

**THE UNIVERSITY TEACHERS**  
**FOR**  
**HUMAN RIGHTS, JAFFNA**  
**(UTHR(Jaffna))<sup>1</sup>**  
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**The Fatal Conjunction :**  
**Women, Continuing Violations & Accountability**

Observers of the Sri Lankan scene from about the middle of 2000 would be struck by signs of a slide with the darker impulses gaining ascendancy. Widespread accounts of torture and sadism – most of them reported exclusively in the Tamil Press – are a depressing reminder of the state of the country. Pledges of good intentions by the Government ring unreal against its inability to take a forthright position when the victims of violations belong to a minority. This was evident following the massacre of 27 Tamil inmates of the Bindunuwewa rehabilitation centre last October and the mob attack on Muslims in Mawanella in early May. In both instances the Police were culpable of complicity while the Government equivocated. The Government appears to lack the will for the kind of decisive action that would stop this slide.

These developments come against a background where the Government instead of taking the initiative is reacting to pressures. Among these are economic pressures resulting from a heavy defence expenditure and political pressures. Both these ultimately stem from the Government's inability to institute even minimal constitutional measures, such as would reassure the Tamils of its seriousness in addressing politically their unenviable plight. This owes in part to the (present) parliamentary political reality as well as the short-term opportunism of the political forces, not least the Tamil parties who claim to be in the mainstream. It needs mature political leadership to overcome the deep crisis the whole of Sri Lankan society is in. Such leadership is now lacking on all fronts. Although international and local realities have exerted pressure on the Government and the LTTE to talk and reach a settlement, the Government appears to be losing its ability to keep a cool head and respond creatively. This stems in part from its coalition formation dependent on disparate forces.

On the other hand internal pressure on the LTTE from a strangled Tamil community has at present very little impact. At the same time the fluid dispensation at national level has driven several of the political actors to fish for deals with the LTTE. The LTTE has thus been awarded the capacity to manipulate political and military opportunities on a broad canvas to its advantage, irrespective of the interests of the Tamil people.

It is here that the present drift in which human rights have been allowed to suffer neglect and deterioration causes concern. In the meantime the Tamil people have been pushed into a corner by a conjunction of both the Government and the LTTE, and their voices will not count in any

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<sup>1</sup> The University Teachers for Human Rights (Jaffna) (UTHR(J)) was formed in 1988 at the University of Jaffna, as part of the national organisation University Teachers for Human Rights. Its public activities as a constituent part of university life came to a standstill following the murder of Dr. Rajani Thiranagama, a key founding member, on 21st September 1989. During the course of 1990 the others who identified openly with the UTHR(J) were forced to leave Jaffna. It continues to function as an organisation upholding the founding spirit of the UTHR(J) with its original aims: To challenge the external and internal terror engulfing the Tamil community as a whole through making the perpetrators accountable, and to create space for humanising the social & political spheres relating to the life of our community. The UTHR(J) is not at present functioning in the University of Jaffna in the manner it did in its early life for reasons well understood.

negotiations. Particularly disastrous would be the Government compounding its problem of legitimacy among the Tamil people through its continued neglect of human rights. A consequence of this would be that the LTTE, a nihilistic authoritarian force, would be sanctioned as the legitimate guardian of Tamil interests by many sections advancing peace. This could at best be a brief illusion of peace – a peace compatible with massive human rights violations during and after.

Sadly, the inadequacies of the Government and the Southern Polity will continue to lead many to entertain a blind spot for the LTTE's true nature, so prolonging the agony of the Tamils.

This bulletin examines the current human rights situation and its implications for peace, stressing the need for more aggressive monitoring. We will first examine several salient features of a well known recent case, which help us to explore the system.

### **1. The Rape of Two Women in Mannar**

Two women, Sinnathamby Sivamany Weerakoon (24) and Vijikala Nanthakumar (22) along with the six year old son of the former and the husband of the latter were picked up by the naval personnel from Asika Lodge in Mannar, on the night of 19th March 2001. They were driven to the Counter Subversive Unit (CSU) of the Police in Mannar and Vijikala and her husband were taken into the building. According to the testimony of the women, while Sivamani was alone in the van, a naval rating stepped on her mouth to silence her while she was raped in turn by two naval personnel.

Meanwhile, inside the CSU, Vijikala was stripped, and a sock was tied around her eyes. She fainted as she was gang raped by several CSU men. Vijikala's hands and legs were then tied and she was suspended on a pole between two tables and tortured until she admitted that she belonged to the LTTE. She was made to sign the proverbial confession prepared in Sinhalese. Sivamani was then brought in about 5.00 AM and Vijikala was made to strip her. She was similarly suspended on a pole and tortured. According to their testimony, N.P.N. Suraweera, OIC, CSU, Mannar, was party to these proceedings. It was after the Mannar Bishop, the Rt.Rev. Rayappu Joseph, visited the two women in remand prison on the 27th that the matter started receiving wide publicity.

We now come to features that we will return to in a wider context.

### **2. The System: Licensing Abuse**

We are given to understand that DMO Mannar, Dr. G. Somasekaram, examined the women on 22nd March, and found no signs of abuse and again examined them on 30th March under the direction of the Magistrate and found symptoms of grave abuse! How is it that the women were produced for a medical examination on the 22nd, apparently to no purpose since they were found perfectly well, but were produced before the Magistrate for the first time only at 6.30 PM on the 27th? According to the *Veerakesari* of 31st March, the Human Rights Commission (HRC) officials led by the District Co-ordinator Raja Ravindran (based in Vavuniya) had been investigating the case from about 27/28th March - after the public alarm had been raised. However it was mandatory for the CSU to inform the HRC immediately upon arrest. These are just two instances of things going wrong.

Most revealing in this connection is the petition submitted to the Appeal Court by OIC N.P.N. Suraweera (*Island* 18.4.2001). This was after Justice Minister and Chairman of the Anti-Harassment Committee, Mr. Batty Weerakoon, on 11th April, ordered the IGP to arrest the

suspected CSU and naval personnel and produce them before the Mannar Magistrate, Mr. M.H.M. Ajmer. Mr. Ajmer had on 31st March directed SP Mannar to produce the suspects before him on 9th April. The SP directed the order to the IGP. On 5th April Deputy Defence Minister Mr. Ratwatte, parried questions about this incident in Parliament by citing the first medical report which found no abuse.

On 3rd April the Navy's Media Co-ordinator, Commander Rohan Amarasinghe, issued a statement rejecting as '*absolutely false*' allegations that naval personnel were involved in the abuse of the women. It was when it transpired at a meeting of the Anti-Harassment Committee that nothing had been done on the Magistrate's order to produce the suspects that Minister Weerakoon intervened in a rare move of its kind. Thus came the petition from Suraweera, one of the accused, who tried to protect himself by inculcating the whole system. At first glance he may appear to have acted correctly, until one recognises that the system has atrophied to a point where those involved in the legal process do not know their priorities and prerogatives. Everything is primed against the victims, who at present are mainly Tamil. What follows is based on Suraweera's information and the testimony of the victims.

**The Recording of Statement:** According to Suraweera the statements from the women were recorded at 3.00 PM on the 20th in the presence of a woman police constable. However Vijikala had testified that she signed the statement admitting that she was a member of the LTTE during the rape and torture 12 hours earlier. She said this without any premeditation. However it is clear that the women were not questioned after the 20th afternoon, and in all probability not after dawn on the 20th. We shall see that there was absolutely no case against the women.

The argument adduced in counter-terrorism measures for a discretionary delay in producing a detainee before a magistrate is that it enables more complete intelligence to be extracted. The case of the women is a clear instance of the widespread abuse of this provision. For, although the women were not questioned after the 20th afternoon, they were not produced before the Magistrate until more than seven days later on the 27th evening. It is easy to see how the Magistrate who is the linchpin of law enforcement is cowed and reduced to a cipher by the licence given to the security forces.

**The Human Rights Commission:** Suraweera has stated that he informed the HRC's Vavuniya office of the arrests on 21st March. He adds that HRC's district co-ordinator Raja Ravindran along with investigating officers Chandrasekera and Priyadharshana visited the CSU, Mannar, on the 22nd and left after spending about two hours. Suraweera said that no complaints were made. This suggests that the HRC had seen the victims five or six days before they, according to the Press, commenced investigations.

According to the report of the medical examination done on the 30th, apart from bleeding from the vagina, Vijikala had prominent marks of abuse on the visible parts of her body. These included 1/4-inch nail marks (semi-circular abrasions) on her elbows, forearms and wrists. Also reported were abrasions on both ears. The women were in mortal fear of speaking out because of threats by the CSU. But on seeing the women the HRC officials would have known that something was terribly amiss.

However, the women obtained no relief from the visit by the HRC. Is it that HRC officials have become so inured to torture that they merely content themselves with reporting the victims to be alive and let the process go on? If so, visits by the HRC are a poor substitute for producing the detainee before a magistrate. We learnt on checking with other sources that the HRC officials were alarmed on seeing the women, but were apparently deterred from being firm by the

unsavoury reputation of the Police in Mannar. However, they would have informed the HRC HQ in Colombo. Why nothing was done needs to be explained.

**The Two Medical Examinations:** Suraweera claims that the two women were produced before DMO (District Medical Officer) Dr. G. Somasekaram on 22nd March. This reference appears just after mention of the HRC visit on the same day, suggesting a connection. Suraweera's claim that the HRC officials made no complaint is probably inaccurate. Suraweera indicates, as the victims have averred, the presence of CSU men during the so-called medical examination by saying, *"Dr. Somasekaram had carefully examined the suspects and found no injuries"*.

This was a peculiar medical examination where the patients were threatened and taken to a doctor to tell the doctor that they were fine and obtain certification from the doctor to that effect. The doctor did not examine the women. Clearly this 'examination' had no place in law or medical practice. Had the doctor not been so overwhelmed, he should have insisted that the women be directed to him on an order from the Magistrate and then there would have been no question of a police presence during the examination.

Somasekaram conducted the second examination on the 30th upon an order issued by the Magistrate on Wednesday, 28th. This time, in a long report, he recorded symptoms of grievous torture, some externally visible, and also that the women were impaired both mentally and physically, and were hardly able to sit up. Owing to the delay of more than 10 days perhaps, Somasekaram was unable to find symptoms on Sivamani to support her testimony that she was raped twice by naval personnel.

The first medical report was clearly obtained for the purpose of a cover-up. It was used by defence officials to discredit the findings of the second examination, which would very likely not have taken place if not for the Bishop's intervention. We will later deal with another instance of the intimidating focus of the security establishment on a doctor.

**The Police:** One upshot of the women being taken to the DMO on the 22nd was that the women were seen by others and the alarm was raised. Also the HRC officials talked about it privately and this, we understand, was a means by which the Bishop was alerted. According to Suraweera, on a complaint of assault on the women, SP (Superintendent of Police) Nihal Kalansuriya visited the women at the CSU on the 24th, but received no complaint. This surely inculcates the SP, given the condition of the women. Moreover, the SP would have found that the women were neither being questioned, medically treated nor charged, and should have insisted that they be produced before the Magistrate and released, or a request be made for a detention order if there were credible charges. Doing nothing and leaving the women in CSU custody makes the SP part of the cover-up.

Matters became difficult when Vijikala's mother visited her daughter at the CSU on the 26th morning and the ICRC (rather belatedly?) saw the women on the 26th afternoon and again on the 27th morning, signifying that there was cause for alarm. No one seems to have informed the ICRC early, not even the HRC that was apparently doing nothing? It was apparently after the ICRC visits that the CSU decided to go to the Magistrate.

On the 28th officials from Police HQ arrived in Mannar, and according to the Press, the whole CSU unit was transferred on the 30th. The Magistrate on the 3rd of April ordered the SP to produce all concerned security personnel in Court for identification on 9th April. The SP duly relayed it to the IGP and the latter duly slept on it, until Minister Weerakoon intervened. In a subsequent identification parade several CSU and naval personnel were identified by the women.

**The Grounds for Arresting the Women:** Suraweera claims in his petition that Police HQ had informed SP CSU Bernard Silva that Vijikala had been sent by the LTTE's Pottu Amman to assassinate the local Navy Commander. This they communicated to the Navy, he says, who arrested the three suspects and the child. As for Sivamani, Suraweera merely describes her a 'suspect' - presumably like any other Tamil woman.

Sivamani faced a problem which many Tamil women from the lower orders face because of the war. She married Weerakoon Banda apparently when she was 14 or 15 and had 3 children, aged 9, 6 and 4. After a period of separation she came to Vavuniya from Killinochchi in search of her husband accompanied by her 6 year old son. She found him living with another woman. After a brief polygamous arrangement which did not work, Weerakoon brought her to Mannar and housed her in Asika Lodge six days before the incident. It is here that the Police have made a crucial oversight in their attempted cover up.

If Sivamani were a 'suspect' in some diabolical plan such as assassinating the local Navy Commander, after taking down her statement on the 20th morning the CSU should have quickly moved to arrest Weerakoon. It was he who planted her in Mannar, so making himself a suspected accomplice. Suraweera merely tells us that *'the detention of Sivamani was communicated to her husband Weerakoon Banda by police on 21st March 2001'*. Clearly, Sivamani was not, in any tangible sense a 'suspect'. She was only being held to cover up the abuse of the women.

In Vijikala's case she was pregnant. It would appear that this was the first time the LTTE sent a pregnant woman, along with her husband as handler, to conduct a suicide bomb attack. Strangely however, for all the gruesome attention the CSU paid Vijikala, they evinced very little interest in her husband Nanthakumar, who would presumably have had the crucial information about the local network and contacts. Although produced before the Magistrate on the 27th, the latter saw no need to medically examine Nanthakumar.

Police teams have had significant breakthroughs in counter-insurgency, but never by acting in this manner. It was through watching suspects, their contacts, intercepting messages and planting informants. When they made arrests, they got almost the whole network, arms caches and all. To pick up two women late in the night, rape them and make them sign statements in a language that was unintelligible to them, is crass thuggery, not policing.

It is an outrage for security officials to intrude upon the privacy, especially of women, late in the night, without sound reasons. In this case it was possible to place a sentry around the building and question the women in the morning. Even if there was good reason to detain them in the night, there are professional ways of doing it with women personnel present. No sensible judge should give any credit to the claims of security officials who act with scant regard for basic decency.

In this particular case, all claims by the Police and the security establishment are a contemptible tissue of lies. So much so that unable to provide a shred of evidence against the women, Suraweera tries to make a point of the Bishop *'who is a well-known LTTE sympathiser'* taking an interest in the case.

Any thinking person in the defence establishment would have minimised the damage by having the victims released forthwith, apologising to them, and instituting disciplinary measures against the offending personnel. But instead, even after medical confirmation of rape and torture, the authorities persisted in their shoddy drama as though they had a point to make. The four, including the child, were remanded in Mannar jail on the 27th. Following the incriminating

report from the medical examination of the 30th, the victims, including the women who were in a poor mental and physical condition, were subject to the unnecessary strain of being transported to remand prison in Anuradhapura. On the same day the entire CSU unit was transferred. When summoned to the Mannar Magistrate's Court on 3rd April, the *Veerakesari* reported that the party was brought from Anuradhapura under '*intense*' security. The same report said that when they were thereafter committed to the remand prison in Mannar, security there was '*strengthened*'. The three detainees were given bail on 9<sup>th</sup> April.

**The Magistrate:** One pities the bewildered magistrates in the North-East who have to deal with such contingencies. The Security Establishment has usurped so much of the ground that belongs to the magistrates that the latter do not know where their powers begin and where they end. What can the Magistrate do if the local SP or the IGP in Colombo ignores an order to produce members of the armed services in court? The answer is, practically nothing! He slowly gets accustomed to being an unoffending bureaucrat. However, a determined magistrate can assert himself and give lawbreakers in the armed services a rough time and one or two have done it.

How the Magistrate acted in this instance, and was indeed expected to act, though normal in this country, is a parody of professionalism and is in conformity with the regime of routine violations. OIC Suraweera claims that upon the women being handed over to the CSU, an application was made for a detention order, but does not say if one was obtained. One trusts that the Magistrate would not have issued a detention order without the 'suspects' being produced before him.

However, after the women were taken to the doctor on the 22nd March, the public in Mannar had come to know that the women had been tortured and this is confirmed by the SP meeting the women on the 24th. Torture has been accepted as universally reprehensible and is forbidden by both international and national law. When the Magistrate has good reason to believe that torture has taken place in the area under his jurisdiction, it is his duty and obligation to intervene. In this instance the Magistrate should have ordered the Police to produce the detainees before him. If the Police refused, the matter would have got into the Press and the Government would have had to respond.

But even when the Police produced the women on the 27th evening, the Magistrate meekly remanded them. No questions were asked. Although this rubber stamping by magistrates of requests for detention orders is standard practice in Sri Lanka, the magistrate is required to verify that the grounds for suspicion cited by the Police, if any, satisfy certain objective criteria. In the case of these two women, the Magistrate would have seen that such objective grounds did not exist. The state of the women, their reluctance to speak in front of the Police, their confessions recorded in a language alien to them, the absence of any incriminating materials and the failure to question Sivamani's husband, were all an indictment on the Police, rather than the women.

When the women were summoned before the Magistrate on Tuesday, 3rd April, the Magistrate had the medical report and the testimony from the women. There was no case from the Police because the men who supposedly investigated the women had been transferred out. The Magistrate had to ask the SP to bring them at a later date (if he could). Surely, there was no reason to prolong the detention of the women. The State had failed to make a case. The drama put on by the authorities in subjecting the women to intense security after the medical examination on 30th March should be seen as a move to arm-twist the Magistrate. It made it harder for the Magistrate to conclude on the basis of the evidence before him, that the women were innocent victims of torture and rape by security men.

The subservient status of the magistrates and, by extension, the Judiciary as a whole, is indicated in a Foreign Ministry press release (*Island* 19.5.01). It reported recommendations adopted at a meeting of the Inter-Ministerial Standing Committee on Human Rights (IMSCHR) on 11<sup>th</sup> May, presided over by the Foreign Affairs Minister. The Committee decided to recommend to the President a legal provision *'requiring suspects arrested under the PTA to be produced before a Magistrate expeditiously and not later than 14 days after arrest...Another recommendation was to empower the Magistrates to visit and inspect, without advance notice, places of detention under the PTA within their respective jurisdiction'*.

This reveals an absurdity where our magistrates do not have even the authority of the ICRC to visit detainees and ensure their basic rights. Additional structures like the HRC have been necessitated by such anomalies that have atrophied the office of the magistrate. The recommendations above are no doubt in part a response to pressures arising from the case of the two women. Mr. Batty Weerakoon's intervention is the only aspect of the case that is to the credit of the Government. Apart from that, in attempting a shoddy cover up of a crime by a few low-ranking officers, the system stands indicted right up to the highest levels. We move onto an incident that throws further light on the system.

### **3. The Massacre in Batticaloa on Vesak Day - 17th May 2000**

We reported the incident in our Report No. 23 of July 2000. A cycle was parked opposite the office of DIG/Police Batticaloa about 4.30 PM. The word soon got around that the bicycle had a bomb on it. Some policemen, including Sergeant Uthayanan were out keeping people away from the bomb. Some auxiliaries from the Razik group who were passing that way tried to defuse the bomb, resulting in an explosion killing three of them. After a gap of 5 to 10 minutes a group of men from the Special Forces rushed into the area from the Army HQ across the lagoon in Puliyantivu, and fired randomly at civilians.

Among those killed by firing were 10 children who had been brought to town by Fr. Jeyachandran and were about to see Vesak decorations. Also killed were Sergeant Uthayanan and 7 other civilians. Some, including the Kacheri Recorder, had been dragged from inside shops and shot. In the earlier explosion, Fr. Jeyachandran had been injured by shrapnel just when Sergeant Uthayanan warned him to stay back. Several of the children who came forward to help him were killed by firing of the Special Forces. A number of civilians witnessed the incident and in Batticaloa Fr. Miller of the Batticaloa Peace Committee stands by the foregoing as facts he has verified from his own inquiries. Fr. Jeyachandran had in fact shouted at the soldiers not to shoot the children.

The government media however put out a version that these deaths resulted from a bomb explosion caused by the LTTE. This signalled that any bona fide inquiry had been precluded. Earlier reports from Batticaloa said that doctors had removed several bullets from the hospitalised victims. However, the doctor who did the autopsies certified that the deaths had resulted from shrapnel injuries. He then left the station and kept away for some time. From his inquiries, Fr. Harry Miller ascertained that the doctor had been told by Brigade Commander Zacky to certify that the deaths had resulted from shrapnel injuries and not to mention the bullets.

Fr. Miller with other members of the Peace Committee had a meeting with Commander Zacky with whom they had a good working relationship for 3 years. Zacky maintained that the civilians died because of the LTTE bomb and no one was shot. The Special Forces men, he said, had only fired into the air to disperse the crowds. Fr. Miller told him, *"Everyone knew for some time that the bomb was there and were warned to keep away. Your job was to cordon off the area and*

*defuse the bomb. But you did nothing. Why?" Zacky replied that they did not have a bomb-disposal squad in Batticaloa!*

Fr. Miller told Zacky, *"You say that your men fired into the air. But everyone knows that the two vans which brought the children were riddled with bullets. But you have concealed them from public view. Why don't you put them out for all to see?"* Zacky agreed to put them out. Fr. Miller told him, *"For three years you have had a relatively good record here. There had been no incidents of reprisals against civilians after attacks by the LTTE. But now you have tarnished your record."* Zacky protested that it was not so. He said that there were two sides to an incident and went on to talk about civilian casualties at English football matches.

Fr. Miller observed that Zacky was normally reasonable in his public relations, *"but this time he was stonewalling"*. On the promise to put the bullet-ridden vehicles out, Fr. Miller said, *"Zacky did put them out. But only for an hour. They were then shoved away."*

Fr. Miller received his next shock when he spoke to the ICRC representative. The latter came to see Fr. Miller over another matter when Fr. Miller raised the shooting incident. The ICRC representative said that he had seen the doctor's reports and was satisfied that the victims died of shrapnel injuries. Fr. Miller told him that there was no point in carrying the discussion any further.

Fr. Miller's hope that justice would be done was strengthened when DIG Pathirikirikorale was sent to Batticaloa by the President, ostensibly to inquire into the incident. When Fr. Miller met Pathirikirikorale, the latter introduced himself as the product of another famous Jesuit institution, St. Aloysius, Galle. Fr. Miller gave him all the information in his possession, including the Tamil press cuttings (only the Tamil media covered the incident substantially) and the funeral notices for the children, most of them from around Aithiyamalai. The DIG told Fr. Miller that he had checked with the police station and that no ammunition of theirs had been used on that day.

Fr. Miller then told the DIG that Fr. Jeyachandran, the priest who was with the children, had been moved from Batticaloa Hospital and was currently in Colombo Hospital, and that he could obtain the priest's testimony. The DIG immediately rang the Police in Colombo and told them about Fr. Jeyachandran. In turn the DIG was told that they had already obtained Jeyachandran's testimony, according to which the Army had not fired and the children died from the bomb explosion. Fr. Miller was taken aback because Jeyachandran, a crucial witness, had earlier testified to them that all others about him remained standing after the explosion. Pathirikirikorale went back and nothing more was heard.

When Fr. Jeyachandran was discharged from hospital and returned to Batticaloa, Fr. Miller asked him about testimony to the Police. Fr. Jeyachandran confessed that he was scared to tell the truth about the Army firing at them. He was in a strange environment and the nurses and hospital staff had been referring to him as a 'kottiya' (tiger in Sinhalese), adding to his jitters. Fr. Miller added that Jeyachandran was scared even when he was in Batticaloa Hospital, especially with the Army around the place. Jeyachandran had feared that the Army would try to finish him off. This he had communicated to Bishop Kingsley Swamipillai, who reassured him. Fr. Miller observed despondently that the cause of justice seemed hopeless until there was peace.

We may now observe the crucial similarities to the case of the two women in Mannar, which point to the modus operandi by which justice is subverted. In both cases relatively young and nervous doctors caved in under pressure from the Security Forces and distorted the forensic evidence. In such situations there is pressure on everyone concerned to fall in line - e.g. the Magistrate, the Police and the witnesses.



In the incident above for example, there was no civil society organisation in Batticaloa that was able to organise witnesses and carry forward the struggle for justice. The magistrate's inquest at which it fell to the Police to direct the evidence was decided technically on the medical reports. It would have been a bold magistrate who did not fall in line. The Human Rights Commission did not inquire into the matter - this will be taken up below. However, we need not doubt that the higher authorities, including the President, knew the truth about the Batticaloa incident. The incident was too public. To begin with, the Police were on the spot and would have reported independently. This is indicated by what DIG Pathirikirikorale told Fr. Miller.

He volunteered the information that he had checked and found that the Police had not fired. This was gratuitous information since no one accused the Police of firing. The question was what the Army had done and surely the DIG knew from his local inquiries, if not before. Moreover, there were the two vans with bullet marks giving the lie to the Army's claim that they only fired into the air. People even saw this in the state TV new broadcast that showed neat lines of bullets on the vans coming from automatic guns. We may conclude that the cover-up was directed from the top and the DIG's mission was to report on a course of damage limitation - e.g. whether or not a token inquiry should be launched.

Direct testimony of early involvement of the Police in the cover up comes from a senior RC priest in Batticaloa. Since he had a personal interest in the children who were killed, he went to the hospital mortuary the morning after the incident. The doctor who was doing the post mortems gave a sheepish smile. The priest recognised him as a former student of St. Michael's. Some experienced mortuary labourers called the priest aside and told him, *"Father, these died from bullet wounds, but the doctor is going to record that they died from the bomb blast"*. A labourer lifted the skirt of the young maiden who had escorted the children and showed him the bullet wounds. The maiden was to be given in marriage two days from the fatal incident. A little later a labourer told the priest, *"Father, you had better go, the SI (sub-inspector of police) is watching!"* The disturbingly routine nature of covering up is evident in the Navy's record.

#### **4. The Navy's Record**

The *Daily News* of Tuesday 23rd April reported that the two women victims in Mannar at an identification parade picked out as their assailants 2nd Lt. S.P. Nalin Kumara and D.D.I. Priyadarshana of the Navy, and Inspector Patrick Suraweera and PCs Rajendra and C.V. Wimalaratne from the Police. Nine other police personnel were identified at a further identification parade on 10<sup>th</sup> May. The *Sunday Island's* Defence Correspondent who gives considerable weight to human rights described (29.4.2001) the Navy's earlier denial in the press release as *"proven to be a blatant falsehood and an official attack on press freedom"*.

The Defence Correspondent added, *"Although this column called upon the navy top brass to apologise publicly for its actions, the silence has been deafening. This is the first time in Sri Lanka's history that the armed forces officially issued a statement covering up a heinous crime..."* Where does the President, who as commander-in-chief, must accept responsibility for such official denials, stand in all this? Such official hyperbole is an attempt to veil a rotten record.

Well known is the case of Sarathammal of Pungudutivu who was raped and murdered on 28th December 1999 by four personnel from the local naval detachment. The Navy denied responsibility and the judicial process appears to be stymied. Some of the indiscipline in Mannar comes from corrupt practices to do with smuggling to the LTTE controlled area. On 28th February, the Navy at 10.00 PM detained Kandiah Uthayakumar (42), father of seven, of

Chavatkadu, Mannar, strangled him to death in the presence of his daughter, and delivered his body to Mannar Hospital at 3.00 AM.

Some of the worst behaviour by naval personnel involving abduction and extra-judicial killing, has been along the coastal stretch north of Trincomalee. During twilight on 22nd November 2000, the Navy shot and killed four fishermen, including a boy of 15, and injured several others, two children aged 4 and 11 among them. These fisherfolk were, as was their wont, attending to their nets at the mouth of the river near Gopalapuram, Nilaveli, Trincomalee. The Navy prevented the villagers from removing the bodies unless they certified that the dead belonged to the LTTE. The following day up to about a thousand villagers launched a protest demonstration.

After sunset on 13th December 2000, the Navy abducted, tortured and killed two youths Thamiran and Sornahasan from Gopalapuram, who were on their way home. The bodies of the youths, whom apparently the Navy suspected of involvement in the demonstration, were found the next day. Those returning from the funerals of the youths were warned of serious consequences by the Navy, if they protested in future.

Asked recently if any action was taken on this matter, TULF General Secretary, Mr. R. Sampanthan said that the Human Rights Commission looked into the first killing of four persons. Its Chairman, he said, told him that they found the four killed not to be terrorists as the Navy held, and had recommended compensation. The Navy, Mr. Sampanthan said, maintained that those shot were in an area frequented by the LTTE. This one cannot accept. These folk were doing their regular work, were unarmed and there were children among them. They were not challenged by the Navy.

On the second incident of two youths being killed, Mr. Sampanthan said that he had not heard of any inquiry. He also said that about early May, the Navy had twice fired mortar shells into the recently resettled Tamil fishing village of Sirupiddy, east of Sambaltivu. The second time one man was injured and the whole village fled. Harassment by the Navy has also made their economic life unviable. Tamil fishermen who go out in the afternoon finish their work at 11.00 PM. The Navy has ordered them not to return to the shore until morning. This has resulted in greater fuel costs and their catch getting spoilt. The Navy imposes this restriction selectively on Tamil fishermen. Mr. Sampanthan said that a senior US embassy official who visited the area described the attitude of the Navy as '*insolent*'.

The foregoing gives a cross-section of incidents leading to a mood of despondency among Tamils. Open eruptions may be few. But they ought to give food for thought.

## **5. Abuse of Women in the East : Some Current Trends**

On 30th March, the final day of the World Drama Festival held at the Eastern University, the crowd of several thousands joined the students in an hour's protest at the entrance to the University early in the afternoon (*Veerakesari* 31.3.2001). The protest was around the rape of the two women in Mannar. Among slogans against state terrorism, torture and rape, a notable one read as follows: "*O Sinhalese Nation, you want our mothers to satisfy your carnal hunger (lust), to satiate your blood-lust, you want our fathers, and to satiate your gluttony you want our flesh. What more do you want?*"

The protest was no doubt planned by a few and carefully launched. However, there is also no doubt that the cause and the slogans touched the gut feelings of many people who had come to the University on that occasion. The near impunity with which violations occur drives home into

the people a sense of humiliation and servile status. This is clear from the incidents above. We give below a sample of incidents from around Batticaloa.

**10th September 1999: Kumburumoolai:** Mrs Rukmani Krishnapillai (35), mother of 5, was taken from home by the Army, to the Kumburumoolai army camp and was dumped in a bunker with her eyes tied. She was then taken to a room, drugged and gang raped. She was tortured by being beaten, and having objects inserted into her vagina. At nightfall she was taken unconscious in a tractor, dumped in the jungle and left for dead. She later recovered and was helped by an old woman. Later her MP, Mr. Thurairajasingam, directed her to people in Batticaloa, whence she contacted the ICRC and was treated by Dr. Chandrapalan in Batticaloa Hospital. She declined to take up legal action because there was no security for her family. The Army came to her home again on 10th January 2000, apparently because she had complained to the ICRC, assaulted her mother and took her. On the hearing the sound of an explosion, the soldiers left her and vamoosed.

**14th March 2001 (Thinakkural) Kaluwanchikudy:** The Special Media Information Centre stated in a release that Reserve Constable Ranjith of the STF was dismissed as he was accused of raping a woman. He was released on bail by the Magistrate.

**21st April 2001: Kaluthawalai:** Mrs. Nageswari Mahendran (34), a widow, was the mother of two sons. Her eldest had joined the LTTE in 1990 and is no more living. On 17th April 2001 the STF came saying that they wanted to search her house. An officer tried to make her go into a room. When she refused the officer said that he would come again. He returned on the 20th and tried to pull Nageswari into a room. Nageswari wrenched herself away and ran out. The officer told her, *"I am the lord here, we will see what you can do"*, and went away. The following day she went to the STF HQ in Karaitivu and complained about harassment and threats to her life from the local STF. The same evening the 'Lord' came home, and told her, *"I am the lord here. I can do as I please and no one can ask questions"*. He beat her mercilessly, kicked her down and stood on her chest. Her son who came home was also beaten. Nageswari was later admitted to Batticaloa Hospital.

Her son, fearing for his life, got himself taken to the HQ of the Razik group, an auxiliary force, through a person in the group from his area. He was later handed over to the Army Brigadier. He was then sent to Remand Prison apparently because in a statement he had confessed to being a member of the LTTE. After being discharged from hospital, the mother was roaming around trying to get her son out.

Another incident from the same area, a village south of Batticaloa, illustrates the erosion of steadying influences and the fluid nature of dispositions. Miss. Subitha Yogarajah, a pre-O.Level student at Kaluthawalai Central, was last December wrongly suspected of having stolen a small amount of money from her class room. The teacher stripped her in the toilet to search her. Unable to stand the humiliation, she went the next day and joined the LTTE. The latter, suspecting her of being a plant, kept her in a dark room for a month. She was then taken towards Vanni on foot through the jungle. They ran into an ambush and she was injured in the leg by army firing. She was taken back to the base. She left the LTTE and is back at home, signing at the STF office every Sunday.

The last incident illustrates the confused disposition of the people. The STF, Army, the LTTE and the Razik group are all there, and the people get on with life putting up with all of them, but without having hope in any. But having marginalised all other Tamil groups or parties, the LTTE alone retains the ability to summon the gut feeling of Tamil nationalism, which is founded on the collective humiliation of a people. Yet, so great is the disillusionment with it that the response

the LTTE gets is pitifully abysmal. University students and pressmen make their contribution to its cause with dramatic slogans and keep a safe distance. This seed would ultimately bear fruit in fragile minds like Subitha's in a moment of helplessness.

Given the continuing violations by the State and the oppressive order revealed by the processes through which justice is denied, organised resistance to such a State would have evoked a compelling sense of duty among mature, thinking adults in most societies. This was true among the Tamils in the 1970s and early 1980s. Today, to those feeling justifiably angry and disillusioned with the State, the LTTE has virtually monopolised the means to offering resistance. However, the voluntary support the LTTE receives from people living under it is minute. Having in the early days ridiculed groups that admitted women, women at present make up the majority of the LTTE's casualties.

Of the nearly 140 LTTE casualties reported in the Jaffna press from the confrontation of early April, more than 60% were women. If one also takes into account the children, the starkness of the tragedy is laid bare. In a further remarkable irony, those carrying the LTTE's message urging the young to die in its cause - intellectuals, clergy, academics, media men and dramatists - are practically all of them healthy, mature men. Not only that, they are totally cynical. A lady who had visited Jaffna was telling a Tamil church group in Australia that life in Jaffna was difficult, but fairly normal and that the Sinhalese soldiers at check-points generally were polite. A man called her aside and told her sternly "*Mrs... you must tell them that the people in Jaffna are being starved. Only then will they contribute to the LTTE!*"

An important part of the Tamil nationalist message is that every ill that befalls Tamils is part of the planned agenda of the Sinhalese Nation. This was the gist of the slogan from the Eastern University cited above. Bishop Rayappu Joseph told the Press (*Thinakkural* 30.3.2001) that the injustice inflicted on the two women arrested from the lodge in Mannar, is '*a crime committed against the entire Tamil motherhood*'. As a defender of family and motherhood, the Bishop's positions are strange. In an interview with the Tamil monthly *Amuthu* earlier this year, the Bishop denied that the LTTE recruits children. On family breadwinners in the Vanni being importuned and taken to the front to perform suicidal military tasks, the Bishop maintained that this was being done without the Leader's knowledge. Such understatement set against the preceding hyperbole, surely, hides something insidious.

## **6. The LTTE and the Regime of Ordered Violations**

During the UNP era of the 1980s and early 1990s, violations against Tamils, massacres, destruction of villages and displacement were primarily a part of state policy. Under the PA government since 1995, the violations are secondarily, rather than primarily, part of the State's intentions. They result from institutional inertia, lethargy and indiscipline in the Government and the Government frequently uses inherited institutional practices to cover up violations, rather than trying to change them.

These violations by the State today are violations of an imbecile character, having no future end in view. The damage they do to the Tamil people is short term and can easily be confronted if the Tamil people have the freedom to organise and make political demands. However, these violations by the State have throughout acted as a smokescreen for systematic violations by the LTTE.

It is well-known that prolonged adversity coupled with the breakdown of ties of respect and support that bind a society together, is utterly detrimental to character. The LTTE has determined that the Tamils will have nothing but adversity, and has been atomising people by hammering

away at all the healthier ties and inhibitions. It multiplied adversity amidst war by contriving at reprisals by the state forces. It attacked Muslim villages in the East largely in order to provoke reprisals against neighbouring Tamil villages.

When the middle classes suffer, they complain vocally for a short time. But then, they and their children can escape. Tragedies frequently encountered at the lower levels of society seldom reach the outside world. Loss of their children to the LTTE is the most routine. We give below other incidents that exemplify the kind of systematic long term manipulation of people that the State can never do.

**i) P from Vadamaratchy** is the mother of 5 children. Her husband, a carpenter, lost his income when the LTTE broke off talks and resumed war in June 1990. The husband tried itinerant trade, but could not make ends meet. The LTTE gave him some work putting up platforms and could cut-outs for meetings and later persuaded him into a deal. The LTTE was to pay his wife Rs. 3000 a month, and the man was to be setup in a trade in a northern town under army control. In time he took on a mistress and broke off ties with his family. He has been arrested a number of times by the Police and other armed Tamil groups, and released. During the 1995 Exodus, P and her children moved to the Vanni and are in utter despondency. P, once a respectable woman, had been known to ply the shadowy trade of smuggling liquor from Vavuniya to make a living. This example is just the thin end of the wedge.

**ii) Thavamany's father**, who was a harbour worker at KKS, became unemployed after civilians were excluded from the area in 1987. The family moved to Pt. Pedro and lived in dire poverty. Thavamany became engaged to Vasu, a leading LTTE figure, a key man in the Pt Pedro area during the respite of peace in early 1990. Vasu helped Thavamany's family by passing onto them some rations. After the war resumed, Vasu was one day publicly executed by the LTTE north of the bus depot. Among the charges against him was his helping Thavamany. However Vasu's transgressions were, if any, small, compared with those of several senior LTTE figures spending lavishly on mistresses. The reasons for his execution must be sought elsewhere.

One day in early 1990, during the peace, Vasu transported members of 'martyrs families' to a big house saying, *"Our leader wants to speak to you"*. Additional chairs had been brought for the occasion and the guests were seated and refreshments served. Suddenly a new vehicle arrived, followed by an armed escort in a pick-up. Mahattaya strode into the hall. Beginning his speech, he apologised for summoning the guests instead of calling on them individually as he should have done. He praised them for sacrificing a member of their family for their cause. He went on:

*"We had become depleted by fighting the Indian Army and needed a break. Since [President] Premadasa called us for talks, we used that opportunity. Our ultimate goal is Eelam and we will not falter. The war will resume and our path will be hard... Only about five percent of the people support us. You are the people who must help us. You can for example help us to be rid of traitors by identifying them..."*

Between Mahattaya and Prabhakaran there were no differences in objectives or methods. However Mahattaya, the scourge of traitors, was got rid of by the latter as a traitor. Vasu's closeness to Mahattaya was no doubt observed and reported. *'Thurohi'* (Traitor) has become the most fickle word in the Tamil language.

After Vasu's execution, Thavamany sat long by his coffin, as any faithful wife would have done, crying inconsolably. Her family moved to Vadamaratchy East. News came subsequently that the bereaved and confused girl had joined the LTTE!

iii) **M, a mother of 4 children**, lived in Kudaththanai. Her husband was a lorry driver for the Karaveddy MPCs. Soldiers from the Indian Army camp nearby used to come to borrow objects like an axe from him. He was then killed by the LTTE. M was without means to look after her children and her invalid father, a retired sub-postmaster. Seeing her helplessness, the LTTE moved in to clinch a deal after the war began in 1990. They asked her to move to Colombo with her crippled father and children and rent a house. They would see that she receives money from abroad. She would also receive instructions from them from time to time. If questioned by the Police, she was to say that her brother abroad was sending her money.

There are a number of cases of the LTTE using women whom it made helpless by inflicting the loss of a dear one. The worst that depraved Sri Lankan security personnel can inflict on a Tamil woman is bodily harm. However the LTTE had imposed an order where it can in its time and pleasure play with the very souls of vulnerable women. Many are the crimes against Tamil motherhood that are whitewashed by the community's spokesmen. In imposing this order, the LTTE has cleverly used violations by the State.

## **7. Violations: The Process & Ghosts from the Past**

An oft repeated canard is that the State was indeed guilty of massive violations during the 1980s and early 1990s, but that is now well behind us. It is a history that is however yet with us because a process of justice that could have brought about change has been denied. The Tamil people still see their relations with the State as governed by implicit terror.

This has to be taken into account in understanding why the two doctors and the priest in the incidents encountered above felt impelled to make false declarations concerning major violations, where their role was crucial in the process of securing justice. The CSU for one has an unsavoury record of impunity. Moreover, in Mannar, where the security forces enjoy so much unchecked power, the doctor is obliged to get permission from them to travel to Colombo, and if he does not behave himself, he can be harassed on the way. The Magistrate is hardly better off.

With regard to the 1996 disappearances in Jaffna, justice had been obstructed right along. The Deputy Defence Minister denied that there had been any violations in Jaffna. Army Commander Daluwatte supposed that the hundreds reported disappeared had joined the LTTE. President Kumaratunge promised an inquiry that is yet to materialise. The Krishanthi Kumarasamy case opened the lid on the matter, forcing the Government to agree to excavations at Chemmani, where 15 skeletons were found. Foreign Minister Kadirgamar in his legal circumlocution concluded in effect that since there was no mass grave, the claims of hundreds of disappearances were false and malicious. Now the matter itself has been buried.

The Committee for the Parents and Guardians of the Disappeared in Jaffna said recently that neither death certificates have been issued nor the compensation paid on behalf of the 14 persons whose skeletons were found at Chemmani in June 1989 and identified (*Veerakesari* 31.3.2001). Several of the officers responsible for the disappearances in 1996 have continued to play key roles in Jaffna. Would it be practically possible to hold an open public tribunal in Jaffna collecting evidence on disappearances? For the good name of the Government, even the issue of death certificates will have to be delayed indefinitely.

In the face of a rising spate of violations, how free are the people in the East to organise public demonstrations against the Army, the Navy and the STF and pursue justice? We saw what happened to two of the youths who demonstrated against killings by the Navy in Gopalapuram and to two women who complained, one to the ICRC about the Army and the other at the regional STF HQ.

There is therefore no doubt that the regime maintained by the State in the North-East continues to be oppressive in several crucial respects. It would be wrong to put it down to institutional inertia alone. Instead of trying to change the inherited oppressive machinery, the PA Government has rather used it. It has used it to suppress the true extent of violations, and to provide, as it were, props to support its claims of an excellent human rights record.

On Vesak day, 8th May, this year, the first anniversary of the massacre was observed with a *hartal* (complete stoppage) in and around Batticaloa. The observance had enormous propaganda value. Tamil children being taken to view Vesak decorations was symbolic of reconciliation. However, ten of them were massacred by soldiers who were not restrained even by an occasion sacred to them, and the Government covered it up. It is against such an atmosphere that one-sided slogans about '*Crimes against the entire Tamil motherhood*' are given publicity by Tamil opinion makers.

At the same time the Tamil newspapers operate in a ghetto where they, quite legitimately, report at length on violations by the State that receive scanty coverage in other newspapers. They use this as a pretext for a righteous indignation where they justify the LTTE and attack those who question it as traitors and quislings. The Tamil people have thus been prevented from questioning their own sepulchral leadership. The few who dare to do so are marked and picked off by the LTTE when a suitable pretext arises.

There are thousands of examples; we take up one that should be recorded. Cheliyan Perinpanayagam of Batticaloa was a journalist and Tamil literary figure. At the height of state terror in the early 1990s, Cheliyan performed yeoman service as a member of the Batticaloa Peace Committee and was involved in documenting disappearances. In this Cheliyan showed himself a man of courage with a concern for his people. Later he took to politics and became mayor of Batticaloa. He was assassinated by the LTTE in the run up to the October 2000 General Elections for which he was a PA candidate. If being a PA candidate were a crime, one only needs to look at the UNP MP for Jaffna, whom the LTTE has nothing against. He made his fortune by proving his resourcefulness in the trade between Colombo and the embargoed North. Cheliyan lived and died a man of very modest means.

Indeed, the people of Batticaloa gave their verdict by electing a PA representative and punishing the TULF. What the LTTE had against Cheliyan must be sought elsewhere. He once poured out his mind: *"Thamby, people here do not suffer only because of killings by the Sri Lankan forces. The LTTE too often kills people for the flimsiest of reasons. Were not they too sons of Tamil mothers? When the LTTE came to Batticaloa in December 1989 with the help of the Sri Lankan Army, as the Indians withdrew, they killed 300 Tamil youths. They were innocent boys, mainly TNA conscripts. Their bodies were taken away in municipal garbage trucks. It was so tragic, so painful."*

These are events in the history of its innate sadism which the LTTE would like to suppress. A fault in Cheliyan from the LTTE's point of view is that he had a conscience. The LTTE would have known from its informants a long time ago that Cheliyan reflected in this vein, and was hence a 'traitor'.

The outcome is that the ordinary Tamil people are silenced by a process involving both the State and the LTTE. The former in a way that is mindlessly arrogant for transient ends, but the LTTE in accordance with a set agenda. This being so, the practical way out of this embroglio, appears in the first instance, to push the State to observe a rigorous respect for human rights. That will place far clearer options before the Tamil people.

## **8. Human Rights Monitoring: The Challenge**

Based on hindsight, when a major violation by the security forces occurs, the Government's first line of action seems to be denial by the Deputy Defence Minister. In the event that the pressure is persistent, the President steps in and orders a controlled inquiry. Although this creates a dilemma for the Human Rights Commission that is appointed by the President, it need not be, and one trusts that it is not, bound by such constraints. Unlike other groups whose activism is *ad hoc* the HRC has the institutional stature and the resources to make a benignant impact. The challenge of human rights activism is to understand the process - the fatal conjunction - through which human rights are violated, and to counter that process. This as we have pointed out has to be done by challenging primarily the State.

It is in this spirit that some questions have to be placed before the HRC. We understand that the HRC did not go into the Vesak Day tragedy in Batticaloa because the recorded evidence was contradictory and they feared becoming conveyors of LTTE-instigated propaganda. But such an approach would cripple the HRC. It would amount to an admission that they are unable to make judgments and penetrate behind the reality of the Tamil community. This the London-based Amnesty International has done quite successfully, and has hardly ever been proved wrong. This also means that the HRC has not been able to find reliable local contacts. The Batticaloa Peace Committee (BPC) has after all built up its credibility over many years as a mine of reliable information.

It was the BPC working with international organisations that pursued the Sathurukondan massacre of 9th September 1990 where 184 villagers were massacred. Comparatively, the material evidence was slim. There was only the direct testimony of a confused and traumatised villager who survived the massacre with grievous injuries. Apart from this, there was testimony from other villagers who were witness to the Army taking away the victims. The Army destroyed the evidence when Amnesty International pressed the Defence Ministry for an inquiry. However, the Human Rights Task Force under Justice Soza in 1993, and the North-East Disappearance Commission headed by Justice Palakidnar in 1997, heard evidence and accepted the massacre as a fact. Both named some of the officers involved. We too spoke to several of the bereaved villagers in 1991 (our Report No.8).

By comparison, as we have pointed out, the material evidence for the Vesak Day massacre is strong. If the HRC does not look into it, some future commission is likely to come along and find that the Army was responsible. If Fr. Jeyachandran's testimony recorded by the Police in Colombo Hospital is a problem, a Commission can always ask Bishop Swamipillai or Fr. Miller what he had told them immediately after the massacre from Batticaloa Hospital, and make its judgement.

In some notable respects the situation today is an advance on that which prevailed ten years ago. At least, rather than recording massacres and disappearances alone, we are talking about shortcomings, indeed grievous ones, in the legal process, because in most cases now there is one. For example, disappearance of the two women mistreated in Mannar would have been more convenient for the CSU. As with the Jaffna disappearances, a government can go on looking for missing persons until they are out of office and play innocent as the UNP has done. Today there appears to be some inhibition against disappearance or outright murder. But, when murder did take place, as with rape victims Sarathammal and Carmelita who did not live to testify, the Government's response has been far from convincing (see our Bulletin Nos.: 21 of July 1999 and 22 of January 2000) .



Nevertheless, how much credit for improvement can be given to the PA government is uncertain because of its obstructive approach. Even the earlier UNP government from about 1992 had to implement measures to safeguard human rights. The issue of receipts for arrest had been quite firmly established when the PA came to power. The next step was to bring in penalties for the failure to issue receipts. However, during the mass disappearances in Jaffna no receipts were issued although people asked for them. This meant that an order had been passed down from the top not to issue receipts. There is today a gap between the work of commissions that looked into disappearances during the UNP era and the present work of the HRC. The disappearances in Jaffna in 1996 have not been gone into.

The HRC cannot ignore it. The HRC must at least submit a preliminary report and call for the appointment of a separate commission. The testimony collected from the accused in the Krishanthi Kumarasamy case by Mr. T. Suntheralingam, a member of the earlier Human Rights Commission, has not been pursued. We need to place on record who orchestrated these disappearances and who gave instructions not to issue receipts (see our Special Report No.12). The families in need of relief should not kept waiting any longer.

A particular problem concerning safeguards is that given the discretionary powers enjoyed by security officials, legal accountability can be overridden and restored at pleasure as happened in Jaffna in 1996. We have seen magistrates and medical officers too easily succumbing to their will. Thus important links in the legal process have become fragile. It requires positive remedial action to restore the autonomy of their roles. The needless and mindlessly bureaucratic controls exercised by security officials over the movement and residence of Tamil civilians should be examined carefully. Such measures should not discriminate against one community.

The State has become so heavy-footed in its dealings with the Tamil people that there is an alarming absence of reciprocity or even courtesy. The *Daily News* quoting Police HQ reported on 14th June that the security personnel identified in the rape of Sivamani and Vijikala could not be produced in court in Mannar on 24th May because the CID after its fashion discovered an LTTE plot to kill the suspects. As though to thicken the 'failed' plot, the Police added that two Tigers had come to town and asked a police woman if the suspects were being brought to court. The police woman with singular presence of mind answered that she did not know! Mannar town is no less secure for judicial proceedings than any other town under government control. At this rate the security forces can argue that they cannot stay in Mannar because there is a threat to their security! Has anyone in the Government raised a single query of concern for innocent Tamils who are detained and shoved from one place to another without any concern for their welfare or security? Indeed, a large number of them have been killed, tortured and raped in police stations and army camps, and massacred even in a rehabilitation centre. In several important areas there is no reciprocity and the Tamils have no rights, no justice. To the practical man, the Mannar case is closed.

This is again part of a pattern. The first thing to have done after the Bindunuwewa massacre of 25.10.00 was to interdict the SSP whom the HRC found to have been telling tall stories. This was not done. Again the delay in judicial proceedings was inexplicable. The Foreign Ministry press release cited earlier reported the disclosure by the Attorney General and DIG CID on 11.5.01 that the assistance of a foreign laboratory had been sought '*to conduct DNA tests to scientifically ascertain the identity of some (our emphasis) of the victims*'. This was a novel ruse in Sri Lanka's legal history. There was no shred doubt about who the 27 victims were and the testimonies of survivors had been compiled exhaustively. Then a state radio bulletin on 2<sup>nd</sup> July 2001 (8 months after the event) said that it has been decided to send blood samples to India for DNA testing to expedite the case. So uncharacteristically meticulous!

In Colombo, a Tamil going to a police station to register, can go through the experience of being interrogated at length in public view by a police sergeant, and being finger-printed, like ordinary criminals and drug peddlers (*kudu karayas*) who are routinely brought in. Sometimes the police officer rubs it in by dividing his attention between the two categories. The landlord of the Tamil is warned to be responsible for the good behaviour of his tenant or face unpleasant consequences.

This procedure gives no respect to position. This is just the surface of attitudes that betoken far graver abuses. We recently had the case of a 27 year old Tamil woman whose case came up before the Supreme Court in March. She was badly tortured at Negambo police station, first by being severely assaulted by policemen, and then having an object coated with chillie powder inserted into her vagina. Since then similar mistreatment of two women at Bambalapitiya police station in the heart of Colombo has come to light. Then in the night of 23<sup>rd</sup> June, 3 soldiers and 3 policemen took for questioning a Tamil woman, whose address they had obtained when she passed a checkpoint in Colombo's commercial district a few hours earlier. They then gang-raped her at the checkpoint and threatened her with death should she report it.

A related matter that may escape attention in the case of the two mistreated women in Mannar is the question of the detention order. In this instance her detention order appears to have been signed by a superior officer - even the SP was covering up. The officer issuing the detention order should be identified and punished in the event of the detainee being tortured. The frequency of abuse calls for strong measures. What happened in Mannar is important, because it gives the clearest evidence of the implications of the system. Its inherent brutality transforms into black comedy when the magistrate accedes to the request for continued detention of the victim, after he is presented with proof of gross mistreatment without a shred of evidence of the victim's guilt.

However, after 20 years in this school of burgeoning disaster and losing their ability to think, the security forces would insist that they need more impunity to fight terror. Ironically, the PA government that has been more committed to a political settlement than its predecessors, would have been in a far stronger position to deal with the LTTE, had it been more firmly committed to human rights.

One of the reasons for the present impasse is the Government's inability to discipline itself. A number of times since the Joel Pera murder of 1997, the Government has used the Police to shield the transgressions of its members and cronies. Notable here are election abuses and the problems of the Deputy Defence Minister's son. How can the same Police act as a thinking force when dealing with Tamils? Finally, we deal with the implications of these developments for peace.

## **9. Implications for Peace**

Many who have lost faith in this country's ability to solve its problems have started speculating on a foreign or Western conspiracy behind this country's ills. The Norwegian peace effort too is seen in this light. However, we can blame only ourselves for our failure to advance two essential remedial measures. One is our failure to uphold human rights, and the other, the failure to implement an acceptable political settlement. The UNP's undermining the PA government's constitutional proposals was a piece of short-term opportunism that will not take them anywhere.

Without these essential measures, the political battle for a united Sri Lanka is lost. Once that is lost, the military effort too would in time run aground. An army that finds itself fighting without a clear objective, merely having to go on until someone puts a stop, and resented by the people

whom it is supposed to protect, would lose its morale. Having lost faith in their task, officers and defence officials would remain contented making hay while the sun shines. Several of the incidents above show the effects of this demoralisation.

What talks under the present dispensation hold out for the Tamil people is contained in one outstanding fact. Both parties have formed a common interest in suppressing investigations into violations. Two sets of graves were uncovered in Jaffna during the period of the Chemmani excavations in mid 1999, the other set being in Duraiappah Stadium. Today there is a mutually congenial silence on both. Whoever was responsible for the skeletons at the Stadium, the LTTE does not want skeletons being dug up.

So far there has not been the slightest hint that human rights and democracy for the Tamils will play any role in the Western-backed talks between the Government and the LTTE. It is a singular pathology of these talks that the Tamils have to worry about the standing of the Government. Whether the Government is good, bad, reasonable or unreasonable would all be largely immaterial if the LTTE were a liberation group with its credentials to negotiate on behalf of the Tamils not in question. In their own contexts, no one questioned the ANC's and the PLO's credentials to negotiate. These groups were mass-based structures. Whence the international recognition they gained was not based on their political claims alone. Despite the violence of their struggles, being mass-based, their political arms retained the capacity to assert ascendancy. The LTTE on the other hand asserted its ascendancy via terror within its own community and is politically vacuous.

It is the Government's poor standing that has enabled the LTTE to hide its true disposition and pass itself off as the one and only representatives of the Tamil people. Mahattaya (see 6 above) was not trying to be sensational when he said that only 5% of the Tamil people support the LTTE. He and all other LTTE leaders knew right along that the people had rejected them and only fascist coercion can maintain a show of support.

As to what the LTTE wants from negotiations is confirmed by what journalists have heard from LTTEers who have recently been captured by the Army. Children in the age group 13 to 15, some of them forcibly recruited, had been told as an inducement that they need not face the Army. What they need to do is to destroy the Army with artillery from a distance and walk in! From the testimony of a girl of 15, she and the 3 others who joined from the same school after a propaganda meeting desperately wanted to get back to their mothers. They had been planning to desert. The other 3 had succeeded. A boy of 14 forcibly recruited into the elite Charles Anthony Brigade had deserted 12 times and was 12 times brought back. In the so-called Border Force, adult men with enforced rudimentary training had been forcibly parted from their wives and mothers and placed on the frontlines as sitting ducks. These reflect the same trends reported in our earlier bulletins. These are crimes against humanity by any standard.

Clearly, what the LTTE wants from negotiations is to be allowed, as the minimum, free movement in the army-controlled areas, especially Jaffna, to apply its well-known coercive methods and recruit young persons. One argument adduced in favour is that in a cease-fire backed by the Western nations and India, foreign monitors will be here to prevent abuses.

The TULF vocally advocates a Western-backed ceasefire and has accused the Government of betraying the Tamil people, even after shamefully reneging on its support for the Government's constitutional proposals last August.

The question was put to a senior TULF leader, *"If you let the LTTE into Jaffna under a ceasefire and they start abducting dissidents and taking away children from schools, who is going to*

*inform the foreign monitors?"* The leader replied that civil society has to rise up to the occasion and play the role. He was asked, *"What civil society is there left among the Tamils? Even you, the leading Tamil party, have been unable to issue a statement stating that your Batticaloa MP Nirmalan Soundaranayagam was murdered by the LTTE. How can you expect people living among the LTTE to report its abuses?"* The leader said quietly after a pause, *"Yes, many of our leading members were killed by the LTTE, but we have not said so."* When monitoring by civil society was acknowledged as impractical, a suggestion came from the same quarters that Military Intelligence could inform the foreign monitors!

One could hardly find a more novel description of the plight of the Tamil people. Here we have the tragicomedy of veteran Tamil nationalists envisaging a replacement of Tamil civil society with the 'enemy's' Military Intelligence.

The TULF clearly know what would happen if the LTTE were turned loose and have absolutely no idea on how to prevent it. Their public positions are utterly irresponsible by the Tamil people they claim to represent. Do Norway and the other Western nations or India have any better ideas up their sleeve? We think not. Allowing the LTTE into Jaffna will be murder - blue murder. It will end up with the monitors washing their hands and a new and bloodier round of war.

Dealing with and monitoring a group whose existence crucially depends on continued violations has to be clearly thought out. Two recent instances exemplify this. On 8th November 2000 the LTTE murdered Soundaranayagam who received the largest preference vote in Batticaloa. Pro-LTTE elements pointed at the Government as the killer. Tamil journalists and the TULF knew, but said nothing.

The LTTE has long resented the work of Christian ministers from the independent church groups, particularly in areas under its control. Their upholding pacifism as integral to the Gospel message has threatened LTTE recruitment. In a first move of its kind, the LTTE in the company of local thugs went to the house of Sivanesarajah on the night of 2nd May and took him out. He was beaten, cut with a mamotty and shot dead. Sivanesarajah (21) was the leader of a local church group of the Assembly of God in Panichchankerni, near Vakara, and had ignored LTTE-backed threats to stop holding meetings. Other church leaders decided not to talk about it, and the murder of a leader in this very backward area remained suppressed for more than a month. The LTTE has succeeded in making people believe that silence is the most judicious means to dealing with them, or it might get worse.

The problem in this country has been so badly mishandled that there is no guaranteed road to peace. There is no doubt that we all want an end to war, but that does not mean that we should turn our back on hard-won experience. Agreeing to temporary ceasefires without taking into account the reality within Tamil society, and without any hold on the LTTE to ensure its movement towards political negotiations, is a recipe for disaster.

The challenge of achieving peace and upholding human rights straddles many crucial issues and dilemmas. There is no simple formula at hand and the debate goes on. The argument that an emphasis on human rights would prolong the conflict and not achieve peace is advanced at one end of the spectrum. It is argued at the other extremity that ignoring human rights in the interests of peace-at-any-cost will lead to instability, through keeping the baneful tendencies intact. This happened in Sierra Leone. We do accept that in the real world politics is not governed by higher values and conflicts are manipulated by many vested interests. But we do hold that violations by state forces, and for that matter by non-state forces, fall into a variety of qualitative levels. The qualitative nature of the state, or non-state, force in question needs to be understood clearly to influence it or to make it accountable. Nor could there be meaningful conflict resolution without

such understanding. Our own elucidation of the nature of the LTTE and the political character of Tamil civil society is not done with any malice. The challenge of advancing human rights needs to take account of the salient socio-political factors that influence human behaviour and its creative and destructive potential.

The environment among the Tamils is one where many who resist the collective debasement of humanity and advance healthier political alternatives are silenced by the LTTE's terror. Even more, they are frequently devalued and disregarded by those who profess fidelity to human rights, democracy and peace. The core internal issues that are crucial to the survival of the community are not touched by the Tamil media, which like all other sectors has made a virtue of playing extremely safe. Even most international monitoring organisations and media watchdogs, who are blind to the extent of internal terror, treat every item that makes news in isolation. Hence the crippling dynamism of internal terror, which also disfigures reality, is given the status of a legitimate expression of an oppressed people.

Human rights activism must thus address and challenge the conjunctive process of violations by both the State and the LTTE. It must also work towards changing the political and ideological milieu of the two communities that has made peace a mirage.

We could say with certainty that the promising first step is to force the Government to clean up its act and be seen to stand up for higher principles. If that cannot be done, there is little hope. At the same time it would be a grave error to gloss over the qualitative distinction that marks LTTE's politics. It is synonymous with the suicide cult, child soldiers, and war and devastation without end.

In view of this reality, the other nations who have taken it upon themselves to restore peace in this country have a duty to make it clear that they are committed to democracy and human rights for the Tamil people. Further, if they advance a particular course as a risk worth taking, would they share in the risk themselves?