

SRI LANKA

In defence of the legal profession



November 2008

Mahason Balakaya - Who?

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(Lanka-e-News, October 22, 2008, 6.30 PM) All the registrars of Colombo Magistrate Courts received a letter Monday (20) threatening that those who appear for the terrorist suspects those who represent their human rights would be killed, maimed or blinded.

The ill-famous `Mahason Balakaya` that issued similar threats previously as well had posted these letters.

Parcels containing 50 copies each of these letters were received by all eight Registrars of Colombo Magistrate Court.

Almost all the lawyers in Colombo rose against the bomb attack at the house of renowned human rights counsel J.C. Weliamuna. Fifty civil organizations held a rally in Colombo New Town Hall recently condemning the attack.

The threatening letter reached to the registrars of Magistrate Courts several days later had no mentioning about lawyers.

The counsel of Colombo courts Manjula Pathiraja said to `Lanka-e-News` that no lawyer of any courts in Sri Lanka would be meek to give up the respect of the law profession in such a situation.

The threatening letter of the Mahason Balakaya is in the picture.

In defence of the legal profession

Death threats to lawyers and the public (Sri Lanka)

a pamphlet relating to a letter of
threats sent to lawyers by a group
calling itself Mahason Balakaya:
the battalion of the Ghost of death



ASIAN HUMAN RIGHTS COMMISSION (AHRC)

Asian Human Rights Commission

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Introduction

Lawyers are a very much threatened species in Sri Lanka. The period following the repression of the rebellion of 1971 has seriously threatened the very foundation of the rule of law and consequently the role of the lawyer. The constitutions of 1972 and 1978 fundamentally challenged the separation of power doctrine and its actual practice. The constitutional diminishment of the actual role of the judiciary has also had a tremendously adverse affect on the legal profession. Added to that the ever-enlarging space of the emergency laws, national security laws and anti terrorism laws has squeezed the space available to the practice of an independent legal profession.

What is even more important than the limitations of the legal ethos are the political and social developments within the country in which violence has become a normal way of life. Threats to every aspect of the citizen's lives increased, the police lost the capacity to enforce the law and as a result a situation of lawlessness spread throughout the country. In the north and the east a prolonged period of internal conflict virtually destroyed all space for normal living within those areas. In the country as a whole corruption spread as never before. All these and other factors have undermined the process of the settlement of disputes through the court system which is what gives the grounds for the existence of the legal profession.

Besides this development the collapse of the institutions of authority has also challenged the very possibility of achieving the aims of the administration of justice within a strictly legal framework. The most frightening aspect of this is the development of the Sri Lankan police as a law unto itself. The police high command has its authority due to two main reasons. The first and foremost is the politicisation of

the whole system which deeply undermines command responsibility. Secondly the very use of the police for engaging in acts of violence on behalf the security state has made the issue of discipline almost irrelevant. Added to this is also the perception that many high ranking police officers themselves have learned to adjust to political demands and learned to take advantage of the situation.

In the area of criminal law this has upset the balance between the police and the courts and the police and the lawyers. A committee appointed by the Ministry of Justice to investigate into the delays of adjudication noted that one of the major causes of the delays is the failure of the police to respect the courts and even to report to court. On the other hand in the Magistrate's Courts where all criminal proceedings begin the police have become a power unto themselves and even develop methods to prescribe to suspects which lawyers to contact. Intense conflict exists between lawyers and the police at all Magistrate's Courts conspiring to undermine the independent practice of law.

It is in the midst of these developments that even a further threat has developed of direct assaults, threats and even the assassination of lawyers. From the 80s up to now in the south, north and the east many lawyers have been killed, mostly for doing their normal work, like for example, the filing of habeas corpus applications in the late 80s during the period of terror. There have been no real studies initiated by anyone, including the Bar Association into this important attack on the lawyers. In fact, there has not even been an attempt to honour these lawyers, for example, by having their busts at the Bar Association premises where many busts of former lawyers are exhibited. Perhaps for the sake of creating respect for the dignity of the profession it would have contributed much if at least those who have been slain were recognised in a significant way by the Bar Association itself.

However, the purpose of this pamphlet is to document the recent threats to the legal profession. There are a few incidents that need to be recorded.

- On the morning of September 27 the Bar Council recognised the complaint of a threat to a lawyer at Wattala who had been appearing for the assassinated Sugath Nishanta Fernando. The issue was raised at the Bar Association by Mr. J.C. Weliamuna
- Two grenades were thrown at the house of Mr. Weliamuna on the night of the 27th. Only one exploded which damaged part of his house and the wall of a neighbouring house. Had both grenades exploded there could have been a threat to the entire family of Mr. Weliamuna.
- This brought a considerable protest from the lawyers, civil society organisations and the international community. The Bar Association after a general meeting passed a lengthy resolution. However, even up to now there has been no successful inquiry into the matter and it appears that no serious inquiry was conducted at all. Meanwhile the government media made an attempt to create the impression that the incident may be related to a personal matter despite of Mr. Weliamuna's consistent statements that he had no personal enemies to suspect.
- By mid October a document was circulated to the registrars of courts and some lawyers threatening any lawyer who might appear in court on behalf of alleged terrorist suspects. This document which became known as the notice from Mahason Balakaya was reminiscent of similar letters circulated in the late 1980s during the period of terror. At the time this letter was circulated one of the prominent cases under anti terrorism laws was the case of the journalist J.S. Tissainayagam.
- Then on October 24th Mr. D.W.C Mohotti, an attorney at law who went to the Bambilipitya Police Station to represent a client complained of humiliating treatment and threats by a Head Quarters Inspector of Police.

All these matters raise tremendous attacks on the legal profession and its capacity to survive as an independent profession. We hope this pamphlet will contribute to a discussion on this very fundamental issue which is not merely a matter of importance to lawyers but also to the judiciary and the country as a whole. A much undermined legal profession is now facing even further threat. How will the Bar

Association, the lawyers in general, the judiciary and the political leadership of various political parties, trade unions, intellectuals and others respond to this issue?

Perhaps one dismissive approach may be that the lawyers have cared little about others in the past and therefore the black-coated fraternity's problems need not be the problems of others. However, whatever be the past record of the legal profession this profession is necessary for the maintenance of the rule of law and the proper administration of justice. Perhaps the discourse on threats to lawyers could even be an occasion at which the profession itself can look into its responsibilities to the rest of the nation. It is to be hoped that the acute crisis faced now would be resolved for the betterment of all including that of the legal profession and also will contribute to dealing with the threats to the independence of the judiciary.

If a lesson is to be learned from elsewhere the experience of the lawyers in Pakistan provide an enormous example of a courageous fight by lawyers to defend themselves, the judiciary and the law itself.

Basil Fernando

1

A death squad formation against human rights lawyers needs to be investigated urgently

Yesterday (October 22) an announcement was received by registrars of all courts and a number of human rights lawyers by a group that calls itself the Mahason Balakaya (Mahason Battalion). The notice threatens death or other serious physical harm to any lawyers who appear for any suspected terrorist in any court in Sri Lanka. The lawyers who appear for such persons are referred to as traitors, who should be treated in the same way that the terrorists treat their enemies. In the present context the vast majority of those who are charged under anti-terrorism laws are Tamils.

We give below a full translation of the notice from the "Mahason Battalion" referred to above.

To those who represent the terrorists today

The innocent people of our motherland have been subject to the killing sprees of terrorists for over three decades. Expectant mothers and farmers have been among those killed - chopped to pieces by the terrorists. These terrorists now engage in bombings intended to kill innocent civilians in various parts of the country, in a bid to escape defeat at the hands of the valiant forces.

To date, the number of innocent that have fallen victim to these terrorist bombings extend into their thousands. Thousands more have been maimed. But there is no one today to speak for the human rights of these innocent people.

However, we know that there are many traitors who voice their concerns for the human rights of the evil terrorists and those who assist them in carrying out these indiscriminate killings.

Can such people who strive to free these terrorists when they're captured and imprisoned for their crimes against the innocent be considered anything but traitors? We have the names and addresses of these traitors who take home salaries numbering into hundreds of thousands and even accept bribes in exchange for acting as enemies of our beloved motherland and its innocent people.

We have decided that all those who try to split our motherland in two and all those who represent the interests of and speak on behalf of the terrorists who kill our innocent civilians will be meted out the punishments that they deserve. There is still room for those who sell out on the cause of the nation, of the motherland, for financial gain, to cease such treacherous acts. In the future, all those who represent the interests of the terrorists will be subject to the same fate that these terrorists mete out to our innocent people.

Traitors to the nation, mouthpieces of the terrorists,

Remember the faces and bodies of those innocents who have been killed and maimed by the terrorists. Be warned that meting out the same fate to you in the name of our motherland would be a favour that we would render to the entire nation.

The Mahason Force that represents the interests of those who have lost their lives and those who have been maimed at the hands of terror.

(The Sinhala word 'Maha sona' means 'big graveyard and the word 'Mahason' means 'the ghost that brings death'. The popular myth is that anyone will die when Mahason strikes).

This notice comes at a time when there are several well-known cases where suspects have challenged the charges filed against under

anti-terrorism and emergency laws as being baseless. At the same time many cases also come before the Supreme Court by way of fundamental rights applications regarding the forced deportation of persons from Colombo and other Sinhala areas and arbitrary forms of registration imposed on Tamils arriving from conflict regions to safer areas. The Supreme Court has made several interventions in order to protect the rights of these persons.

Under these circumstances the notice of death threats announced against lawyers who appear in these cases could come from sources which are linked to the agencies that investigate into alleged offences under anti-terrorism laws and other arbitrary acts that are undertaken for the purported purpose of keeping terrorists away from other areas. As all these activities come under the auspices of the Ministry of Defence it will be this ministry that will must come under the greatest suspicion about such notices.

This announcement may also be seen as a direct threat to the Supreme Court itself since the Supreme Court in recent months has given many judgements against the government, among which are matters relating to the protection of minorities. If the lawyers can be intimidated from taking cases to the Supreme Court, the Supreme Court would not have the occasion to intervene into arbitrary forms of deprivation of rights under the pretext of national security by agencies of the state.

Sri Lanka in the past has seen many formations of death squads which act under various names. There were many such squads in the period from 1986 ?1990 when there were counterinsurgency activities against the predominantly Sinhala JVP. One such group named the Black Cats left a tremendously chilling impression in the minds of people. During this period the number of disappearances has been estimated officially to be around 30,000. It is now well established that these death squads functioned under the country's security forces and police during that period.

The re-emergence of such death squads is a frightening reminder

of the extreme loss of the rule of law in the country. Such death squads in the late 1980s were used against all political opponents of the regime as the reports of the Commissions on Enforced Disappearances clearly demonstrates.

It may not be a coincidence that there was a grenade attack on the house of a well-known human rights and anti graft lawyer, J.C. Weliamuna on the 27th September, 2008. Had both grenades that were thrown at the house exploded Mr. Weliamuna and his entire family might have been killed. Despite of the intervention of the Bar Association no one has been arrested for this attack.

It is the duty of the government to investigate and to arrest the persons who have been sending such death notices under the name of the Mahason Balakaya. However such investigations will not happen if the government itself is directly or indirectly linked to this initiative. It is only through pressure from everyone, including the political opposition in the country, civil society and the international community, that this threat can be exposed and eliminated.

2

An Open Letter to the Bar Association of Sri Lanka - On defending lawyers against death threats by the Mahason Balakaya

October 22, 2008

Mr. W. Dayaratne,
President, Bar Association of Sri Lanka
Hulftsdorp
Colombo 12
Sri Lanka
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Email: wdaya@slt.lk

Dear Mr. Dayaratne,

By now the Bar Association must be aware of the letter issued by a group calling itself Mahason Balakaya to the registrars of courts and human rights lawyers making death threats to anyone who appears in cases of alleged terrorist acts. The Bar Association is now called upon to defend the entire profession. Failure to take decisive action may result in loss of life as has happened several times before, particularly during the period of terror in the late 80s.

On the 11th October the Bar Association met and passed a resolution to defend the rights of one lawyer, J.C. Weliamuna and also demanded action by the Inspector General of Police to investigate the matter of the grenade attack and to report to the Bar Association. To our knowledge no successful investigation has been conducted into the matter. Now the Bar Association is called upon for a much more serious task of defending the profession as a whole.

When and where the first strike against one of the members of the profession will happen is hard to predict. The Asian Human Rights Commission has been informed that even today one of the lawyers was pursued by two persons and the lawyer concerned has made a complaint to the police about the incident.

There is without doubt a serious attempt to teach the Sri Lankan lawyers a chilling lesson as it was done on earlier occasions. The warning of the execution of this threat lies entirely on the leadership of the Bar Association and what it will now do.

We urge the Bar Association to take immediate steps to bring the matter by way of legal action before the Supreme Court of Sri Lanka asking the Supreme Court to intervene on the protection of the profession as a whole. The lawyers are officers of the court and therefore the threat now it to the independent functioning of the judiciary assisted by an independent Bar. Therefore a collective action by the profession by way of a fundamental rights application for the defense of the entire profession is well within the rights of the Bar Association.

In the earlier instance of the attack on J.C. Weliamuna the Bar Association delegation was reported to have met the Hon Chief Justice and he had advice on this matter of protection of lawyers. On this occasion it is appropriate to go before the Supreme Court by way of direct legal action so that the Supreme Court can exercise its power to ensure inquiries into the matter and to hold the government accountable about the protection of the lawyers.

On the resolution relating to Mr. Weliamuna's issue, among the things that the Bar Association resolved was to appointed a group of senior lawyers to go into the issue of the protection of the lawyers. This has not been done yet and this is an appropriate time to install this committee of lawyers immediately.

It would be natural if the lawyers and the public would blame the Bar Association if anyone of its members was to fall victim to the designs

of attacks on lawyers. Thus, delays or negligence to act on the part of the Bar Association may have serious consequences for its members as well as on itself. For your ease of reference we attach the translation of the relevant notice of death threats issued by this group that hides their real identity under the title of Mahason Balakaya.

Thank you

Yours sincerely,

MOON Jeong Ho
Programme Officer
Asian Human Rights Commission

cc: Mr. Udaya Rohan De Silva, Secretary of the Bar Association
basl.lawnet@stmail.lk

3

The implications of the death threat from Mahason Balakaya to lawyers, judges and the public

The letter from the Mahason Balakaya threatening lawyers who appear for terrorists raises many questions which go far beyond the matter of the protection of the individual lawyers who have received such threatening letters. Why is it necessary to deprive a terrorist, alleged or real, representation by lawyers at legal proceedings? An inquiry into that question could take us to many of the complex problems involved in contemporary Sri Lanka.

The threat is made to those lawyers who appear in criminal proceedings. All criminal proceedings are against criminals alleged or real. Some cases may be about thieves and robbers, about murderers or rapists, about frauds and corrupt persons charged under the Bribery and Corruption Ordinance, and it also involves those state officers who may be charged for crimes such as torture, extrajudicial killings, bribery and the like. Thus, a criminal proceeding that is not related to an allegation of a crime cannot exist.

Criminal proceedings involve lawyers on the side of the prosecution and on the side of the defense. The main contesting lawyers belong to these two groups while a lawyer for an aggrieved party may also represent the interests of the aggrieved party and his family.

The duty of the defence lawyer is to defend the criminal. The defense lawyer does so by presenting the version of the accused about the crime he or she is alleged to have committed. Thus, a judge can come to the conclusion of the guilt or otherwise of the accused in a just and fair manner only if the accused version is presented with competence and ability.

From all these above stated premises many conclusions follow which are very relevant to the understanding of the intentions of those who have caused the publication of the death threat letter of Mahason Balakaya. First of all such threats imply that terrorism is not a crime but something worse than that. However, the law does not know anything worse than a crime. Therefore, to consider terrorism as something worse than a crime can only happen outside the framework of law. In that case an alleged terrorist need not to be brought to court at all. The simple reason is that courts are supposed to consider everything according to law and they are called courts of law.

Now can a court of law have any other proceedings than those proceedings permitted by law? The obvious answer, of course, is no. If a court of law is expected to carry out any proceedings outside the law it is no longer a court of law. Thus, it would not make any sense if a person is brought to a Magistrate's Court or a High Court and the court is expected to act outside the law on that particular matter. Such an expectation is implied in this letter by Mahason Balakaya. It expects the courts to be not courts of law but something else. Though any reasonable person would consider this as devoid of meaning those whose hands are behind Mahason Balakaya do not think that way. They want a court verdict to justify a punishment even if it means that the court should act outside the law to do that.

The expectation of courts acting outside the law is not an original idea. There have been many instances of mock courts installed by various dictatorships and authoritarian rulers to bring alleged enemies of the state before a so-called court and give an appearance of legitimacy while, in fact, there is no real legitimacy in such staged 'trials'. As glaring examples we may cite King Henry VIII's trial of Thomas Moore and many such 'trials', and the trials under Russia's Joseph Stalin and Adolf Hitler of Germany. It is the underlying reasoning in that sort of 'trial' and the expectations of this type of trials which are behind the letter of the Mahason Balakaya that is the same.

As pointed out above a fair trial requires the representation of lawyers for the prosecution and for the defense. When this Balakaya makes death threats to lawyers who appear for 'terrorists', this implies that the expectations of those who wrote this letter is to have 'trials' where only the prosecution lawyers can appear. The prosecution will make its case naturally to convict the person and if this version is unchallenged the judge is expected to make the verdict purely on what the prosecuting lawyers have said. Once again in such instances no trial is involved and it will only be a propaganda exercise where the prosecutors will publicise their accusation against the person. In such instances there is no role for the judge. Thus, what is implied in the letter of Mahason Balakaya is a propaganda exercise by the prosecutors and the judge, just giving the appearance of agreeing with the prosecution although in fact, the judge has no role in the matter at all. In this manner the role of the judge is denigrated and the judge is reduced to a comic figure.

What is further implied in the 'vision' of justice contained in the Balakaya's letter is that the version of the accused should not be presented at all. This of course has a big advantage. If the allegation is untrue, as it has turned out to be in many trials, the public has no way to know the truth. Thus, any person can be brought to 'a trial' and punished whether the allegations are true or not. All that would be needed is to say that someone is a terrorist or that someone is even indirectly linked to terrorists. With that a verdict can be obtained to punish such a person. For the public this means that they should believe in the propaganda and take whatever is said by way of propaganda as the truth.

Now all these considerations bring us to the issue as to what are lawyers, what are judges and what is the public. Under the context envisaged by the Balakaya the lawyers are nothing. If any lawyer tries to act as a lawyer in relation to persons who are alleged to be terrorists the lawyers deserves death. Death as we know is the ultimate punishment. Thus the lawyer now faces the ultimate punishment if he or she still wants to be working within the framework of professional obligations which have been undertaken when the oath

of a lawyer was made.

Now let us see what is the expectation regarding judges? It is the judge's duty to ensure that an accused facing a criminal proceeding has proper legal representation. The Balakaya thinks that there should be no legal representation. A judge who insists on providing a proper legal defense to an alleged terrorist would therefore be going against the expectation of the Balakaya. Such a judge tries to do what the Balakaya tries to prevent. Therefore such a judge would also fall under the classification of traitor within the vision of the Balakaya. Naturally the conclusion would be that such a judge would also deserve death.

Now if look into the implications to the public any member of the public who is not happy with the prosecution version given against an alleged terrorist, and wants to know the version of the accused, that member of the public would also be committing a grave offense in the eyes of the Balakaya. The public therefore should believe whatever the propaganda says about alleged terrorists and anyone who wants anything more than what is being told also deserves the punishment meted out to traitors, death. Thus, inquisitiveness on the part of the public to find out the truth would be tantamount to a breach of a rule which carries the punishment of death. The implication of this to the media and the right of information is that all these are rights which carry the danger of death if exercised.

This vision of the Balakaya can be expressed through two experiences relating to the case of a well known LTTE leader at one time called, Kuttimani. Kuttimani was tried on various counts relating to terrorists acts before the High Court of Colombo. One of the most revered judges, Tudor De Alwis, presided over this trial. Kuttimani was given all the rights that any other accused would have in criminal proceedings in a court in Sri Lanka. At the end the court found Kuttimani guilty. Before pronouncing the death sentence Tudor De Alwis got up from his chair and addressed Kuttimani, saying that, 'I do not think of you as a common criminal who would commit a crime for private reasons. I would be a happy person if I were to hear

that the president wanted to grant you a presidential pardon from the death sentence.’ Then he sat down and pronounced the death sentence. Kuttimani made the request that in the event the death sentence is carried out it was his wish that his corneas be donated to someone so that that person may see Eelam. Obviously Tudor De Alwis did not believe in the ideological premises of Kuttimani. However, this great judge was able to convince Kutimuni, as well as the public, that he received a fair trial.

Sometime later a different type of trial took place. That was inside the Welikade prison. While riots were taking place in July 1983 there was a well planned massacre of many persons awaiting trials or serving sentences for crimes relating to terrorism. A group, well armed attacked the unarmed prisoners and hacked them to death. Among them was also Kuttimani. It is also reported that the murderers removed his eyes.

The trial at the High Court and the ‘trial’ at the Welikade prison represent two completely different concepts of justice. In the 80s these two different versions existed. Those who condemned the type of barbarity involved in the Welikade massacre could urge that all matters of justice be done through courts and the process of law. However, those who are expressing their vision through Mahason Balakaya want to destroy any possibility of a proper criminal trial for those alleged to be terrorist which can extend to all those are considered enemies of the state. There cannot be a more complete denial of justice than this.

Though the Balakaya’s letter has been published and therefore the government should have official notice of this letter there is no report of any inquiry into the matter. Does the silence of the government imply consent? These are matters that no one who cares about any decent standards of society or basic norms of rule of law can ignore without inviting greater peril to themselves and society as a whole.

For further information on the death threat letter by Mahason Balakaya please refer to our earlier statements:

<http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/>,
<http://www.ahrchk.net/statements/mainfile.php/2008statements/1738/>,
<http://www.ahrchk.net/statements/mainfile.php/2008statements/1745/>,
<http://www.ahrchk.net/statements/mainfile.php/2008statements/1747/>
and
<http://www.ahrchk.net/statements/mainfile.php/2008statements/1748/>

4

An Open Letter from the International Bar Association forwarded by the Asian Human Rights Commission (AHRC)

SRI LANKA: Death threats to Sri Lankan Lawyers

International Bar Association
(The global voice of the legal profession)
10th Floor, 1 Stephen Street,
London W1T 1AT
United Kingdom

His Excellency the President Mahinda Rajapaksa
Presidential Secretariat
Colombo 1
Sri Lanka
Fax:+94 112446657

Your Excellency,

Re: Death threats to Sri Lankan Lawyers

We are writing you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern about death threats reportedly made to lawyers representing suspected terrorists in Sri Lanka.

In its role as a dual membership organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies, the International Bar Association (IBA) influences development of international law reform and shapes the future of the legal profession. Its member organisations cover all continents. The Human Rights

Institute works across the association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

We have received reports that a notice was sent to a number of Sri Lankan lawyers on 21 October 2008 from a group calling itself 'Mahason Balakaya'. This notice reportedly threatens lawyers representing suspected terrorists, calling them 'traitors' and warning that they will meet the 'same fate' as innocent victims killed by terrorists. The notice also reportedly warns that they have the names and addresses of 'traitors'.

These threats follow reports of the incident on 30 September 2008, in which a grenade attack was apparently launched on the home of Mr J.C. Weliamuna, a senior lawyer working in human rights and anti-corruption cases.

The IBAHRI is extremely concerned that failure to act upon these issues contravenes the Sri Lankan constitution, as well as international obligations.

Article 14 (1) of the Constitution of the Republic of Sri Lanka states that 'home, correspondence and communications and shall not be subjected to unlawful attacks on such person's honour and reputation.' Furthermore, article 20 (1) outlines that 'every citizen is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise' and article 24 states the 'right to safe conditions of work.'

Sri Lanka ratified the International Covenant of Civil and Political Rights (ICCPR) in 1980. According to Article I of this document, all people have the right to 'freely determine their political status and freely pursue their economic, social and cultural development.' Article 9 of the ICCPR states that 'Everyone has the right to liberty and security of person,' and the right to life is outlined in article 6.

We would also like to remind you of the United Nations Basic

Principles on the Role of Lawyers, which provide standards by which lawyers worldwide should be treated. According to principle 16, 'governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference'. In addition, article 18 states that 'lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.' Furthermore, article 3 of the General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms declares that 'everyone has the right, individually and in association with others, inter alia, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.'

The IBAHRI calls on the Sri Lankan authorities to ensure a full investigation into these allegations and ensure protection for all lawyers working to uphold the rule of law in Sri Lanka. We urge you to take steps to ensure all professionals defending the rule of law are able to carry out their work without fear of harassment and violence.

We look forward to receiving your urgent response, and would appreciate updates on the progress of these cases.

Yours sincerely
signed:

Ambassador Emilio Cardenas
Human Rights Institute Council Chair

Justice Richard Goldstone
Human Rights Institute Council Chair

cc. Hon. Amarasiri Dodangoda
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5

The case of Mr. D.W.C. Mohotti

A lawyer complains of harassment at the Bambilipitya police

Mr. D.W.C. Mohotti, an Attorney-at-Law of the Supreme Court of Sri Lanka, (Membership Number of the Bar Association M. 859) by way of an affidavit has narrated the harassment that he has suffered while accompanying a client to the Bambilipitya Police Station. This lawyer is a junior of Ranil Samarasuriya, a senior lawyer practicing in Colombo. On the instruction of the senior lawyer one of his clients K.P. Anil Rupasinghe, was taken to the Bambilipitya Police Station by Mr. Mohotti on several occasions. However, the police stated that this person was not wanted and that if needed, they would call him later.

As the client received a notice to go to the police station on 24.10.2008 Mr. Mohotti accompanied him and they arrived at the police station at around 10 am. The lawyer met the Officer-in-Charge of the Crimes Branch and this officer introduced him the Headquarters Inspector (HQI), Upul Seneviratne.

The lawyer states that the HQI became extremely angry with the client, scolded him in filthy language and told him to admit that he had engaged in a robbery regarding some money. According to the lawyer, the HQI did this in a threatening manner. Further the lawyer states that the HQI continued to scold and threaten his client for about 30 minutes in his presence and stated that he would take out a detention order against the client. The HQI also said that he would assault the client and blame the incident on him. During this entire period the client over and over again denied any involvement of any robbery of money, stating that he was an innocent person.

At this stage the lawyer states that, in his presence, the HQI while scolding the client, suddenly got up from his chair and tried to assault the client. At that stage the lawyer intervened and stated that as the client was protesting his innocence the case should be reported to court and that if there was any need to obtain a detention order the HQI could do that. Mr. Mohotti told the HQI that he was willing to make a statement saying that he has handed over the client to the police. He also reminded the HQI that he should do whatever the law required him to do and, if necessary, he himself was willing to make a statement to the police.

When the lawyer said this the HQI became extremely angry and threateningly told the lawyer to get out of his office. In reply the lawyer told the HQI that he was representing his client and therefore it was not possible to leave the office. He again asked the HQI to act according to the law.

At this stage the lawyer states that the HQI began to behave with unbelievable anger. He got up from his chair saying, "Get out of my office." And, "Lawyers can't show off to me." The HQI shouted in a very loud voice and the lawyer states that he couldn't believe that a senior police officer could behave in such a manner. The HQI further said, "Before hearing filthy words from me get out from here." The lawyer states that from the manner of the HQI he was afraid that the HQI would assault him and as he thought that there was no point in talking any further, he decided it would be better to make a statement and leave the place. At this stage a police inspector came in, put his hand on the lawyer's shoulder and threateningly told him to get out. The lawyer immediately left the HQI's office and the HQI still scolded him saying, "Get the hell out of here gentleman (Mahattaya), before you hear filthy words from me." The HQI even continued to shout from the veranda of the police station that he would write to the lawyer's associations to get his tie and the coat removed and that lawyers are useless fellows. The lawyer was able to record this tirade.

The lawyer went on to say that the HQI was shouting that, "This is my place." The lawyer got the impression that the HQI treated the

police station as his private property and not as a public place where people come to have the law enforced.

Mr. Mohotti also states that his lawyer's identity card was forcibly taken from him by the Police Inspector who took him out of the HQI's office and that if he saw this inspector again he would be able to identify him.

The lawyer told the police inspector that he wanted to make a statement about this incident but was told that due to the instructions of the HQI this was not permitted. Thereafter the lawyer was asked to sit in the area where the suspected criminals waited. At this time he called his senior and requested his senior to come to the police station immediately. He explained the entire incident to his senior over the telephone.

A little later the same inspector who took the lawyer's ID card returned it to him and stated that it was not possible to record a statement and asked him to leave the place. Later he learned that his senior lawyer made a telephone call to the DIG Legal of the police, Gamini Dissanayake, and that this officer instructed the inspector mentioned above to return his lawyer's ID card.

The lawyer further states that if his senior had not contacted the DIG Legal, Gamini Dissanayake, he believed that he would have been detained inside the police station as a common criminal and that there was quite a good possibility, judging from the behaviour of the HQI, that he may even have filed fabricated charges against him.

The behaviour of the HQI was witnessed by many persons, police officers and civilians at the police station and also his own client. Mr. Mohotti stated that it created in him extreme shock and distress and he felt cowed by the situation. This was the first time he had ever faced a situation like that.

Mr. Mohotti said that, accompanied by another lawyer, he went to Police Head Quarters and made a complaint about the incident and that the report bears the number CIB II - 89/60.

6

I and my children live in hiding Authorities are trying to deny us justice The wife and mother complains

The following is the interview with Surangi Sandamali Padmini Peiris—wife of Sugath Nishantha Fernando from Dalupotha, Negombo, who was killed for daring to complain against the Sri Lankan police.

* * *

AHRC: Tell me about your children?

SSPP: I have two children. My daughter Dilukshi is 16; my son Anjana is 11. They were studying at schools in Negombo.

AHRC: What events led you to come here (undisclosed place far away from her hometown in Negombo)?

SSPP: After the funeral of my husband, I gave a statement in court. In it, I gave the names of all the police officers I suspected to be involved in my husband's killing. I am the main witness in almost all the court cases filed by us, up to now. In the bribery case, he had already given his statement and my statement was due to be recorded when they (the police) came to our home and demanded that I refrain from giving evidence. It was then that they tortured all of us. Actually they tortured me more than my husband; this is also according to the medical reports. My nose was fractured and I was told a case against the police could be filed for my torture.

[She shows several official documents and photographs pertaining to her torture; she said that 6 policemen surrounded her; one hit her on the face with his gun; the others pushed her to the ground and

assaulted and kicked her viciously. She was then hospitalised; and chained to the bed after the magistrate remanded her]

I accompanied my husband everywhere he went—especially after the police torture incident. But from Friday morning he told me not to. On Saturday morning I even walked up to the vehicle, but he left with our son. Maybe they (the police) thought I was also in the vehicle and wanted to eliminate me also.

The main reason for the torture was the delay by the bribery commission to file the case against the police. This is what a lawyer friend told me. Yesterday a case has been filed in the magistrate's court regarding the torture. Earlier when both Sugath and I visited the bribery commission we were told that our injuries warranted a High Court case (under the Anti-torture Act) and our lawyers also agreed. Now after all this time, only a case in the lower court has been filed. The (torture) incident occurred last November 12. But the filing of the case has been delayed until yesterday though there was ample evidence.

AHRC: So do you think the filing of the case was intentionally delayed?

SSPP: Yes.

AHRC: Why do you think so?

SSPP: It is obvious. We had implicated senior police officials in our torture case including SSPs, HQI and IPs. They were angry and frowned at us when they saw us on the road. Also, there had always been traffic policemen on their bikes; but a few days before the shooting of my husband, the cops and their bikes were missing from the vicinity. At the time we did not take much notice, but now we know why. According to my son (eye-witness to the shooting incident) the killers came on a motor bicycle wearing no helmets. They seemed so confident, they won't be recognised.

AHRC: After the funeral, did you return to your home in Negombo?

SSPP: The funeral was held in that house and thereafter we remained there.

AHRC: Did you face any threats?

SSPP: On the day, my husband was killed; the bribery official investigating our case visited the mortuary and told me that now my life was also in danger. Hence, I should leave the area. This officer, had previously also received threats. Thereafter several suspicious incidents occurred that led us to go into hiding.

AHRC: Can you detail these suspicious incidents?

SSPP: When my father was returning home, he noticed two motor bicycles following him. My younger sister also suspected being followed and did not like us living in that area. Then a human rights activist assisted us to find alternate places to live until we arrived at our present place of abode. Even thereafter my younger sister said two unknown persons on motor bicycles followed her and were seen loitering around. My father also said two men, with their faces masked, had also followed him. I believe that this is because our relatives lived around the same area and maybe they (the police) suspected that we were hiding in one of their houses. They were looking for us.

AHRC: From when are you in hiding?

SSPP: My husband was shot to death on September 20; since about September 25 my children and I have been hiding in different places. We have been changing places.

I now feel that even my children's lives are in danger. Yesterday a reliable source telephoned me again. He said the Negombo police were searching for me. He advised me not to reveal my whereabouts to anyone; nor step outside my house. The bribery case is fixed in

court for December 1, but he told me not to attend court unless I had sufficient security.

AHRC: Why do you feel that your children are in danger?

SSPP: If they (the police) wanted to shoot someone, they should have killed me. I was in the forefront and the main witness in all the cases filed except the fundamental rights case—which was filed in my husband’s name. They might have killed him to prevent me from testifying. They said they will kill me. This is when they came to our home and tortured me. My son witnessed my husband being shot and I worry for his life; as well as that of my daughter’s.

AHRC: Since the incident, have your children resumed their schooling?

SSPP: No. they have not gone to school one single day.

AHRC: So how is this affecting them?

SSPP: Of course they are not taking it well. They do not like to stay away from school. My son was so happy that he had been chosen for the school band on the 19th. The next day, he saw his father being killed. Now both children are adamant to return to school. They want to take their school exams—especially my daughter who is due to sit for her O/L examination at the end of this year. I see her looking through her school books and she says she will do her exams, but I don’t think she will fare well under these circumstances. Soon after the incident (killing) my son fainted often when he remembered what happened. Later, after coming here, he is much better.

After leaving our home but before coming here, we were separated. While we were in a convent, my son was in another place. We visited him during the day, but he cried every night. That is why we came here. Now he snuggles next to me and falls asleep. None of us like to return to our home in Dalupatha (Negombo). As a family we were very close and we were always together. I have still not thought about

their schooling but the children keep in touch with their friends via telephone.

With the filing of the case yesterday, the danger to their lives has increased. Even the Derana TV reporter who reported our case had received a threatening phone call. He has filed a police complaint. Now the bribery commission has said that at least 4 more court cases could be brought against the police regarding the torture and assault on my husband, two children and myself.

AHRC: How do you feel to have left your hometown?

SSPP: Dalupatha is my birthplace. It has been about 8 years since we built and moved into our own home. Many of our relatives also live in the village. So it is very difficult for us to leave. However now I do not wish to return to my Dalupatha home. There will always be threats. But mostly, we cannot face the bitter memories of what happened.

AHRC: What about your economic situation?

SSPP: I have to depend on help of others. My husband had a heavy vehicle (cantor) which he hired out. He also had a three-wheeler. Both these vehicles had been purchased on lease and several instalments still remain to be paid. I told my sister (whose husband is working overseas) to pay the balance instalments, sell the vehicle and give us any balance. Whatever money received will be deposited in the bank accounts of my children. The house will be written to my son. Actually we had planned to give the house to our daughter and build another house for our son, but that was not to be.

[Her phone rings: later she explains it was a relative who was worried after hearing over 2 TV channels that a case had been filed in court. The relative was worried whether the family was once again in jeopardy]

AHRC: What are your hopes for the future?

SSPP: First, I want to solve the problem of my children's schooling. Thereafter I want to complete all the legal cases we began.

AHRC: Are you certain about pursuing your legal cases?

SSPP: Yes. I am certain. Sugath was a person who has not harmed anyone during his lifetime. He has not assaulted, hit, killed, or defrauded anyone. He did not owe anyone anything. It is indeed a shame that such a person is killed. He went to court for the injustice caused to him. He did not seek to do anything else but took legal action. So I shall pursue all these legal cases; I will finish the journey towards justice we began together. If it means that I too will be killed, that cannot be helped. I will pursue to the end.

I prefer that my two children remain with me; this will be a great consolation to me. But if this is not possible, they could be boarded somewhere to pursue their education. But I have not thought about their education yet. A friend promised to look into this matter soon but the children are still in danger—especially after the case was filed in court yesterday.

AHRC: Is there any other action you intend to take regarding the injustice caused to you?

SSPP: I will look around and take every action that can be taken. Right now what I want is for a proper investigation to be conducted into killing of my husband. I have heard that a senior police official in Negombo (who is implicated in the Supreme Court case) has connections to drug lords and the underworld. People have told me that this senior policeman in Negombo was responsible for the release of a terrorist suspect after obtaining a bribe of Rs. 5,000,000 (koti 50) and another inspector of police who assisted him is also implicated in our case. That is the reason the case is not receiving the attention it should (yata-gahanawa). These policemen are also known to obtain bribes from those who illegally mine sand.

AHRC: If you are called again to make statements or give evidence will you do it?

SSPP: Yes. I gave the names of these policemen to the magistrate. I requested the magistrate to provide security for my family until the 7th day alms giving, but the police did not carryout the magistrate's order. I was asked the names of the suspects and I gave them—from the SSP to the policemen, I afforded the names of all those I suspected.

AHRC: Do you think you will receive justice?

SSPP: I will try my utmost to obtain justice. I will pursue to the end.

AHRC: Why do you think this happened to you and your family?

SSPP: Because we filed a court case against the police for bribery. At first we did not want to; but later we did and we were summoned to court. At the time, a local government minister told my husband not to pursue the case. He did not threaten us but requested us not to. We agreed but attended court. In March Sugath's evidence was recorded.

AHRC: Tell me about the fabricated charges filed against you by the police?

SSPP: From the time we complained to the bribery commission, to the time the case was filed and after, we were harassed by the police. The complaint was lodged in 2004. Thereafter several fabricated cases were filed against Sugath. It was when he went to make statements regarding these complaints that there was a confrontation with the SSP. The SSP wanted us to settle the cases but we insisted that our statements be recorded. It was then, Sugath was arrested on the roadside, allegedly for 'obstructing duty'—this was the first case. He was arrested and remanded for the very first time. They also filed a case against me because I insisted on accompanying him to the police station. But this time they did not assault us; they also wanted to remand me but the lawyer fought on my behalf mentioning the fate of my two children. The second time the police came to our home and severely assaulted us. But despite that I was seriously injured; the

magistrate visited the hospital and placed me in remand.

I remember the first time Sugath was remanded; a local government official's golaya (minion) came to me and said his boss had received word that the SSP had contracted a notorious gangster 'Feroze' inside prison to attack and kill Sugath. But the official had intervened and told the gangster not to do so because Sugath was his friend. Then an acquaintance had called another gangster in prison called 'tinker' who had also involved in many killings and this person had told gangster 'Feroze' not to harm Sugath intimating he belonged to tinker's gang. It was only then Sugath was safe.

AHRC: Do you think their work is important; if so why?

SSPP: If there were no such organisations, people like us would be rendered helpless. At least now because of them, we can pursue seeking justice through the legal process. Otherwise we too might face death. We did not know them, until they came in search of us. Thus, I believe they should publicise their services more—maybe via an advertisement or two—so that others in our position will also know how to find them.

When Sugath was alive, he informed the office whenever he heard of a human rights violation over television news for example. These activities should increase. Otherwise some people may, after their cases are filed, agree to a settlement to withdraw their cases under pressure. It is important to raise awareness among people of the importance of pursuing their cases without giving in. The main problem however, is court delay.

AHRC: So what is your opinion about these court delays?

SSPP: This is a big problem. For instance, I was assaulted on November 12. My husband was remanded for three months and released on bail on February 12. The case was postponed to June 3 and on this day the lawyer argued and obtained a postponement to September 3. On September 2 the lawyer had gone to the Appeal

court requesting another judge to hear the case but their request had been denied. On September 3 the lawyer was absent and case was postponed to December 1. Meanwhile on September 20 my husband was killed. Court delay is the greatest shame in Sri Lanka. And this is the main reason witnesses get killed. (Adds Daughter Dilukshi: “maybe the reason for the postponement was to kill my father”). Since they (the police) were aware that it was my husband who attended to matters pertaining the case, they might have thought, his elimination would induced me to withdraw the cases against them.

The other big problem is lawyers. One or two lawyers do their work properly. But the other lawyers in Negombo are useless. In his first case, my husband could not find a lawyer to appear for him. One lawyer told Sugath that he did not appear for cases against the police but volunteered to recommend another who was willing. That lawyer did not speak more than two or three word on behalf of his client. Then 3 lawyers from Colombo had to come and obtain bail for my husband. They (lawyers) should be whacked for what they do to their clients. I have seen them take money from the accused persons and then say “settle your case or you will go to prison”. Sometimes the suspects might be innocent, but they don’t care. They work in collusion with the police. Some lawyers are even afraid of the police.

AHRC: How do you know all this?

SSPP: I have been going to court for some time. I have seen these incidents with my own eyes.

AHRC: Do you have anything more to say?

SSPP: I will never stop pursuing the court cases. I will also never forgive those who killed my husband. So please help us in our pursuit. Also thank you for all the help you have given us. May goodness be with you always (pin-wewa).

The interview was conducted by Shyamali Puvimanasinghe of the AHRC on 29.10.2008.

7

SRI LANKA: A prominent politician complains of death threats

Mangala Pinsiri Samawareera, a cabinet member in several governments and presently the leader of a political party and Member of Parliament yesterday (November 6), reported in Lanka Dissent, an E-publication, that he has been receiving death threats due to the exercise of his freedom of expression by establishing a forum called 'Defence Watch'. According to the report Mr. Samaraweera has been receiving telephone calls threatening him with death and the "callers appear to be linked with the military." Most of the calls have warned him that "traitors have no punishment other than death."

Mr. Samaraweera was the Foreign Minister of the ruling regime until, due to a difference of opinion he was sacked from his post in 2007. Prior to his sacking he had been the chief organiser for the Sri Lanka Freedom Party in the southern city of Matara since 1983. He also held various positions such as Assistant Secretary of the SLFP Coordinating Secretary of the Mother's Front. In the previous government of President Chandrika Bandaranaike Kumaratunga he held the position of Minister of Post & Telecommunications. He also served as the Minister of Urban Development, Construction and Public Utilities in the same Cabinet until after a reshuffle he was given the Deputy Minister of Finance portfolio. He was also on the executive board for the Sri Lanka National Commission for UNESCO. For further details about Mr. Samaraweera kindly see: http://en.wikipedia.org/wiki/Mangala_Samaraweera#Political_career.

Several members of the United National Party, which is the leading opposition party complained in parliament that they too have received death threats from an organisation called Mahason Balakaya

(Battalion of the Ghosts of Death), which they claim to be connected with the ruling regime. It is interesting that the ruling regime have made no announcement of conducting inquiries or made any effort to distance themselves from this group.

A number of human rights lawyers and court registrars also received death threats in the recent weeks, warning them not to appear in courts in cases relating to alleged terrorists.

On September 27 2008 the house of a prominent human rights lawyer was attacked with two grenades and this attack was condemned by the Bar Association of Sri Lanka, civil society organisations and international organisations such as the International Commission of Jurists, Transparency International, Amnesty International, Lawyers for Lawyers, Netherlands, Law Asia, the Asian Human Rights Commission and many other organisations.

Observers have warned that in the south a serious situation is developing in which opposition politicians, journalists, lawyers, particularly those dealing with human rights, intellectuals and trade unionists and others may become targets of unidentified assailants. Sri Lanka has a record of extrajudicial killings, forced disappearances and torture which have continued since 1971 in various parts of the country, the south, north and the east. There is a fear psychosis being created. That a major operation against dissidents of any sort may take place, is a common fear that has been expressed.

It is the duty of the state to provide security to everyone and this applies even more seriously regarding politicians and public personalities who engage in public life. The opposition politicians of whatever colour need to be given effective protection. It is the duty of society to demand from the state that such protection must be ensured. Bernard Shaw stated that assassination is an extreme form of censorship. This kind of censorship which is already widespread may spread even further. The government and the international community must cooperate to prevent such a political tsunami from doing greater damage to an already devastated country.

8

Mahason Battalion - death squads and lessons from the past - Part One

The wide circulation of death threats through a letter from a group calling itself the Mahason Battalion last week has evoked fears of the reemergence of death squads in the south. As was pointed out in the AHRC statement last week, death squads were a terrifying experience in the late 1980s. Please see the AHRC statement, SRI LANKA: A death squad formation against human rights lawyers needs to be investigated urgently at: (<http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/>). We give below the reports of the commissions on forced disappearances appointed to enquire into the disappearances of about 30,000 people at the time. These reports provide a useful guide to the understanding of the operations of death squads in Sri Lanka's recent experience. These reports may be found at: www.disappearances.org. They are:

Interim Report of the Commission of Disappearances in Western Zone

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces - September 1997

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces - September, 1997

Final Report of the Commission Of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) - 30th April, 1998

We are reproducing below the measures which were considered necessary to prevent the reoccurrence of such disappearances in the future by the Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces which issued its report in September 1997.

CHAPTER EIGHT - PREVENTIVE MEASURE

Your Excellency has mandated this Commission under Section (f) to report on

"The measures necessary to prevent the occurrence of such alleged activities in the future"

I. Introduction

The objectives of the recommendations set out below are:

The restoration of mutual confidence amongst citizens inter-se, and between citizens and the State

The strengthening of the underpinnings of a just and democratic society

We are mindful that our recommendations should have relevance and be meaningful to citizens living in all parts of Sri Lanka. Priority must be given at all times to the avoidance of situations of disappearances arising. The security forces and the police are necessary adjuncts of a state. They are required for the protection of the state and the protection of the citizens of the state. The average citizen looks to them for protection. The tragedy of Sri Lanka lies in the distortion of relationships between the citizens and the security forces including the police, which has resulted from the acts of both politicians and subversives.

II. Provisions Relating to Arrest, Detention and Transfer

The following recommendations shall be applicable to All arrests, detentions and transfers, irrespective of whether they take place under the usual provisions of law or the extraordinary provisions under the Emergency Regulations and the Prevention of Terrorism Act.

1. The Duty to Record Arrests, Detention and Transfer.- All arrests, detention and transfers must be recorded, simultaneous with the event.
2. The Duty to Inform.- The nearest police station should be informed forthwith.

There shall be a concomitant duty on each police station to maintain a register of such notifications. The information to be recorded at the Police station must contain the following particulars :

Name of informant and other particulars of Rank, Regiment, Army camp/Police station.

Time and date when the information was received.

Full particulars of the transaction informed i.e. place, time, purpose, etc.

Name and address of relatives, as supplies by the detainees.

Information to District Secretary : Additionally, there shall be a duty cast on officers in charge of the police station or the Army camp which was the arresting authority to submit to the District Secretary weekly a list of persons arrested, detained or transferred with particulars including such person's permanent address. There shall be a concomitant duty on the District Secretary to maintain a register of such information received which will be available to relations, lawyers or other persons/organisations with a legitimate interest in such information.

3. The duty to produce before the Magistrate within 24 hours.- The requirement that all persons taken into custody be produced before the Magistrate within 24 hours, which was a long-standing salutary feature of our law, was rendered inoperative in respect of the many persons in detention under Emergency Regulations and the Prevention of Terrorism Act, with many adverse consequences, some of which have been examined by the Supreme Court in the exercise of its fundamental rights jurisdiction. The 24 hour rule should be re-introduced without delay.

The Magistrate must be informed of any change in the place of custody, transfer out of the Magistrate's jurisdiction, and release.

The Magistrate's Court shall maintain a written record of such productions, which will be available at the Magistrates Courts.

4. The duty to issue A Receipt of the Arrest.- The arresting officer must give at the time of arrest to a family member or friend of the person arrested a Receipt of Arrest. This receipt must contain the name of person arrested, date, place, officer arresting, with rank, place of intended detention. A copy of this Receipt of Arrest is to be given in writing to the detainee himself.

5. Detention

All detention must be at authorised places of detention.

All places of detention must maintain registers of detainees, irrespective of whether the place of detention is "Permanent"/ "Temporary": whether it is maintained by Security Forces/by the Police. Particulars of Detainees held at temporary camps must also be entered in the Registers of the main Army Camp/Police station to which the officers concerned belong.

All officers-in-charge of places of detention must send to the Pradesheeya Sabha Secretary weekly, lists of persons in detention, to be entered in a Register of Detention to be maintained by him.

6. Visits by Magistrate of places of detention.- The Magistrate is required to visit all places of detention once a month. A record of the Magistrate's monthly visit and comments, if any, and of any special visit made by the Magistrate pursuant to his Habeas Corpus Jurisdiction 1 must be maintained at the place of detention as a Record available for persusal by lawyers, Court, and persons/organisation with legitimate interest in the information.
7. Conditions of Detention.- The Prison Rules shall apply, including the right to communicate with the detainee's family.
8. Release.- Release from detention must be
Through Courts or
To the families.
When release is to the family, a family member must sign the record of release. The Magistrate's Court and the Pradesheeya Sabha Secretary must be informed, including particulars of the person to whom the detainee was released.

III. The effect of a failure to abide by Rules regarding Arrest/ Detention/Transfer

1. A failure to abide by the above regulations shall make the officer concerned subject to a Disciplinary Inquiry which shall be conducted by an inquiring officer from outside the service to which alleged defaulter belongs.
2. The failure to abide by these regulations shall be entered in the officer's service record if proved.
3. A Criminal Prosecution.- the failure or refusal to record arrests, detentions and transfers by the police and the security forces and to record complaints of abductions by the police if followed by an involuntary disappearance shall be declared a cognisable offense by Act of Parliament. A criminal prosecution shall take place.
4. A Right of Private Plaintiff.- The failure to record arrests, detentions

and transfers coupled with the refusal to record complaints or involuntary removals or disappearances as it happened in the period under review lie at the root of the phenomenon under consideration by us. It is a frontal attack at this root that requires attention. With this objective in mind we recommend that the failure or refusal to perform the acts envisaged above per se be declared acts entailing penal consequences. Further, We are of the view that, in the event of the Police failing to institute proceedings against those personnel contemplated above whether at the intervention of the first complainant or any other person or institution having locus standi to do so the first complainant or any other person having locus standi to do so 2 (as recommended by us) must be given the right to file a private plaint. The recognition of an appropriate agency as contemplated above as having locus standi to institute proceedings may serve to translate into practical terms the concept of the community concern in respect of the failure on the part of state agencies on whom public trust has been reposed.

IV. The Enlargement of the Jurisdiction of the Magistrate's Court Fora in Habeas Corpus Applications

The Writ of Habeas Corpus is a main plank in the prevention of disappearance from custody. First and foremost is the requirement of speed of response: The opportunity to invoke this jurisdiction no sooner a situation of unacknowledged custody arises, is the first requisite. The following recommendations are designed with the objectives of enabling a disappeared person's family to move with promptitude in a case of suspected disappearance.

(i) Enlargement of the Magistrate Court Jurisdiction in HCA matters.- Your Commissioners recommend the enlargement of the jurisdiction of the Magistrates Court to empower the Magistrate

To receive the affidavits of the petitioner and his witness register the complaint

To entertain the petitioner's application that the Magistrate visits the place of alleged/unacknowledged detention. 3

Forward to the High Court the affidavit and the note of visit etc.

The existing jurisdiction to record evidence once a matter is referred to the Magistrate Court by the High Court will continue.

The High Court shall continue to exercise jurisdiction in respect of the declaration of responsibility and compensation as at present.

(ii) A Special Division of the Magistrate's Court, Colombo.- It is advisable that a special Division of the Magistrate's Court Colombo should be established in order to deal with the more than 330 Habeas Corpus Applications to the Court of Appeal since 1988 which still await attention. It is important that notices should go out anew to the petitioners from the Court of appeal in respect of their applications.

2. Executive Control of the Police and Security forces.- It has been brought to the notice of this Commission that an award of compensation against an official found responsible in a Habeas Corpus Case does not get reflected in his service record. Your Commissioners find this to be a very unsatisfactory situation. We accordingly recommend that Your Excellency as Commander in Chief of the Security Forces makes a direction that henceforth a finding of responsibility in respect of a disappearance by way of a judicial award in a Habeas Corpus Application shall be entered in the service record of the officer concerned, and consequently be taken into account with regard to promotions, increments, and other features of advancement in service. We consider this to be a necessary measure in order to emphasise to superior officers the need to control, and ultimately create a culture of accountability in, the security forces.

Your Excellency will doubtless ensure that these requirements are made applicable in the case of the police as well.

3. Penal Measures on Evidence of a Lack of Public Accountability.- Criminal prosecution must also follow when there is evidence that "disappearance" is a euphemism for "death". The indictment filed in The Case of the Disappeared Embilipitiya School Boys 4 is an indication of the grave charges that can be framed under the criminal law.

V. Chain-of-Command Responsibility

Officials with Chain-of-Command responsibility who order or tolerate "disappearances" by those under their command should incur criminal liability. 5

The Court of Appeal has already made award against officials with chain-of-command responsibility who had been found responsible in Habeas Corpus Applications. 6

VI. The need to dismantle "Alternative Structures of Command" and the prevention of their coming into existence

The elimination of alternative structure of command within the Police force and Grama Sevaka system is a prerequisite for prevention.

Senior Police officers have described to this Commission how an alternative structure came into being in the Police of officers junior in rank and rapidly promoted through political patronage who were used by politicians for their own ends. Enormous amounts had been paid illegally as "rewards" in contravention of the provisions of the Police Ordinance; and officers against whom the Supreme Court has made order for the payment of compensation for breach of fundamental rights had been further "rewarded" by these amounts being paid by the state, accompanied by a total absence of the recovery of these amounts from the person concerned. In this context we recommend:

The institution of disciplinary action against miscreants, including legal action, in the near future.

The identification of rules as regards the requisite qualifications for police officers and Grama Sevakas by a committee set up for that purpose, accompanied by the promulgation of a rule that future promotions of all officers will be decided on the basis of the possession of the requisite qualification plus his record of past performance, with new recruitment to be strictly on the basis of the requisite qualifications.

A training programme in investigations is urgently required for all police officers. The long years of recruitment and training of recruits as assistance to the military in border villages has resulted in a police force sadly deficient in the requisite skills in investigation. Further, there was the sad spectacle of arbitrariness and an over-dependence on unreliable "informers" in the counter-subversive exercises in the south. It is essential that the reminder goes out to all levels of Police Force that they are valuable and indispensable only if they re-dedicated themselves to the proper police functions of investigations, public relations and the maintenance of law and order.

VII. A system of a Police Lay-Visitor' Panel for each Police Area

It is necessary to reestablish the community-based forces and procedures to which the citizens can turn when faced with a possible misuser of police powers state power. Such community-based structures have a valuable part to play in the spheres both of monitoring and of prevention of such misuse. A Panel of Lay-Visitors for each police station area could serve this function.

- to speak to detainees
- to check conditions of detention
- to check records of tire police station in respect of a detention
- to liaise in the presentation of complaints to the police station
- to liaise with the SSP/DIG of the area
- to accompany persons to the police stations when requested to do so

- to make complaints themselves in a representative capacity, inclusive of impending problems
- the coordination at local level with the Human Rights Task Force(HRTF) could be an aspect of their work with importance for the restoration of Law and Order nationally.

VIII. Citizens Advisory Bureaus 7

A System of Citizen Advisory Bureaus located in the vicinity of every district secretariat would be a valuable aid to the whole community for advise on various matters. In the context of disappearances specifically, such a system is required for the assistance of bereaved persons on where to go and what to do obtain the requisite assistance.

IX. The Elemination of the Possibility of the Maintenance of a "Private Army" at state Expense

The maintenance of a considerable number of armed personnel as security guards etc, of a politician at state expense was a feature of the period under consideration. In requires to be dismantled immediately. Persons selected by the politicians were given the rank and emoluments of an Army Officer. They were paid by the Army, armed by the Army, but not controlled by the Army of employed in the Army's function of the protection of society from its enemies. These "soldiers" saw their role rather in the sphere of moving against personal enemies, acting for personal benefit or moving against the opponents of the politician concerned.

The security of public figures should be provided by a special security coordination Division of the Police officers attached to this division should be subjected to the command and supervision of superior officers in the service. All officers should be subjected to periodical transfer

X. The Manifestation of the requisite Political Will: The appointment of the three Commissions on Disappearances in Nov. 1994 is an important manifestation of the political will to come to grips with the problems which the Commission has found to exist.

A further development lies in The Presidential Directives of July 1995 to the armed forces and the police requiring that :

No person shall be arrested or detained under any Emergency Regulations or the Prevention of Terrorism Act. No. 48/1979 except in accordance with the law and proper procedure and by a person who is authorised by law to make such arrest or order such detention, and (that) every member of the armed forces and of the Police shall "Assist and facilitate the Human Rights Task Force". 8

These regulations go on to specify that :

- the person arresting shall identify himself by name and rank;
- the person arrested should be informed of the reason for the arrest; and
- a document acknowledging the fact of arrest should be given to a close relation or be recorded in the Police Information Book.

It is time now to harness civil society in the implementation of these provisions.

With these paramount considerations in mind we make the following recommendations additionally.

the need to introduce constitutional safeguards

the need to enlarge the Human Rights Commission Act

the need to create the office of the Independent Human Rights Prosecutor

A. The need to introduce Constitutional safe-guards.

We recommend the following additions to the safeguards guaranteed by the constitution on arrest.

A constitutional right in the person arrested to Communicate with a relative or friend and a corresponding duty on the arresting officer to afford reasonable facility to do so be recognised and declared.

A constitutional right in the person arrested to have issued to his relations with copy to himself a document acknowledging the fact of arrest inclusive of date and place, and particulars of the arresting authority inclusive of name, rank and place of work, and a corresponding duty on the arresting officer to issue such document or to report to the nearest police station within 24 hours the fact that the document was not issues and the reasons therefore, be recongnised and declared 9

A constitutional right in any person to be represented by the Human Rights Task Force or a similar body in bringing to the notice of the Supreme Court the existence and location of a place of detention which has not been published in the Gazette to be a place authorised by the Secretary, Defence, in an application to have the place declared as being an unauthorised place of detention by the Supreme Court

A constitutional right in a person detained in such a place of detention to be represented by the Human Right Task Force or a similar body to prefer and indictment through the intervention of the proposed off ice of public prosecutor against any persons or person alleged to have been responsible for the setting up of/or continuation of such place of detention.

Principle 3410 of the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment¹¹ be incorporated in the constitution.

B. The Need to Amend the Human Rights Commission Act

A common and recurrent feature during the terror period was the lack of responsibility shown by law enforcement authorities to take action on complaints regarding 'disappearance'. This lack of action by the Authorities was seen even after judicial acknowledgement of 'disappearances' (The cases of Richard de Soya and lawyer Liyanarachchi besides many others serve as illustrations).

Consequently, as a measure to prevent future occurrences of this kind of public unaccountability there is an imperative need for a separate institutional machinery to entertain and process complaints against excesses by police and armed personnel. A first step towards this has already been taken by Your Excellency's Government in the form of the establishment of a permanent Human Rights Commission. However we feel the need to give more teeth to this Commission so that it can serve the function of a more effective Human rights Watch, Accordingly we recommend that the Human rights Commission Act be amended by creating an independent investigating unit to inquire into complaints received by the Commission with adequate powers for that purpose.

In any event the existing agencies with their jurisdictional limitations (for example, 500 disappearances taking place in different parts of the country in a short period of time or the phenomenon of 500 disappearances in one part of the country over a year) and other constraints (complaints to police against police personnel) are not equipped to handle this type of situation expeditiously. What is required is a quick, effective and accountable agency to address the complaint without the need for an abated healing process through investigations conducted by Disappearance Commissions long after the event with attendant political overtones, Indeed, if there is an inbuilt mechanism to deal with human rights violations whatever their magnitude as and if they arise it will serve as a Human Rights Watch. Such a Human Rights Watch would act as a deterrent, and is most likely to obviate the need to appoint ad hoc Commissions in the future.

C. Need to Create an Office of Independent Prosecutor.-

As a necessary adjunct to the measures recommended above we feel the need to create an office of an independent prosecutor with security of tenure (with a supporting staff) to institute prosecutions once evidence has been collected by the proposed investigating unit. The existing framework of the Attorney General's Office is not structured to fill this need. The Attorney General's function is to mount prosecutions and represent generally state officers in complaints against them. This appears to place that office in a paradoxical position. The sole concern of the proposed independent prosecutor's office would be to institute proceedings (criminal prosecutions) where the Human Rights Commission (with the assistance of its investigating unit) has found sufficient evidence for that purpose. We also recommend that while the salary of the proposed independent prosecutor be made a charge on the Consolidated Fund, the nomination to that office be made by and ratified by a Majority of the Members of Parliament.

CONCLUSION

The manifestation of the requisite political will by the reaffirmation of the state's commitment to human rights, the reaffirmation of the right to peaceful dissent, free and fair elections being held at regular periods, and the commitment to overall development irrespective of race, caste, religion or region, are an essential and integral part of the national reconciliation to which Your Excellency has already committed the state and the people.

For more details of circumstances of disappearances and recommendations made by all the commissions kindly see www.disappearances.org under the section on Reports. Besides these reports many more documents with relevance to the subject may be found in this website.

Lessons from the past - Part Two

The wide circulation of death threats through a letter from a group calling itself the Mahason Battalion last week has evoked fears of the re-emergence of death squads in the south. As was pointed out in the AHRC statement last week, death squads were a terrifying experience in the late 1980s. Please see the AHRC statement, SRI LANKA: A death squad formation against human rights lawyers needs to be investigated urgently at: (<http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/>). We give below the reports of the commissions on forced disappearances appointed to enquire into the disappearances of about 30,000 people at the time. These reports provide a useful guide to the understanding of the operations of death squads in Sri Lanka's recent experience. These reports may be found at: www.disappearances.org. They are:

Interim Report of the Commission of Disappearances in Western Zone

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces - September 1997

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces - September, 1997

Final Report of the Commission Of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) - 30th April, 1998

We are reproducing below chapter twelve of the Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces which issued its report in September 1997.

CHAPTER TWELVE - THE CLIMATE OF TERROR: ITS IMPACT ON SOCIETY

Nearly 10,000 witnesses appeared before this Commission to give evidence in respect of the disappearance of their family members. Their personal accounts of this period form a very rich source of information for the understanding of society at the time.

It was a crisis period. The functioning of society, its administration and law enforcement, were put to severe test. The merits and defects of a system can be better judged by its performance during a crisis situation. The evidence as a whole is a damning indictment of what happened during that dark era, whether it happened at the hands of the agents of the state, private persons who tried to take advantage of the situation to settle their personal grudges, or subversives. The evidence echoed the common yearning: "Never Again."

1. The Use of Violence

When one says that terrorism has to be countered even by resorting to violence, the rationale offered is that it is done "in good faith" to safeguard society and to save the country. When one says that excesses should be tolerated, the assumption is that they are unavoidable. Can you explain this logic to the affected families who have undergone the kind of experiences described below?

A. Hostage-taking - A group of army personnel had come in search of a youth who was alleged to have been involved in subversive activities. Since he was not at home that night, they had threatened to take somebody from the family as a hostage. When the father volunteered to go with them, they had ridiculed him by saying: "No use of old codgers, we want to take that girl." Another girl was also abducted from the same area, and it was later found that both girls had been raped, killed and their bodies burnt. The person who came to her house that night had been a well-built, tall person with a moustache. With eyes filled with tears, the mother said: "People know about this, so I have nothing to hide. She was so small and fragile. I don't know how they could do a thing like that to my little girl."

Some army personnel had come in search of a man, who was involved in subversive activities. Since he was in hiding, they had wanted to extract information from his wife as to his whereabouts. Not, only had they assaulted her but had also dug a hole in the ground and put her 10 month old daughter in it and covered her in soil up to her shoulders. They had also taken with them her 10 years old son as a hostage. Her husband was later abducted and killed but the ten-year old boy was never returned home and is still missing.

A young woman had been visiting her parents with her husband. At night a group of police officers had come to the house in search of her brother who was suspected of subversive activities. When they were told that the brother was staying at her place, they had taken her husband as a decoy to find him and subsequently, both of them had disappeared. When the family met the A.S.P. of the area, they were told: "At a time like this, we can't choose between good and bad people. Don't ask us. Go and ask the government. Don't pursue this matter anymore because you are only making enemies in vain."

The evidence placed before this Commission has revealed that hostage-taking was a common practice in all the three provinces investigated by us. In some cases, hostages were released after the surrender of the suspects, but in many cases, hostages never returned.

B. Revenge Killings. - We came across many cases where women, little children, and elderly parents had to make the supreme sacrifice for the "sins" committed by their family members.

When a group of army personnel had come in search of an army deserter who was suspected of subversive activities, he had run away and escaped. Then they locked up his wife inside the house and set it on fire. They had also abducted his brother who is reported missing since then.

The person involved in this case had not been an active subversive but one who had expressed "leftist" ideas very critical of the government. He had used very abusive language when he got drunk and had

antagonized people as a result. He had also been questioned several times by the army. One day at night a group of persons had come to his house and killed eight inmates and set the house on fire. Among the dead were an 89yr. old man, a woman, and five children.

In another case, a death squad had killed 8 persons (belonging to two families) and burnt the house. One girl escaped with stab injuries. Among the dead were three adults and six children (between the ages 3 and 10).

C. Indiscriminate Killings. - Reflecting on the indiscriminate and senseless nature of killings during this period, a witness told the Commission that people were treated like stray dogs. But he added: "Even a dog is killed only when it is mad."

Another said: "People in our area were scared even to go to town, because the army had abducted many boys at the time. Even 12-year old boys were arrested. Therefore, young boys did not go to town even to get their hair cut. That was all done at home." The father of a Muslim scholarship student at Ananda College recounted the loss of his son caught in the curfew on his return journey from the Maradana Mosque and disappeared since.

My son was not doing any kind of JVP politics. He can't even write. One day he went with a crowd to do street decorations for a SLFP meeting. If it was thought that he was doing politics, that was the only political work he did. He went there not because he was a SLFP supporter but to earn a living. We have no time to engage in politics. For our day-to-day existence, he had to do odd jobs to earn a daily wage.

We did not do anything wrong, so we stayed at home. That's why we became an easy prey. The real subversives were in hiding, and now have returned to our villages.

When terrorist attacks took place, people around the area were taken in for questioning and subsequently some of them disappeared as

a result of reprisal killings. In certain area, the security forces were looking for a person named "Shantha," and several youth in the area by the same name had been arrested and they never returned home. During this period, the subversives had made a habit of collecting identity cards from people. Therefore, some people found it difficult to prove their identity when they were arrested at road blocks or in search operation.

In a few cases, we found that people with mental and physical disabilities had also disappeared. One mother said that her son who had a severe stammering problem was abducted by security forces at a bus stand and he never returned home. According to the mother, her son was not involved in any kind of subversive activity, but she suspected that her son would not have been able to prove his innocence due to his speech disability.

D. Corruption.- Some people tried to make money out of the misery of the family members of the disappeared. Using their contacts with police stations and army camps, some brokers had asked for money from families to secure the release of their loved ones. There were also allegations against police and army personnel for demanding money to release the suspects. A wife of an army lieutenant, nicknamed "Rose Madam," had allegedly taken large sums of money to secure the release of detainees. There were also several allegations against police and army personnel for soliciting sexual favours from the wives of disappeared persons, offering assistance to secure the release of their husbands.

E. Disappearances Due to Personal Animosity.- Personal jealousies, animosities, family disputes due to property-related issues, and even controversies surrounding love affairs, caused untold misery to people during this period. Caste rivalry also featured in a few cases of disappearances. As there was no proper investigation, even innocent people could be implicated in subversive activities. It happened in several ways: some provided false information to the authorities; some got the assistance of state agents to eliminate their opponents; some organized their own gangs to eliminate their enemies. This last

category of cases simply amounts to private murder, but since the normal laws of the land were silent during this period, many such crimes were not properly investigated, and as a result, they were also passed off as political crimes. One more body burning on a tyre did not arouse any undue suspicion during this period.

We had several complaints where the controversies surrounding love affairs had led to disappearances of persons. One girl directly accused her father of being instrumental in the disappearance of her boy friend. In another case, a sister attributed the disappearance of her brother to a love affair he had with a girl of a wealthy family. He had received threats from this family to lay off the girl. On an earlier occasion too, they had tried to threaten him through the police. It was revealed in another case that a police officer in a clandestine love affair with a school girl had objected to another boy in the same school having a similar affair with this girl's sister. That boy and his friend who challenged the police officer's objections subsequently disappeared. The evidence revealed that this police officer had played a certain role in their abductions.

The kind of incidents described so far reflects a very dangerous situation in the sense that nobody is safe in a crisis situation. One cannot rest assured that he is safe just because he is a law-abiding citizen. In a normal situation, one can have recourse to the judicial process and other safeguards provided by the law, but it is quite different in a situation similar to the one that existed in the late 1980's. Usually a curfew is meant to keep people at home. But during the "reign of terror", curfews were very often used to "lift" people from their homes.

II. Breach of Public Trust and Disenchantment with Law Enforcement

During this period, many police stations had flatly refused to entertain complaints from persons whose family members were abducted by security forces. A common complaint was: "We were chased away like dogs." One mother described how an officer whom

she knew by name had denied to her face that her son had been brought to the police station. "This was unbelievable. Only two hours prior to that my son had been removed from home by these very persons." Asked whether she had made a complaint to any other police station or state authority, she promptly replied: "No, it would have been like asking the thief's mother to catch the thief."

It was inevitable then, that the police functions of recording and investigating into complaints of the general public, so central to the effective administration of the criminal law, completely broke down. "The police drove me away. The Grama Sevaka said: go to the new Grama Sevaka. The New Grama Sevaka said: Go to the old," said a mother who had lost two sons. Another witness said: "I appealed to the IGP for assistance as the area—police refused to record my complaint of the abduction of my son. The IGP referred the matter for inquiry to the very same person who had refused in the first place. He is the A. S. P. of the area now."

In response to an appeal made by the government for those involved in subversive activities to surrender, a person had surrendered himself to the authorities, but had subsequently disappeared. On inquiring from the particular law enforcement officers to whom he had surrendered, the mother of the corpus had been told that her son had escaped from custody. The mother said: "I feel that we were fooled. We thought my son's life will be saved if he surrendered." Another witness said:

When my son, a Technical College Scholarship student was released on Amnesty after the 1988 Presidential Election, the police said: "don't think you have escaped", he was abducted soon afterwards and has since disappeared.

It was revealed in a number of cases that suspect, released from police/army custody, were abducted again no sooner they had left that place. In another set of cases, the police had produced the suspects before court reporting that there was no sufficient evidence

for prosecution. When they were released from court, the victims had simply disappeared on their way back home.

Several witnesses complained that the real culprits referred to by them were not produced when identification parades were held. In one such case, our investigations revealed the following facts. The corpus was abducted by "X" (name given) attached to a certain police station in the South. On a complaint made by his father, an inquiry was held by another police station, and this matter was subsequently referred to the Magistrate. An identification parade was held in court. Twelve police constables attached to this particular police station had been produced at the parade. The P. C. referred to by the complainant was not produced at the parade although he had been attached to this particular police station when the abduction took place on 14.12.1990. There is no record at this particular police station regarding the arrest and detention of the corpus on the given date.

Many families believed that justice has not been meted out to the affected families. They lamented that those who were responsible for the disappearances of their children have not been punished; they have not even been transferred out of those areas; instead they have got promotions and are doing well. As one witness put it:

The Governor who imposed Martial Law in 1915 was recalled by the British Government. But persons identifiable, who have been responsible for acts such as the enforced disappearance of my son are still at large.

I lived during the Second World War. There were even foreign soldiers on Sri Lankan soil at that time. But there was a law at that time. There was always some senior officer to whom one could make a complaint. But during 1988-89 there was no law. They just wanted to kill somebody.

III. The Destruction of the Democratic base of Society

The "reign of terror" was not simply a two-sided conflict between the government and the ruling party on the one side and the JVP movement on the other. Other oppositional parties also became targets of attack by both the government and the JVP. A systematic repression and general intolerance of the democratic opposition was spoken to by witnesses in the case after another.

As incidents of disappearances of candidates and active supporters occurred, and arson and murder of political opponents in the guise of anti-subversive activities increase, a disgust of elections was brought about in the people. "This is what happens a when you participate in elections", said the mother of a political activist who has disappeared.

The suppression of the freedom of speech association was also spoken of by petitioners giving evidence on the abduction and disappearance of journalists, of human rights activists, of trade unionists, and of NGO activists in these fields The following are some of the incidents that transpired in our evidence.

A mother spoke of her son, an undergraduate working as a journalist in human rights while the University was closed, who was abducted and has disappeared since.

Witnesses spoke of how a Habeas Corpus application had to be withdrawn due to threats to their lawyer; and of the actual murder of another lawyer who was appearing for them.

A brother of the then General Secretary of the SLFP Trade Union Federation, "disappeared without trace on a bus journey to Colombo."—wife

My mother, a trained family planning advisor, was an active member of the Mid-Wives Union. They came in the night and took her away while she was still in her night-dress; she has since disappeared.—daughter.

My husband was a supervisor at the Kotmale work site and was abducted when he formed a trade union there.—wife.

My husband tried to form a trade Union in the Free Trade Zone, Katunayake. He and four others were abducted on the same day and have disappeared since.—wife.

IV. The destruction of Community Initiatives

The for psychosis had gripped the entire society. In the face of the anxiety and uncertainty engendered, people became passive onlookers to the many tragic events of this period.

We who would move to a side the body of a dog found dead on the roadside saying "aney" were rendered passive spectators to the sight of young mutilated bodies burning at the cross-roads. I didn't report the abduction and disappearance of my widowed sister's only son as I have a son and I feared for his safety should I do so.

The army took away my two sons as they were walking by the road. One of them has returned. We are rendered passive victims as regards the disappearance of the other through fear our surviving son too will be lost to us.

My heart wished to bring him (corpse) home no one would help me.

In a case where a woman was hostage instead of her husband, the neighbours refused to open their doors to her twelve year old son.

The temple, the hospital—the traditional symbols of refuge and help—became associated instead with the destroyer. "We had no one to turn to. Even our temple had been turned into an Army-Camp", said a sorrowing mother. "When we found my brother with gun-shot injuries, my husband took him to the Government Hospital, and remained in the ward with him. But the Army abducted my brother from the ward and there is no news of him since", said a sister, vividly describing how doctors and medical staff became passive by-standers.

V. Lost Hopes and Shattered Dreams

In Sri Lanka the free education system has provided the poor and the underprivileged majority with considerable opportunities for upward social mobility. They feel that it is only through education that they can surmount the barriers that keep them disadvantaged, whether these barriers are created by race, caste, creed, class, or other social and economic factors. In our survey on university students, we found that most of the disappeared students (even in the "prestigious" faculties such as Medicine and Engineering) came from very humble social backgrounds. Besides university students, a large number of school children had also disappeared during this period. Considering the meager income of these families, it is obvious that they would have made tremendous sacrifices to bring them up to that level. They were the ultimate hope of their parents for the security and social status of the family. Their disappearance shattered beyond repair all their hopes and dreams.

The potential that article 12 of our constitution carries in providing rights and opportunities to persons who would otherwise be subject to certain barriers was blighted in the guise of counter-subversive operations. Some incidents revealed in our inquiries were in relation to families who had suffered disadvantages on the ground apparently of caste and on account of being economically disadvantaged families

A witness giving evidence regarding the disappearance of his son, a second-year university student, said:

Anything can be robbed but not education. So we educated our child. But somebody has robbed him of his life. We can't understand this. My wife has become a mental patient thinking about our son all the time. Now she mutters nonsense. She was treated at Angoda and Mulleriyawa hospitals. She is still undergoing treatment.

A young woman who gave evidence before the Commission regarding the disappearance of her brother (third-year medical student) had subsequently sent a letter the Commission saying:

At the end of the inquiry, I realized that my brother is no more. I swear that the most painful moment I have experienced in my life was when I was told that I can get a death certificate for him. We wanted my brother to get a Medical degree certificate. We don't want a death certificate for him. My father died ten years ago, and my mother had to beat coconut husks by hand to obtain the fibre for the manufacture of coir rope in order to bring up nine children. When my brother disappeared, we had to spend a lot in our search for him and we got into a worse financial situation...

"My son was the only educated person my village had. If you suspect a person take him to courts; don't kill him" said a father, depressed caste, recounting the abduction and subsequent disappearance of his bright younger son. In his evidence he described how the older brother coming in from minding the cattle would ask eagerly "has malli (younger brother) been found" and how that son too committed suicide thereafter.

VI. Killings by subversives

779 killings by subversives were reported to this Commission. Among the victims were personnel of the security forces, their relations, grama niladharis, gramarakshakas, politicians, and ordinary citizens. In one case, subversives had killed 9 inmates of a hours (belonging to two families) and also set the house on fire.

Among the dead were an old woman, two middle-aged women, two men, and four youths. The reason was that when subversives had come to collect money on a previous occasion, they had been assaulted by two members of this family.

The wife of a cultivator in the Sabaragamuwa province giving evidence before the Commission stated that in July 1989 subversives had come to her house and killed her husband. He had been first stabbed several times and later shot with a gun. She attributed this killing to the fact that her husband had worked for and was closely associated with a prominent politician of the ruling party at the

time. Consequently, the state had paid her compensation for the loss of her husband. A couple of days later a gang of persons whom she suspected to be of the same group that had killed her husband had come home and looted money and provisions at home.

Killings by subversives led to reprisal killings by the agents of the state. At one of the monthly meetings of a certain Provincial Council, a member has said (the minutes of the meeting on 27.2.1992 was produced in evidence):

No other person has suffered from terror as much as I did. My eldest daughter was 17 years old. The other was only 5. Both of them were brutally murdered by JVPers...my 17 year old daughter was still a school girl. What was the crime she committed to deserve such a death. They came in disguise to destroy us. Three JVPers were killed in my own house. Eleven others who killed my children were burnt on tyres. Karmic cycle has taken over. A few others are still in rehabilitation camps. Revenge will be taken on when they are released.

Some witnesses produced threatening letters that their families had received from subversives. In one case, a father of 9 children who had lost his wife two years back, had been abducted by subversives and tied to a lamp post and shot dead. A threatening note he had received reads as follows:

We know that J. R. Jayewardene, the murderer, will not conduct the Presidential Election scheduled to be held on December 19th in a free and fair manner as his aim is to extend the tenure of his regime. Therefore we have named the UNP, SLFP, and the USA as banned parties. It will be considered an unpatriotic and treacherous act to serve at any election center as a party representative or to give any support at the election. You are strictly warned not to participate as a party representative. If this order is defied, punishment will be death. (signed by Commanding Officer, Anadena Mulasthanaya, Deshapremi Sannaddha Balakaya, Kegalle.)

The person involved in the above case was a UNP supporter who was killed even before the election. Several supporters of the Sri Lanka Freedom Party (SLFP), and the United Socialist Alliance (USA), also received equally brutal treatment at subversive hands. We also came across several cases where citizens were killed for exercising their right to vote at elections.

Most of the anti-government subversive activities during this period were carried out by an organization which called itself the "Deshapremi Janatha Vyaparaya" (Patriotic People's Movement). The JVP always claimed that the DJV was a separate organization notwithstanding the fact that both organizations shared common political views and their membership overlapped with each other. Mr. Tylvin Silv, presently the Secretary of the JVP, who gave evidence before the Commission reiterated this position and maintained that the JVP cannot take responsibility for the actions of the DJV. However, several special witnesses from political parties and other organizations who appeared before the Commission strongly believed that the DJV was only a front organization of the JVP. Some went to the extent of saying that the DJV had no separate existence and was an integral part of the JVP movement. What was the popular perception? Thousands of witnesses who came before us saw no difference between the two; they used the name "JVP" through out.

VII. A Society Caught Between Two Forces

Many witnesses said that, caught between two forces as they were, their life during this period was like a "nut in a nut-cracker" (girayatha ahu vechcha puwak gedyak vagei). They felt that there existed a kind of "dual-power" situation in the country. The state had lost its hegemony, and some referred to the authority of the JVP as Punci Aanduwa (small government). The JVP imposed its own curfews, organized island-wide hartals, and called for frequent strikes. Some joined these protest movements under JVP threats.

Many witnesses said that their families suffered at the hands of both the security forces and the JVP during this period.

In our area a group of JVP supporters went from house to house and asked people to assemble for a meeting. Later the army had raided the place and arrested people. My son was among those who were arrested, and he never came back home.

As a punishment for supporting the SLFP in the 1988 election. The JVP asked me to kneel down on the road for three hours. However, it was the security forces who abducted my brother on a later occasion. The resultant sense of isolation was portrayed time and again in the evidence: "There was no one to complain to. two The government was deaf; the opposition absent; the police drove us away like dogs. The JVP killed, the army killed," said a mother who had lost three sons taken away in three different rounding-up operations never to return.

The police and armed forces are not alien institutions to this society. The affected families also had their own children and relatives serving in the police and armed forces. We came across several instances where one member of the family was killed by subversives as a punishment for serving in the police or in the army; another member of the same family was abducted by security forces for alleged subversive activities.

Batheegama Temple



" OUR TEMPLE BECAME AN ARMY CAMP "

For more details of circumstances of disappearances and recommendations made by all the commissions kindly see www.disappearances.org under the section on Reports. Besides these reports many more documents with relevance to the subject may be found in this website.

For the first statement in this series kindly see: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1745/>

Lessons from the past - Part Three

The wide circulation of death threats through a letter from a group calling itself the Mahason Battalion last week has evoked fears of the reemergence of death squads in the south. As was pointed out in the AHRC statement last week, death squads were a terrifying experience in the late 1980s. Please see the AHRC statement, SRI LANKA: A death squad formation against human rights lawyers needs to be investigated urgently at: (<http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/>). We give below the reports of the commissions on forced disappearances appointed to enquire into the disappearances of about 30,000 people at the time. These reports provide a useful guide to the understanding of the operations of death squads in Sri Lanka's recent experience. These reports may be found at: www.disappearances.org. They are:

Interim Report of the Commission of Disappearances in Western Zone

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces - September 1997

Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces - September, 1997

Final Report of the Commission Of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) - 30th April, 1998

We are reproducing below chapter ten of the Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces which issued its report in September 1997.

CHAPTER 10: RECOMMENDATIONS

The Commission has been mandated by Your Excellency to investigate into the Following:

- (A) Whether any persons have been in voluntarily removed or have disappeared from their places of residence in the Northern Province and Eastern Province at any time after January 1, 1988;
- (B) The evidence available to establish such alleged removals or disappearances;
- (C) The present whereabouts of the persons alleged to have been so removed or to have so disappeared;
- (D) Whether there is any credible material indicative of the persons responsible for the alleged removals or disappearances;
- (E) The legal proceedings that can be taken against the persons held to be so responsible;
- (F) The measures necessary to prevent the occurrence of such alleged activities in the future;
- (G) The relief, if any, that should be afforded to the parents, spouses and dependants of the persons alleged to have been so removed or to have so disappeared and to make such recommendations with reference to any of the matters that have been inquired into under the terms of the warrant.

As regards section (A) of the Mandate: Whether any persons have been involuntarily removed or have disappeared from their places of residence, the obvious response is a resounding "Yes".

People from all stations of life, from wives of labourers, to wives of principals of schools and parents, all came with their tearful stories of their family members taken into custody by security service personnel or by militant groups. There is no doubt that there had been a large scale involuntary removal of people from their places of residence.

Regarding Mandate (B), i.e. the evidence available to establish such alleged removals or disappearances, there have been large scale

corroborative evidence by relatives, neighbours and fellow human beings, as most of these arrests were done in full public view, often from refugee camps and during cordon and search operations where large number of people witnessed the incidents.

Regarding Mandate (C), i.e. the present whereabouts of the persons alleged to have been so removed or to have so disappeared, the Commission faced a blank wall in this investigation. On the one hand the security service personnel denied any involvement in arrests in spite of large scale corroborative evidence of this culpability. They also denied the existence of any undisclosed detention camps where the arrested could have been kept pending the emergence of Civil Peace. In this situation the Commission feels that a separate investigation and much more time are necessary for the determination of this issue.

The fact is that Army arrested people in large in large numbers. The Army only can answer what happened to the corpus of those arrested. It was no use denying that they have much to do with these arrests.

Regarding mandate (D), i.e. whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances, according to the evidence recorded, 90% of the removal was ascribed to the security forces – Army, Navy, Airforce and the Police. L.T.T.E. also was responsible for its own share of removals. Other militant groups also are in the picture. The name of some officers comes up often in the course of inquiries. Captain Suresh Cassim, Major Suraweera, Dean of Dyke Road, Trincomalee, Richard Peiris of Trincomalee police, Captain Munaz, Captain Palitha, Capt. Guneratne, Major Majeed and Major Mohan of Kommathurai army camp in 1990, Captain G.L Perera and Inspector Soyza of Ampara Police area are some of the Army and Police Officers against whom there is enough evidence in our files for initiating prosecution.

Your Excellency's next poser was Mandate (E) the legal proceedings that can be taken against the person held to be so responsible. The Commission feels that on ex-parte evidence alone, it cannot decide

on the guilt of these people. Hence, proper inquiries have to be undertaken and evidence given by the complainants should stand the scrutiny of cross-examination. This is a task we leave for the next Commission.

Regarding the Mandate (F), the measures necessary to prevent the occurrence of such alleged activities in the future, Sri Lanka has already taken ancillary measures to prevent the excesses happening again. The directions issued by His Excellency the President and the Regulation 08 of The Emergency (Establishment of Human Rights Task Force) Regulation No. 01 of 1985.

These require the Army and the arresting parties to ensure the fundamental rights of persons arrested or detained and such persons to be treated humanely. These seek to ensure that the officer making arrests or detentions shall identify himself to the person arrested or any relative or friend of such person by name and rank. Every person arrested shall be informed the reason for the arrest. A document containing the name and rank of the arresting officer, the time and date of arrest and the place of detention shall be specified in such documents. This is to be given to the spouse, father or mother or close relative of the person arrested. If he is unable to issue a document he shall make an entry in the nearest Police Station or if he belongs to the armed services to report to the O.I.C of the Police station why he is unable to issue a document.

The members of the Human Rights Task force should be permitted access to the arrested person. These and other regulations are already in the Statute Book but this will not be of much help unless they are properly enforced. In this connection the Commission wishes to endorse an observation made by “Asia Watch” report on 31st May, 1992, which reads as follows:

“It was not enough to point to an impressive array of laws and institutional mechanisms adopted to protect and promote human rights. Unless these laws and mechanisms are utilised to secure the effective enforcement of rights, and unless that enforcement

is strictly monitored, the introduction of such measures will serve only a cosmetic purpose. Such measures may enable a Government to deflect, for a limited time, criticism that it is failing to fulfil its international human rights obligations. They will do little to improve the human rights situation in the long term unless individual members of the security forces are held accountable – and are seen to be held accountable for human rights violations they commit”

In any case these regulations will not touch on the basic problem which creates deep fissures in society. Two problems are facing this country. One is the problem of the youth which took militant form under the J.V.P. The other is ethnic problems which takes militant form under the L.T.T.E. These two problems unless handled with vision and statesmanship will distort all organs of Society and make the Army arbiter in national issues.

Your Excellency has taken the correct decision and especially in the ethnic sphere, Your Excellency's proposals could be adopted as a basic policy of the land.

The next question (G) Your Excellency posed was a relief that should be afforded to the parents, spouses or dependants of the persons alleged to have been removed. The Commission has worked out a Compensation Scheme in accordance with the circular issued by the Ministry of Public Administration No.21/88of 13th July, 1988 and this is only a token of the concern of the Government for deprivation suffered by the affected families. Money in any quantity will not compensate the absence of the bread-winner, the love of the father, the duty of the son for the family. But money helps in some way to cushion the blow.

As far as the compensation is concerned we have to issue a note of caution. Some of these complainants have already obtained compensation through the Ministry of Rehabilitation. Steps have to be taken to ensure that there is no double payment.

In addition to compensation certain other measures have to be taken to help these families whose bread-winners are removed from them. We recommend at least one person in such families who has the minimum-

qualifications be given employment either in the State Sector or in the Private Sector. Where people do not possess minimum qualifications they should be given vocational training at State expense to ensure that one person in the family is employable.

We suggest that:

1. Dependants of all public servants, employees of semi-Government bodies, Statutory Corporations, who have disappeared must be paid the salaries of the disappeared till they reach the age of retirement and thereafter they must be entitled for pension. No distinction must be drawn among permanent, pensionable, casual, temporary employees etc.
2. Dependent family members who are not caught up in the above category must be brought under an effective and meaningful social security system.
3. The Commission was able to identify malnutrition among the children of the disappeared. The existing programme of fight against malnutrition should be extended to them as well.
4. A portion of Scholarships for higher education should be reserved for the children of the disappeared.

The Commission has already found that the immediate family members of the victims are facing legal and administrative problems, some of which needs special attention. We refer to the problems arising out of the state of legal uncertainty of those who have disappeared due to lack of proof. Family members face problems connected with their civil status, inheritance, widows and orphans pensions. Even though Government had made it possible for them to have a person registered as dead if he had not been seen for over an year, this had not been brought to the notice of the family members of the disappeared. It is recommended that action should be taken at

the level of the Divisional Administration, to make this development, well known.

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For the first and second statements in this series kindly see:

<http://www.ahrchk.net/statements/mainfile.php/2008statements/1745/>

and

<http://www.ahrchk.net/statements/mainfile.php/2008statements/1747/>

RESOLUTION

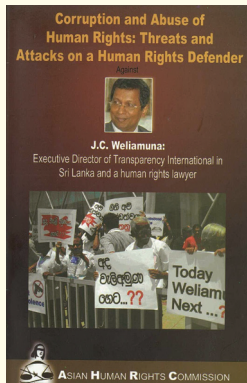
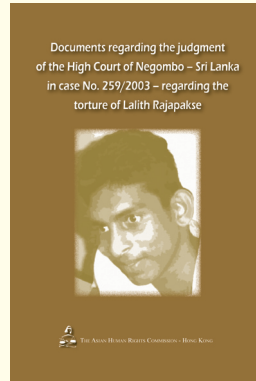
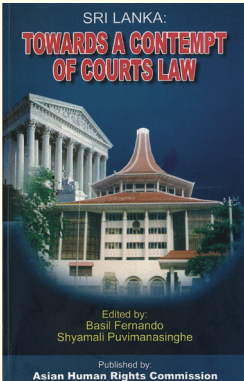
PROPOSED BY MR. W. DAYARATNE, PRESIDENT OF THE BAR ASSOCIATION OF SRI LANKA AND UNANIMOUSLY PASSED BY THE BAR COUNCIL AT ITS MEETING HELD ON 22/11/2008

WHEREAS, in the exercise of his professional duties, Mr. Dothalu Waniga Chinthamani Mohotti (Ranga) Attorney-at-Law of the Supreme Court of Sri Lanka is made entitled by Article 14(g) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 41 of the Judicature Act, with the right of representation before any authority, including the Police and in the event Mr. Mohotti moved to surrender a suspect in the precinct of the Bambalapitiya Police Station, whom the Police was searching for, the said Attorney was subject to abuse, humiliation and ridicule in the hands of Upul Seneviratne, the OIC, Police Station, Bambalapitiya in the presence of the Public and his client while threatening with life, and the said incident which was recorded in the electronic media manifestly makes clear that the Attorney has been subject to the aforesaid harassment, and

WHEREAS, the said act and attitude of Upul Senerviratne, the OIC Bambalapitiya Police towards an Attorney-at-Law amounts to degrading treatment, the Bar Association, of Sri Lanka, wholly and unreservedly condemn the said act of the Police Officer and call upon the Inspector General of Police and the National Police Commission to interdict the Police Officer and take adequate disciplinary measures forthwith and to ensure the physical safety, the self-respect and the dignity of the Law professionals and to give effect to the provisions of the Circular No.1374/97 issued with regard to the Police-Lawyer relationship, forthwith.

W. DAYARATNE
PRESIDENT
BAR ASSOCIATION OF SRI LANKA

Three other publications by the Asian Human Rights Commission



For information on other publications please see:
<http://www.ahrchk.net/pub/mainfile.php/books/>



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