at home and went unheeded. Soon after the LTTE air force bombed Katunayake air force base on 26<sup>th</sup> March, the Air Force Chief evasively blamed the Indian gifted radar in the presence of the President, which responsibility demanded should never have been said without an internal inquiry. A newspaper editor moved to educate the Sinhalese public with the comment, *"We strongly believe that India ceased donating good things to us 2500 years back."* Facts about the raid since emerging in the media suggest that the Air Force Chief was indeed very hasty and the damage done to Sri Lanka's credibility was enormous.

These are unfortunately attitudes we are seeing coming from the very top and the Judiciary in particular, presaging ridicule, isolation and disaster. Torrents of blind official and semi-official abuse, without checking where they stand, has become the very image of Sri Lanka. UN Special Rapporteur Allan Rock, who charged the Government with complicity in child abduction by its ally Karuna, invited a stream of abuse. Today every foreign correspondent visiting Batticaloa sees it for himself and the abusers are silent.

Also a casualty of the deterioration of democratic culture in Sri Lanka is the rise of sycophancy in the Foreign Service. At no other time did Sri Lanka look so unpromising a nation to do business with. As foreign ministers, A.C.S. Hameed and Lakshman Kadirgamar commanded respect because they were not sycophants and outsiders knew that they could grasp the global reality and knock sense into their governments. Today foreign policy has no independent role as against the ravages of the Defence Ministry. When the Foreign Minister calls for aid without being able to give any assurances on respect for humanitarian law, donors just walk away.

More of the talking now seems to be done by Foreign Secretary Palitha Kohona. India is interested in concrete assurances about a political settlement in Sri Lanka. All that Kohona seems to be able to offer are stunts like telling India that the LTTE's planes posed a potential threat to Nuclear Reactors and Harbours in India. Many having a wealth of diplomatic experience feel that whatever the Sri Lankans learnt in the 1980s has been forgotten and the country is going back to the bad old days of blaming everyone but themselves for the ills of the country.

The other side of this trend is that persons with healthy values and professional competence who would have stood the country in good stead have been harassed, hounded and sent to the pasture.

Suriya Wickremasinghe of the Civil Rights Movement said in a tribute to Justice Mark Fernando who was driven to retire prematurely in 2003: *“Justice Fernando's judgments are clear and compelling in their analysis. They reflect that deep attachment to values of fairness and equality, to freedom of expression and freedom from torture and arbitrary arrest, unaffected by changes of political climate, which the public have the right to expect of any judge.”*

The respected public interest lawyer Elmore Perera (73) was served with an interim order barring him from practicing in the Supreme Court after he brought a fundamental rights petition on issues arising out of the resignation of two judges of the JSC and the illegal appointment of replacements. An issue of immense public importance has been sidetracked into the legality of Mr. Perera's suspension for alleged rudeness in court invoking a clause specifying *‘deceit, malpractice, crime or offense’*.

We have adverted to a number of instances of absence of process in the ACF and other cases and to indications that the Attorney General's department is going along with a cover up. The AG, the principal officer bringing charges against criminals and abusers of human rights, is traditionally attributed a stature similar to the Chief Justice. Unfortunately, in times when persons in power and members of the security forces commit the gravest of crimes, the calls upon the AG's department have changed. AG's officers are sent to defend Sri Lanka's record at the Geneva Human Rights Council, not on their unremarkable performance in bringing violators to book, but simply for their semantical flair. This transformation was manifest in July 1983.

After the first prison massacre in July 1983, the superintendent Leo de Silva was deeply upset. The AG's department sent Deputy Solicitor General Tilak Marapone and Senior State Counsel C.R. de Silva to assist Magistrate Keerthi Wijewardene in holding an inquest. Leo de Silva wanted the whole truth to go on record. An AG's department lawyer, very likely DSG Marapone, took him out and made that same appeal to perverted patriotism that we are all too

familiar with – that the truth would place Sri Lanka in a very adverse position internationally (see Supplement). Leo de Silva's subsequent attempt to hold an internal inquiry was aborted by orders from above and he was hounded out of his job at the age of 56 by the Minister for Justice.

Lt. Nuvolari Seneviratne commanded the platoon that was on duty outside the prison during the second July 1983 prison massacre. He appealed to Army HQ for permission to go in and rescue the Tamil prisoners under threat, but was ordered to stay out pretending that there was an attempted jailbreak. When the AG's men came he refused to testify to an attempted jailbreak that was intended to whitewash what he held was murder. The AG's lawyers guiding the inquest kept him out from testifying. His career with the Army was virtually over. The AG's department men who covered up the first massacre must also take responsibility for the second. By undermining Leo de Silva's authority as superintendent and giving the jail staff the message that UNP commissars among them called the shots, they cleared the way for the second massacre.

Marapone went on to become AG and is now a high-ranking UNP politician. C.R. de Silva who assisted him was in early April 2007 made Attorney General. He needs to demonstrate clearly that he would not continue traditions that brought infamy upon this land. After a generation we find the same destructive tendencies at work eating away at the foundations of the state.

After the passage of a generation there are no new ideas, only institutional degradation. But those in power gifted with amnesia periodically wanted time and money to defeat terrorism using absolute impunity. In July 1979 President Jayewardene allotted 6 months to a Brigadier to wipe out terrorism. July 1983 and the Welikade prison massacres were thought by his cronies a quick fix. Jayewardene then spoke of going to the devil to exorcise terrorism, brought in Israeli expertise and depopulated many eastern Tamil villages clearing the way for militarised Sinhalese settlements. Today, hawks led by the Defence Secretary speak of 3 years of the old medicine and have made Sri Lanka a scandal of abuse and misery even before the real fighting began.

The sure victim in this war to wipe out terrorism is bound to be the democratic ethos of the country. The checks by the Judiciary have been usurped by an executive waging a war against terrorism, behind a fragile shield of Sinhalese nationalist ideology. Sri Lanka's reputation as a functioning democracy itself is at risk with the recent developments fuelled by the Defence Secretary's highhandedness and the Judiciary's complicity with the executive's Sinhalese nationalist project.

There can be no trifling with Prabhakaran. His idea of personal glory is to fight until the last Tamil child he could sacrifice before enemy cannon. Finding it too costly to match his destructiveness and lacking new ideas, Southern politicians have periodically tried to make opportunistic deals with him. After a few months down this anarchic road the present incumbent of the presidency would find all systems close to collapse and another somersault in the offing.

The LTTE would have to be cornered by political means, which means winning over the minorities. Those holding office need to put process back into the working of government. The country must be restored to one that good men would serve rather than being driven up

the wall. Giving into the temptation to destroy the LTTE and the Tamils together would leave Sri Lanka hardly a place to live for anyone.

## **15. Why International Human Rights Monitoring should be Utilised**

Dealing with the LTTE, whether under conditions of war or peace, poses enormous challenges for any government intent on upholding human rights and the rule of law. Under conditions of war the challenge is far more critical and we see state institutions failing in many crucial respects. This is not in anyone's interest except of those who hope to benefit by the country going to pieces. The Government has two choices. It could carry on the way it is doing now. Then under conditions of severe breakdown, the international community is bound to impose harsh conditions on the Government or what is left of it. Alternatively, if the Government accepts an equitable political settlement and upholding human rights and the rule of law as the way forward, it and the country stand to benefit enormously from UN involvement, in the form of a Human Rights Field Operation that includes human rights monitoring, reporting and technical support to strengthen our institutions. UN monitoring could also be used to make it costly for the LTTE continue with political killings and conscription by taking cover behind the State's conduct. A UN role would very likely not work unless the Government is committed to a realistic and equitable political settlement. We describe in point form the need for urgent correction:

- 1.) 1.) The Government, while keeping hopes of a decent political settlement alive through the APRC process, played truant for 1½ years. These hopes have ended in an anti-climax where the ruling SLFP has offered Rip van Winkle style the long discredited District Development Councils which are an insult to the minorities and enlightened sections of the Sinhalese who have long worked for a just settlement. From a fringe party such proposals would have been a laughable irrelevance. From a ruling party they are a declaration of war whose aim is nothing less than a Sinhalese hegemonic state where the minorities have no place. The Government in response to harsh criticism appears to hint that the proposals are a mere ploy before the APRC to appease the President's extremist backers. After 50 years of turmoil the question is far too serious for such games. A party in power is obliged to lead and allowing matters to drift by default brings about the worst of all worlds. How seriously could anyone credit the Government with process when the President earnestly assures the Indian Prime Minister of path breaking devolution on the Indian model and offers this travesty?
- 2.) 2.) The direction of the Government, which is seen as a concerted attempt to crush the minorities and the Tamils in particular, has given the LTTE ample opportunity to muffle its 30 year record of crimes against humanity and portray itself as the only and true liberator of the Tamils. It would further marginalise democratically minded Tamils, who have constantly argued that the LTTE leader Prabhakaran's violence, self-glorification and spurning of several good opportunities for peace with dignity, would in the end would reduce the Tamils to a wretched nation of derelicts. Even international actors in Sri Lanka are presently so disgusted with the Government that the LTTE's true nature makes little impression on them. Under circumstances where only the immediate makes an impression on people, it is easy for LTTE propagandists to persuade the young within its control and also the Tamil Diaspora that it is only Prabhakaran who grasped the true obdurate nature of the Sinhalese state and doggedly insisted that there was no alternative for the Tamils but a separate state of Eelam; and though it is unfortunate, there was no alternative for him but to kill woolly

intellectuals among Tamils whose ideas would sidetrack the people from the only viable goal of independence.

- 3.) 3.) In these circumstances the LTTE is going ahead with conscripting one person per family in the Vanni, usually someone 18 years or above. Even those who were previously left alone as conscientious objectors on religious or political grounds are being coerced. No one, not the Church nor the international presence, is challenging this. With the Government bent on going into the Vanni with its MBRLs and bombers blazing, this promises far greater death and misery than what the East has seen, and neither party is likely to get a decisive edge.
- 4.) 4.) With the throwing out of ethics, process and rules, the Government machinery itself is falling to pieces and it does not have the discipline nor the administrative capacity to withstand several years of intense war and hardship. The system has been progressively politicised from the 1970s, particularly from the advent of the Jayewardene government. The state machinery was once quite competent. Despite the politicisation it retained credibility because it was served by a number of persons of the old school who were taught to do a job irrespective of the party in power. We seldom questioned the integrity of the courts. We knew the commissars in the Police, but there remained a core of professional police officers. We almost never doubted the ethics of doctors, post mortem examinations or reports of the Government Analyst. All that has gone overboard and the present dispensation of power has vividly brought us face to face with it.
- 5.) 5.) Once the country plunges into war the slippage would be precipitous. The State lacks the institutional capacity to learn from mistakes. It too readily takes refuge in abuse and repression than reflect on real options. One should only expect the President's closest supporters – those who seek to reestablish what they believe to be the religious and ethnic dispensation in Sri Lanka 2200 years ago – to drive the armed forces on disastrously. The Government's political proposals that are tailor-made to appease this constituency would make it difficult for it to move in any other direction. It would be a one-way street to disaster. Down this road it is only a matter of time before Sri Lanka is formally charged with genocide.

We see a UN Human Rights Field Operation as the best hope of averting catastrophe and getting this country back to work. Among its first tasks in parallel with an independently worked out ceasefire would be to release all children and adults who have been forcibly conscripted by the LTTE and Karuna groups. Monitoring of human rights should include both investigation and the creation of an environment where prosecutions are likely. In the South its primary purpose would be not so much to teach skills to Sri Lanka's much abused systems of law enforcement, but to enable professionally minded persons intent of maintaining high standards to come out of their shell and assert themselves.

One of the expected benefits would be to loosen up the debilitating air of repression and help civil society play its due role. In any democracy, killings of journalists and the threatening of editors would have led to an avalanche of protest if the offending Defence Secretary was not removed and he were shameless enough to stay on. Here, after initial protests, the media themselves have largely gone silent. A part of the reason is a fatalistic feeling that nothing could be done. If one went to the Supreme Court with a fundamental rights petition about the unacceptable threat the Defence Secretary poses to the journalistic profession, it is not unlikely that it would get thrown out at the leave-to-proceed stage citing the legal immunity enjoyed by the President who made the appointment. The petitioners are thereafter likely to find life impossible. In such situations UN HR Field Operation could make a big difference in

removing fear. We will now touch on some situations that illustrate the need for and challenges of external monitoring.

## **16. The Vavuniya Scene: A Cry for International Monitoring**

Killings in Vavuniya have become as numerous as they are tortuous. Bringing the culprits to book would easily be routine in most cases if honest police investigations are carried out. Today most killings are by state agents or by persons, under duress or otherwise, acting on behalf of the State. In the absence of any meaningful investigation, people instinctively sense which party is behind a particular killing, but the killers themselves maintain a shocking level of impunity. It also shows state killer groups targeting Tamil nationalists in the name of fighting the LTTE. The situation begs international monitoring.

About 8.30 PM in the night of 16<sup>th</sup> April four gunmen went to the house of Chandrabose Suthakar (32), who was trying to publish a local newsheet 'the Soil'. Chandrabose who was a graduate of the College of Journalism, had done a stint at the *Virakesari*, written for the Tamil journal *Sarinihar* and functioned as a freelance journalist from Vavuniya. The intruders shot Chandrabose dead, asked his 7-year-old son to sleep and went away. After the gunmen left, the boy woke up a neighbour and called the mother's cell phone to inform her. The mother, a hospital attendant, was at the railway station to travel to Colombo. The deceased who lived in Thirunavatkulam, a mile north of Vavuniya, had no known political involvements. He was simply a Tamil patriot or nationalist. The son later said that some of the intruders spoke Tamil and the rest 'another language'.

Local observers pieced together this story, which began on 19<sup>th</sup> January 2007. The first youth from Ramanathapuram in Killinochchi, journeyed south and crossed from the LTTE-held territory to the security forces checkpoint at Omanthai to proceed to Vavuniya. Thereafter he went missing. The second youth from Asikkulam had also been missing from early March. This youth was working for a firm in Colombo and had come home to Asikkulam prior to going to the Middle East for employment.

Subsequently there were several targeted killings in the Koomankulam – Veppankulam area around Vavuniya. A common feature of these killings was the presence of about two Tamil youths with other Sinhalese speaking persons among the killer group. The killing of Chandrabose was one among the killings of this description. The activities of this killer group came to be widely talked about, causing some embarrassment to the security forces, since the Magistrate, Mr. Manickavasagar Illancheliyan, repeatedly raised the matter.

On 22<sup>nd</sup> April, the body of the second youth of about 30 dressed in green underwear was found strangled to death at Kovilkulam near Vavuniya. On 25<sup>th</sup> April the body of the first youth in his early 20s was found with gunshot injuries at Thalikkulam, also near Vavuniya. Both the deceased were not known in the area where their bodies were found and were reported as unidentified. The body of the first youth was in the mortuary for 5 days before his mother came down from Ramanathapuram and identified her son.

The mother's story is that her son was arrested on a firearms offence and was released by the High Court after spending 8 months in remand. Under the terms of his release he was due to report to the Vavuniya Magistrate on 20<sup>th</sup> January 2007. He came down the day before and had since been missing.

After the two bodies turned up, no killings have been reported in the Koomankulam area in the past few weeks. The inference drawn by the people is that the two youths were abducted by a section of the security forces tasked with killings, and were arm twisted and used for that purpose. When the affair earned notoriety, the security forces killed them to avoid exposure. The second youth probably did not know how to use a weapon and may have been used to communicate in Tamil. The matter has disturbing implications for those persons, including Tamil and Muslim paramilitaries, who are in a position to provide information on cases under investigation by the Commission of Inquiry.

Despite what may be a temporary respite in one area, stark impunity continued. A van roamed around Karuval Puliyanakulam near Vavuniya over 4 hours in the night of 16<sup>th</sup> May and abducted three men: Subramaniam Chandrasekaran (28), a father of two, Sinnathurai Vigneswaran (24), father of two, and Manamohan Mohanathas (24). The Police recovered their dead bodies on the 18<sup>th</sup>. What was curious about this was that their abductions took place in the 56 Brigade Division (Maha Rambaikkulam), but their bodies were thrown in the Koomankulam – Veppankulam area 5 miles north in the 211 Brigade Division (Omanthai).

Normally men from one brigade division would not go into another area, especially to implicate a crime on another division. This factor suggested that the crime was committed by the Military Intelligence unit based in Vavuniya town. According to witnesses from the area where the abduction took place the same white van that was involved in the abductions roamed about 4 hours around midnight along a triangle comprising the army sentry points at Karuval Puliyanakulam, Kokkadi Thandikkulam and the police sentry point at Poonthottam. These lie within a circle of half a mile radius and all the abductions took place within 200 yards of the Karuval Puliyanakulam army camp.

All three checkpoints should have checked and recorded the numbers of vehicles that passed their way, and given the time span involved, the Karuval Puliyanakulam army camp must have known about this. The abductors spoke fluent Tamil. According to sources in Vavuniya, the Magistrate has ordered the Police at Poonthottam to record statements from those on sentry duty at all three checkpoints.

Killings on a notable scale by agents of the State began in Vavuniya after a claymore mine fixed to a tractor targeted an army bus near Joseph Camp killing five soldiers on 15<sup>th</sup> April 2006 and a second mine fixed to a three wheeler targeted an army transport killing four soldiers two days later. Killings were carried out by a number of paramilitary groups working with the Army, including about 10 members of the Karuna faction under Seelan operating out of Joseph Camp. Since then there have been over 80 killings in Vavuniya alone. Nearly all those used by the LTTE, often by duress, in their propaganda activities under the CFA have been killed. The freedom to kill, also led to widespread extortion and crime, which too were a cause of killings.

Today killers and extortionists with various affiliations enjoy free license in Vavuniya that is dominated by the security forces. One sees the kind of barbarity that shows no signs of abating as the country becomes increasingly mired in war and violence. None of the parties has any accountability in mind.

On 2<sup>nd</sup> May the Defence Ministry web site [defence.lk](http://defence.lk) announced with an upbeat note that three LTTE cadres had escaped from the oppressive conditions in the group and surrendered to them and that many more were eager to follow. Under normal practice, surrendeers are

produced before a judicial officer. But there was strangely no further word of this triumph with significant propaganda value. One had to look elsewhere for their gruesome fate.

During the night of the same day, 2<sup>nd</sup>, the LTTE reportedly opened fire at a sentry point in Pampaimadu killing a policeman. The next morning the Police reported recovering the bodies of three males in the outskirts of Vavuniya, two of which were partially burnt and the other with gunshot wounds. All three were classified by the Police as unidentified.

In the evening of 11<sup>th</sup> April 2007, apparently acting on a wrong tip-off, Tamil-speaking paramilitaries attached to an army camp in Koomankulam, Vavuniya, went to a bazaar less than quarter mile away and opened fire killing a lad of 20, a man of 48 and an elderly lady Subramaniam Chandramathy (68). The latter was shot through the vagina. The Defence Ministry reported the same day that two suspected LTTE members were killed in a shootout between rival groups, while an old woman was killed in the crossfire. It also claimed the recovery of weapons from the dead. It turned out that the victims were innocent and unarmed and were killed within a few feet of where they lived. The armed intruders had also tried to rob a nearby communication centre and beat up the owner.

The following day Magistrate Illanchelivan called up the local army commander, who denied any knowledge of what happened, and was unable to answer how the Defence Ministry could issue news reports of an incident when the army commander responsible for the locality knew nothing.

The following day 12<sup>th</sup> April, the LTTE entered the Sinhalese village of Paleuruwa, Avaranthuluwa, near Vavuniya, about the same time of the day as the previous incident, and opened fire killing five women, Kaluhami (85), Seelawathi (55), Podinona (35), S Siriyalatha (32) and Leelawathi (45); and two boys Lanka Saumyasiri (13) and Sanath Sanjeeva (17). The victims were from two families. Three of the women were shot through the vagina as with the woman in the incident the day before.

All this barbarity on display on the internet, the pride of the global village! The very nature of the CFA, which freely allowed abuses by the LTTE, placed many people in danger in the anarchy that resulted at its end. M. Gunaratnam, the former owner of Kabilan Travels, which once owned the bus that was caught in a claymore mine explosion on 23<sup>rd</sup> April 2007, was shot dead at his home in Kurumankadu, Vavuniya, along with a Sinhalese employee Jude on 22<sup>nd</sup> March 2006. During the CFA the LTTE made use of businessmen like him to stake out a near monopoly in the transportation opportunities along the Jaffna Road made possible by the CFA. This embittered rival bus operators, especially among the Sinhalese. Local sources believe that Gunaratnam and his employee were killed by persons trying to extort money, but not the LTTE.

S.R. Senthilnathan, a businessman and leading local politician in the pro-LTTE TNA was killed on 26<sup>th</sup> April 2006, 19 days after Vigneswaran, a similar figure, was killed in Trincomalee. We opined in Special Rep.No.21 that both were victims of government-associated killer groups as part of the programme to undermine the LTTE's political base. We recently came to know another possible angle. The one-time Vavuniya MP *Adangathamilan* (the Tamil who could not be bowed) Suntheralingam had owned 60 acres of land in Vavuniya, which was later distributed by the Tamil militant group PLOTE to about 600 families. During the CFA the owner's daughter in the USA reportedly sold it to the LTTE and the ownership was registered in Senthilnathan's name. The LTTE apparently intended

reselling this land in parcels. There were several parties who wanted Senthil out and the Government's own attitude provided plenty of opportunity.

## **17. The Inscrutable Claymore Mine Menace – a Challenge Crying for Monitoring**

Another area where experience suggests the need for UN monitoring is the rising nastiness of claymore mine attacks targeting civilians. Every civilian traveller has to pass through lonely and sparsely populated areas. A mine is placed and remotely activated by someone who need not know anything more than how to press a switch. Usually there are no witnesses. In the absence of evidence, we base our judgments on who the victims were or the motives we read into the attackers. Decades of war also brings in its wake insidious forms of corruption and people who live in porous border areas come under a variety of pressures to play safe and there are lingering doubts after every incident.

The attack most publicised by the Government was the attack on a bus in Kebitigollawa on 15<sup>th</sup> June 2006 killing 65 Sinhalese civilians, whose families have since then largely been forgotten. Our instincts point to the LTTE. If there were no doubts, there was no need for the Government to put it down as an item for the Commission of Inquiry. But there have also been several attacks on civilians where the security forces are answerable. 8 days before the Kebitigollawa attack, on 7<sup>th</sup> June, 10 Tamil civilians – 5 women, 2 men and 3 children – travelling in a tractor in Vadamunai, Batticaloa District, died from the explosion of a pressure mine planted by the Army or the Karuna group. There has been a long series of civilian deaths from mine attacks by the Army's Deep Penetration Unit operating in the Vanni.

### **17.1 Attacks Near Vavuniya:**

Two recent attacks that have aroused controversy are the mine blasts targeting passenger buses plying from Mannar to Vavuniya on 7<sup>th</sup> April 2007 morning and one plying from Mannar to Colombo on 23<sup>rd</sup> April night. Seven civilians were killed and 25 wounded in the first attack between Piramanalankulam and Puthukulam 15 miles west of Vavuniya. The dead were six Tamil civilians and a soldier in civils. Six soldiers were among the injured. The Government and the LTTE blamed each other and confusion remained. But we are now clear that the attack was by the LTTE. We learnt that the soldiers were travelling in the bus with civilians. They were carrying arms and in uniform.

The second took place half an hour before midnight at Andiyapuliyankulam near Chettikulam on the Mannar – Madawachchiya Road. The road being a key military road, there are police units in small houses every 100 – 200 yards. The bus with Muslim and Tamil passengers caught an exploding mine about mid way between two sentry points about 200 yards after passing a security forces' camp. The sentry points were about 150 yards apart. Six passengers were killed including the driver. One died later.

Slight shifts in accounts of what happened change the picture radically. For about a week there was uncertainty about what had happened, while the Government blamed the LTTE. The matter took a different turn when some of the survivors reportedly said that the dead died of gunshot wounds, some on their heads. This version appeared in a strong form in a statement issued by the Mannar Citizens' Committee on 30<sup>th</sup> May and became a story internationally. It claimed that 'unknown persons' got into the bus and opened fire at civilians. When we checked with people who had travelled in the bus, the claim that security

personnel or 'unknown persons' got into the bus and fired was firmly denied, but some believed that soldiers fired from outside and caused several deaths.

One of the survivors told us that he is quite sure that the driver and another bus owner who was seated in front on the left died of gunshot wounds. He said that the driver had stopped the bus and asked everyone to lie down when the firing started, and was not thus killed in the explosion.

Another survivor, whose two cousins, one an engineer and the other who just obtained university admission, were killed, contradicted the earlier witness's version. He said that most of those dead and injured were in the left of the bus where the mine had struck. The bus upon the explosion had swerved sharply to the right, went off the road and then slowly turned to the left and had been stopped by a barrel close to a sentry point. His impression was that no one was controlling the bus; whose rear left wheel had been damaged. He heard shouts asking people to lie down, but it was not from a single source.

It was much later when the policemen who had kept a distance from the bus came to help and they were nervous. He did not understand Sinhalese, but heard a tall officer scolding a junior apparently for being slow to alert him, and the junior appeared to be saying that his communication set was defective. One of his cousins had died and the other was yet alive. When the policemen removed the injured, he screamed that his cousin was alive. He was taken to Vavuniya Hospital where he died of an injury on the head. He spoke to the doctor who showed him the X-ray photographs, which showed metal balls used in mines in the body.

When we checked with authoritative sources in Vavuniya, they confirmed on the basis of post mortem examinations that all deaths were due to bomb blast injuries – the reverse of the 5 Students case. Because of the controversy, the JMO Vavuniya was summoned to court by Magistrate Ilanchelian and asked about the deaths. The JMO confirmed that the deaths were due to the claymore mine blast. This was further confirmed by sources close to the MSF in Vavuniya. It also suggested that many of the survivors had formed mistaken impressions and needed to be questioned with care.

Another survivor and regular traveller who seemed to have kept a cool judgment gave the following picture: The bus was hit by a claymore mine on the left side behind the front section. It went a further 75 yards and stopped near a sentry point. The policemen began firing not at the bus, but into the jungle opposite, across the railway tracks, thinking the LTTE was there. For a long time they did not come near the bus, until a Superintendent of Police (SP) came from Chettikulam. He asked the survivors to come down and then the injured were helped to Hospital. The SP scolded the Inspector in charge of the sector who was slow to respond and said that he would place a woman in charge.

Those who spoke to the SP and the policemen said that they were courteous and helpful. They were certain that the security forces were not responsible. Subsequently soldiers from other camps in the area also came there in response to the sound of the explosion.

According to local sources there is LTTE infiltration in the area close to Manik Farm and they force themselves into some of the houses and stay there. As a pointer – not evidence – one may note that the LTTE web site *nitharsanam.com* that caters to the Diaspora with an eye to contributions did not mention either of the bus attacks. *TamilNet* gave one report on the first and the LTTE's denial, and a very scanty report on the second, which was not followed up,

although it was the second mine attack in which public suspicion against the government forces was initially strong. This scanty, even evasive, coverage in the LTTE media of the two major violations should be compared with the coverage of the Trincomalee 5 Students case and the ACF case. In the latter two, where security forces' involvement is hardly in doubt, LTTE media coverage included photographs of funerals and sometimes corpses, and was intended to give a powerful message.

There was however a persistent word-of-the-mouth campaign communicated aggressively and rhetorically that the security forces were responsible for the outrage. But their claims did not stand up to the slightest scrutiny and generally exploited the prevalent gullibility. The claims that victims died of gunshot wounds had no substance. Some attributed their claims to the Vavuniya Magistrate, which again were absolute lies. Given this background we are in no doubt that the LTTE is responsible for the outrage.

Governments too are in the habit of suppressing investigations for very petty reasons and we don't think this bus bombing is going to go far. The LTTE shooting down the Lionair passenger flight on 29<sup>th</sup> September 1998 was an opportunity for getting international help and exposing the Tigers for the kind of crime the ordinary citizen of the world is very sensitive to. But the government of the day suppressed it to cover up negligence by the management of Lionair, which was very influential with the Government. Even 1½ years later the victim families were without death certificates, leave alone compensation.

## **17.2 The Conscription Angle**

Behind the bus explosions is the LTTE's need to deter travel and whip up anger against the security forces as part of its conscription campaign. The second bus was typical of buses leaving Mannar. Among the passengers were a number of school students attending school in Negombo. There were also a number fleeing the merciless conscription being imposed by the LTTE. The district is going through what local observers describe as a Middle-Eastern wave. A number of parents have taken their sons to Colombo and are staying in lodges, desperately trying to send their sons to a job in the Middle-East.

For more than a month prior to the incident, the LTTE sent the Balraj Brigade, who are strangers to the locals, to enforce the final leg of conscription. The methods they used were ruthless. Many young persons fled to the government-controlled area, some, like a well-known doctor's son, after escaping from their abductors. Fisher folk were conscripted at sea. LTTE abductors had even intruded into areas close to the town such as Panankattikottil and Keeri, where at least 3 students were captured. At Manjiakkulam two A.L students who tried to escape were fired upon and captured. At Vellankulam, one boy was fired at, beaten and taken. At Madukkarai, 30 youths were abducted.

At Madhu, LTTE abductors chased a girl whose frock came down. She was caught, thrust into a van and taken away. The Balraj group's standard treatment after abducting a person is to give him or her shock treatment in the form of a sound thrashing so that they would not think of escape.

A large number of people took refuge in churches such as Vidatthaltheevu and Madhu. Many of those sheltering in Madhu had come all the way from Mullaitivu. But the Church failed them. Bishop Rayappu went to some villages and urged people not to give into the LTTE. He had also tried to get both the LTTE and the Army to recognise Madhu as a sanctuary, but

failed. The LTTE also tightened the noose around the thousands in Madhu, by restricting food supplies and telling INGOs not to help them. Communications had already become risky because of the Army's DPU mine attacks on vehicles plying the Adampan-Madhu road. On 27<sup>th</sup> February, a newly appointed school principal Siluvairasa Amalanesan (33) was killed and Christian Rajakone (47), an education official travelling with him was injured, when their motorcycle caught a mine blast.

The final crunch came when before Easter 2007, the Army launched an ill-judged move to 'rescue' the people stuck in Madhu. Shells began falling, one in the Madhu co-op premises. The Bishop asked the people to leave. The LTTE too announced by loudspeaker that they should leave. And many were conscripted as they left. Thanks to mixed feelings that are a hangover from Tamil nationalism of a bygone generation, the Church failed to act imaginatively, as did the Mutur Muslim clergy under Moulavi Kareem recently, when Mutur was besieged.

The harshness of the LTTE's conscription regime has left a deep undercurrent of resentment and fear, counterbalanced by the Government's utterly irresponsible approach to the minorities. The LTTE has also resented the fact that many people are escaping its clutches by passenger buses along the Mannar-Colombo Road. The LTTE had gone to the extent of arresting two UN employees who allegedly helped people to escape from the LTTE's clutches. A peculiarity about Mannar is that several people complained to the Police in Mannar, Murungan and Vidatthalthivu when the LTTE abducted family members. People believe that in some cases it worked and the LTTE released the person.

Knowing the LTTE and the harshness of its conscription regime, claymore attacks on buses carrying those trying to escape to teach them a lesson, is entirely compatible with its character. One must remember that in a move to control people moving in and out of Jaffna, and the airlines flying them, the LTTE shot down a Lionair flight from Jaffna in September 1998, killing 55 civilians, including the crew. The Church knows all about it including the LTTE's shelling of the displaced in Madhu in 1999 killing dozens of refugees, but never said a word in public.

These bus attacks, which signify how nastier things could become, are the strongest reasons for a UN Human Rights Field Operation that could also deal with the LTTE. And it is in everyone's interest to have such a mission.

However, one needs to be cautious and the ground has to be laid carefully. The usefulness of the UN role depends on the readiness of especially the Government to use it constructively and a civil society that would work with it to this end. The UN, the international community and local civil society, who are no strangers to the situation, have also been part of what has gone wrong after the CFA. Their illusions about engaging with the LTTE towards bringing about a stable environment, even if an oppressive one, exacted a heavy price from the Tamil people for which no one is now answerable. An important question is, have they since done their homework?

**Acknowledgments:** As always, while taking responsibility for the contents of this report and errors, which we endeavour to correct in time, we have benefited from invaluable interactions with many others. These, besides information, served to focus our analysis. Several of them are implicit in the contents. Many others would not be named. We owe a particular debt to **Peter Apps** of Reuters, who is recovering in England from a nasty accident he met with in

this country. We have benefited immensely from his astute and phenomenal powers of observation. But for the accident, he would have been at the forefront of several of the stories. We wish him a speedy return to harness.

[Supplement: Scripting the Welikade Massacre Inquest and the Fate of Two Dissidents](#)

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