

## **Report of the Special Rapporteur on Conflict Related Human Rights Violations**

### *I. Introduction*

There was an escalation in violence in the country during the months of November and December 2005. Consequently there were allegations of human rights violations such as arbitrary killings, rape, harassment of persons during cordon and search operations, unlawful arrests and detention of persons both in the North and the East and to a lesser extent in the other parts of the country.

The Human Rights Commission (HRC) realizing the fact that its present cadre is inadequate to cope with the problems consequent to such incidents, thought it fit to appoint a Special Rapporteur with a team of two others to look into such incidents and advise the HRC on the measures that need to be taken to protect the rights of persons; to gather evidence from whichever sources possible in connection with such incidents and monitor compliance by the police and security forces with human rights norms; to guide the Regional Co-ordinators of the HRC in the North and East and to submit periodic reports to the Chairperson of the HRC.<sup>1</sup>

The Special Rapporteur and his team were appointed with effect from 1st January 2006 for a period of three months ending 31st March 2006. During the first month the resources made available to us were limited in spite of which we were able to collect information on the incidents by making formal contact with various officials in the field. An office was provided for us with effect from 1st February 2006, but the necessary office furniture and the staff were not available till about the end of the first week of February 2006 when an Investigating Officer and a Secretarial Assistant were made available. But it took one more week for the office to be operational with the provision of the necessary office equipment.

### *II. Activities*

The Regional Co-ordinators of the HRC in the North and East were summoned for a meeting at Anuradhapura on the 29th of January 2006 to brief them of the functions of the Special Rapporteur and to seek their co-operation in collecting information on incidents of conflict related human rights violations. They were also given guidance on how they should handle such cases. Mr. N. Selvakkumaran, the Board Member of HRC in charge of supervising the work of the Investigation Division, joined us at the meeting.

On 2nd February we attended a Board Meeting of the HRC where the Chairperson briefed us on their expectations and we informed them of the manner in which we proposed to proceed with our work.

On 20th February we had a meeting at the UNDP where the Senior Adviser on Human Rights to the UN Country Team was made aware of the constraints under which we were functioning.

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<sup>1</sup> Vide *Annex I - a copy of the Press Release of the HRC announcing the appointment.*

Subsequently on 23rd February 2006 we had two meetings, one with some of the local NGO's and the other with a representative group of International NGO's to discuss issues relating to our task and seek their co-operation in our efforts.<sup>1</sup> It was conceded that with the limited resources at our disposal we will not be able to deal with all the conflict related incidents. So it was decided that we would deal with high profile cases and allow the Regional Co-ordinators of the HRC to deal with the other cases. Among the matters discussed with the local NGOs was the need for the HRC to make its presence felt in regions such as the Mannar district where quite a number of violations had taken place in the recent past and no officials from the HRC had gone there to hear their grievances. Hence we decided to pay a visit to Mannar on 3rd and 4th March 2006 and meet the Civil Society Organisations and gave them a hearing. Following this meeting we met the Superintendent of Police and heads of the Army and the Navy in the region. A report on the responses we received from them was sent to the Citizen's Committee of Mannar.<sup>2</sup>

### III. *Cases Investigated*

Based on the information we were able to collect from the Regional Officers, a list of 30 conflict related incidents were identified as those that need investigation.<sup>3</sup> Out of this list 13 cases were chosen for prioritized consideration.<sup>4</sup> This list included the abduction of some members of the staff of the Tamil Rehabilitation Organisation, the killing of five students near the Beach at Trincomalee, the rape of a 20 year old girl at Pungudutivu, the killing of Muslims at a mosque in Akkaraipattu, and, the murder of the Divisional Secretary of Kattankudy. These investigations were conducted expeditiously in respect of these incidents as they were high profile cases. Our reports on each of these incidents set out below -

#### (a) **Abduction of Tamil Rehabilitation Organisation (TRO) Staff**

The Executive Director of TRO made a request to the Human Rights Commission on 6<sup>th</sup> February 2006 to investigate the abduction of members of their staff on the 29<sup>th</sup> and 30<sup>th</sup> January 2006 on their way from Batticaloa to Kilinochchi. At the incident that took place on the 29th, five members of their staff including the driver had gone missing. Three of them - Ms. S. Dosini, a pre-school co-ordinator and two pre-school teachers- Nadeswari and Sivamathi, were among the abductees who had later been released and had returned to their homes in Batticaloa. K. Ganeshalingam, the Secretary of the Pre School Education Development Centre of the TRO and driver Thangarasa are still missing.

We were told that two of the abducted persons who had been released, namely, Nadeswari and Sivamathi were available at the office of the TRO in Colombo for questioning. They were said to be scared to travel about in Colombo. So we decided to go to the TRO Office in Colombo and conduct the inquiry.

Mr. Ganesharuban, an officer of the TRO who had taken the released pre-school teachers- Sithravel Sivamathy and Punniyamoorthy Nadeswari from their homes, to the Batticaloa police station to lodge a complaint about the abduction before they were

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<sup>1</sup> Vide Annex II - A list of those who attended these meetings .

<sup>2</sup> Vide Annex III – A copy of the Report sent to the Citizens' Committee of Mannar.

<sup>3</sup> Vide Annex IV – A List of incidents identified for investigation.

<sup>4</sup> Vide Annex V - A Prioritized List of incidents.

brought to Colombo was present at the TRO Office along with Ms. Gunamathy Subramaniam, Attorney-at-law who had appeared for the TRO at the Batticaloa police station.

From the statement made to us by the released teacher Sithravel Sivamathy it appears that she and the other teacher Punniyamoorthy Nadeswari were to have travelled the following day 30<sup>th</sup> January 2006 by bus to get to the TRO office in Kilinochchi for a workshop that evening. Since a TRO van was going to Vavuniya on the 29<sup>th</sup> evening, Dosini the pre-school co-ordinator had asked them to join her in that van. This van had set out for Vavuniya from Navatkuda in Batticaloa at about 5.45 p.m. on the 29<sup>th</sup> with K. Ganeshalingam, Secretary of the Pre-School Education Development Centre, Dosini pre-school co-ordinator and the two pre-school teachers Sivamathy and Nadeswari. The driver of the vehicle was Thangarasa.

It is in evidence that Ganeshalingam had to meet someone on the way and thereafter they had reached Welikande around 7.45 p.m. Most of the passengers had been sleepy during the journey. The driver of the vehicle was not familiar with the route to Vavuniya. At junctions he had been asking Ganeshalingam, who was in the front seat, for directions on which road to take.

Sivamathy stated that after passing the Welikande check point the road was “bumpy and full of ruts”. Therefore the vehicle had to travel very slowly. After about two hours of travelling from the Welikande check point the vehicle had been suddenly stopped by masked men who had come in a van. They had got into the TRO van with weapons, blindfolded, gagged and tied up all those who were in the TRO van. The driver and Ganeshalingam had been put into the rear of the vehicle and the vehicle was driven away. She stated that as they were being blindfolded, the abductors had asked those in the front seat as to why they came along that route.

Sivamathy and Nadeswari stated that they were first taken to a bunker with sand bags and then to a concrete building where the blindfolds of the females were removed. Their bags and jewellery were removed by the abductors. The males continued to be blindfolded and tied. Later they were taken to a separate room in the same building. They had heard Ganeshalingam and Thangarasa being assaulted while being questioned. Though the females too were questioned they had not been assaulted. They had been photographed and told not to talk to each other.

The following morning the bags and the jewellery of the females had been returned. They were given food to eat. They had noticed the words *Eela Makkal Viduthalai Puligal* written in chalk on the door of the room. At about 4.30 p.m. the following day, Dosini was taken to another room while the two teachers were asked to get ready, to be released. They had then been taken in a van to the main road at about 9.00 or 9.30 p.m. and put into a bus to Batticaloa.

This evidence was corroborated on all material points by the other witness Punniyamoorthy Nadeswari who was kept elsewhere in the building, while Sivamathy was making her statement. While the evidence of these two teachers were being recorded

Ganesharuban, the TRO officer and Ms. Gunamathy Subramaniam, the Attorney at Law were present at the place where the inquiry was being conducted at the TRO office.

An assessment of the evidence of these witnesses indicates that the van in which they had left Batticaloa to go to Vavuniya had been driven by a driver who was unfamiliar with the route. He had strayed into a by -road “full of ruts and pot holes” after passing the Welikande check point. The road from Welikande to Polonnaruwa is reasonably good and it takes less than an hour to cover this distance. The fact that the van in which the TRO officers traveled had taken about two hours from Welikande to get to the point where they were abducted, confirms this contention that they had strayed possibly into an uncleared area. That area was perhaps controlled by an armed group. The first question asked from those in the front seat had been, ”Why did you come along this route?” That again indicates that the van had gone through a road other than the Batticaloa /Polonnaruwa Road.

Dosini who had been released subsequently was said to be in Batticaloa. She had expressed fear of travelling to Colombo. Attempts to arrange safe transport for her through ICRC were not successful. So we had to get our Investigating Officer at the Batticaloa office of the Human Rights Commission to record Dosini’s statement and forward it to us. Her evidence is basically the same as the evidence of the other witnesses except that at crucial moments she appears to have been asleep.

Taking the evidence as a whole, it appears that the TRO officials who traveled in the van to Vavuniya on 29<sup>th</sup> of January 2006 had taken a wrong turn at some point after passing the Welikanda check point and had driven along a road leading perhaps to an uncleared area where an unknown armed group had stopped them and abducted them to find out why they had taken that route. After questioning they may have been convinced that this group of TRO officers had mistakenly strayed into this area. Of the five persons in the vehicle, the three who were released are persons from Batticaloa . Of the other two – Ganeshalingam is a man from Jaffna educated at the Mahajana College , Tellipalai. The driver Thangarasa is from Kilinochchi which is in the North and had been a farmer until 21<sup>st</sup> January 2006. Thereafter he had been employed as a driver in the TRO, just about a week before his abduction. The Tamilnet website confirms this information. The fact that the persons who were released were from Batticaloa and the others detained are from the North indicates the possibility of an anti- Jaffna armed group being responsible for the incident.

On 30<sup>th</sup> January 2006 another incident had taken place during which five other members of the TRO staff are said to have been abducted and are still missing. The Special Rapporteur could not proceed to conduct any inquiries into this incident yet. .

**(b) Killing of five students at Trincomalee**

At about 7.30 p.m. on 2nd January 2006, there had been an incident of a grenade being thrown at some students at the Trincomalee Beach. Following this there had been shooting by the security forces. Consequently the following had died -

1. Shanmugarajah Sajendran

2. Thangathorai Sivanandan
3. Manoharan Ragayar
4. Lohithadasan Rohan
5. Yogarajah Hemachandran

Pararajasingham Kokularaj and Yoganathan Pooncalalon had been injured. All of them were students who had gathered near the Gandhi statue that evening for a chat. The statements of the injured had been recorded at the Trincomalee Hospital where they received treatment. Kokularajah had stated that at about 6.50 p.m. all the above mentioned deceased, the other injured person Yoganathan and he had gathered for a chat. Kokularajah was facing the Dockyard Road and chatting when he felt a vehicle approaching them. Within seconds he had heard a bomb exploding. He was injured on the head and had fainted. Yoganathan Pooncalalon corroborated the statement of Kokularajah. However he had seen a green coloured three wheeler coming towards them. A grenade had been rolled in their direction from the three wheeler. When he attempted to run away it had exploded. He saw the three wheeler fleeing towards the fort after the grenade exploded. As a result of the explosion Kokularajah, Sajendran, Sivanandan and he, were injured. He could not move as his leg was injured. Kokularajah had fainted. His head was injured. In a short while, a jeep had arrived with about 10-15 persons in military uniform. He is not sure whether they were from the army, navy or the STF. They had then put the injured into the jeep and assaulted them with the butts of their weapons. Thereafter they were pushed out of the jeep. Then he had heard several gun shots. Bullets hit him on his thigh and the back of chest. He lay flat with his eyes closed. In a little while there was silence. He could not move due to the injuries. Shortly thereafter the police arrived and took the injured to hospital.

This incident had taken place not very far from a check point on Beach Road. The navy and the STF were also not very far from this point. It is surprising how a three wheeler that threw the grenade could have come past one check point undetected and got away after throwing the grenade without anyone giving chase to it. Nor had it been stopped at the next check point a little further away within hearing distance of the place of this incident.

It is in evidence that the STF had arrived for duty in Trincomalee on 24th December, 2005. Sub Inspector Ananda Bulanawewa of the Uppuveli Police Station had stated that he had been instructed by SP Kapila Jayasekera to work with the STF.

In his statement SI Ananda stated that he was at the Clock Tower check point on duty from 7 p.m. to 8 p.m. This check point is not very far from the place where the shooting had taken place. He stated that 13 STF officers were present at this check point. They heard a grenade explode on the Beach Road. According to him all of them had then gone towards the Dockyard check point, stopped the jeep there and started walking towards the beach. He stated that they saw a police jeep halted near the Gandhi statue.

Police Inspector VA Sarathchandra Perera had stated that on 23<sup>rd</sup> December 2005 28 persons from the STF had come to Trincomalee on the orders of K.H. Jayaweera, Superintendent of Police. These 28 included 1 Inspector of Police, 2 Sub Inspectors of Police, 1 Police Sergeant, 22 Police Constables and 2 Police drivers. They were staying at the old Police station near the Urban Council. On 2<sup>nd</sup> January 2006, 13 of them were on duty near the Clock Tower. They were all wearing STF uniforms and were armed. He stated that on hearing the grenade explode they had rushed to the spot on the beach and saw seven persons, some of whom were injured. He stated that there is another check

point about 75 meters away. Two Police jeeps had arrived from that side. On 6th January 2006 the STF had been ordered to leave Trincomalee.

Reserve Police Sergeant H.P.D. Upali Gunewardana of the Harbour Police had stated that 3 or 4 minutes following the grenade explosion he heard gunfire. At that time he was on duty at the UC Junction check point which is about 100 meters away from the Pedurukotuwa Junction which is near the beach.

The statements of these Police officers indicate that the place of incident is between two check points and the STF were the ones who first arrived at the scene of the grenade blast. IP Sarathchandra speaks of seeing seven persons at the site, some of whom were injured. When the Harbour Police arrived they had dispatched all seven to the hospital. The JMO had reported that the five killed at the incident had died due to gunshot injuries. Of them, three had been shot on the head. The two, who were injured, also had bullet wounds. The Magistrate had concluded that the deaths were due to gun fire.

Thus it would be seen that though the evidence of the STF personnel who arrived at the scene almost immediately after the grenade explosion do not speak of having fired any of their weapons, the Police who arrived immediately afterwards and dispatched the dead and the wounded to the hospital. It is therefore hard to imagine that anyone other than the STF could have shot those who were at the Gandhi Statue. This is also confirmed by the evidence of Yoganathan Pooncalalon who stated that about 10 to 15 uniformed persons arrived soon thereafter. They had then put those who had been injured into their jeeps, assaulted them with their weapons while they were in the jeep, and then pushed them out of their jeep. Soon thereafter he had heard repeated gun shots two of which struck him on his thigh and back of chest.

Dr. Manoharan, the father of the deceased had received a telephone message from the mobile phone of his son Ragayar, that the security forces who had arrived at the scene after the grenade blast, were making him and the others who were with him to kneel down and that they were pleading with the security personnel not to shoot them. Dr. Manoharan who had arrived at the scene soon afterwards had been stopped at the check point near the beach and prevented from going to the rescue of his son. He speaks of having heard the pleading of his son and then gunshots a few minutes later, which killed his son and the others.

Following this incident the security forces had issued a statement to the press that seven tigers who had attempted to throw a grenade had been injured as the result of the grenade exploding in the hands of those who brought them. As the result of the explosion five had died and two had been injured. This story was proved to be false when the Judicial Medical Officer who conducted the postmortem examination reported that all those who died had gunshot injuries. The JMO Dr. Gamini Gunathunga, who deserves to be commended, had stated in his report that three had gunshot wounds on their heads while two had been shot on their chest and abdomen. Though the Magistrate had ordered that the bodies be released to their families, there had been some delay in releasing the bodies. The people of Trincomalee had been enraged by these incidents and had observed several days of mourning for the dead students. There had also been a hartal.

The inquest proceedings and the photographs of the deceased that appeared in the Tamil Newspapers – the *Metro News* and the *Sudar Oli* on the 9<sup>th</sup> of January, 2006. This brought to public knowledge the manner in which the killing had taken place. This enraged the Tamils who continued to mourn these deaths. These pictures had been taken by Subramaniam Sukirtharajan, a correspondent of the *Sudar Oli* newspaper. On 24th

January 2006 he was shot dead near the ICRC office which is in the High Security Zone of Trincomalee.

President Rajapaksa had also initiated a probe into the killing of the students. Even Amnesty International had issued a statement condemning the action of the security forces in respect of these killings. It is hoped that probe ordered by the President will result in bringing to light the manner in which the incident took place and identifying the perpetrators. Thereafter action has to be initiated to deal with the miscreants who had tarnished the image of the government and placed obstacles on the President's efforts to bring peace to the country.

(c) **Rape and Murder of Elayathamby Tharshini**

On 19<sup>th</sup> December, 2005, S. Ratnapoopathy complained to the Regional Office of the Human Rights Commission in Jaffna that her daughter Elayathamby Tharshini, aged 20 years, of Ward 7, Pungudutivu who left home on 16<sup>th</sup> December, 2005 to go to a relatives place nearby had not returned. She alleges that her daughter had been abducted on the 16<sup>th</sup> of December by the Navy. Her body was found on the 17<sup>th</sup> December in a deserted well with stones tied to her legs and waist. She had been raped and murdered.

When Tharshini failed to return home on the 17<sup>th</sup> of December, her relatives had started looking for her. They found one of her slippers not very far from her home on a path leading to the Navy Camp nearby. Later in the evening some boys from the village had found her body inside an abandoned well. Her relatives who went to the site had found a hat worn by navy personnel placed on a palmyrah trunk near the well around which there were some boot marks. They also found a blood stained palm leaf near the well. Tharshini's under garments were also found nearby. They had been cut to pieces. That night the people of the village had guarded the well with the body in it. The following day the Magistrate of the area had been informed of the incident and the villages took out the body from the well in the presence of the Magistrate. The security forces and the Police had not been allowed by the people to get near the well. The body was then taken for a postmortem examination along with the stones that had been tied to her legs and waist. The Judge had ordered the Grama Niladhari of the area to take all the items found near the well and produce them at the Kayts Courts.

The postmortem examination conducted by the Judicial Medical Officer of the Teaching Hospital in Jaffna had confirmed that Tharshini had been raped and killed. She also had bite marks on her face and lips. There were also stab injuries on her hips and chest.

When her body was being taken after the postmortem for the funeral rites the armed forces personnel had attempted to put sacks of rice and sugar in the vehicle in which the body was being taken to placate the mother who had refused to accept them.

Subsequently the CID had arrived for investigation and had found the braces used for Tharshini's teeth, close to the place where one of her slippers had been found. Her other slipper too was found further down the foot path leading to the navy camp. A navy

key tag was also found near about that place. The CID is continuing with its investigations.

It was alleged that the villagers who assisted in the recovery of Tharshini's body had subsequently been threatened by the security forces personnel not to give evidence. The protests against the security forces spread to the other parts of the peninsula. The security forces started retaliating against the protestors. A crowd of protestors had been fired at and a postal peon had been injured. The Jaffna University students who had wanted to join the funeral along with the Member of Parliament for Jaffna had been prevented by the army from leaving the Parameshwara Junction in a procession. On 19<sup>th</sup> December the University staff and students had decided to lodge a complaint at the SLMM office. While they were proceeding to do so the security forces had prevented them from getting to the SLMM Office. During the clash that ensued, about 15 persons had suffered gunshot injuries and contusions caused by assault with blunt weapons.

Besides the alleged rape and murder of Tharshini, the action taken by the security forces to prevent protestors proceeding to the SLMM is an attempt to suppress a democratic right of the people to protest against injustice.

The fact that Tharshini's slippers were found along the path leading to the navy camp at two different places indicates that she must have been carried along the path to the camp after being abducted and the slippers had come out at different points when she had struggled while being carried away. The bite marks on her face speak of the brutality of the rapists. The navy cap and the key tag found in the area are also significant clues. These clues suggest that Tharshini had been abducted, raped and murdered probably by Navy personnel from the adjoining Navy Camp in Punguduthivu. The inquest in this case is not over yet. Hence it had not been possible to peruse the evidence led at the inquest proceedings in the Magistrate Court at Kayts.

( d ) **Killing of the Kattankudy Divisional Secretary**

The Kattankudy Urban Council Division has 21,370 voters. A vast majority of them are Muslims. A large number of Muslims from the villages of Ullikulam, Keechampalai, Manmunaithurai and Paalamunai had been displaced during the conflict that started in 1990. They had taken refuge in the coastal areas of Kattankudy. They were displaced for a second time by the tsunami in December 2004. They had therefore to be accommodated in the already overpopulated areas in the interior of Kattankudy. The Divisional Secretary of Kattankudy had to face the problem of looking into the welfare of these displaced persons. In view of the extreme congestion of people in Kattankudy, he could not find suitable places in Kattankudy to re-settle them. The living conditions of the local people were affected by the displaced persons living in their midst. Due to the ban on the re-settling people within 100 meters of the sea in the tsunami affected areas, the Divisional Secretary had to look for alternative places. The displaced people had expressed their consent to a suggestion by the Divisional Secretary to re-settle them in their original villages that border the Kattankudy Division. This idea was also welcomed by the local people of Kattankudy. So the Divisional Secretary Adam Lebbe Mohamed



Faleel had initiated action to re-settle the displaced tsunami affected Muslims in their original villages in the border of Kattankudy. Following this move it appears that the Divisional Secretary has been summoned to the LTTE Headquarters in Kokkattichcholai and warned not to proceed with his plan to re-settle these people in their original villages bordering the Kattankudy Division. The Divisional Secretary had not heeded this warning and had continued to make arrangements to re-settle these displaced persons.

We have also received information suggesting other possible reasons for this killing. It appears that a Tamil staff grade officer attached to the Kattankudy Divisional Secretary's office had been used by the LTTE to take the deceased Divisional Secretary to the LTTE Headquarters in the East for a discussion regarding the funds allocated by the State for the rehabilitation of the tsunami victims. They are alleged to have demanded Rs.5 million to be released to the LTTE for them to carry on the rehabilitation work in the coastal areas in and around Kattankudy. The Divisional Secretary's refusal to accede to this request too is mentioned as another possible reason for his murder.

Prior to this when there were floods in the East, the State had provided funds to the Divisional Secretary for the flood relief work in his area. The Tamil Rehabilitation Organisation has asked for this money for TRO to do this work. This request too had been turned down.

There is also speculation that the LTTE was keen to get rid of the few educated Muslims in the East who are in administrative positions in the area. They are said to be keen to ensure that the key positions in the East are manned by Tamil officers who would readily cooperate with the LTTE in the East. The killing of the Divisional Secretary of Kattankudy is believed to be one in the series of such killings.

At the inquest proceedings two persons namely Aliyar Ansar, a trader from Kattankudy who had been at the Divisional Secretary's office on official business on that day and Mohideen Pitchai Mohamed Asmy, a Data Entry Officer of the Divisional Secretary Office, gave evidence on the manner in which the incident took place on 02<sup>nd</sup> December 2005. The style of the killing and the manner in which the killer escaped in a waiting motor cycle are indicative of the manner and pattern in which other such killings had taken place in East. There is a strong possibility that he had been shot on 02<sup>nd</sup> December 2005, while he was in office for having ignored the warning given by the LTTE. However in the absence of any specific clue we cannot come to any conclusion other than to say that the Divisional Secretary of Kattankudy had been shot by armed persons belonging to one or the other of the armed groups operating in the East.

( e ) **Killings at Akkaraipattu Mosque**

On 18<sup>th</sup> November 2005, a grenade had been thrown into the Jumma Mosque at Akkaraipattu at about 5.30 in the morning by some unknown persons. Four persons died as a result of the explosion. Two persons died on the spot and the other two died on the way to hospital. They are 1. Mohamed Ismail Mohamed Mustapha 2. Mohamed Ismail Mohamed Abubacker 3. Mohamed Aliyar Mohamed Abubacker and 4. Samsudeen Mohamed Ibrahim. Two others Adam Lebbe Mohamed Abubacker and Adambawa Athamlebbe, died on 21/11/2005 and 26/12/2005 in Badulla and Kandy hospitals respectively. About 30 to 40 persons who were praying in the Mosque at that time had been injured.

At the inquest proceedings that followed, seven witnesses gave evidence. All of them stated that the deaths were caused by the explosion of a grenade thrown into the mosque when the people had gathered for prayers at about 5.30 a.m. on that day. Thajudeen Jainudeen, one of the witnesses who gave evidence at the inquest, spoke of seeing two strangers walking up and down, outside the mosque when he came to the mosque early that morning. He had not suspected these people at that time but since they had vanished after the explosion, he believes that they must have thrown the grenade and run away.

Two days prior to this incident two Tamils had been abducted by Muslims and later their bodies had been found in the beach near the mosque. This attack on the mosque is said to be a sequel to this incident. Following these incidents, there had been tension between the Muslims and the Tamils living in the East. Subsequently, a few other killings had also taken place in the East. On 2<sup>nd</sup> December 2005 the Divisional Seretary of Kattankudy was shot dead. On 5<sup>th</sup> December 2005 two other Muslims had been killed in the Kalmunai Division and their bodies were found on the beach. On 27/12/2006 a Muslim Reserve Police Conatable (RPC) and a Tamil RPC had been shot at and the Muslim RPC had died while the other had been injured. Similar incidents had occurred in January 2006 in other parts of the Batticaloa district. All these incidents

indicate that the feelings between the Muslims and the Tamils in that region had been inflamed following the killing at the mosque in the Akkaraipattu area. The police had intervened and had called for a meeting of the religious leaders of the area in an effort to ease the tension.

There is evidence of armed groups moving about frequently in the Batticaloa district. One cannot fix responsibility for these incidents on one group or the other. The only conclusion that could be drawn is that some unknown group or groups interested in straining the relations between the two communities had been responsible for the conflict related human rights violations that took place in the Batticaloa district during that period. The throwing of the bomb into the mosque in Akkaraipattu is one in the series.

It is interesting to note that these incidents ceased with the agreement of the LTTE and the government to meet at Geneva to discuss issues relating to the ceasefire violations.

#### *IV. Observations and Recommendations*

##### Observations

The Emergency Regulations that have been widely condemned by concerned human rights organizations in general and the Presidential Commission on Disappearances in particular as that which facilitated human rights violations in the by the police and the security forces. They are alleged to have abused the powers conferred on them and committed grave violations. Yet, following the killing of Foreign Minister Lakshman Kadirgamar on 15th August 2005 the then government thought it necessary to re – enact the Emergency Regulations on the excuse that there had arisen a need to strengthen the hands of the Police and the security forces to contain the escalation of violence in the country. However subsequent events proved that it did not help in stemming the increase of violence, instead it led to an increase the incidence of human rights violations in the

country in general and in the North and East in particular. Towards the end of 2005 such violations reached alarming proportions.<sup>1</sup>

None of the established human rights mechanisms have been able to effectively check or investigate such human rights abuses which occurred at the hands of both the state and non-state actors. None of these institutions have been able to facilitate justice or provide redress to these victims of human rights abuses. Though international agencies such as the SLMM, the UNICEF, the UNHCR and the ICRC had been receiving complaints of abuses relating to their areas of competence, they could only sound the alarm. The Human Rights Commission which has been mandated to investigate such violations can only deal with violations by state actors only. With the limited resources at its disposal even that could not be done adequately. So the HRC set up the Special Rapporteur on conflict related human rights violations, in the hope that this unit could provide specialized attention that such incidents.

The spate of politically motivated killings and incidents of human right violations continued even after the Presidential Election brought in a new President. Perhaps the some of the appointments made to the defence structure could possibly have prompted them. The appointment of an army commander and a Prime Minister who are known for their extreme views on the conflict. And the appointment of a similar person as the adviser on Police matters, sent signals that the state was getting ready to confront the militants and move away from a peaceful settlement of the conflict.

Given the nature of the conflict specially in the East where the LTTE and the Karuna ~~group were at each others~~ throat to take control of the East, most of the victims were Tamils. There were also killings of Sinhalese and Muslim mainly in the Trincomalee and Batticaloa districts. The series of political killings that took place are among the most serious and widespread human rights abuse in the East. The majority of these killings are reportedly committed by the LTTE, although the Karuna Group is also responsible for many of them. Some of the killings are also attributed to a third group while there are allegations against the military too for such incidents.

Though the IGP and the Army Commander have issued statements to the contrary, the fact that at the Geneva Meeting in February 2006 the Government delegation had agreed to disarm the para military groups operating in the country is ample proof of their existence. Even the SLMM had confirmed this fact. In view of this factor it is hard to fix responsibility for some of the killings to one group or the other. However in the event of a land mine or a claymore mine explosion, it could be reasonably assumed that the perpetrator was the LTTE. Similarly where killings occur in close proximity to military or police check points, the incident could be blamed on those at the check point as it happened in the case of the shooting of the students at Beach Road, Trincomalee.

Deliberate killings of civilians are violations of international humanitarian law, while the LTTE has often claimed that those they kill are spies or persons who engage in activities against the LTTE, evidence to justify such allegations were not always found. Such incidents were frequent in the Batticaloa district initially, later they spread to Amparai, Kalmunai, Trincomalee and even to Jaffna. No action seems to have been taken to provide compensation or reparations to the families of those killed during the period. Many of them are afraid even to report such killings and are reluctant to give evidence at inquest proceedings. Some of those who were bold enough to do so, had been victims of threats and other forms of harassment. Such threats are done openly. In the case of the

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<sup>1</sup> Figures 1, 2, 3 & 4 at Annex VI – for a sample of the incidents that took place in January, 2006.

witness who gave evidence at the inquest into the killings of the students in Beach Road, Trincomalee, the threats had reached alarming proportions. No attempts appear to have been made to protect these witnesses, some of them are living in fear of their lives. Though it is very difficult for the police to provide protection to all witnesses, they do not seem to have taken any efforts to protect such witnesses.

There were several instances of unlawful arrests and detentions in Jaffna and other parts of the North and the East. There have also been very alarming numbers of disappearances of persons during this period. However the numbers showed a sharp decline by the end of January, when a date for talks between the government and the LTTE in Geneva was announced.

Yet it needs to be mentioned that none of the parties to the ceasefire appeared to be seriously wanting to maintain the ceasefire during the months of November and December 2005, and thereafter.

### Recommendations

Nothing could more effective in bringing down the incidents of human rights violations in the North and the East than a renewed commitment by the security forces and the LTTE to respect human rights and stop abuses. Such a commitment needs to be blustered with a strong human rights investigation, monitoring and documentation mechanism. The Special Rapportuer on Conflict Related Human Rights Violations and his team would have been able to play a meaningful role if only it had been strengthened and provided with the necessary resources to play such a role. But unfortunately it had been given a short life span of about two months and hardly any resources. The following are some of the other measures that could be taken -

- The government must take effective steps to protect the civilian population from falling victim to such abuses.
- A meaningful witness protection mechanism should be put in place.
- Any abuse by the security forces must be dealt with promptly and effectively.
- An effective international human rights monitoring presence could reduce violations to a great extent. Both the parties to the conflict are sensitive to adverse publicity in the international arena and their presence will have a moderating effect.
- Every incident should be investigated thoroughly and swiftly by independent an agency such as the Human Rights Commission.

There is an imperative need to review some of the provisions of the Emergency Regulations which facilitate the commission of human rights violations. Though these Regulations were enacted to facilitate investigation into Foreign Minister Lakshman Kadiragamar's assassination as stated before, they continue to be re – enacted month after month for other reasons. The need for many of the provisions of these Regulations to the current situation is questionable. Listed below are some of the areas of concern which we believe have in one way or the other facilitated human rights violations by the security forces in the recent past -

- *Arrests may also be by any person authorized by the President, and several safeguards regarding arrests by the police or armed forces do not apply to such arrests.*

- *The ER enables preventive detention at the instance of the Secretary, Ministry of Defence for up to one year.*
- *The IGP is authorized to decide on places of detention.*
- *The police can detain a person for ninety days and have him remanded for an indefinite period.*
- *The condition under which a person could be kept under detention is at the discretion of the authorities . There are no minimal rights to which such a person could be entitled.*
- *There is no requirement that the places where persons are kept under detention to be made public.*
- *Safeguards provided in the Evidence Ordinance with regard to the admissibility of confessions have been removed.*
- *In certain instances confessions obtained ‘ in whatever circumstances ’ have been made admissible.*
- *The ER provides for death penalty for certain offences.*
- *Property could be forfeited for certain offences. Such forfeiture could be retroactive and provides no protection to subsequent bona fide owner .*
- *The normal laws relating to inquests and the disposal of dead bodies have been by-passed.*

The Emergency Regulations also provide extensive powers of censorship. And gives a very wide definition to the term ‘ essential services ’ .

It is recommended that the government should give careful attention to these provisions and remove most of these provisions which could be used to violate the rights of individuals.

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