

An Exceptional Collapse of the Rule of Law



Told through stories by families of the disappeared in Sri Lanka

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Introduction

Mass murder and constitutional insanity

By Basil Fernando

Oversimplified explanation

Several attempts have been made to explain the large-scale disappearances that took place in the south of Sri Lanka from 1987 to 1991, conservatively estimated to have taken the lives of over thirty thousand persons, most killed after their arrest by the police or armed forces. While some explanations have been in the form of official reports of Commissions on forced disappearances, others have come from international agencies such as the UN Working Group on Enforced or Involuntary Disappearances. Individuals have also offered explanations via books and articles.

Virtually all of these documents explain the disappearances as a consequence of a civil conflict, or 'war' between a group of insurgents known as the Janatha Vimukthi Peramuna (JVP, or Peoples' Liberation Front) and the security forces. While this explanation is convenient, it fails to arrive at a proper analysis of the political situation that developed after the July 1977 elections, which continues to this very day. Some major changes took place in the political management of the country at this time. They were so far reaching that even today there seems to be a general consensus that the very nature of this political transformation need not be examined too deeply.

It began with an election victory of more than a two-thirds majority. The big victory was used as a mandate to completely overhaul the political system of the country and set in place the structures that would guarantee decades of violence far beyond anything envisaged by their instigators.

Crazy constitutional experiment: Montesquiean vs. Bokassan models

The Constitution promulgated in 1978 created a political system in which the Executive President became the core. This transformation resulted in a Bokassan model—a complete change from the broadly Montesquiean approach of the previous constitutions— which has not yet been subjected to serious examination. Dr. Colvin R. de Silva, the Constitutional Affairs Minister of the former regime, pointed this out immediately after Prime Minister Jayawardene transformed himself into Executive President in the same style as Jean-Bedel Bokassa, President of the Central African Republic from 1966 to 1979. Bokassa crowned himself Emperor in 1977, and renamed the country the Central African Empire. In his essay ‘New-Style President’, Dr. De Silva correctly observed that the example given by Bokassa was the source of the new-style President’s ideal for state control. The similarity between the two situations was not just in the manner of appointment but also in the very substance of the model for governance introduced into the country. The separation of government into executive, legislative and judicial branches remained only in name; the real power lay exclusively with the Executive President.

Falsification about the French style

The President’s party had secured an overwhelming majority in Parliament. Hardly any opposition to the transformation was possible there. But alarmingly, many legal luminaries joined in chorusing praise for the new Constitution. Political scientists energetically promoted it, saying that now there was a Constitution combining elements of the de Gaullean model with that of Westminster. They saw the Executive President as someone wearing nice clothes and

demonstrating the higher aspects of constitutionalism. Hence, the Bokassan face of the Executive Presidency became well disguised. Sri Lanka thereby fell into one of the most primitive forms of governance. With this radical transformation began the nightmares that would bedevil the country in the decades to come. Tragically, the nightmare political scenario has persisted to the present day.

However, under the new system the absolute powers of the Executive President have depended on having a Parliament with a two-thirds majority to rubber-stamp whatever he or she wants. In 1977 this was possible, but as the years dragged on it became quite clear that it could not continue to be the case. The Executive President had to preoccupy himself in fighting and eliminating all those who could damage the position he had in Parliament. This also meant suppressing elements from within his own party, which he did through many unscrupulous methods, including obtaining undated resignation letters from members of parliament. He also had to suppress the major opposition, the Sri Lanka Freedom Party (SLFP), which was the next most - established political party. These attacks have been well recorded, and there is much documentation available on them.

Need for violence

As opposition deepened, the system required the extensive use of violence. Thus one of the most violent periods in Sri Lankan history began to develop. Yet, there was one difference in the Sri Lankan Executive President when compared to Bokassa: the latter declared himself lifetime ruler, whereas Jayawardene was not in a position to do this immediately. However, he clearly had this ambition and scheme. To achieve this end gradually, he had to maintain his party's majority in parliament. For this purpose he deliberated a referendum in which the people were asked to extend the life of the parliament without an election, creating further confusion and resistance throughout the country. This step could only be taken if accompanied by widespread violence. For this purpose the ruling party itself was transformed into a physical fighting force, which spread into the remote corners of the country. The natural consequence was that anyone else who had

political ambitions had to organise in a similar manner. The capacity for violence and counter-violence became the means for political organising in the country.

The violence, then, was not accidental: when a political model that people have been accustomed to is abruptly transformed into something completely different, its very survival depends on the possibility of maintaining a high state of confusion within which rational debate and rational settling of disputes becomes impossible. The more the violence deepened, the more it helped the Executive Presidency to survive.

Corruption and the underworld

The prevalence of violence helped the Executive President in another way. It created a new layer of friends who would want the Bokassan style of governance to continue. These were elements that preferred 'free play' for their corrupt practices. The Executive President broke all the laws that in the past had controlled corruption. In fact, he created an environment in which the corrupt were rewarded and encouraged. When letters of complaint were received against those in the regime, they were sent directly to the persons against whom they were made, giving them the opportunity to take revenge against the complainants. Impunity for corruption was no longer hidden, rather, it was a fact of life.

Corruption spurred the growth of the underworld; in fact, the underworld's size and influence today originated with the political transformation of the seventies. All areas of life came under the influence of the underworld. Everyone vying for a social position had to obtain the patronage of these criminal elements. Politicians of the ruling party in particular had many connections. Whether the politicians were living under the patronage of the underworld or the underworld under the politicians is hard to tell. Perhaps it is sufficient to say that they were mutually dependent.

Deadening effect on policing

These developments had a deadening effect on Sri Lanka's policing system. Independent policing could not exist alongside the Bokassan political system. The policing system was already in need of serious reform by 1977, as pointed out by several government commissions. In fact, everyone was aware of the problems. However, instead of reform, under the Bokassan model of governance, the complete collapse of independent policing followed, as it was assimilated into the political system in order to serve its purposes. Corruption naturally spread faster into the policing system, bringing down the whole of society with it.

Controls over abuse of power

Hence, within a few years of the political model introduced by the 1978 Constitution being realised, all controls that had existed to limit the abuse of power had collapsed. All social arrangements of the previous years had given way to the new system. The rhetoric of the old system—such as the rule of law, independence of the judiciary and need for checks and balances—remained only as 'lucid talk' among some liberal elements, with no relevance to the new political reality. The resulting situation was beyond anyone's control, including the Executive President himself.

Polarization

As pointed out above, the new style of ruling needed violence to keep peoples' minds diverted from fermenting opposition to the political scheme. The Executive President did everything possible to manipulate existing political contradictions, using them as an excuse for the application of emergency powers and other provisions to enhance his own position. From the beginning of his rule he declared a war on the Tamils. Ethnic camouflage was used to hide the development of a dictatorship. In fact, Tamil liberals themselves looked to the Executive President as their only possible saviour, because they believed that a dictatorship would be more successful in resolving the ethnic conflict than a parliament.

By 1983, however, the government itself organised a riot against the Tamils in Colombo, drawing support from some sections of the military. Perhaps the political impressions created by this riot went beyond anything calculated by the Executive President, for it actually worked to undermine him personally. However, it did consolidate the Bokassan-style Executive Presidency, as war spread across the country. The logic of the war was that it would preoccupy the minds of the people, and deny any political challenge to the new political structure.

The third term

Despite all this, after the 1982 Referendum the Executive President had to preoccupy himself with what he should do in order to continue in his position when his second term of office ended. There were two major problems. First, the constitutional limit to the presidency was two terms and an extension would require a Constitutional Amendment. This was possible if the parliamentary majority could be used to rubber-stamp the Amendment. But second, even if he was to continue for a third term he would need a further extension of parliament without an election. Under the circumstances, he toyed with the idea of imitating Bokassa fully and returning to a monarchy. Many political events of the time, many political speeches and even a case before the Supreme Court — where a Solicitor General argued that the incumbent Executive President was the continuation of the Sri Lankan monarchy — bear witness to this idea.

However, by this time there were many problems facing the regime. The 1983 riots had created international outrage against it, and there were problems within the President's party itself about succession. The unquestioned leadership he had in 1977 was beginning to erode. To survive he needed more violence, and some unusual circumstances.

Scapegoats

Since the July riots of 1983 there was enough violence in the north to legitimise the declaration of open war. The Executive President named several left-wing political parties as scapegoats for the riots. The media

then reported about a great plot masterminded by the members of those parties, naming individuals. Many were arrested, while some went underground. In this manner, a scheme for massive suppression in the south of the country was unravelled from the revelation of this plot, which had no basis in fact. It was the ruling party that masterminded and executed the riots, with the connivance of the police and security forces. Its concocted plot stemmed from an unrealistic political ambition, which saw the Executive President emerging from the chaos in the north and the south as a lifetime dictator.

Provoking violence

Among the groups that were declared as instigators of the July 1983 riots was the JVP. By then it was a democratic political party to which no links to any violent schemes could be established. However, after being forced underground and hunted, it developed modes of brutal retaliation, as did the militant elements in the north. The escalation of conflict led not only to the adoption of draconian laws but also to the authorisation of violence by the police and other security forces, and their steady militarization.

The JVP's alleged acts of brutality were used in propaganda to disguise the extensive violence perpetrated by the state to ensure the continued existence of its political system. However, the actual target was not only the JVP but also any opponents of schemes introduced by the Executive President.

False explanation

If the JVP alone was to have been suppressed, then there would have been no need for killings after arrest. Arrested persons with definite links to the JVP would have provided the best evidence against insurgent leaders, which could have been used in a court of law. Moreover, such evidence could have been used to create a databank of political information against the accused.

The liberties given to the police and the armed forces, however, were

not for the purpose of creating better investigative facilities and methods in a time of crisis. Rather, they were intended to encourage the police and other security forces to operate violently and commit acts that would in normal circumstances be construed as criminal offences. This criminalisation of the police and other agencies resulted in the mass disappearances that are the topic of this book.

Target everyone

The force of violence, once let loose, cannot be controlled even by those who initiate it. Developing its own momentum, it destroys the very fabric of society. Its target widens to gradually include everyone. In many of the inquiries into cases of disappearances, parents and relatives complained of innumerable innocent people being killed, including young boys and girls. According to the statistics provided by the inquiry commissions, close to 15 per cent of the total number of disappearances were persons below the age of 19. Many parents have claimed that their children were killed due to false information given by a jealous neighbour.

In fact, no one who lived through this period would challenge the notion that people used those moments of chaos to take personal vengeance against others. The sheer madness of the situation consumed innocent lives; this is no surprise. Normal life could not continue alongside the abnormal political situation created by the Bokassan scheme, which ensured that the whole nation would be thrown into chaotic violence. It is impossible to seek an explanation for such violence in any way other than in connection with the political transformation forced upon society at the time.

With massive violence occurring all over the country, the personage of the Executive President became irrelevant. The Bokassan scheme had become so consolidated within Sri Lanka that it even consumed its ambitious creator. By the end, the first Executive President had become nothing more than a pathetic figure. Hatred was rife among those closest to him, and a number of those who wanted to be his successor lost their lives. No name has been more cursed by people of all beliefs

and ideologies in Sri Lanka than that of Jayawardene. Despite this, the political scheme that he created had become so consolidated that his surviving country folk have found no way to escape living under a Bokassan model of governance.

Retarded imagination of constitutional experts

The constitutional imagination of the legal and political experts has virtually dried up in Sri Lanka. While everyone—including those who openly supported the 1978 Constitution—lament over it, there has not even been an attempt to escape from this political and constitutional scheme. Since the early nineties, ministers who held the portfolio of Constitutional Affairs have come up with nothing except a few amendments to the scheme. Thus, a despised system has tended to survive because the constitutional imagination of the country and those experts outside have failed to generate ideas that can shake the roots of the Bokassan system.

Experts are unwilling to come to terms with the tremendous political and constitutional transformation caused by the Constitution, as this would require abandoning most material written since the late seventies not only on law and politics in the country, but also relating to most social sciences.

False interpretation

In the early years of his office, the first Executive President accused a senior constitutional lawyer in the country of failing to understand the new Constitution. This was an attack on the lawyer's attempt to interpret the 1978 Constitution within the conceptual framework of other constitutions. The legal profession by and large—as well as the courts—has tried to interpret the 1978 Constitution in broadly Montesquiean terms. In such attempts, some degree of continuity with earlier Constitutions has been claimed; however, the actual constitutional and political reality has been missed.

The 1978 Constitution has nothing to do with the constitutional

framework of earlier constitutions. What took place in 1978 was an abrupt rupture with the past. It was an act of forced discontinuity. Perhaps because consciousness usually lags behind real developments, the legal and political experts of Sri Lanka failed to understand or to accept that there was no continuity. A set of assumptions and conceptions that were completely alien to basic democratic notions was introduced in 1978, while the only continuity with the past was a terminological façade.

Lamenting the collapse of institutions

These attempts at trying to interpret a Bokassan Constitution in Montesquiean terms have resulted in negativity. As the years go by, the lost value of basic democratic institutions—the parliament, courts and law enforcement agencies, among others—is increasingly lamented. The literature speaking to this is abundant.

The 17th Amendment to the Constitution was itself proposed for this reason. The most influential lobby for the 17th Amendment also included the former ruling party under the first Executive President, now in opposition. Their own speeches and announcements reported in newspapers at the time bear testimony to an admission that the basic institutions of democracy in the country have collapsed.

Underlying fallacy of the 17th Amendment

However, the 17th Amendment was not an attempt to displace the 1978 Constitution; it was an attempt to find a way to act within the institutions of the state as if the 1978 Constitution did not exist. The attempt is of course both constitutionally and politically naive for as long as the dominating institutional ideal is absolutely authoritarian. Trying to get some basic institutions to function outside it only demonstrates desperation, not resoluteness to do away with the basic cause of institutional tragedy in Sri Lanka, namely the conceptual framework of the 1978 Constitution.

Another suggested 'solution' to the present impasse has been to change the post of the Executive President and to return to the Westminster style of prime ministerial system. Although this alone would not alter the overall scheme of the 1978 Constitution and its impact on existing institutions, even such promises have never been realised.

Why no investigations, no prosecutions?

The political scheme of the 1978 Constitution—for which large numbers of people were sacrificed, including the disappeared persons in the south of the country—is therefore still being consolidated. For this reason, all attempts to find legal redress in innumerable cases of disappeared persons have proved futile. Some attribute the failure to obtain redress to political leaders. Others go further and say that since those persons in law enforcement agencies and the military, which caused the disappearances, are still holding powerful positions, it is only natural that no meaningful redress can be obtained. Many also say that powerful politicians themselves were in one way or another involved in the political violence of the time and they would not want any serious inquiries into these vast disappearances.

Perhaps there is some truth in these statements. However, despite similar circumstances, other countries have made successful attempts at justice. The difference is that in situations where justice was possible, there was a substantial political change preceding the displacement of the dictatorial framework within which the acts of violence were committed. Until there is such fundamental political and constitutional change in Sri Lanka, displacing the Bokassan scheme altogether, justice will be dead. This applies not only regarding disappearances, but regarding all human rights abuses. Moreover, until then, the system for the administration of justice will continue to serve the purpose of promoting and safeguarding institutional injustice.

Constitutional impasse and ethnic crisis

A common complaint these days is that despite the ceasefire there is no progress in solving the 'ethnic crisis.' However, we must identify

the real problem. It is that no conceptual framework exists to resolve any of the major issues in Sri Lanka, including the issue of ethnicity. Looking for an isolated solution to the 'ethnic crisis' is a constitutional illusion. The tragedy is that people pay in blood for such illusions.

Voices of sanity vs. constitutional insanity

The families of the disappeared whose stories are told in this book may appear to be the voices of a small minority. However, they are not: they are the voices of the huge number of persons who have experienced the crisis that has enveloped the country in its most horrible form; a crisis shared by all, regardless of race, gender or ethnicity. Speaking of the particular tragedies that they have faced, these families are undertaking the most poignant form of expression of an acute crisis. By telling their stories, these families are breaking the silence about the most fundamental aspects of Sri Lankan society. Many today want to keep silent about these events for various reasons. These families, however, cannot afford to remain silent. As was told of the Hiroshima and Nagasaki survivors, such families — if and when they are heard — become the real saviours of society. And theirs are the only sane voices in a country that is constitutionally insane.

These families are also aware of how murder became a political and constitutional game-play in Sri Lanka. All facilities were provided by the state for security officers and underground elements connected with them to engage in any acts that might end in casual murder. As shown by the inquiry commissions, people were kidnapped from their homes, their workplaces and on roads: even in full view, during daylight hours. One group handling the kidnapping would hand over the victims to others, who had different roles to play. Detention centres of all kinds were set up everywhere, and the play went on in theatres large and small. Sadistic creativity could be exercised freely. The gruesome nature of the acts done in the name of interrogation, which came from the imagination of the 'guardians' of the law, make them too painful to even narrate. The third act of the play was the killings; the fourth, disposal of bodies. These were again left to the sadistic imagination of those given the roles. Floating bodies down rivers, laying them upon

roads, burning them with tyres, exhibiting beheaded bodies in public, exhibiting the naked bodies of women with bottles inserted in their vaginas and similar gruesome acts were fully sanctioned.

Memories and tears

As the survivors from these families look back at what happened to their loved ones, they are aware that any of these acts could have been done to them as well, such being the situation of law enforcement in the country at the time. Many today wish to forget these things. However, surviving families remind us that the legal framework within which these acts were committed has not undergone any fundamental change. Particular emergency laws that authorised violence for the sake of national security have not been withdrawn, despite local and international disgust. The basic constitutional structure that made these acts and subsidiary laws possible is unchanged.

It is often said that many of those who masterminded and carried out these inhuman acts are still holding prestigious posts. One officer reportedly tells his friends that he “misses the fun of not being able to kill someone at least now and then”. The degenerated psychological condition that made these acts possible is still prevailing, despite claims that ‘things have changed’. Nothing has been done to exorcise this condition. No one has made any apologies. No confessions have been asked for, and none given. Tacitly, cynical laughter is what the political and legal establishment is able to offer the families of the disappeared and anyone else who cares to raise questions about them. Even UN agencies, such as the UN Human Rights Committee and Working Group on Disappearances, have not been spared such cynical treatment.

As the stories narrated here show, tears are choking these families even now. Tears are also running in the heart of every decent citizen who has had the misfortune of sharing the bitter knowledge of political mismanagement and law enforcement in the country. These families and citizens find it hard to believe that there is anything resembling an independent judicial system in Sri Lanka. There has not been a single event to demonstrate judicial outrage against this gravest of

crimes, carried out on the instigation of the political and legal establishment.

The only voices of sanity in the country today are those who continue to cry in pain. These families have done this for over a decade now, and will continue doing so for the rest of their lives. At some stage, will the national conscience—if there is any such thing remaining—prove capable of responding to their pain? The answer to this question lies in whether or not the Sri Lankan people will prove capable of escaping from the Bokassan scheme in which they are trapped.

Story one

The killers' list

The disappearance of S. A. Chaminda Luxman Senanayake

Education was the focus of life in the Senanayake household at Divulapitiya in the 1980s. Francis Senanayake, a school principal, and his wife Piyawathie, an English teacher, emphasized the importance of education, and their four children devoted themselves to their academic studies.

However, due to the widespread violence in Sri Lanka at the time, and especially after rumours of a mass grave in nearby Walpita, where it was said that the burnt bodies of about 30 children had been buried, Francis and Piyawathie sent their 19-year-old son Chaminda to live with Piyawathie's brother, a policeman. This was to ensure his safety, even though the family was not involved in politics and they had no reason to believe that their son's life was in danger.

Thus, they were shocked when they received a telephone call from Piyawathie's brother on 16 December 1989, informing them of Chaminda's abduction. They immediately contacted their member of parliament, Ariyaratne Jayathileke, and also made a complaint at the local police station, where a police officer scolded them, remarking sarcastically that after sending their son to join the Janatha Vimukthi Peramuna (JVP), they now came to the police looking for him. When they protested that Chaminda was not a JVP member, the police officer

showed them a book containing the names of JVP suspects, pointing at the name of Chandana Senanayake. They corrected the policeman, explaining that their son's name was 'Chaminda', not 'Chandana'. The policeman then apologized and wrote down their complaint. Subsequently, however, this complaint had been lost, as the parents learned several years later, when they requested a copy of the document to obtain their son's death certificate.

In desperation, Francis and Piyawathie continued their search for Chaminda: they met with Luxman Jayakody, MP, notified the Red Cross, sent a registered letter to the Inspector General of Police (IGP) and wrote to the United Nations Commission on Human Rights in Geneva. They also notified the joint operations command of the army and visited the army camps at Hunumulla, Boossa, Makandura and Henpitawala. But their efforts were in vain—for they did not find Chaminda—and neither did they obtain any tangible evidence of his whereabouts. Two days after Chaminda's disappearance, his parents also visited the office of the Assistant Superintendent of Police (ASP) at Negombo. However, the ASP refused to help them and instead rudely queried as to whether they thought 'the police were God to find lost children'.

Later on, Francis and Piyawathie were introduced to another police officer who was commonly known to be responsible for abducting children in the area. Francis recalls that when they asked him about their son, this officer had looked in his diary and simply said, "It is useless looking for your son." Nonetheless, his parents persisted with the policeman and began giving the details of Chaminda's abduction, as they had been told. But when they explained that their son was taken away in a Pajero vehicle, the policeman shook his head and pointed to a nearby van saying, "Chaminda was taken away in that vehicle." When they asked why their son was abducted the policeman replied, "I have nothing to do with the reason—I was given a list (of people to be abducted) and Chaminda's name was on the wanted list."

Francis says that it was a common perception in the village at the time that police officers who abducted children were financially rewarded

for their actions. "The youth in our country were murdered in a big way during that period," Piyawathie adds. "This was a common occurrence in every village. The persons who were supposed to maintain the law in the country were publicly involved in violating the law."

In spite of this news, Francis and Piyawathie did not give up hope. They continued to visit detention centres and police stations where they thought Chaminda might be kept or where someone else believed he might be detained.

"We did all the things possible to inform the law enforcement authorities in our country about the abduction of our son," says Piyawathie. "We also met various astrologers—whether it be right or wrong, so that we may be able to get some clue about the whereabouts of our son. In this manner, we spent all our money to bring back our lost son. Because of this, the education of our other children as well as our home matters were neglected."

She adds, "For several years, we received information from different people that our son was still living. And whenever we got such information, we would promptly visit the relevant army camp. Like this, we must have travelled all over the country to almost all the places he could have been held, hoping and praying all the while that we would find our son. But our efforts to secure our son were in vain as there was never any solid evidence that he was detained in a particular place. In fact, from the time he disappeared to date, we have had no information about our son's whereabouts. Now, after many long years, we have finally resigned ourselves into believing that our son is no longer among the living. So now, we engage in religious services in memory of him."

So why was Chaminda abducted? Piyawathie says that the news in the village was that a government minister and member of parliament had created a 'wanted list' containing the names of 64 children. These children, including Chaminda, had subsequently been abducted.

But why was Chaminda, a model student, added to this list? "Actually, this list was not drafted by the minister," says Francis. "If a villager needed to take revenge against some person, the situation which existed in the country during this time was extremely conducive for doing so. We feel that some person, or persons, jealous of our family coming up in life in the village may have been responsible, for we are sure that we did not have any personal enemies in the village. Maybe because our children were very clever in their studies, someone jealous of our family got this done to my son."

Stresses Francis, "We have not done anything wrong to any political party or any government to our knowledge. We have not even been involved in any type of active politics in our country. But UNP (United National Party) leaders in our village may have falsely implicated our son and added his name to the 'list'. And since the minister concerned was a UNP MP, just to please local party supporters he may have signed a list of names prepared by the UNP village leaders without even reading the list."

All this violence was so unnecessary, says Francis in anguish. Not only should his son still be alive, but so should thousands of other young Sri Lankans, who were so brutally destroyed. "These actions of the government against the JVP's illegal activities could have been done in a more democratic manner. Instead of arresting and indiscriminately killing young people who were branded as political opponents, the suspected JVP youth could have been detained in jail and rehabilitated. If this was done, about 60,000 young lives of our country could have been saved."

However, he says that according to his knowledge, most of the youth killed in his village were not JVP activists. Instead, they were quite unconnected to the JVP. Thus, while innocents were killed, they still could not find the hardcore JVP members living freely in the village.

From information gathered, Francis is of the opinion that the reign of terror unleashed across the country at the time was instigated by the government itself. He says that if there were high-ranking Army or

police officers in the area with their families living far away, some person was usually contracted to murder the members of the families of these officers. Then a note or poster was put beside the dead bodies to show it was the work of the JVP. In this way, the army or police officers concerned were provoked into abducting and killing so-called JVP activists of the village.

Moreover, explains Francis, "During that period (in the late 1980s), laws in the country were not executed in a just and fair manner, with even the lawyers who appeared in cases being murdered. Today it is not as bad as it was then. However, even now, a similar trend continues. For example, we read in the newspapers how certain government ministers take the law into their own hands whenever they feel like it. Therefore, the people living in our village have lost confidence in the law of the country. We also have serious doubts about obtaining justice and fair play from our judicial system."

Describing the chilling atmosphere in Sri Lanka in the late 1980s, Francis recalls that when people heard about bodies burning at various places, they considered it 'just another day's event'. He says that the community got accustomed to these occurrences. Consequently, when passers-by saw a body burning on the road, they merely looked at it and walked away because of the bad smell.

"My school was also situated close to a place where they were burning bodies," he says, "So I was compelled to close the school because of the bad smell, which was spreading in the area. Whenever a dead body was brought and set on fire, the fumes came right into our school, and because the teachers were telling us that it was unhygienic to conduct school with these fumes coming in, I closed the school.

"These occurrences," he concludes, "were not strange to the people. It was common for bodies to be found floating in the sea or in the rivers. The community was afraid to rise up against these acts, as people were fearful the same fate would befall them."

"My only wish," says Piyawathie, "is that never again should our coun-

try be governed by a cruel government like the one that killed our children. In the future, the innocent youth of our country must be protected from being meaninglessly murdered. And finally, as Buddhists, I wish to pray that our child, who is now no longer living in this world, obtains the peace of Nirvana, and let him not face a similar tragedy in the next birth if he is reborn into this world again.”



Story two

Body under the bridge

The disappearance of
Warnakulasuriya Arachige Don Peter Michael

It was about 12:30am on 5 August 1989, when a group of men visited the home of W. A. D. Peter Michael and his wife Sunila Senanayake in Seeduwa. The group told the couple to open their front door so that they could check their identity cards. While the couple was speaking to the men from behind their front door, some of the men forced open the rear door and entered the house with guns. They warned the family not to scream, or they would be killed. Sunila attempted to give the men their identity cards, but they said that they did not need them anymore. Instead, they wanted to speak to Michael, a commercial filmmaker, for about 10 minutes, they said, and took him outside. Sunila recognized one of the men as the private secretary of the then ruling party member of parliament for the area.

A few minutes later Sunila went outside to look for Michael but as it was dark, she could not see him. At a nearby tailor shop though, she saw a picture of a disfigured person with marks scribbled all over the person's eyes and mouth. After seeing the picture, Sunila worried about Michael's safety; to her, it was a clear message that Michael would face the same fate. Although she immediately wanted to go to the police station and report what had happened, she could not due to a curfew being in force. She thus waited until 5am and then together

with Michael's sister Catherine Beatrice, who lived next door and had witnessed the arrival of the armed men, went to make a complaint to the police.

The police, however, refused to record their complaint. Instead, they told them not to worry, says Catherine, for they said Michael would be dropped off at home the next morning. Having little faith in what the police promised, the family hired three or four vehicles and combed the area looking for Michael, but without success. They once again returned to the police station to file a complaint, but for the second time the police refused to entertain their complaint. Instead the police officers told them that making a complaint would be useless. From their comments, Catherine believed that the police were well aware of what had happened to Michael.

Three days after Michael disappeared, says Sunila, a betel leaf seller told them that he had heard a noise near the Dandugama Bridge the previous night, and that he thought it was the sound of a person being killed and dumped into the river below. Catherine says that upon learning this news, the entire family raced to the bridge, where they saw a pool of blood nearby. "We understand that my brother was murdered by a gun being fired into his mouth," says Sunila and adds, "The condition of his body was similar to the mutilated photo I saw in the tailor shop that night."

According to Sunila, the family arranged for a boat to retrieve Michael's body, and because the body was so badly decomposed, they were compelled to seal the coffin and hold the funeral the very next day. The funeral was attended only by family members. However, remembers Catherine, there were three strange men that no one recognized, who instructed those present not to cry. Some people were afraid to come to the funeral, fearing that the same fate might occur to them too, says Catherine and adds, "Even the funeral arrangements were made by us, the close relatives of my brother, with no one else coming for the funeral."

However, the funeral did not conclude the saga of Michael's

disappearance. "After my husband died, I received an anonymous letter informing me that my husband had been murdered by the UNP (United National Party) Mayor of Seeduwa," says Sunila. "This letter further stated that Michael was abducted in a van and while being taken in the van, someone had broken his neck. His chest too had been burned with cigarette butts."

This anonymous letter also stated that certain high-ranking government officials had been behind Michael's killing, says Catherine, and it advised the family not to probe into the reasons of the death. "When we received this letter, being afraid that harm would come to our children if we pursued the matter, we did not push for an investigation," remembers Catherine. "In the meantime, we heard that certain police officers of the Seeduwa police were also involved in this murder and that a high-ranking officer had given instructions to the police to kill our brother. Upon these instructions, our brother had been murdered."

According to Sunila, this was the first murder committed by the Seeduwa police during the violence. However, she adds that after her husband's murder, several hundreds more people were murdered by the police, who threw their bodies also under the bridge. Thus, it was not only Michael's body that was found under the bridge.

Catherine says she has a good idea of who masterminded her brother's murder. "The UNP government reigned supreme during this time. My brother was also involved in politics, but worked for the opposition (i. e. the SLFP). Thus, the UNPers of the area may have thought that if my brother were not eliminated he would prove a real barrier for their future political activities. Thus they decided to murder him." She is convinced that these politicians and police officers schemed together and planned carefully to do away with Michael.

Although her brother was an SLFP supporter, Catherine continues, UNP officials who had her brother murdered wanted people to believe that he was killed because he was a Janatha Vimukthi Peramuna (JVP) activist. This excuse was commonly used to destroy one's political opponents in the area. And thus, she says, through jealousy and greed

for power, her brother's career was blasted away together with his life.

But who was so jealous as to have Michael killed? There was one such person, says Catherine, and he was the Deputy Mayor of the Seeduwa Municipal Council. She adds that she can now name him without fear, because he is dead.

So what then can be done to prevent disappearances in the future? "I strongly feel that disappearances must be treated as a serious criminal act," says Sunila. "Because there is no rigid law enforced in our country to probe into all types of disappearances and to treat such actions as a serious criminal act. These types of actions may happen in our country in the future too."

Catherine agrees. "To stop these actions, very rigid laws must be brought in by the government, or similar horrors are bound to recur in the future. As we know, the police officers are now keeping their eyes closed, as there is no local law against disappearances. Thus, the Sri Lankan government must be compelled to bring in legislation criminalizing the causing of all types of disappearances. We must keep in mind that whenever a person is abducted and then disappears, a family loses a breadwinner, a child loses a father, and there is suffering all around. So disappearances must be stopped and there must be some laws against these acts. I do not know how such laws may be enacted, but it must be done."



Story three

Torture chamber at the law faculty

The disappearance of B. Hemantha Ajith Chandrasiri

B. Carolis Silva, a resident of Divulapitiya, was in Colombo on 12 October 1989, visiting the member of parliament of the ruling party for the Colombo East electorate. At that time, the universities in Sri Lanka were closed due to clashes on the campuses, and thus, his 26-year-old university-going son, Hemantha Chandrasiri, was at home helping his mother, Asilin Fonseka, watering the plants in their garden.

At about 4:30pm, according to Asilin, two men in civilian clothes approached her son and asked if he was Hemantha. When he responded that he was, they showed him a piece of paper with a name and address on it and inquired whether he knew the identity and the address of the person mentioned therein. Hemantha replied that he did, and the two men asked him to accompany them to that house. Hemantha declined but said that he could give them directions. The men insisted that he go with them, but Hemantha refused and went inside the house. The men followed Hemantha into the house and attempted to force him to accompany them.

At this point, Asilin realized that something was wrong and that her son was in danger. So she began to scream in fear. One of the men pulled a pistol from his hip, held it to her head and ordered her to be quiet, says Asilin. Hemantha told his mother that these men were from the independent student union at the University of Colombo,

where he studied. The men then dragged Hemantha out of the house and forced him into a jeep that had been parked outside. As they pushed Hemantha into the jeep, Asilin had run out of the house shouting and chased the jeep as it sped away. Seeing what happened, two neighboring boys mounted their motorcycles and followed the jeep. However, as the roads were crowded, they could not keep up with the jeep and lost sight of it as it turned off the Marandagahamulla junction in Divulapitiya. The boys then returned to tell Hemantha's mother what had happened.

Asilin immediately called her husband, who raced back to Divulapitiya, and together with other family members and neighbours started the search for their son. Their elder son went to the police station and lodged a complaint, but the police never conducted an investigation, says Hemantha's father Carolis, adding that this was because the police and the Army were acting in accordance with the wishes of the government in power. He explains that most police and army officers were loyalists of UNP politicians and the government turned a blind eye to the illegal activities of these officers.

"For instance," he says, "There is a village close to our home called Estella. There were mass graves there where heaps of bodies of people murdered were dumped and burnt. Even Buddhist monks who had been detained for various reasons were murdered by the army and brought to these graves and burnt. These acts were very common in those days as the respective governments in power virtually legalized these horrendous acts."

Carolis visited several army camps looking for his son. First he went to the army camp at the racecourse, but his son was not there. His family also learned from a relative who was at the Naiwala army camp in the area that Hemantha was not there and villagers told them that he was not being kept in other nearby camps either. Carolis then traveled more than a hundred kilometers away to the army camp at Boossa, near Galle, and to the Palawatte army camp in search for his son. But he did not find him anywhere.

Meanwhile, Carolis and Asilin also found the owner of the jeep in which Hemantha was abducted—one S. M. Kulathilaka. This man had

told a relative of Carolis that the government had openly given permission for the police or the army to stop and take into their possession any vehicle travelling on the road to conduct their operations. So while his vehicle was being driven along Galle road, somewhere in Dehiwela, several army or police personnel had ordered the driver out of the vehicle and had taken the vehicle away.

During this time, according to Hemantha's parents, Champika Ranawaka, a university friend of Hemantha, was also looking for him. Champika, who at present is a member of the Sihala Urumaya political party, had visited the Narahenpita Abayarama Temple's chief priest, who was known to have close links with university students. The monk had warned Champika to be careful and advised him against looking for missing persons. The monk had then suggested that he leave the temple discretely via the back door, as there might be security checkpoints along the main road, checking people's identities. Champika quickly left, but did not abide by the monk's advice. He continued his search for his friend and then while in Borella looking for Hemantha, he was arrested and taken to the law faculty building at the Colombo campus. Here Champika discovered that the two-story building was filled with people detained by the police or army. And during his detention in the law faculty building, Champika heard Hemantha's voice.

Carolis says he discovered the aforesaid information while going through a series of newspaper articles written by Champika Ranawaka, several years after his son's disappearance. Consequently, Carolis wanted to meet Champika to discuss his son's disappearance. The opportunity arose when both Hemantha's parents and Champika were invited by the Colombo University student union to attend a commemoration ceremony in honour of students who had disappeared.

At the commemoration, Carolis was asked to garland a picture of a disappeared student from the Peradeniya campus, to which he agreed. Another person was then called to garland a second photograph, which Carolis suddenly recognized as his son. Carolis says he began shivering and fell to the ground unconscious. Asilin also saw her son's picture and fainted. The students took her to the Colombo National Hospital, where she was treated and then returned to the campus about two hours later.

Due to the delay, Hemantha's parents missed the opportunity to speak with Champika. However, they were given the names of several people who had been at the campus during Hemantha's stay and who could give them information about their son. These people were Adams, Parakrama, a bodyguard of a politician who was in control of the student union torture unit, and an Army Captain who it was alleged monitored the activities of this torture unit. Carolis was also invited to see the bloodstained floor of the law faculty building, but he had no desire to do so. After the confirmation of his death, Carolis and Asilin have been performing religious rites for Hemantha.

Hemantha's death appears to have been caused by his activities in the student union, but why would the participation of a student in such campus activities lead to torture and death? Carolis explains that there had been two student union factions at the Colombo University. The independent student union responsible for his son's disappearance was a pro-government union and affiliated with the UNP. He adds that student unions linked to the political party in government were always very powerful and influential. However, Carolis had been quite unaware that his son had been a member of the student union; Hemantha had never mentioned it to him.

During this period, why was there no outcry about the massive numbers of people who disappeared? "This was due to widespread fear at the time," says Asilin. "People were afraid to speak out against these incidents because they feared the government in power. It was a well-known fact to everyone that all of those who spoke against the government were abducted from their houses and murdered. So people just did not want to comment on anything." Carolis adds that, "even if any person or group came forward and spoke or held demonstrations about such matters (disappearance of their loved ones) the government would have taken these people and murdered them too."

Regarding the prevailing justice system in Sri Lanka today, Asilin says, "Even today there is no justice in our country. All around us, we see various types of unlawful activities taking place on a daily basis and injustices being perpetrated on the people. This is definitely due to the so-called political culture in our country. Therefore, it is time for the people to change this. Without using force to get votes, respective

governments too must make an honest attempt to change this culture.”

Carolis adds, “Our nation’s main problem is our ailing political system. Different political party leaders practice their own self-centered notions of democracy; real democracy does not exist. As a result, law-enforcement authorities are often rendered helpless when implementing the law. I have lost confidence in the procedures of law-enforcement in Sri Lanka. Most of the law-enforcement officials implement the law in accordance with the wishes and plans of various party leaders in our country. In other words, they have become stooges of the politicians. And they automatically resort to corrupt practices when implementing the laws of the land. In short, democracy here in Sri Lanka has been restricted to a piece of paper. Thus, justice for me is to change the current system.”

Carolis also asserts that abduction and murder must be eliminated and that these unlawful activities must be made criminal offences. “We have lost our son,” he laments, “and we just cannot calculate the value of this life in rupees and cents. We do not need money. Instead, what we need is a full inquiry into what really happened to our son and all those unfortunate people who disappeared. We need to know the reasons behind the abductions and killings as well as the identities of those who were behind them. The findings of these inquiries must be made public. It is only then that change will be possible.”

And if this is not done immediately, he warns, future generations of the country too, will run the risk of becoming innocent victims of similar unlawful activities, and more parents will lose their children. “We, as Sri Lankan people, are now mentally suffering and will thus suffer for the rest of our lifetime because we have lost our son. My fervent prayer is that no other family faces the same plight which we are facing by losing our son.”



Story four

Gamini is no more

The disappearance of Handunkutti Pathiranelage
Gamini Sugathasiri

After attending Driver Training School, H. P. Gamini Sugathasiri was returning home on his motorcycle with a friend on 28 October 1989, around noon, when he was stopped about 500 meters from his home by a group of soldiers, policemen and civilians dressed in black. Neighbours quickly notified Gamini's parents about the incident, and they rushed to the spot where he was being held.

Gamini's father Handunkutti Pathiranelage Danney, and mother Manadhi Pathiranelage Leelawathie attempted to go near their 21-year-old son, but the men pointed their guns at them and warned them not to get any closer. When Gamini's parents nonetheless sought to go near their son, they were threatened with death. The parents saw other boys blindfolded and tied to trees or lampposts nearby. They also counted five vehicles with no license plates parked near the scene. Some of the men seated in the vehicles had their faces covered.

The men then forced Gamini and three other boys into a double cab and sped away. Danney and Leelawathie immediately hired a vehicle and followed. They heard Gamini screaming loudly and calling for help. Suddenly they noticed two soldiers riding Gamini's motorcycle over-

taking the convoy of vehicles, and all the vehicles stopped. The two soldiers opened the door of the double cab and pulled Gamini out. They broke off a large pole from a nearby fence and began beating him. They then put Gamini in another vehicle with his motorcycle on top of him and drove off again. Later the vehicle reversed its direction, drove through Divulapitiya and stopped outside the entrance of the temporary army camp at Hunumulla.

Leelawathie ran to the vehicle and peered inside, seeing her son lying on the vehicle floor with his motorcycle on top of him. Danney and Leelawathie pleaded with the soldiers at the camp gate that their son was in pain, but the soldiers raised their rifles and forced them to leave. It was the last time they saw Gamini.

Danney and Leelawathie immediately sought the advice of Saddhatissa Sakalasuriya, an Sri Lanka Freedom Party (SLFP) member of parliament, who advised them to file a complaint at the Divulapitiya police station nearby. As they left the MP's home, they noticed two high-ranking army officers who had been involved in their son's abduction also coming to meet Sakalasuriya. The same army officers later appeared at the police station and spoke to the Officer-in-Charge (OIC).

Danney and Leelawathie told the police that they had been sent by Sakalasuriya to report the abduction of their son and that they wished to make a complaint. The police refused to entertain their complaint saying that they did not have the proper logbook to record such cases. This decision of the police, Danney and Leelawathie believe, was influenced by the two army officers who they think pressurized the police into refusing to entertain their complaint. At this point, they cried and touched the feet of the army officers, pleading the return of their son. A police officer came over and tried to kick Danney, asking the two of them why they had brought up their children to be members of the Janatha Vimukthi Peramuna (JVP). Out of fear, Gamini's parents never went to that police station again.

Gamini's parents staunchly maintain that Gamini was not a JVP member and did not have any connections with JVP activists. They say he

was not a member of any particular political party, but was studying and doing electrical work in his spare time. His ambitions were to finish his studies, obtain employment and help his family.

After being rebuked at the police station, Gamini's parents visited another MP from the opposition, Lakshman Jayakody, who in turn advised them to notify the Red Cross, the army Commander and the IGP, which they did. Leelawathie explains that, "We wrote several letters to these people and also visited most of the army camps and police stations in the nearby areas to obtain any information about our son. But all our attempts to get some information about our son failed," and she laments that no one gave them any clue or helping hand in finding their lost son. "I don't know when and where I went looking for my son," continues Leelawathie. "Even my sister joined me with her 8-month-old child as she was afraid that I might do something rash to my life on account of this unfortunate incident. We spent all our money in traveling and looking for my son. I have been to several astrologers too to find out whether my son was alive."

Danney and Leelawathie, being ardent supporters of the SLFP, had also written to the leader of their party, Chandrika Bandaranaike Kumaratunga, about Gamini's disappearance. Accordingly, when the People's Alliance (PA) (which was a coalition of political parties including the SLFP) was elected to power in 1994, Kumaratunga appointed a Presidential Commission to inquire into the numerous complaints of disappearances in the country. Gamini's parents made a statement to this Commission and were subsequently awarded compensation of 25,000 rupees (US\$254) and a monthly stipend of 500 rupees (US\$ 5). The monthly payments ceased when the United National Party (UNP) returned to power in 2001. However, Leelawathie notes that though Kumaratunga made many promises at public meetings during her election campaign about how she would take steps to arrest and punish those who were responsible for abducting and killing people, little action has been taken to date.

Gamini's parents recall a story told to them by a Buddhist monk who had allegedly been an eyewitness at Gamini's death. Around the time

of the PA's election victory, a Buddhist monk named Kapugollewe Indrawimala visited Gamini's parents' home. Gamini had been one of his students at the Divulapitiya junior school where Kapugollewe had taught Buddhism. He told Danney and Leelawathie that he too had been abducted by the Army and witnessed Gamini's death. The Buddhist monk explained that the army blindfolded them, took them to the Badalgama Bridge and shot them three at a time. Ven. Kapugollewe had survived by jumping into the river before he was shot, and swimming to a nearby house where he took refuge. He had eventually escaped to Thailand, where he lived for several years before returning to Sri Lanka in 1994 when the PA was elected to power. He advised Danney and Leelawathie to give up their search for their son, as he was no more.

However, Leelawathie insists that regardless of this Buddhist monk's story, they did not get discouraged. In fact, whenever they received even a hint that their son might still be in some army camp, they never hesitated to go and look for him. She also says that in a bid to find some information about Gamini, she had visited the Poonani, Hasalaka, Kuliypitiya, Anamaduwa, Mahiyangana and Boossa camps. Having learnt that they were still looking for their son, Ven. Kapugollewe visited them two or three more times and urged them again to give up their search. He promised to do whatever he could to assist them and said that he had already given a statement to the court.

Meanwhile, the police summoned Danney and Leelawathie to appear before the Minuwangoda Magistrate's Court and give a statement to the magistrate about Gamini's disappearance. This they did privately in the magistrate's chambers. Thereafter, though they were summoned a couple of times to appear before the Minuwangoda Magistrate's Court, they were never asked to testify, says Danney. Only the names of the defendants—OIC Nimal Fernando, Minister Ariyaratne Jayatilleke and Army Capt. Major Dean—were called, he says. After they were summoned to court for the third time the case was postponed for about a year.

"Suddenly," says Danney, "We heard that the magistrate had been

transferred to another court. This is still a mystery to us. After about two years, the case was once again called this time before the High Court of Negombo. But here too, the same old procedure continued with the case being postponed without our side being called. This is when we stopped going to court through fear of our lives. Even though the case may still be pending before the Negombo Court, we are not interested in finding out details about it.”

Why were they so afraid of going to court? “We decided not to go for any further hearings in any court pertaining to our case,” explains Danney, “Because the UNP government was in power, and there was a possibility that the thugs in the government may harm us.” According to Danney, people have been killed inside courthouses, when coming out of courts, as well as on their way home after attending court sessions. He is well aware of these deaths because of the wide publicity given to them in the local newspapers and on television. He says that they are living in fear, especially since the thugs who were responsible for many murders in the country are still living and are still serving in the police and army. For example, one such army officer is about to be promoted, while another is the OIC at the Mundalagama police station. As a result, the present situation is not very different from that which prevailed in 1989. “In our case,” says Danney, “We have to travel 25 kilometers on the road from the Negombo courts, and the accused have firearms and hold high-ranking government jobs. These leading government officials also have their own thugs and underworld gangs who can easily harm us. So we are afraid for our lives.”

“Just look at the things which are happening in our country today,” stresses Leelawathie. “Take, for example, the TV or any other national newspaper in our country. Almost everyday you may observe news items relating to various types of murders that have been committed in broad daylight. If people are shot and killed inside the courthouse, in a hospital, or on the main roads, or come into your house and shoot you, what can anyone say? The full picture is clear to us. Even when we go about our jobs, if someone comes and kills us and gets away, what is the protection that you and I have today?”

This fear also affects justice in Sri Lanka, notes Danney and adds, "The judiciary is generally good, but when the judges are threatened by various underworld elements, the standards of our judiciary could easily deteriorate. Judges in courts are quite willing to conduct a just and fair inquiry but they too are human. So when they face death threats and are instilled with fear, they may think twice about conducting just and fair inquiries. For example," he says, "Recently a newspaper in Sri Lanka reported that a judge had received death threats relating to a case he had commenced hearing; and after these threats, he issued a statement that he would not hear this case. In another case, two underworld gangs shot at each other inside the court, and the judge who had been hearing the case escaped from the courtroom by crawling under the bench and running away. Likewise, the situation in our country today is that if one is in a position to spend 50,000 rupees [about US\$ 500], one can easily hire a killer to dispose of a party to a case."

Recalling the terror of the late 1980s Leelawathie notes that unfortunately, Gamini's disappearance was not an isolated incident. Instead, she claims that around 100,000 people disappeared during the period. "Everywhere we went, we saw mass graves and heaps of bodies dumped and set on fire," she says. "For example, the Walpita grave was one such grave that was found. We also know that along the roads to Kuliypitiya and Anamaduwa heaps of bodies were found burning. The Kurunegala District was the worst-hit area." And according to Danney, "The 100,000-odd people who may have died were not criminals. Rather, most of the youth were innocent and had been betrayed by some person or persons for various reasons such as jealousy and politically-motivated revenge."

More specifically, Danney believes that his son was abducted because he, Danney, was a strong supporter of the opposition SLFP. He thus blames the local UNP leaders for Gamini's death, including the UNP MP for Divulapitiya. "What I feel," says Danney, "is that at the request of the village area UNP organizer, the minister had given either written or oral instructions to the police, maybe a telephone call, to arrest my son. He had the full power to question the army or the police

as to why they were abducting people and killing them.”

Generally, explains Danney, political parties that come to power are greedy to retain their power. So they often resort to unlawful methods to do so. When someone is power-hungry, he or she will resort to anything to gain this power. He says that he is well aware that some politicians have purchased land from foreign countries or sold state properties to earn big commissions. So they are adamant to cling onto power—even if it means killing innocent people—and amass wealth.

Leelawathie hopes that one day this cycle of using violence to gain political power and accumulate wealth will end. “What I feel,” she says, “Is that whichever government comes to power, it must uphold justice and fair play in our country and stop these killings. By doing so, we could bring peace and harmony to our motherland. Until that is done the citizens of Sri Lanka will not enjoy the happiness of a just and fair society.”



Story five

Murderers among us

The disappearance of A. G. Sudath Premasiri

Sudath Premasiri, 30, and his wife Rohini Subasinghe lived together with Rohini's 26-year-old brother Gamini in Kandy. Gamini helped Sudath with his terrazzo tile business. According to Rohini's testimony, a white van without license plates stopped outside their house on 15 December 1989 between 1:30pm and 2pm. Nine people in civilian clothes with guns got out of the van and surrounded the house. They told the couple that they were from the Criminal Investigation Department (CID) of the Kandy police and that they had come to take away Gamini. However, since Gamini was not at home at the time, the police arrested Sudath instead, and instructed Rohini to bring her brother to the police station as soon as possible.

On December 24, Rohini together with a Buddhist monk from Kadugannawa accompanied Gamini to the Kandy police station, where the officers on duty said they wanted to record a statement from her brother. When she inquired about her husband and appealed for his release, the police officers said they were unaware of his detention or who had arrested him. Rohini says the policemen pretended that they had never taken her husband away.

She also went to the CID office and inquired about her husband. The officials present pointed out several CID officials in the office and

asked whether she could identify any of them as the officers who took her husband away. She immediately said that they were not the people who came to their residence. They then told her they did not know the identity of her husband's abductors because no officer in that office was responsible. So they suggested that Sudath might have been arrested by another CID unit. However, Rohini believes the police lied to her. Later, the police instructed her to list the details of Sudath's abduction and forward an appeal to them. She did so. Subsequently, the police had officially written to her and insisted they were unaware of her husband's arrest.

Thereafter, a desperate Rohini notified police stations in the area as well as human rights groups about the disappearance of her husband. She also visited several members of parliament representing the Sri Lanka Freedom Party (SLFP) and the Lanka Sama Samaja Party (LSSP). They included Vasudeva Nanayakkara, Vikramabahu Karunaratne and Yasaratne Thennekoon. Rohini continued to visit the police station at least three or four times a month for about 18 months, looking for her husband, but she met with no success. "Even after all this effort" she says, "We did not receive any response from law enforcement authorities about the whereabouts of my husband. The first response we received was about seven or eight years after his disappearance when the government gave us his death certificate. This finally confirmed that he was dead."

In the meantime, Rohini's brother Gamini was detained, and for 26 days, says Rohini, none of the family members were permitted to visit him. Thereafter he was transferred to the Pallekelle Rehabilitation Centre in Kandy. After his release four years later, a case against him was heard in the Kandy High Court. He was found not guilty and set free. However, while in police custody, Gamini had been brutally tortured, says Rohini. Gamini had confided in her that the police had assaulted him with poles and dislocated his arm. They had also put chili powder and pepper on him. During the first 26 days he had even lost his clothes and was rendered completely naked due to the severe assault. Even now, he still suffers from the trauma of this torture and is being treated for loss of hearing. He also suffers from several spinal

defects and finds it extremely difficult to get up. The police had then taken him blindfolded in a vehicle at night and told him to go away if he wanted. At the same time though, the police threatened that they had the power to shoot him if he ran away. So severe was the mental and physical torture Gamini underwent in police custody, that he told Rohini not to expect him to come out alive from the rehabilitation centre. He wished her to live a happy life as he was not sure of his own life.

Rohini believes that the violent environment prevalent in Sri Lanka at the time provided a pretext for her husband's disappearance. "The Janatha Vimukthi Peramuna (JVP) was engaged in a war against the Government," explains Rohini, "and were murdering people in their houses or abducting them for various reasons. At the same time, the army too declared war on the JVP or people they suspected to be JVP supporters, and arrested, tortured and killed them." She says that even innocent people were labeled as JVP activists and killed by the army without inquiry. So if someone desired to take revenge on another, all they needed to do was to forward a petition to either of these groups. Based on these petitions, people were arrested and killed. They did not bother to check out the authenticity of the petitions. Therefore, she suspects that someone may have taken advantage of this situation to harm her husband.

"Both of them [Sudath and Gamini] were not involved in any type of political activities. They refrained from being involved in politics. This incident must have been sparked by personal grudges which someone had against them," Rohini states.

This violent environment, Rohini contends, paralyzed Sri Lankans from taking action to stop the widespread disappearances in the country. "I think the people were really afraid to move on these matters," says Rohini, "As it was a known fact that the police and army had harassed people who voiced their opposition to similar incidents. The people were well aware that houses of those who had protested had been set on fire and damaged. Therefore, they opted to keep silent merely through fear. In other words, because of the cruel actions of the police

and army, people were afraid. Actually, by this time most of the youth from our villages had been arrested and detained in various rehabilitation camps. The people were afraid to say anything about these incidents, fearing for the lives of the youth who had been detained in the camps. People were afraid to come out of their houses and were also switching off their lights and living in fear of what would happen. People were afraid, as they were not sure at what moment the police or army or any other armed group may come into their houses searching for the youth. The community was gripped with fear and anxiety.”

If people at the time had been able to overcome their fear, Rohini believes that Sri Lanka’s crisis of disappearances would not have turned out to be so catastrophic. Rohini also asserts that the country suffered from a lack of leadership. “What I feel,” she says, “Is that even though there may be various highly influential people in our society, if they opt to just keep their eyes closed and mouths shut when a similar incident happens to a fellow citizen, it becomes a very pathetic situation. I really get demoralized about the so-called influential people in our society even today. Actually speaking, they should be the first people to take up such issues in society. As a result of this, today I have little respect for our leaders.” Sri Lankan society was also saturated with violence because those responsible for the suffering had little respect for life, says Rohini. “I feel these people were unaware of the true value of their life, and they were unaware of the value of other people’s lives too,” observes Rohini. “They had no proper feelings about others. That is why these people resorted to dirty or degrading tactics and do so even today.”

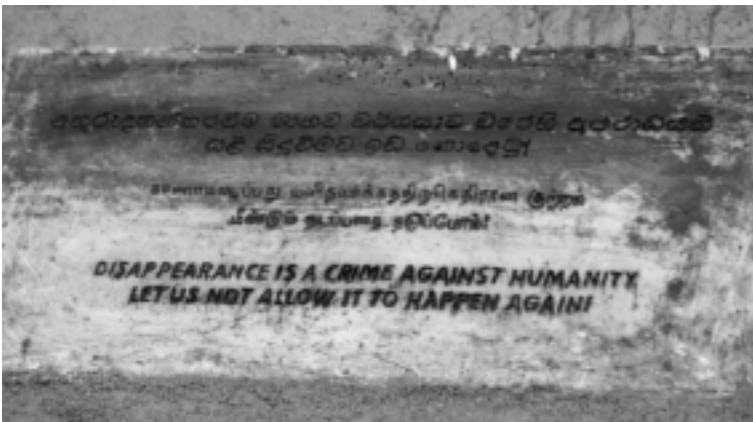
Her comments underline her fears that the violence that permeated the country 15 years ago is still present. “My child is now growing up. I am afraid for his life and his future. Now, I just cannot trust even my next door neighbor. I am reluctantly compelled to think in this manner as abductions are continuing, and are likely to continue in the future as well.” Her pessimism is rooted in the inaction of society as it still refrains from confronting violence. “It is mainly due to the terror tactics adopted by these so-called politicians in controlling civil society today,” she states. “Mainly money and terror are being utilized to muzzle

people. It seems leaders and authorities are resorting to thuggery and intimidation to prevent people from coming together and protesting.”

Going by her experiential understanding of the situation, Rohini believes that a law against disappearances is necessary to end this form of violence and save innocent lives. She also believes a change of attitude is necessary among the people. “We need to learn to live together in a spirit of unity and diversity. All people must have the right to live without fear in a peaceful atmosphere,” she explains.

“To achieve this in our society,” she continues, “effective action must be taken, with a strong example coming from the top. The law enforcement authorities must be made to understand that they need to respect democracy and the fundamental rights of the people.”

She concludes by saying, “I hope in the future our children and our children’s children will not face the horror and tragedy that befell me, when evil triumphed and good people did little or nothing. I have lost my husband and what is gone is gone. I am a widow and my child is without a father. We have gone through the worst in life.” Rohini prays that the murderers still living amid Sri Lankan society will be brought to justice’.



Story six

Burning bodies for a wedding service

The disappearance of Herath Mudiyansele Ranjith,
Neil Chandraratna and D. G. Wijedasa

Herath Mudiyansele Ranjith was a 30-year-old machine operator and labour activist in the Katunayake Free Trade Zone (FTZ) 20 kilometers from Colombo, working at the Floral Greens silk flower factory. He disappeared on 27 October 1989, after attending a disciplinary hearing at the factory.

Ranjith often protested against conditions in the factory, says his fiancée Dandeniya Gamage Jayanthi, who also worked in the FTZ at that time, as a machine operator at the Smart Shirt factory. Jayanthi says that a girl working at this factory had lost her fingers after they were caught in one of the old machines while on duty. Ranjith had fought hard trying to get some sort of compensation for this employee from the factory owner. The toilet facilities were also very unsatisfactory for the employees. Even the payment of salaries to the workers was usually delayed, and overtime payments were not properly made either. Workers also found it difficult to get approval for leave if there was any kind of emergency. The biggest problem, however, was the ancient machinery in the factory: some of the machines were badly damaged beyond repair.

Although Ranjith was a member of the FTZ joint council to resolve

labour disputes and spoke at the council's meetings about the problems that workers faced in the Floral Greens factory, whose owner lived in Hong Kong, his own problem with the management began on 18 August 1989. He was working the morning shift that day from 6am to 2pm on a molding machine that was old and damaged, making it difficult for him to meet his production target. Factory workers knew, says Jayanthi, that Ranjith's machine was broken. The person who relieved Ranjith and worked the 2pm to 10pm shift that day also knew that the machine did not work properly. Before Ranjith finished working that day, he left a message with the supervisor to have the machine repaired, a request that the supervisor ignored. Within five minutes of beginning the 2pm shift, the finger of the operator who replaced Ranjith got stuck in the machine.

The next day Ranjith again worked the morning shift. The supervisor that day, a friend of Ranjith's named Rajathunga, had worked the shift the previous day when the worker was injured. Ranjith approached Rajathunga and asked why Rajathunga had not repaired the damaged machine. He said the failure had led to a serious accident. While he was questioning Rajathunga about the broken machine, Rajathunga assaulted Ranjith. Ranjith's face hit the machine, and his nose began to bleed. The factory management called the police, and both men were taken to the police station. As Ranjith was still bleeding badly, he was taken to the Negombo hospital where he was treated for four days. While he was in the hospital, Ranjith received a letter from the factory's personnel manager, saying that the factory was out of bounds for him until further notice.

Jayanthi says that her fiancée sought legal advice and wrote several letters to the factory management inquiring about his job status. As a result of these letters, he received a reply on October 25, summoning him to a disciplinary inquiry two days later. Ranjith immediately asked whether a legal advisor could be present at the hearing, and the management agreed. Thus he obtained the legal services of Lionel 'Aiya', a legal advisor well known to both the management and workers in the FTZ.

On October 27 the disciplinary inquiry began at about 4pm with five

people present: Ranjith and Lionel; Rajathunga and his legal representative, A. P. C. Perera; and a lawyer who was a well-known politician and member of parliament. This lawyer-cum-politician was both the mediator/inquiring officer and representative of the Floral Greens management. Jayanthi sees something strange in this arrangement. She says that although the mediator claimed to be independent, he in fact represented the interests of the company, as he was paid by the management to conduct inquiries. Jayanthi is thus of the view that more often than not, these disciplinary inquiries found the employee guilty.

Ranjith's inquiry had taken place in the Floral Greens factory next to the office of the company's personnel manager, who was also present for part of the inquiry, but excused herself when Ranjith was cross-examined. However, because the inquiring room and the personnel manager's office were separated by glass, it was possible for the personnel manager to observe the inquiry's proceedings even when she was not present.

Unexpectedly, Jayanthi says, Ranjith won the case and was awarded compensation, but he never enjoyed his victory as both he and Lionel disappeared after the inquiry concluded at about 7:45pm. Jayanthi says she was told that when Ranjith and Lionel were leaving the inquiry, the personnel manager called the Katunayake police and conveyed to the ASP that 'our work is completed now'.

Jayanthi recalls the last time she saw Ranjith. "In the afternoon of October 27, when my fiancée left for the inquiry, he told me he might not be able to pick me up as he was not sure when the inquiry would end. He said if the inquiry was delayed he would accompany Mr. Lionel to the bus stand and get back home. I prepared some dinner for him and stayed up anxiously till about midnight for his return. But Ranjith did not come home after the inquiry. Due to the reign of terror at the time, a curfew was in force and when it ended at 5am, I went in search of Mr. Lionel's wife."

Before going to Lionel's home, Jayanthi says she went to his office, but was informed that he had left with Ranjith the previous day and

had not returned. Jayanthi then proceeded to Lionel's home in Ekala with a Chandra Devanarayana from Lionel's office, but he had not returned home either. The three of them—Jayanthi, Chandra and Lionel's wife Ruwan Kanthie—then went to the Katunayake police station.

"I told the police officer on duty that both my fiancée and Mr. Lionel had gone for a disciplinary inquiry last evening and that they had not returned home. The police officer abused me with filthy language. He said, 'The Hong Kong people do not want to kill your fiancée'. He also said that on one occasion my brother too had been killed by some unidentified people, and he asserted that the same people may have killed my fiancée this time. Then when we wanted to lodge a complaint, the police refused to write down our statement," says Jayanthi. Since the police would not record their complaint, Jayanthi, Chandra and Lionel's wife Ruwan went home, hoping they would receive some news about Ranjith and Lionel. Jayanthi also began to fear for her own life.

"I felt compelled to seek refuge in convents and other people's homes, because when I was returning to my boarding house after Ranjith had been abducted and we had been out looking for him, I was informed by my boarding mistress that some unidentified persons, who were said to be members of the police or army, had come looking for me and had made inquiries about my whereabouts. Consequently, I contacted Sr. Ranjani in a nearby convent in Katunayake, and she advised me to stay in the convent. After I went to the convent, the police learned that I was there and came to the convent. They took statements from the sisters to find out why they were keeping me. On October 31 the dreaded news came to us that Lionel and Ranjith had been killed. On that day we met Fr. Sarath Iddamalgoda, Sr. Ranjani and Sr. Christine. They went out of their way to contact various people to find out what had actually happened to them. We all went to the Katunayake police station, and I made a written complaint to the police about this incident. I told them that I was suspicious about the involvement of the police and the personnel manager of the Floral Greens factory. Because of my statement, some officers must have come in search of me to harm me.

“While all of these things were happening the media came to know, and journalists came to see me and get the story. I told them I suspected that a company official and a police official were behind these disappearances. They published stories accordingly about this incident, mentioning these two names,” Says Jayanthi.

Meanwhile, on October 31, a friend of Jayanthi’s took her to the home of Brito Fernando, a member of the Nawa Sama Samaja Party (NSSP) who spoke out about labour issues and organized youth activities in the Negombo area. It was from him that Jayanthi found out about the deaths of Ranjith and Lionel. Brito contacted the lawyer/politician who conducted Ranjith’s inquiry and learned from him that the burnt bodies of Ranjith and Lionel had been found at Raddoluwa Junction.

Later Jayanthi went to this lawyer’s home to get more details. He told her that his secretary travels by the Raddoluwa Junction every morning on his way to work and that on the morning of October 28 he had seen two bodies burning there. His secretary could not identify the bodies, he said, because their faces were too badly burned. He also told Jayanthi that he was able to identify the bodies when his secretary told him that one of the victims was wearing the same style of black shoes that he wears. He explained to Jayanthi that during the disciplinary inquiry someone had accidentally stepped on his foot. When he looked to see who it was, he noticed that the person had identical shoes to his. That person was Lionel.

Much later Jayanthi learned exactly how Ranjith and Lionel were killed from the priest at St. Cecilia’s Church, Raddoluwa, and others in the area. They described to her how the police brought Ranjith and Lionel to Raddoluwa Junction in a jeep, told them to get out and run. The police then shot them and threw their bodies onto tires, added petrol and planks, and burned them.

That particular day, a wedding mass was due to be held at St. Cecilia’s Church. The people had seen some bodies burning close to the church and had requested the priest to inform the police to clear the bodies before the wedding service. Consequently, the priest called the Seeduwa police and got them to clear the bodies. The police buried the bodies

close by. Later Jayanthi learnt that the police took the bodies elsewhere, after people found out about the incident. Jayanthi also says that she subsequently learnt that Ranjith and Lionel were shot and killed between 4:30 and 5am on the morning of October 28 and the bodies were seen burning till about 9am. The police had buried the bodies around noon, but came and took the bodies away due to public agitation in the area.

Jayanthi believes that Ranjith was killed for his labour-related activities in the FTZ. She also believes that Lionel was killed for similar reasons.

Tragically, not only did Jayanthi's fiancée Ranjith disappear, but her two brothers also disappeared. Her youngest brother Neil Chandraratna, 21, disappeared on 5 October 1989, about three weeks before Ranjith.

In her family's village located at Panemulla, in the Beliatta electorate in the south of the country, Janatha Vimukthi Peramuna (JVP) activities were at their peak, Jayanthi says, and the JVP was constantly trying to persuade her brothers to participate in activities such as putting up posters during the night, attending lectures and other meetings, and providing money. Her brother Neil refused to cooperate, she says, and thus, the JVP threatened to kill him if he did not leave the village in three days. As he was no longer safe in his village, Jayanthi's mother took Neil to the home of one of her relatives in Ridiyagama. He stayed there for about five or six months, and Jayanthi's uncle gave him some land and built a house for him. He later got married there.

On 3 October 1989, there was a funeral for a relative in Matara, says Jayanthi, and Neil traveled from Ridiyagama to attend. The following day the JVP attacked the army camp in Ridiyagama, killing several army officers and destroying an army truck. As a result of the attack, the army ordered everyone who was not from Ridiyagama to leave the area. Unaware of the army's order, Neil returned to Ridiyagama after the funeral. That night the army came to his house to check his identity. They discovered that he was originally from Embilipitiya, from the village of Beliatta Panamulla, but that he was now staying in Ridiyagama.

Because of the recent army order, he was detained. News of his detention spread in the area, says Jayanthi, and the temple monk and school principal went to the army camp to secure his release, explaining that he was innocent of any involvement with the JVP. However, the military would not release him.

The family learned of his detention on October 6, says Jayanthi, and she rushed to the Ridiyagama camp and asked an army officer at the gate about her brother. He told her to go to a mass grave on the other side of the camp and see if her brother was there. Instead, she says, she went home and spoke to Mahinda Rajapakse, then a member of parliament, representing the Hambantota District. He made inquiries and relayed the sad news to the family.

Mr. Rajapakse told them it would be no use to go around looking for him as the army officer had told him that he was arrested and brought to the camp. After he was brought in, they shot him once and he had fallen down dead. They also told Mr. Rajapakse that Neil had been arrested on mistaken identity and that he was not the person they wanted to arrest. They said that they were looking for a JVP leader by the name of Chandraratne, but this person's name had been Neil Chandraratna so they simply apologized for arresting (and killing) the wrong person.

In addition to the disappearance of her youngest brother, Jayanthi's second brother D. G. Wijedasa, also disappeared. Over a number of months, her brother, who Jayanthi suspects was involved with the JVP, was abducted three times and eventually disappeared the last time he was taken away in January 1990.

The first time that he was taken away, says Jayanthi, he was detained at a place called Theligga Villa Matara Farm, by people claiming to be army officers. For four to five months, he was brutally beaten, she says, before being released. The second time JVP activists took him away to Walasmulla in the Hambantota District, where they tortured him in a dark room. The last time he was abducted, notes Jayanthi, was 10 January 1990, when people who identified themselves as police officers broke down the door and escorted him out of his house. Jayanthi

believes that the police or army may have thought he was a JVP activist and thus killed him.

And so in a span of about three months, Jayanthi lost three loved ones. She not only mourned their loss, however, but also responded to their disappearance by working with others to establish the forum of the Families of the Disappeared in 1990. Initially confined to families in the Gampaha District, membership in the organization has expanded to other parts of the country, and there are now plans to include families from the north and east. Over the years, the organization has documented cases of disappearances and has provided services for the victims' families, such as vocational training programmes and free medical examinations. Moreover, with the help of the May 18 Memorial Foundation in Gwangju, South Korea, and the Asian Human Rights Commission (AHRC)

in Hong Kong, the group erected the Monument for the Disappeared with the Wall of Tears behind it that contains photographs of the disappeared. Located at Raddoluwa Junction in Seeduwa,



it offers a place where the families can pay homage to those who were suddenly and violently snatched from them. October 27 is now observed every year as Disappearances Day at the monument — the date and place where Ranjith and Lionel disappeared. To prevent future disappearances, the organization is pushing for the enactment and enforcement of a new law that will make enforced and involuntary disappearances a criminal offense.

Jayanthi explains that for real change to take place in Sri Lanka, civil society must be educated and motivated to take action. She is disappointed that some sections of society do not condemn, but even condone, past disappearances.

Story seven

What we have lost is lost completely for a lifetime

The Embilipitiya disappearances

Over a period of several months in 1989 and 1990, 31 secondary school students in the southern Sri Lankan community of Embilipitiya disappeared. Of the tens of thousands of disappearances in Sri Lanka from 1988 to 1992, the disappearances in Embilipitiya are the only ones in which those responsible were brought to court, convicted and sentenced. This story summarizes eight of these tragedies.

(1) *The disappearance of Sujeewa Pushpa Kumara Prasanna Handuwala*

On 19 December 1989, Shelton Handuwala was in a tire shop with his eldest son, 18-year-old Prasanna, getting the rear tire of his motorcycle fixed, when a car with several people stopped outside the shop. One of the persons got out from the car, assaulted Shelton and dragged his son away. This was the last time he saw Prasanna, a student in the second year Advanced Level science class at Embilipitiya Central College.

Shelton went to the Embilipitiya police station and filed a complaint about the abduction of his son, but the police failed to do anything about it, says Shelton. "They only said that they were helpless on account of the situation which existed in the country at the time.

Because they failed to respond in any way to the complaint made by me, I was compelled to travel across the country making complaints to various people and organizations about this incident,” adds Shelton sadly.

In his endeavor to find his son he wrote to President Ranasinghe Premadasa, Prime Minister D. B. Wijethunga, Defence Minister Ranjan Wijeratne and the member of parliament for Embilipitiya, Nanda Mathew. However, according to Shelton, their response was similar to that of the police. ‘We have received your complaint already and we will see to your complaints in the future,’ was all he heard from these representatives of the people. Shelton was emphatic that Prasanna was not involved in any political activities that might have led to his abduction. He said that the boy was innocent and did not do anything other than engage in his studies.

Subsequently, Shelton discovered the reason for his son’s disappearance—a love letter. He explains that a love letter sent to a girl by the son of the principal at Embilipitiya Central College was intercepted by one of the students, who shared its contents with other students. They then began to tease the principal’s son about the incident, leading him to complain to his father. The principal told the boys to stop harassing his son, but they persisted in tormenting him. According to Shelton, the principal became furious and decided to take revenge.

In Shelton’s view this principal had influential relationships in the community. One of these relationships was with those in charge of the 6th Artillery Brigade at the local Sevana army camp led by Colonel L. P. Liyanage. “The officers in charge of the Sevana camp had a close relationship with the principal,” says Shelton. “They used to visit him often and had parties together. Thus, they had a very close connection with one another. It was also observed that this principal carried a pistol, which had been given to him by the army. He was also a supporter of the United National Party (UNP) and had very close and friendly links with Mr. Nanda Mathew, the member of parliament of the area.”

Unfortunately, Prasanna was not the only student of Embilipitiya Central College who disappeared. According to Shelton, 31 students aged 14 to 19 had disappeared from Embilipitiya. As so many families were affected in the community, they banded together, says Shelton, and in addition to making complaints to the local police and writing letters to government officials, they also informed the Criminal Investigation Department (CID) in Colombo, who in turn conducted an investigation. Their efforts, notes Shelton, resulted in a court case in which nine accused were tried in relation to the disappearances in Embilipitiya. The defendants included the principal, his son, Colonel Liyanage and six other soldiers, including Captain Jaliya Epa, who Shelton says was directly responsible for Prasanna's disappearance.

After the trial, with the exception of the principal's son and Colonel Liyanage, all the accused were convicted and sentenced to 10 years in prison.

"These disappearances are a great loss to us," says Shelton. "We simply cannot bear them regardless of whatever compensation was paid to us in rupees and cents. After all, we lost valuable human lives and ever since the incidents, we live our daily lives mourning and thinking of our lost children."

(2) The disappearance of Dumindu Dharshana Rasika Kumara Wijetunga

D. D. Rasika Kumara Wijethunga, a 16-year-old student at Embilipitiya Central College, was a friend of Chaminda Galappathy, the school principal's son, and another student named Chamara Jayasena, says his mother. One day Chamara intercepted a love letter that Chaminda had written to Chamara's former girlfriend, who did not share Chaminda's affectionate feelings. So this girl had passed the letter to other students, and as a result, the principal's son was incessantly teased at school for the next couple of months. Unable to bear the teasing, Chaminda complained about it to his father, the principal, who in turn took action in an attempt to spare his son from the verbal torment of the other students.

One day while the principal was passing Rasika's classroom, some students in the class had remarked about the principal and the love letter. The principal overheard these remarks, entered the classroom and asked who had made the remarks. When no one took responsibility for the comments, the principal suspended all the students in the class.

The principal, however, took further action to protect his son, says Sujatha Kalugampitiya, Rasika's 68-year-old mother; he requested Sujatha to obtain this love letter from Rasika. When Sujatha mentioned this to her son, he told her it was only a love letter, nothing very serious, and said it would be of no use to her. In any case, Rasika said the letter was not with him but with Chamara Jayasena.

Sujatha did not take this matter very seriously she says, and she certainly did not expect such a minor incident to conclude in the violent way it did. Unfortunately, this apparently innocent incident sparked other problems in the school and the community. In the next few months, a series of fistfights—primarily between Chaminda and the brother of the letter's intended recipient—created more tension among the students.

“On one occasion after such a fight, the principal had immediately summoned the police to the school premises. When my son informed me about this incident, I promptly went and met the principal,” says Sujatha, a principal herself at the Moraketiya Maha Vidhyalaya. “When I went to meet the principal at his residence, Chamara's father had also come to meet the principal. I then questioned the principal as to why he could not solve problems of the children in an amicable manner, without going to the police. I told him that whenever I am faced with a disciplinary problem with the school children, I sort the problems within the school premises without going to or summoning the police into the school.

“I told Mr. Galappathy firmly, that he could have caned or punished the children concerned if they had done something wrong. This method is the most practical for maintaining discipline in a school; when a

child is taken to the police, he completely loses his fear of the principal. When I told the principal this, he promptly went to the police station with Mr. Jayasena and brought the children back from the police station, having first withdrawn the complaint he had made against them.”

She continues, “On another occasion when I met with the principal at his school, he indicated to me that there had been discussions to abduct some children from schools in the area. I reminded him that we too were mothers and fathers of children and thus we could not possibly allow this to happen to other people’s children. I also told him to explain the meaning of *ussanava* (which literally means ‘lifting’ but is commonly used as slang for abduction). He told me the meaning of that term, by raising a paperweight which was on his table, and said ‘they went, took, brought and did away with’.

“Notwithstanding my reminder to the principal of our obligations to protect our students like we do our own children, Mr. Galappathy told me to prepare a list of seven or eight bright students from my school and give the list to him. However, since I was opposed to this idea, I promptly left his office. Even as I was leaving, he requested me to give him those names. He added that he had already discussed this issue with Mr. Mahesh Dhanansooriya and the principal at the Udagama Maha Vidhyalaya.

“I did not give him any names of children from my school as I was personally against this plan of his. Then Mr. Galappathy said that even though I do not approve of it, he has discussed the matter with the Provincial Council member for the area as well as the principal of another school in Embilipitiya, and that with their approval and consent this plan was to be implemented. He once again tried to convince me to fall in line with his plans, but I resisted. Subsequent to these discussions, before even one week was over, my son Rasika was abducted.

“We think that the principal and his son got the 6th Artillery regiment of the army (at the Sevana camp) to abduct several of Chaminda’s classmates who had teased him before,” says Sujatha. “Altogether five stu-

dents from this particular class including my son were taken away.”

Rasika's disappearance took place on 6 November 1989, when seven or eight people had visited their home at night. Most of them had been in civilian clothing, except for two or three in army uniforms. Sujatha remembers that painful night very well. “He was studying in his room in our home,” says Sujatha. “At around 11:30pm, some people came to our house and rang the bell, but when I asked them why they had come, they did not respond. Subsequently, I did not open the door for about 15 minutes. In the meantime, I observed the door lock shaking as the door hinges were being loosened with the aid of a screwdriver, and the door latches were falling apart. Then my daughter asked me whether to open the other door, or else she said they might break the doors. We then opened the door, and they came into the house. At that moment, all of us were standing near the door. Then a person from the army unit, who had come in the house wearing a sarong and T-shirt, inquired whether ‘brother Rasika’ was at home. Then my son Rasika walked out from his room and came forward. Immediately, they held him by his hand and took him away. At this time we all started howling and screaming. In response, the abductors promised to bring Rasika back home in half an hour and said that all they wanted was to get some information from him.

“I promptly went to the closest army camp near our house and notified them about this incident,” continues Sujatha. “In the meantime, we immediately informed the police station in our area. That same night, officials from both the Army camp and the police station came and told us to wait until morning as they were sure that he would be brought back and that if he was not brought back by then, they would look into the matter.” However, she did not hear from them again.

Sujatha also visited the Sevana Army camp in Embilipitiya as she had recognized one of the officers there as a person who entered her home. The following morning she met Colonel Parry Liyanage and related the full story to him, however, he stated that no boy by the name of her son had been brought to the camp. At that moment, Colonel Liyanage was seated in his vehicle and while he was talking to Sujatha she

noticed that he winked and smiled knowingly at the army officer seated beside him.

After that she visited the army camp on several occasions and got the opportunity to speak to Captain Epa about this matter. Then she went to Colombo and met Lieutenant Colonel Wanasinghe, the then-army commander at army headquarters. She also contacted the nephew of Lieutenant Colonel Wanasinghe, who was also a lieutenant in the army. This officer too assured her that her son would be brought back home safely and not to worry about him anymore.

In addition, she met the then-President of Sri Lanka as well as the Prime Minister and other senior officials. "I also met with Mr. Nanda Mathew, our member of parliament and a cabinet minister," says Sujatha. "I begged him to help us get my son back safely. After we told him the full story, he made a telephone call to the army camp in our presence and gave us an assurance that Rasika was being detained at that camp and promised to get him released as soon as possible. Mr. Nanda Mathew also told us that the boy was totally innocent and that he had been detained only to get certain information."

Although Rasika had participated in demonstrations organized by the Janatha Vimukthi Peramuna (JVP), Sujatha says that he did so just for the sake of it. Sujatha explains that if he had not done so, others would have taken revenge and it would have been extremely difficult for him to continue to go to school. She was aware from various people who had taken part in these demonstrations that her son had merely tagged along behind the demonstrators. His brother confirmed this on the several occasions Sujatha sent him to check on Rasika.

Although many people in Sri Lanka disappeared at this time for their alleged support of the JVP, Rasika's participation in these activities, according to Sujatha, was not the reason he disappeared. "It was because of the incidents that happened in their school that they were taken to the army camp," explains Sujatha, "In a bid to frighten the students. It was quite obvious to everybody that Principal Galappathy was directly involved in the abduction of our children."

Sujatha met the principal on several occasions at his residence after Rasika's abduction, requesting him to get her son back. The principal said that the army may have taken the children for the sole purpose of frightening them and that in a couple of days they would be released. Rasika never returned home, however.

After many years, the relentless efforts of the parents led to an investigation by the CID and the arrest of Galappathy and others responsible for their children's disappearances. Sujatha claims that the parents in fact took a great deal of trouble in persuading the CID to take action and to apprehend the culprits responsible for the unlawful and criminal act of abducting their children. After the CID investigations, the perpetrators were arrested, charged and produced before the Ratnapura High Court. Subsequently, many of them were found guilty and sentenced to jail.

According to Rasika's mother, the matter did not end there. The respondents appealed against the judgement of the High Court, but the parents promptly made representations to human rights organizations and sought their assistance to fight the appeal. "It was my daughter Subodhya Wijethunga, a lawyer, who made all of the necessary arrangements in retaining a leading counsel to appear on our behalf," she says. Finally they were able to obtain justice.

Justice, however, did not erase Rasika from her memory, or negate his disappearance. "My son," says Sujatha, "was one of the best children in our family. I will never be able to forget his loss and will not be able to make up for his loss in anyway whatsoever."

(3) The disappearance of Pradeep Indika Malwathege

One night in November 1989, Saraneris Malwathege remembers that there was a knock on their door. The visitors inquired whether his 16-year-old son Pradeep Indika Malwathege, a student at Embilipitiya Udagama Maha Vidyalaya, was at home. He replied that he was, and asked the visitors to identify themselves. When they said they were army officers, the family became very frightened and did not open the

door. The soldiers, however, broke open the door and entered their home. Immediately after they entered, they switched off all the lights, caught the inmates of the house and locked them in one room. They ordered them not to open the door, threatening to kill them if they disobeyed. They then took Pradeep away. Saraneris and his family never saw Pradeep again.

Saraneris says that immediately thereafter they rushed to the police station and the army camp in the area. He informed them about his son's abduction and inquired whether Pradeep was in the camp, to which the army officers replied in the negative. At the police station, the officers on duty refused to entertain their complaint, saying that it was useless to make complaints 'about these incidents'. Saraneris was of the view that the police deliberately neglected their duties due to fear and thus conducted no investigations into his son's disappearance.

Next, he met with an official in the Ministry of Education and the United National Party (UNP) member of parliament of the area, Mr. Nanda Mathew, and informed them about this incident. However, Saraneris states that these meetings served no useful purpose.

Saraneris also claims that he made it a point to go near the army camp daily, for about a month, in the hope of seeing his son. "Suddenly, however, the army camp was moved from that particular place," says Saraneris. "Later, when we went to the place where the army camp was located, we were told that the former army officers had been transferred out of the camp and new officers had moved into the camp premises. Then we were able to understand that they had killed Pradeep, and we accepted it with great difficulty and stopped looking for him."

Later on, Saraneris and other parents in Embilipitiya discovered the truth about the fate of their disappeared children. Saraneris came to understand that there had been more than 100 detainees at the Sevana camp. However, on the day the camp was removed and new army personnel came to occupy it, not a single detainee was in the camp,

and nor was anybody released. "Thus we came to the conclusion that they had killed our children," laments Saraneris.

Then he received information that there were hundreds of bodies lying in the thick teak forest, Thekka Mandiya, about 8 -10 kilometers away. Upon receiving this information, the parents went there and saw piles of burnt bodies. Tires were thrown over them and certain parts of these bodies could be seen under the tires. Sighs Saraneris, "They simply heaped hundreds of bodies at one particular spot, threw tires over them and burnt them."

(4) The disappearance of H. K. Palitha Alfred Gamage

Another student who disappeared from the Udagama Maha Vidyalaya was H. K. Palitha Alfred Gamage, 17, who was abducted from his home at around 10:30pm on 3 August 1989 by people who identified themselves as police officers.

As they had identified themselves as police officers, says Palitha's 53-year-old mother, K. G. Ranmenike, the family had promptly opened the door. Then, when she asked the intruders the purpose of their visit, they replied that they wanted to take a statement from Palitha. They shouted for him to come forward. As Palitha made his appearance, they arrested him immediately and took him away. When his family attempted to follow, the men shouted and in threatening voices ordered them to get back into the house, close the door and stay inside. Ranmenike also says that even though they said they were from the police, they were not wearing the police uniform. Instead, they were wearing a type of uniform which indicated that they were from another security force. Although they could not be directly identified, she says it was obvious that they were from the army.

The next morning Palitha's parents went to the police even though they suspected that it was the army that had taken their son. But the police were not keen on recording their complaint, let alone taking any action in the matter.

As the government had announced through state-controlled radio that parents should contact their school principal if their child was taken away by the security forces, Palitha's parents went to see the school principal at the Udagama Maha Vidyalaya. He told them to contact Dayananda Galappathy, the principal of Embilipitiya Central College. After the incident was explained to him, Galappathy immediately called the Sevana army camp and spoke to an officer by the name of Senaratne, who confirmed that Palitha was in the camp. "Hearing this, I begged and pleaded with him to help get my son released," says Ranmenike. "Even though Galappathy promised to get our child released from army custody, he never made a sincere attempt to do so."

Ever since Ranmenike and her family discovered that Palitha was at the Sevana camp, they went there daily for about one and a half months, with the idea of at least getting a glimpse of Palitha and securing his release as soon as possible. She thus visited the army camp until it was disbanded, but without any success. "I don't know what actually happened to my son as we didn't get any kind of information whatsoever about him from anyone."

(5) The disappearance of Saruna Bandanage Sanath Priyantha

On 3 August 1989, around 10:30pm, approximately the same time that H. K. Palitha Alfred Gamage was being abducted by the army, a similar ordeal was also beginning for S. B. Sanath Priyantha, a fellow student at Udagama Maha Vidyalaya. As in the case of Palitha, a group of people knocked on the door of Sanath Priyantha's home late at night, identifying themselves as police officers. As they were about to break the door open, Sanath Priyantha's mother, Mohottige Lisina, opened the door. The intruders entered the house saying that they were not really from the police, but from the army. As the entire family (Sanath, his mother, father, three sisters and brother) came to the door, Sanath was asked for his name. His mother replied that his name was Sanath Priyantha. The intruders then announced that they were from the Sevana army camp and demanded Sanath to accompany them as they wanted to take a statement from him.

“Immediately my son began to cry, clinging on to my body, saying that he did not want to go with them,” remembers Mohottige Lisina and adds, “The army officers assured us that they were taking the boy ‘not to eat or kill him’, and that they would return him to us.” They also said that they had received some information and wanted clarifications from Sanath. “Then they took my son away,” says Lisina sorrowfully, “And ordered us to stay indoors and keep the doors locked. They actually pulled him from me saying that he would be returned in the morning.”

The family could not do anything immediately, as the government had declared a curfew from 10:30pm to 5:30am. When the curfew was lifted in the morning, they went to the army camp to inquire about their 16-year-old son. They were told that he would be sent home at noon. When their son did not return by that evening, the family again went to the camp and were informed that the army had not yet taken a statement from him. So they proceeded to the police station, where the policemen initially refused to record their statement and instructed them to return the following morning. After waiting most of the next morning at the police station, the police finally took the family’s statement at around 11am.

In their desperation, Sanath’s family then visited the principal of Embilipitiya Central College, Dayananda Galappathy. “We begged him to assist us to get our son released,” laments Lisina. However, the principal indicated that he was currently busy and unable to go to the Sevana camp to inquire about Palitha. He advised them to return in the evening and meet him after school hours, so that they could all go together to the Sevana camp. Therefore, at around 5:30pm Lisina and her husband met Mr. Galappathy, who informed them that he had already visited the Sevana camp and that their son was there. He further said that the army officials had assured him that Sanath would be released soon.

Sanath’s family then visited the principal of their son’s school, as well as other people and organizations in an attempt to get him released. “But everything was useless,” mourns Lisina, “As we received no positive

response from anyone about the whereabouts of Sanath. Thus, the hope of getting him back alive faded." However, they continued to visit the Sevana army camp and inquire about their son.

"After about six months, I saw my son inside the Sevana camp," says Lisina. "Some people who lived close to the camp told me that at a particular time in the morning all the detainees in the camp were brought out by the soldiers for various types of work. Thus I came to the camp at that particular time and was able to see my child bringing some garbage out of the camp." Lisina rushed to talk to her son, but the soldiers saw her and ran to cover his face with their hands and took him back inside. Lisina laments, "They never permitted him to talk with me, not even one word."

Lisina explains that the case of her son's disappearance was heard in the Ratnapura High Court with the other cases of abducted school children in Embilipitiya. Up to the date of the trial, Lisina was unaware as to what had actually happened to her son. She says she was unaware that he had some problems with Principal Galapathy's son. "It was only afterwards that I learnt that the principal was behind what happened."

(6) The disappearance of Rajapakshage Lalith Upul Shantha

As in the case of others who disappeared in Embilipitiya, R. Lalith Upul Shantha was a good student; in fact, he was the leading student in Ketagallawa Junior School. He was also tutored at a private school in a house near the Sevana army camp. On the morning of 6 September 1989, he left home with his father to go to the Vidyaloka private tuition school, but he never returned home.

Generally Upul Shantha used to return home after his tuition class at around 5:30pm, says his mother Kusumawathie. On this particular day too, she was waiting for him to accompany her to go for a bath at the nearby well, which was customary for them. However, by 6pm that evening there was still no sign of the boy. The government had declared a curfew from 6pm that evening, so the family could not look for him

immediately. Early the next morning, Kusumawathie went to the private tuition school to look for her son. She found his file in the classroom and the list of questions he had completed the previous day, but she could not find him. Moreover, no one at the school knew anything of his whereabouts.

Kusumawathie managed to lodge a complaint at the police station, and then she went to the Sevana camp to inquire about her son. "The army officials told me that they were 'not mad' to bring my son [into the camp], and said that some other group must have taken him. So they told us to look for him elsewhere." The family also visited the principal of Ketagallawa Junior School, who promised to contact Dayananda Galappathy, the principal of Embilipitiya Central College. This was because the Ketagallawa Junior School was one of the schools in the area under Galappathy's supervision. However, when the parents returned to see him two or three days later, he had yet to contact Galappathy. Thus, they went to meet Galappathy themselves.

Galappathy assured Kusumawathie that no harm would befall her son at the army camp, if indeed he was taken there. He also said that the boy would be brought back home safely. According to her, Galappathy then called the Sevana camp and immediately received confirmation from officials that the boy was there. The army officials further said that he was doing fine, he was not facing any problems, and that after they obtained a statement from him he would be sent back home in four or five days. Since they received no information about Upul Shantha after five days, his mother once again met with Principal Galappathy, who told her that the inquiries were not over yet and that her son would be released on their completion.

However, Kusumawathie's son was never released. Since the army camp was en route to her workplace, she passed the camp regularly. She says, "On one occasion, as I was passing by the camp I observed the bicycle which my son rode to his tuition class lying in a corner of the camp. I was able to identify the cycle from a sticker pasted on the mudguard of the bicycle." As soon as she saw this she went to the Sevana camp to inquire. The security officer at the gate asked her

whether she was mad, as he claimed that they had not brought any such boy into the camp. He promptly opened the gate for her to go in and check, reiterating that he was not there. Kusumawathie says she asked him how her son's bicycle could be in the camp if some other organization had taken her son away, pointing out her son's bicycle. The security officer again asked her to go into the camp but Kusumawathie was afraid to go alone and so she declined. The following day, when she passed the Army camp she noticed that all the bicycles were covered with a long khaki cloth.

"I met Principal Galappathy and told him everything," says Kusumawathie, "but he maintained that my child was alive and safe and that he would come back." On September 25 however, when her husband went to meet the principal again to query about their son, the principal told him to give up all hope of getting him back and advised him to hold an alms-giving in his memory.

Kusumawathie believes that Mr. Galappathy for his own personal reasons conspired to abduct and kill all of the brightest students in the area. "We are now aware [after the Embilipitiya student abduction case was taken up before the Ratnapura High Court] that he had given instructions to the principals of other schools in the same Administrative District that came under him to prepare a list of clever students from their schools and to hand the list of names over to him. There had also been various discussions with a view to abducting 10-12 students from these schools. All the children who were abducted were commonly believed to be the brightest school children in the area."

"We, the parents of the disappeared children, deeply feel the loss of our children," moans Kusumawathie, "But it has to be ensured that future parents should be able to keep their children in their homes without fear of being abducted and killed. Therefore, I wish to state that the democratic and human rights of the citizens of Sri Lanka must be preserved and implemented in a just and fair manner by the law enforcement authorities."

(7) *The disappearance of Yatiyana Vidana Arachige Munidasa Susantha and Yatiyana Vidana Arachige Munidasa Susil*

Y. V. A. Munidasa and his wife lost both their sons, Susantha and Susil, in the wave of disappearances that occurred in Embilipitiya in 1989. Because of the student unrest in the schools in Sri Lanka at that time, Munidasa, as a precautionary measure, transferred his elder son Susantha from the Embilipitiya Central College to the Eheliyagoda Madhya Maha Vidyalaya in Ratnapura District in April 1989. Munidasa thought that staying with his wife's sister, the boy would be safe. He also felt assured of his son's safety because his sister-in-law's husband was a sergeant major at the army camp in Kuruwita.

However, at around 5am on 12 October 1989, six men surrounded their house and four of them forced their way in with knives in their hands, looking for Susantha. Although Munidasa explained that he was in Eheliyagoda, the men persisted in their demands for Susantha. Finally, they took away their younger son Susil, allegedly to show them Susantha's whereabouts, promising that Susil would return home soon. When he failed to return home, however, Munidasa and his wife began making inquiries and learnt from a friend who lived near the Sevana army camp that he had been seen several times in the camp.

Munidasa says that he immediately notified the law-enforcement authorities and other people concerned, giving all of the necessary details of his son. He informed them that the boy was at the Sevana camp and begged them to get his son released. His pleas fell on deaf ears. Although the men who abducted Susil were wearing short trousers and T-shirts, not regular army uniforms, Munidasa believes they were army personnel. He explains, "I used to go to my workplace at the AGA [Assistant Government Agent] office by passing in front of this army camp, and whenever I used to go to Embilipitiya, I used this same route. Consequently, I became acquainted with people along the way. As a result, when I saw the six men who had come to abduct my son, I was able to identify them as officers and soldiers from the Sevana camp. I remembered these people very well."

However, the police were neither interested in this information nor in the abduction itself. "The worst thing," says Munidasa, "Was that the police blankly refused to take down complaints made against members

of the armed forces.”

In the meantime, about two weeks later on November 18, Susantha was also abducted in Kuruwita. Munidasa’s sister-in-law came to their home the next day and said that he too had been forcibly taken to the Sevana army camp. According to Munidasa, the army was not the only party responsible for the disappearance of their sons. Principal Galappathy of the Embilipitiya Central College and his son Chaminda, a student at the school, also played an important role. Munidasa learnt that Chaminda was harassing other students at school. They also discovered from some school staff members that there was a plan orchestrated by Galappathy to abduct some of the students at the school. However, Munidasa and his wife did not take the charges of harassment seriously at the time, and by the time they were informed about the abduction plot, their sons had already disappeared.

“After we lost our children, I personally went and met Mr. Galappathy as I knew him very well,” says Munidasa. “I asked him to use his influence and assist us in securing the release of our sons from army custody. When I met him, he was at his official residence. He immediately promised to help me, but as I was stepping out of his residence, I quite clearly heard him saying in a loud voice that he would not allow any person to be released from the army camp as they had behaved and acted against him.”

According to Munidasa, revenge was the motivating factor in regard to the abduction of Susantha and Susil. He says that not only was the principal responsible for the death of his children, he was also responsible for the abduction and death of other children, including those of schoolteachers. For instance, explains Munidasa, there was a schoolteacher named Mrs. Ranasinghe, whose son was forcibly taken away in a van by the army. Until today, this teacher is unaware of what happened to her son. Another schoolteacher was abducted and killed for providing information. Munidasa thinks Galappathy was responsible for both these incidents. He says, “As far as I can remember, most of the children and parents were taken into custody by the army after interested parties who had personal grudges against them gave the

army lists of names of people to be abducted. The main idea was that under the cover of personal grudges, they were labeled as Janatha Vimukthi Peramuna (JVP) members and were arrested or abducted. This was easy for Mr. Galappathy to do as he had very close links with some of the army officials. We are aware that some of the army officials visited Galappathy's school on several occasions for various reasons."

Within a year of Susantha and Susil's disappearance, the parents of the children who had been abducted formed the Embilipitiya Disappeared School Children's Parents Association.

"I closely associated with a cabinet minister at the time, Mr. Nanda Mathew, who belonged to the United National Party (UNP)," says Munidasa. "He was well aware that most of the parents of the disappeared children were his strong supporters. Thus, because of our close links with this minister, without any fear and with utmost confidence in him, we went and made personal representations to him to help us secure our children's release as soon as possible. I must also say," adds Munidasa, "That these parents were educated and highly qualified. Some of the abducted children's parents were school principals, others belonged to various respectable professions and had prestigious jobs. They were in the forefront as they were people of some status. This is why we jointly got together and made representations to Mr. Nanda Mathew about the abductions of our children.

"I remember that we met Mr. Mathew at his Colombo Barnes Place residence on three different occasions. We begged and pleaded with him to get our children released from the army camp, saying that if they had done anything wrong send them to a rehabilitation camp, but not to kill them. And he promised to do so ... but didn't."

In the meanwhile, the army sought to counteract the efforts of the parents. "At that time, the army officers responsible for the abduction of school children did not face any consequences from the law enforcement authorities in our country," explains Munidasa. When parents of disappeared children came forward and agitated for their children's release, or wanted to find out what had happened to their

children, they were threatened by the army. They were told that if they continued their agitations, 'the rest of their families too would be wiped out from the face of this earth'.

Munidasa says that at this time, "The government did nothing to encourage us in our search for justice and nor did they lend a helping hand towards the activities of our organization. However, they did not suppress our activities either." Army officers on the other hand, continued to direct various threats at them in an attempt to suppress their activities. In addition, Principal Galappathy had strong ties with the military and was a strong supporter of the UNP, with Mr. Nanda Mathew being one of his closest friends. Galappathy had even given his school quarters for the army to occupy and had enlisted his two sons in the army.

School children were not the only ones abducted in Embilipitiya, claims Munidasa; the fathers and adult friends of the students had also been arrested and detained at Sevana. When these persons were released, they shared their experiences in the camp with Munidasa and the other parents. "They gave us a detailed description of what happened in the camp and especially about the inhuman and torturous treatment meted out to the children," says Munidasa. They had specifically named two army personnel who tortured children. They also illustrated how the army disposed of the remaining children when the camp was closed: "When the camp was disbanded there had been a few more children inside the camp but due to the torture they had suffered, most of these children were disabled and handicapped. Thus, telling them that they were being taken to see wild elephants in the nearby Sevanagala Jungle, the Army dumped the children into a covered truck and took them away, 'like cattle to the slaughterhouse'. In the thick jungle, the army officers shot the children and dumped their bodies into a freshly-dug pit. Then they put tires over the dead bodies and set them on fire."

Munidasa is of the opinion that his two sons had been taken in a similar fashion and killed. According to him, these eyewitness accounts made it possible to secure convictions and 10-year prison sentences

for those responsible for the Embilipitiya disappearances. This was the result of the court case that was heard in the Ratnapura High Court, after Chandrika Bandaranaike Kumaratunga was elected President and her People's Alliance (PA) won the parliamentary elections in 1994. A fear that now arises for these grieving parents is whether these culprits will receive a pardon. "They seem to be waiting until a UNP President is elected into power so that they can obtain a Presidential pardon," says Munidasa, based on information he has received from people in Colombo who have contacts with prison officials.

The court case and subsequent sentencing has not ended the ordeal for Munidasa and his wife. "Just because those responsible went to jail we still do not get any satisfaction in our minds. Even if they are sent to the gallows, we still cannot bear the loss of our children. What we have lost is lost completely, for a lifetime. That loss cannot be compensated by any court judgement or any sort of compensation. All our future plans went down the drain with the loss of our two sons. The educational activities of our only daughter were also badly disrupted on account of this unfortunate incident that befell our family. After that, we lost all enthusiasm about earning money and have lived a very simple and sorrowful life since."

(8) The disappearance of Milan Manelka de Silva

On 1 December 1989, during the school vacation, Milan Manelka de Silva, 16, was playing cricket at the Embilipitiya Central College playground with his friends and younger brother Niroshan. Two army officers stepped out from Principal Dayananda Galappathy's official residence and entered the playground. They approached Manelka in a friendly manner, put their arms around his shoulder and escorted him away. When Manelka's friend Rukman sought to intervene, the soldiers hit him in the stomach with the butt of a gun and warned him 'to be careful at night'. These words were not an idle threat, for that night, Rukman too was abducted. As for Manelka, it was the second time the army had detained him in less than a month.

Manelka's first abduction took place around November 18 when a group

of soldiers visited his home and took him to the Sevana army camp. Immediately, his father went to the Kuruwita army camp and complained to the Officer-in-Charge. According to his testimony, this officer had contacted those responsible for abducting Manelka and queried as to why they had taken Manelka when there were specific instructions issued to the army not to detain children. The next day the three army officers who had taken Manelka away brought him home. His freedom though, lasted less than two weeks.

After Manelka was abducted for the second time, his parents frantically searched for their son. According to Manelka's 56-year-old mother, Ruwangani de Silva, they immediately inquired from the principal about this incident. He categorically denied that the army had come and taken the child away and instead suggested that maybe another group had taken Manelka. Afterwards her husband had gone everywhere to look for their son, especially since the principal told them that the army would not have done such a thing. After several inquiries were made from different people, they discovered that Manelka was in the Sevana camp.

As in the case of all the parents of disappeared school children, they too went to the police station and lodged a complaint about the abduction of their son. "The police readily took down our statement," says Ruwangani, but suspects that they never took any action to investigate their complaint. She thinks that the police were silent on this matter perhaps due to political pressure, because, during that particular period, most of the police officers in the area had close links with UNP stalwarts.

After learning of Manelka's whereabouts, the parents visited the Sevana Army camp several times and inquired about their son. Each time they were assured that he would be released soon. Principal Galappathy gave them the same assurance. They also met with several high-ranking army officers, Brigadier Algama and Lt. Col. Hamilton Wanasinghe, the Commander-in-Chief of the Sri Lankan Army. Ruwangani remembers, "Brigadier Algama told us not to be afraid; my son would be released by the army and no one would harm him. However, when Lt. Col.

Wanasinghe was contacted about Manelka's release, he advised my husband not to have any hopes of getting Manelka back. He said there were no longer any children living in army camps."

Manelka's family thinks that the reason for his disappearance was due to friction among the students at Embilipitiya Central College. "There were serious problems among the students of that school," explains Ruwangani. "The principal told the parents on several occasions that the students were involved in various unnecessary clashes with the relative of a provincial council member, who was also a student there. On one occasion, after I heard that officers of the STF [Special Task Force] Unit had entered the school premises and threatened to assault the children, I categorically asked the principal what was actually going on within the school premises and what the specific problems were." The principal had only replied that the students were fighting with the child of a relative of a provincial council member. He also said that if the army or the STF got involved and harmed the children, he would not be responsible. Ruwangani adds that the provincial council member mentioned was Mahesh Dhanansooriya of the UNP, and that the student concerned was his wife's nephew.

Ruwangani blames principal Galappathy for the death of her son and the other students in Embilipitiya. "If he had been a honorable person he would not have encouraged or supported such despicable things in his school." Ruwangani recalls that the former principal of the school handled student problems differently. He tackled all incidents of student unrest within the school in a diplomatic and tactful manner. When there had been student demonstrations and unrest, he had never permitted the army or police to come into the school premises.

When his brother Manelka disappeared in 1989, Ruwangani's younger son Niroshan, also a student at Embilipitiya Central College, was only 10-years-old. Niroshan shares his thoughts about his brother's disappearance as well as the surrounding atmosphere that prevailed.

"I just could not believe that such incidents could ever happen to a human being. I knew my brother quite well and when this incident

happened to him, I was quite confident that he was innocent. At that time I was able to see clearly how army bodyguards visited our principal's office regularly. I was shocked to see this as I knew that such things should not take place in a school. At times, these bodyguards were around Principal Galappathy and also seen near his office. Mr. Galappathy was a powerful man in the area and had the support of leading politicians at the time. He could—and in fact did—deal harshly with anyone who opposed or criticized him.

“During the 1989-90 period, JVP activities were taking place in our country. The Embilipitiya area was no different. I think some people used the friction between the JVP and the UNP Government as a pretext to take personal revenge and cause the disappearance of my brother and thousands of others. Therefore, when there was a problem in school relating to a love letter, the principal used the anti-government JVP activities as an excuse to take revenge on certain students who had created problems for him. Also, even though in those days the people of this country were well aware of the abductions and killings taking place in army camps, they were reluctant to give evidence as they feared for their lives. They feared that they too would incur the wrath of the Army and be abducted and murdered.”

Ruwangani is concerned that similar violence will recur in Sri Lanka: “If there are similar rulers governing our country as in 1989-90, these crimes are bound to happen again. Thus, top law enforcement officials must be forced to uphold the rule of law in our country. We must have good leadership. Those who govern should be good not only in word, but in action.”

Niroshan concurs with his mother's views and adds that, “We do not have a form of government that can provide good leadership to the people. All the political parties try their best to come into power by any means; when they are in power, their promises are forgotten. Actually they have no idea how to eliminate violence from our society, and nor do they have plans for its elimination. By what is happening today, I feel that similar incidents will continue to happen for a long time to come. As a youth, I don't see any clear indication for a peaceful future

in our country. The security of the people has gone to the dogs; neither the state nor law enforcement authorities are able to guarantee the security of citizens.

“There is no true democracy in our country today. My parents have lost one child, and I will never see my brother again. So these acts of violence should be completely eliminated. We must not allow more parents to lose their beloved children in this cruel manner. In short, we need to rid our country of all unlawful activities, and to do this we need to establish a good form of government that possesses leadership qualities. And I think if people can elect good politicians, who honestly serve the people, we will succeed. Corrupt politicians should never be elected to power. In our society today there are sections of people who may become stooges of corrupt politicians for the sake of money or other personal benefits. So we must first educate civil society on the dangers to all when corrupt politicians are elected to Parliament.”

Niroshan is frustrated that collective amnesia has consumed the people of Sri Lanka and they seem to have forgotten the disappearances that occurred 15 years ago: “As a Sri Lankan, I am very disappointed that such incidents are so easily forgotten by the people. Today when we tell people of how we lost our brother, they seem clueless as to what happened in 1989. People seem to remember such incidents for about a year or two, and thereafter seem to forget everything.”

He also perceives education to be a way to resolve this dilemma: “If the people are aware of what happened in the past, they will be more prepared to fight injustices in the future. We must educate people about how to face problems and obtain the help of human rights protection organizations in the country. Therefore, if we can build our collective strengths by organizing ourselves, we need not go after any politician for our problems. In this way, if we are united, no individual or particular politician will ever be able to use their political powers against the rights enjoyed by the people of Sri Lanka.”

Ruwangani insists on the need for disappearances to be made a crimi-

nal offence to ensure that this period in Sri Lankan history is not repeated. However, she adds that justice was not rendered for Manelka's disappearance even though those responsible for his disappearance were convicted and sentenced to 10 years in prison. She explains, "The children we lost were very precious. A child's life cannot be calculated in terms of rupees and cents. If innocent children's lives were taken away in such a cruel manner, all those responsible for murdering the children should have received the maximum punishment. A jail sentence of 10 years for these convicted persons is not much when compared to the mental torture we are undergoing after losing our child. They will be able to return to their homes and lives after their 10-year sentence, but how can we bring our son back to life?"



Story eight

Betrayed by a friend

The disappearance of Girambe Gedara Samarasinghe

Girambe Gedara Samarasinghe was a wood contractor supplying timber to the government. While he had been involved in some activities of the Janatha Vimukthi Peramuna (JVP) in 1971, and openly grieved for the many JVP activists who were killed in 1989, since 1971 however, Samarasinghe had not taken part in any JVP activities.

Around 6:30am on 9 October 1989, Samarasinghe had gone to the junction to fetch some water. At the same time, the Officer-in-Charge (OIC) of the Two Sinha Regiment (2SR) army camp, together with 3-4 of his comrades visited Samarasinghe's house in a jeep with no license plates. An informant who used to be Samarasinghe's friend was also in the jeep. Two of the army personnel came into the house and asked the 56-year-old wife of Samarasinghe, Widanage Elsy Wellikumbura, where her husband was. After being told his whereabouts they recognized Samarasinghe's brother, Rajakaruna, who was inside the house. So they took Rajakaruna away in lieu of Samarasinghe. On their way back, they met Samarasinghe fetching water at the junction, so they dropped off Rajakaruna and took Samarasinghe instead.

According to Rajakaruna, his brother had refused to get into the jeep when he had been ordered to do so, saying that he had done nothing wrong, but he was forced into the vehicle. Rajakaruna rushed back

home on a borrowed bicycle and informed Elsy that the jeep taking her husband was heading for Panwilla. Elsy thought that the jeep was going to the Wattegama police station, and frantically rushed there. Says Elsy, "When I went to the police station, the police said that my husband was not there, but I waited for about two hours with the hope of somehow seeing him. But I later learnt that the jeep didn't come here [Wattegama police station], instead it had gone via the Pitiyagedara road to the 2SR army camp in Kandy. One of my friends, Chithra, had seen the jeep. Furthermore, Chithra's husband, Wijerathna, used to work at the camp and he had seen the perpetrators giving my husband a lunch packet in the camp. Wijerathna had also told the army that he knew Samarasinghe, who was a good man, and would do no wrong."

Elsy then went to the 2SR army camp in search of Samarasinghe. She requested to meet the captain of the soldiers who abducted her husband, but the other army personnel said he was not in and for her to come again on Wednesday. However, they did tell her that Samarasinghe was inside the camp, although they could not let her see him. Elsy states that, "One officer in civilian clothes standing in front of a shop opposite the camp observed me entering and leaving the camp. He approached me and said that he was the person who had taken away my husband, and he had done so on the orders of the captain. He regretted that he had no option but to carry out the order."

Before the order was given, an informant who was unemployed at that time had told the captain about Samarasinghe's activities during the 1971 insurrection. "Actually, he was one of my husband's friends who visited our house to chat and discuss matters with other friends. Even three days before he was abducted, this man came and talked to my husband. One day, one of his friends, Linton, asked the informant why he betrayed Samarasinghe this way. He simply replied that my husband was connected to the 1971 JVP insurrection and therefore was taken into custody. This man was not a good person; in fact, he was a drug addict. He would point out innocent people to the army or the police to get some money to feed his addiction. After the PA (People's Alliance) came into power, he went to Singapore. He is now back, working as a tourist guide."

Elsy soon came to know that her husband was transferred to the Pallekelle army camp. One of her husband's friends, Weerakkody, told her that he had talked with Samarasinghe for a while at the camp. In fact, when Weerakkody was talking with his friend, a soldier had inquired about his relationship with Samarasinghe. Weerakkody had said they were brothers, while Samarasinghe said they were friends. After this confusion, Samarasinghe begged Weerakkody to get out of the camp.

Elsy then made her way to the Pallekelle camp. She attempted to make a complaint at the camp but was not sure whether her complaint was recorded. She met a person named Methananda, who requested her to come again in a few days. During those few days, she went to meet a minister, Mr. Kirialla, who gave her a letter to take to the OIC of the camp, Major Mendis. He also ordered one of his staff members to accompany her. When they reached the army camp though, only the member of staff was allowed inside. When he came out, he told Elsy that, her husband was very angry that he was not being released. As he had tried to attack army officers, he had been severely beaten. She was forbidden to meet her husband due to his serious wounds. Elsy says that while her husband was still in the army camp, she went to the camp with a lawyer, Mr. Nandasenanayake, who told her it would take some time to get her husband out.

The next time that Elsy visited the Pallekelle camp, she was told that her husband was not there anymore. A few days later, one of her husband's friends who had been released from the Sylvester college army camp, described how he had exchanged his clothes with her husband's sarong and shirt before he was released. However, on the night the friend was released, her husband had been taken to another place. Thereafter, for about three months Elsy attempted to find her husband. But ever since he was transferred from the Pallekelle camp, she was able to get no further information about him. She went all over the country looking for Samarasinghe, but all her efforts were fruitless. Elsy further states that, "The then UNP (United National Party) Minister of rehabilitation was angry with the members of opposition parties. Some villagers had even seen him inside a jeep

which was going to abduct people. He gave the order for my husband's abduction because though my husband supported the JVP in 1971, he thereafter used to support a minister named Ratwatte, who belonged to the PA."

During this dark period, no one was willing to help each other because if they helped those who were suffering the loss of family members, they too would have been killed. "There was a person named Udugampola who belonged to the PA in the Central Province. Because of him, some violence took place in the Kandy area. He was given a list of people to be killed. He organized a killing group called the 'Green Tigers' who then went around killing people whose names were on the list. If someone was even outside the house of anyone on that list, they also would be captured and taken into custody. So there was a lot of fear."

Elsy received 50,000 rupees (US\$ 500) as compensation as well as 500 rupees (US\$ 5) every month from the Presidential Commission until 2001. She does not see this as justice though. "Like most other families of the disappeared, I also couldn't raise my children and educate them properly. I am still scraping together a living. If someone did something wrong, they should not be killed but rehabilitated. This was the duty of the government."

Story nine

The ominous van without number plates

The disappearance of Galapita Gedara Karunananda

Galapita Gedara Karunananda had gone overseas to earn some money. After he returned to the country, he used the money he earned to open a tailor shop in Nugawella. On 29 March 1989, he had gone to the Kandy General Hospital to get medicine for his father and left his wife, Leela Vitharana, 49, in charge of his shop. While he was gone, several personnel from the Pallekelle army camp dressed in civilian clothing arrived in a jeep bearing the license plate number 31 Sri 2965, and asked for Karunanada. When they satisfied themselves that he was not in his shop, they forcibly took two customers—Rankothge and Chandrapala—into custody. Leela did not know where they were being detained. She says, “When my husband came back, I notified him that some army personnel had come and asked for him. So he went to the Kandy police station with three lawyers—Senevirathanabanda, Parackrama Ranasinghe, and Wijeya Wikramarathne—and met with the Assistant Superintendent of Police (ASP) and another police officer. These police officers said that they did not want my husband anymore because he had done no wrong. Afterwards, my husband went to the Pallekelle camp to ask why he was wanted. Major Mendis, the Officer-in-Charge (OIC) at the camp told him that they needed to record his statement, but not right then. They would call on him when they needed him. One of our customers, Rankothge, was released four days later.”

On April 12, several people from the temporary army camp behind the Katugastota police station came in a jeep bearing the license plate number 31 Sri 1077, and asked Karunananda to come and give his statement. After his testimony, he returned home together with Chandrapala, the other customer who had been taken in earlier.

Three days later, Karunananda was once again notified to come to the Pallekelle camp. Major Mendis was not there when he went, so Karunananda returned and continued with his usual daily routine. Thereafter, on July 6 a suspicious looking white vehicle with no license plates was seen in front of the tailor shop. Usually Karunananda rode his bicycle to his shop, but on this day he went on foot as he planned to visit the army camp. According to Leela, as her husband passed the vehicle several passengers alighted and questioned him. Some of them were in army uniform, while others were in plain clothes. When he turned to go to his shop after answering their questions, they threatened him with their weapons, forced him inside the vehicle and drove off.

On that same day, the white van had been used to abduct a school child. Leela learnt that about 15 villagers had been abducted in this way. Immediately thereafter, Leela rushed to the Alladeniya and Pallekelle army camps, as well as the Katugastota police station, to look for her husband, but was unable to obtain any information regarding his whereabouts. She then tried to make a complaint at the police station, but they would not record it.

On September 12 Leela finally succeeded in making her complaint at the police station, mainly because she was accompanied by a lawyer. While her statement was being recorded, the police asked whether her husband had lots of money. In response, she asked how they knew her husband had money if they did not abduct him. During that period, a Buddhist monk working for the Janatha Vimukthi Peramuna (JVP) from another village was taken into custody. A few days later he was released and Leela was told that the Buddhist monk had seen her husband at the Katugastota police station. However, this monk was then detained again and thereafter never seen. "If I met the Buddhist monk who had

supported JVP to ask about my husband, I might have met with the same fate,” says Leela. “This is because people who would have seen me talking to the monk might have thought I was supporting the JVP too.” She admits that her husband did attend some classes organized by the JVP, but after their marriage he had stopped. She had also heard that there was a list containing the names of people who worked or supported the JVP.

In June 1992, Leela discovered her husband’s name in the ‘Rajaaliya’ newspaper, included in the list of people who had been killed. After confirming this was in fact her husband’s name, she wrote to the Presidential Commission, the Red Cross and several other places. However, she claims that she did not get any satisfactory response.

Leela received 50,000 rupees (US\$ 500) as compensation in lieu of Karunanada’s disappearance. “Even though it is true that my husband’s life is invaluable, this money is not enough for my two young children and myself to live on.” She adds, “If someone had done something wrong, they should not have been killed privately or for revenge. The authorities should have followed the laws of the country. And if we cannot change current rules and regulations, people will continue to disappear even in the future. The government must guarantee our next generation’s life, provide proper compensation, and look after the families of the disappeared because disappearances were caused by the government.”

Story ten

Crying for justice

The disappearance of Ajith Rohana Gunathilaka

M.G. Bisomanike, 67, and A.W.R. Gunathilaka, 65, were the parents of Ajith Rohana Gunathilaka. Bisomanike was a nurse while her husband was retired from the military and was working as a security officer. One night in September 1989, when Bisomanike had to work the nightshift at the hospital and her husband also had night duty, they left their son Ajith and their daughter at home with their relatives' children.

After finishing her nightshift, Bisomanike was standing at the bus stop to catch a bus home, when Weerakoon, a teacher at Uduwa Central College, approached her and told her that Ajith had been abducted by the military. At that time, Bisomanike says that she was unaware of how Weerakoon knew about the plight of her son. Later however, she learnt that he had a relationship with the military officers who took her son. She goes on to explain that in those days the Grama Sevaka (GS; government representative) of their village was on holiday and the temporary GS was Weerakoon's brother.

When she arrived home, the other children told Bisomanike exactly how Ajith Rohana was abducted. According to them, while the four children were sleeping, two army soldiers in uniform, two police officers and two informants wearing masks had banged on their door. They

shouted that if the children did not open the door, they would destroy the furniture near the door. Ajith told them that his parents had bought the furniture and requested them not to destroy it. Thereafter he got his cousin to open the door. Then the Army and police personnel rushed in and demanded to know Ajith Rohana's identity. After he told them, they asked about the identity of the person in a photograph on the table; Ajith told them it was his father. Thereafter they wanted to know where his father was, to which Ajith replied that his father was at work in Balangoda. They then sarcastically asked why his father went to work in those violent days. Afterwards, they forced all the children to sit down and asked the two informants to enter and ransack the house. A few moments later, they requested Ajith to show them the way back. Although Ajith had replied that he would show them the way only if he could do so with his cousin, they said that there was no need for anyone to accompany him. Bisomanike also learnt that after they went out with her son, they had hammered on the door and windows for about 15 minutes, probably to frighten the children.

Bisomanike says, "A Buddhist monk named Polwatte Sivali saw my son being taken away because the vehicles used in the abduction had been parked in front of the monk's temple. At the time, the monk had come out of the temple and seen the commotion. He did not give me any further information, maybe due to fear."

Bisomanike continues, "I felt desperate. I simply did not know what to do. So after informing my husband of my son's abduction I ran to the Hathariyadda police station to make a complaint. I told the police the whole story of the plight that had befallen my son, but they didn't accept my complaint. They also indicated that they were not allowed to entertain complaints regarding these matters [abduction by the police or army]. They just told me to look for my son in the Uduwa temporary army camp, which was about half a mile away from the police station. So I went. But the army officers at the camp said that they didn't have my son and refused to allow me to look for my son inside the camp."

On the next day, Ajith Rohana's father, Gunathilaka, met with Major Mendis, Officer-in-Charge (OIC) at the Pallekelle army camp, and also

went to the Uduwa camp to look for his son. This time, the Army officers at the camp allowed him to go inside and look for his son, but he was not in the camp.

Ajith's parents recall that there was a complaint against 17 children who had passed the O/L (Ordinary Level) and A/L (Advanced Level) exams in the village, about three months prior to Ajith's abduction. The complaint was that these children were working for the JVP (Janatha Vimukthi Peramuna). In actual fact, the parents of those children had been working for the PA [People's Alliance] and UNP [United National Party] political parties. So they think the complaint was an act of revenge. After the complaint was filed, one of the students disappeared. Within a month, Ajith Rohana was also taken away. Thereafter, the parents of the other 15 children had visited the Chief Minister and begged for their children's names to be deleted from the complaint for fear that the same fate was awaiting them.

After his son was lost, Gunathilaka wrote to President R. Premadasa, Prime Minister D.B. Wijetunga and the leader of the opposition, Mrs. Sirimavo Bandaranaike and asked them to help find his son. In the meanwhile, he saw a small newspaper advertisement about the Presidential Commission appointed to look into disappearances. When he visited the Commission with his wife, one Mr. Iqbal told them to go to the Human Rights Commission (HRC). When they visited the HRC, they were informed that they could file a habeas corpus application in court regarding their son's disappearance. Accordingly, they filed a writ of habeas corpus through the HRC and the case (HCA 100/91) began on 11 March 1992. Thereafter they patiently attended court for almost two years, when the HRC lawyer told them that they need not attend court anymore. Instead, he promised to notify them when there was any result. However, Ajith's parents never received any further response from the HRC. Gunathilaka says, "I informed the Presidential Commission of this and some people from the Commission searched for our case file. However, they could not find the file and told us that the file had gone missing."

Gunathilaka and his wife received 15,000 rupees (US\$ 150) from the Presidential Commission and a monthly stipend of 500 rupees (US\$ 5)

from 1999 to 2001. When the UNP government came into power, the payments stopped abruptly.

“No justice was given to me,” says an angry Gunathilaka. “If someone can find those perpetrators who abducted and killed my son, take them before a court of law and punish them; that would be justice to me.” He continues wistfully, “If the law is well-functioning and the government follows it faithfully, disappearances would not happen again. But the law is just on paper—not only yesterday, but also today. During those days, all politicians took the law into their own hands. So, if someone spoke out against the government, they were killed.” Furthermore, according to him, families of the disappeared in Sri Lanka have not got justice. “I wish from the bottom of my heart that civil society organizations and the international community will pressurize our government into affording justice to these families and to ensure that these kinds of incidents never occur again in our country. If they do, we will join them for our son.”



Story eleven

Life is priceless

The disappearance of Abeygoda Gedara Gunawardena

Abeygoda Gedara Gunawardena, 30, a boutique owner, had been arrested by the army and detained in the Dawulagala camp in January 1990. After his release, he told his relatives that while in custody he had been mercilessly assaulted and tortured. At the time of his disappearance on 30 May 1990, he was staying at his private residence with a girl named Kanthi. On that day, Abeygoda Gedara Peter, 43, Gunawardena's brother, was at home with his wife R.G. Ramanajayaweera, 41, when Kanthi came running and informed them about Gunawardena's abduction. According to Peter, "Kanthi came early in the morning and told us that my brother had worked at home the previous day, then gone to deliver some goods to his clients. On his way back home that night, some unknown persons had arrested him and taken him away. She also said that she did not know any more details."

After this shocking news, Peter and his wife went to the Peradeniya police station to enter a complaint, but the police refused to accept it. Peter's wife says that the police used very bad language and chased them away. There was nothing they could do, so they returned home and mourned their brother's loss. However they also realized that though they were frustrated, they could not give up on Gunawardena. So they relentlessly searched for him at the Kadugannawa, Dawulagala,

Boossa, Pellawatta and Anuradhapura army camps and numerous police stations. But they never received any information about Gunawardena. Says Peter's wife, "After then, it was my mother-in-law who attended meetings for families of the disappeared and gave information about the abduction. As a result, she received 25,000 rupees (US\$ 250) as compensation. I know he was not a member of any political party. He could have earned well and looked after the entire family, but he disappeared. This is a big loss for the family and also a mental trauma to us all."

"Life is priceless, so we cannot estimate human life in monetary terms. Though Rs. 100,000 or more may be given to us, we cannot compare it to our brother. We are still waiting for him and we will accept him with out-stretched arms. In fact, if he comes back alive, we will return the paltry money we got as compensation," Peter adds resolutely.

Recalling the era of terror at the time, Peter says that everyone was helpless because of the threat of terrorism in the country. Everyone was afraid and reluctant to speak out even if they had information to give. He continues, "If people spoke out, they too would have disappeared. However, we must prevent our next generation from the same trauma. Speaking from my own experience, most people who had a family member disappear simply did not know whom to inform or what to do. The people of Sri Lanka must force the government to implement the law to prevent such incidents from taking place in the future. And citizens must be educated on how to deal with similar situations in the future."

Story twelve

Broken promise

The disappearance of J.H.A. Amarapala and Sunil Jayawardhana

J.H.A. Amarapala, 44, an accounting teacher, rarely had time to spend with his wife and children since he became a supporter of the Janatha Vimukthi Peramuna (JVP). His wife, S.A. Premalatha lived in Colombo together with their 18-year-old son who was preparing for his O/L (Ordinary Level) examination and their 17-year-old daughter who was in grade 9. Sometimes on weekends he visited the family, but at the beginning of each week he would go away.

Sunil Jayawardhana, 35, who was a farmer, was Amarapala's younger brother. He too moved from place to place, staying mostly with relatives or friends, and infrequently visited his brother's home. According to Premalatha, Jayawardhana could not stay in one place for more than a couple of days because he suspected that he would be captured. In those days, the brothers used to stay away from home mainly because rumors were ripe that JVP supporters and their families disappeared and they did not want to endanger the family. Most of the time, even Premalatha did not know where her husband was.

Then on Friday, 12 January 1989 Premalatha was waiting for her husband's possible arrival, when at 11pm Amarapala came home accompanied by four men in civilian clothes. These men announced that they would release her husband after he was questioned. According

to Premalatha, "Inside the house, my husband spent a little time with the two children. Then suddenly, he approached me and whispered, 'They promised not to kill me, but I don't trust them. So I came to see you before I went.' Since I was not allowed to talk with my husband, I did not say anything." A few minutes later, they took him away. While leading him outside, they instructed me to lock the door and to stay inside with the two children. I was so afraid of them that I followed their every word." She adds, "As I was inside, I couldn't see their vehicle or where they were heading. After that, I never saw him again."

After her husband was abducted, she was very frightened, says Premalatha. So her son would go to police stations in search of his father. He also visited army camps in Colombo, Boossa and Galle. But no one accepted their complaint. Furthermore, the children had to give up their studies and they were forced to move to Divulapitiya, where Premalatha had grown up, because they received information that some people were searching for her son.

One month after the disappearance of her husband, Premalatha heard that her brother-in-law Sunil Jayawardhana had also been abducted. But when her son went to complain to the Divulapitiya police, they refused to entertain the complaint and threatened him. Fearing adverse consequences, the family did not go to the police anymore. According to Premalatha, the police refused to help them find Amarapala because they said he was a JVP supporter. Therefore, the only thing left for them to do was to pray that he was alive. "But as time went by we knew that my husband had been killed."

On 3 March 1993, Premalatha was informed that if she wanted to get her husband's pension she would have to lodge a complaint at the police station, so she did. Then when the Presidential Commission inquiring into disappearances began its hearings, she told the Commission how her husband had disappeared. Afterwards, she received his death certificate and 25,000 rupees (US\$ 250) as compensation from the government. She continues to get her husband's pension, but demands that the perpetrators be punished. She also says, "I can't evaluate the death of my husband with money. Nonetheless, adequate compensation must be provided to all the families of the disappeared."

Story thirteen

The void that can never be filled

The disappearance of M. Luxman Gunawardhana

M. Luxman Gunawardhana, 24, worked as an advertiser and was the eldest of three brothers in his family. His second brother was in the Army while the youngest was a grade 8 student. Luxman was married to Ramyalatha and was a father to three little daughters aged three, two and 10 months, when his life was rudely disrupted.

According to Ramyalatha, "On 10 October 1989 at around 11:30am I went to visit my parents in Galle. I was told that during my absence about 30 persons—mainly army and police officers in civilian dress—visited our house to abduct my husband. Why they wanted to capture him, I still do not know. Anyway, at the time only my mother-in-law and her 12-year-old son were at home. My husband had gone to the village to visit some friends. On learning this, the men left for the village. There, they searched for Luxman and dragged him back home. On the way, they hanged him on a tree branch and severely beat him," she says. When they came to the house, these men threatened the family with their guns and ransacked each room. They then found a photograph of Luxman's younger brother and took Luxman and the photograph with them as they left. When the family attempted to follow, the abductors warned them against such action and left without further ado.

As her complaints were continuously ignored at every police station she went to, Ramyalatha decided to go to Matara and visit her husband's younger brother at the Polhena army camp. She told him of Luxman's abduction and begged for his help. However she did not have a clue as to where her husband could be. Then on 17 October 1989, she was told by two men that her husband was detained in the Kandetiya army camp in Pannala. The two men had been captured with Luxman on the same day, but were later released from that camp. They added that her husband had been severely beaten inside the van and that he was covered in blood. On obtaining this information, Ramyalatha together with her daughters went to the Kandetiya army camp, which was a four-hour bus ride from her house. There she pleaded with the soldiers to give her back her husband. But they denied having taken him, scolded her and chased her away.

In a relentless search to find her husband, Ramyalatha sent many letters about his disappearance to the President, the Army HQ (Headquarters), the Red Cross, the Police HQ, as well as other places and received several replies. One of the responses she received was that her husband had been taken to the Sandalankawa hospital near Negombo and that he had died there. So she went to the hospital with the hope of at least finding his corpse. At the hospital she learned that yes, her husband had been brought to the hospital and had died there. However, his corpse had been retrieved by some persons, and burned on tires in the vicinity of the hospital itself. She also found out that even the doctors had not examined Luxman's body. Instead he had been taken to hospital, left on a bed to die and even then his corpse was not spared by the perpetrators.

"After I informed the Presidential Commission about the disappearance, they asked for my testimony. But I refused to give it due to fear. Moreover, I rejected the paltry compensation of 25,000 rupees (US\$ 250) they offered because I thought my husband's worth could never be calculated in terms of money. After all, can you measure any human being's life?" Now, she is employed in a bank. Even after all these years, she still finds it difficult to adjust both socially and financially to the void created by the loss of her husband.

Story fourteen

Memories are unmade by these

The disappearance of S.A. Samantha Kalyana Senanayake

After J.M.B. Nalini Upamalika's husband committed suicide in 1985, she brought up her two children single-handedly, with the help of his small pension. At the time of her son's abduction in 1989, both her children were still in school.

The date was 9 October 1989 and it was Nalini's daughter's 13th birthday. So many friends of both her children came for the birthday celebrations. That night a group of about 10 men consisting of civilians and police personnel with guns barged into the home and demanded her son's name. Her son replied, 'Samantha Kalyana'. Then they forced Samantha into an adjoining room. When Nalini inquired why her son was being taken into the other room, they said they wanted to question him. They then removed her son's clothes and checked his body; they also asked him a lot of questions about his father, mother and about his job.

Then while some of the men were engaging Nalini in conversation, others took her son outside and shoved him into a van parked at the back of the house. Seeing what was happening to Samantha, says Nalini, "I followed them out of the house. They warned me to go into the house and when I refused, they dragged me inside. I screamed 'Why are you taking my son away?' to which they merely replied that they would release

Samantha after completing their investigations at the Divulapitiya police station. The last thing I saw of my son was him being blindfolded and having his hands tied to his back.”

The next morning, Nalini went to the police station to get her son back, but they did not allow her to meet with him. Two weeks later she saw Samantha’s abductors at the Divulapitiya junction, but she was helpless with fear and could only stare at them from a distance.

Thereafter, Nalini says, “Whenever I went to the police station, I was just told that my son was alive and he would be sent back. I tried to lodge a police complaint and even met with President R. Premadasa to get my son back. But all the while I was told that he was alive and he would be released after investigations were completed, within a week. This was all a lie. My son never came back. I was so upset that I temporarily lost my memory and had to consult a doctor.”

Nalini also informed the army camp, Red Cross, and Presidential Commission inquiring into disappearances. Finally, she received her son’s death certificate and 15,000 rupees (US\$ 150) as compensation. This was the price of her son’s life, she says sadly.

She demands to know the truth about who abducted her son and why the government allowed such things to happen. She also thinks that the government should pay a monthly amount as compensation and give all families of the disappeared adequate money to survive. Finally she reiterates that the government should ensure that this never happens again.

Story fifteen

Tormented over the loss of a brother

The disappearance of S. A. Leelarathna

S.A. Leelarathna, 29, had three brothers and five sisters in his family, and his father had passed away. He was a social worker who lent a helping hand at funerals and otherwise assisted villagers in times of need. “Many in this village were fond of my son, and yes, proud of him too. He was such an energetic man,” says his mother, L. P. Alice Nona. According to Alice Nona, before he disappeared, she was told that someone frequently came to meet Leelarathna, however, there was no one else at home at these times. Then one day their house was broken into and everything of Leelarathna’s was taken away. Thereafter, on 13 June 1989 at around 5pm, Leelarathna told his mother that he was going to work on a construction project at the hospital, to earn some money. Also, since he would be gone for some time and as Alice Nona was not well, he gave her some money to consult a doctor.

Alice Nona continues, “On June 16 at around 11am, when I was at home, a person suddenly visited me and asked whether I was Leelarathna’s mother or not. When I replied ‘yes’, he told me that some policemen had arrested seven persons including my son. He also told me the place from where my son was abducted and offered me 100 rupees (US\$ 1) to lodge a complaint at the police station or the courts. I, however, waited for my eldest son to come home for lunch because I was too old and confused to do anything on my own.”

Together with her eldest son, she visited the Veyangoda police station to complain about the incident. On the way, Alice Nona met with an accident and injured her toe. So by the time they obtained treatment, they were late getting to the police station. "When we went to the police station," notes Leelarathna's brother, S.A. Premadasa, "I tried to look for my younger brother but the police said they did not have him. I didn't believe them so I tried to find my brother inside the police station, but they prevented me from looking for him. And though they did record our complaint, I am sure they did nothing to find my brother." Afterwards, Premadasa also wrote to the Magistrate about his younger brother's disappearance. On June 17 Premadasa visited the Gampaha police station to look for his brother and file a complaint. The policemen did not accept the complaint and said that they did not take his brother. Instead they suggested that Premadasa go to the CID (Criminal Investigation Department, in Colombo) to search for him.

The next day, while he was preparing to go to Colombo, two CID officers living nearby came home and volunteered to look for Leelarathna at the CID, as they too were going there on duty. Two days later, they informed Premadasa and his mother that they could not find even a clue to the whereabouts of Leelarathna. Also, he was definitely not at the CID in Colombo.

Unable to stay at home doing nothing, Premadasa says, "I went to the Divulapitiya police station to inquire whether my brother was there. But the police there said they could not help me because they were not in charge of our area and suggested that I go to the Veyangoda police station. In the meantime, I received a message from the court requesting me to appear on July 15 to give my testimony. At the court I testified to my younger brother's disappearance and gave all the details about the incident to a lawyer. The lawyer asked me to come again on August 15, so I came back home and waited for that date.

"However, a few days later, I got another message from the court, informing me that I need not come to court until further notice. I suspected that something was going wrong so I went to the court on July 22, but I was told at the court that the lawyer in charge of my

younger brother's case had been killed and that the case was taken over by another lawyer. This new lawyer explained to me that some people in vehicles without license plates had come to the court and had abducted people. So he persuaded me to return home as fast as I could and stay there until I received another message to come to court. However, he did not specifically tell me what had happened."

After that, Leelarathna's family did not receive any message from the lawyer and they did not go to court. However they had still not given up looking for their lost one. They wrote to the President and Prime Minister but received no replies. It was only after the ruling party lost the election and the opposition came into power that they received some form of response to their queries. Finally, they obtained Leelarathna's death certificate in 1996, appeared before the Presidential Commission and were awarded 25,000 rupees (US\$ 250) as compensation for his death. Now they receive 250 rupees (US\$ 2.5) monthly. According to Alice Nona, her son was so close to his sister that after his disappearance, his younger sister suffered a mental breakdown and had to be hospitalized for about two months. Even now, she receives psychological treatment.



Story sixteen

Adding stigma to trauma

The disappearance of W.P. Lalith Wijerathna and
W.P. Ranjith Wijerathna

Lalith and Ranjith Wijerathna belonged to a family of five. Their father was a farmer and their mother a housewife. Their eldest brother was working in the Middle East and he supported the family financially. The second son, Lalith, 30, was the Chairman of the JVP (Janatha Vimukthi Peramuna) student union at the Peradeniya University when he disappeared. The youngest son, 28-year-old Ranjith Wijerathna, was a worker at a weaving factory when he disappeared.

According to the boys' mother, several people including police officers often came to their house in search of Lalith, because of the post he held in the JVP student union. Whenever anyone came, though, no one was at home, and it was usually the neighbors who informed them of these visits. However, one day, some people followed them to their relatives' house. She explains, "When we were at a relative's house on 10 December 1989, these people came looking for Lalith. When they found that Lalith was not with us, they just took my husband, dragged him into the van outside and left. Two days later, our third son Ranjith, was also arrested and detained at the same police station in Colombo where his father was detained." While in custody, Ranjith and his father were kept in separate rooms and were not allowed to talk to each other.

On 2 January 1990, the father was finally released from police custody. However, Ranjith was not so lucky. When his father returned to the police station after his release and asked for his son, the police merely promised to send Ranjith home after questioning him. However, as his mother notes sadly, "Ranjith never came back again". In the meantime, the family scrutinized the list of dead people given on television, to see whether Lalith's name was there. Until today, though, they still do not know who killed either of their sons.

When the Presidential Commission inquiring into disappearances began its hearings, the family lodged a complaint regarding the disappearance of their two sons. Thereafter they were able to obtain two death certificates for their sons. They received 25,000 rupees (US\$ 250) for Lalith and 50,000 rupees (US\$ 500) for Ranjith respectively, as compensation from the government. They also received 500 rupees (US\$ 5) monthly, but this was stopped in December 2001 and only recently resumed, but now they only get Rs. 340 (US\$ 3.4).

The case into Ranjith's abduction continues to be delayed in the magistrate's court for little reason. Furthermore, Ranjith left behind a wife and two children. His daughter is now 17-years-old and is preparing for her A/L (Advanced Level) examination while his son is 14-years-old. Both children are attending school while their mother is working at a garment factory to support them.

"Even though my children don't know exactly what happened to their father," says Ranjith's wife, "The death of their father under such mysterious circumstances has been traumatic to them. They are still suffering from the after effects of it. Also my family has been branded as JVP, so my children have been stigmatized in the village and at school. In fact, our whole family is isolated in the village due to this fact." They continue to face social, financial and psychological problems and life remains an uphill struggle.

Story seventeen

I lost hope...

The disappearance of H.U. Biyal Somarathne

Originally Somarathne's family consisted of six members. But in 1981 his eldest brother was killed in a private feud and soon after his father died from heart disease, leaving Somarathne, 37, to fend for the family. He was a farmer by occupation and only rarely assisted in pasting posters for the United National Party (UNP).

On 18 October 1989 at around 1:30pm, some Army soldiers together with others in civilian clothes visited the family home. At that time, Somarathne was at home with his 72-year-old mother and younger sister. According to his sister, two soldiers approached the front door while two others went to the back of the house. The men said they wanted to take Somarathne to the Hunumulla army camp to be questioned. Although their mother howled and cried that he was her only son, they threatened the family with their guns, forced him into the vehicle parked near the house and left.

Within a few hours, Somarathne's sister went to the police station and the Hunumulla army camp with her husband to look for her brother. However, the police and army officers chased them away using obscene language and also refused to entertain their complaint. Furthermore, "The guard at the Hunumulla army camp denied that they had taken my brother. They refused to let us enter the camp, so

in the hope of finding my only brother, we went to two other army camps situated at Markandura and Ambepussa, about 20 miles away. But it was the same result there too.”

One month after he disappeared, the family met with a member of parliament and pleaded with him to help find Somarathne. This gentleman checked a big book at the police station, containing a lot of names, and told them that Somarathne had been killed and burnt with tires. “I lost hope...” murmurs the mother.

They informed the Presidential Commission inquiring into the disappearances, and managed to get Somarathne’s death certificate as well as 25,000 rupees (US\$ 250) as compensation from the government. Now his 90-year-old mother lives with the family of her youngest daughter. They face enormous financial and social difficulties but still want the perpetrators to be punished.



Story eighteen

Footsteps for Josephine

The disappearance of Shiranta Peris

Josephine Fernando's youngest son, Shiranta Peris, disappeared on 29 October 1989, at the age of 24. According to Josephine, several people had witnessed her son being abducted near his office, Blue Diamond, by persons they thought were police in civilian clothes. Josephine suspects that Shiranta was abducted due to jealousy over the relatively high salary he earned—seven out of 14 workers with higher salaries at his office disappeared during that period. Or because he had once lent his motorbike to a member of the Janatha Vimukthi Peramuna (JVP), who had tried to kill an Assistant Superintendent of Police (ASP) of Negombo, a town north of Colombo. She suspects that the ASP was linked to the killing of her son.

Josephine's son was the main wage earner of the family of seven; ever since his disappearance, they have been struggling for survival. Besides Shiranta, she has three daughters, who are all married, and one other son who works in a shop.

Her husband was so shocked after his son disappeared that he got sick and has not been able to work ever since. He now lives with a daughter, who looks after him, while Josephine visits him every day.

To be able to pay almost 2,000 rupees (US\$20) every month for her

husband's medicine, she makes breakfast foods that she sells every morning. Even at 60, she goes to bed at around 1am and gets up again after only a few hours to prepare the food. Her children too help to the best of their ability to find the money for their father's medicine, but it is a constant struggle.

The family eventually got 25,000 rupees (US\$ 250) as compensation from the government, but no investigation was ever conducted. They are still hanging onto the hope that one day they will receive justice.

Josephine never found her son's body and—even 14 years later—cannot completely face the fact that her son is no more. She also has difficulty in sleeping, as every night she can hear his footsteps walking through their small house.



Story nineteen

An abrupt end to Amitha's promising future

The disappearance of Amitha Jayalath

Amitha Jayalath, 26, disappeared on 28 November 1989. His parents, Sirisena and Ariyawathi Silva, as well as his sister witnessed his abduction but were quite powerless to prevent it.

According to the family, several army personnel came to their home at around 3am that day to arrest Amitha and another man who had rented a room in their house. The soldiers accused the two young men of being Janatha Vimukthi Peramuna (JVP) members. His parents admit that Amitha had earlier been a member of the JVP, but had left the party when its activities became violent. In fact, at the time of his disappearance, he was involved with the United National Party (UNP).

His family says that after the soldiers forced their way into their home, they smashed the light bulbs in the house, presumably to prevent the family from identifying them later. The abductors had also put guns to the heads of Amitha's parents to threaten them to be quiet. As the soldiers escorted the two men away, the family heard Amitha protesting that he did not have any clothes on, apart from the blindfold that had been torn from his sarong. In response one soldier sinisterly retorted that he would not need any clothes as 'he was going swimming'.

A few hours after the arrests, the lodger returned home and told Amitha's family that he had been released four kilometers away. He also detailed the manner in which the soldiers had tortured Amitha on the way. When the family went to search for their son, they found a person who claimed to have witnessed the soldiers killing their son and setting his body on fire. But they never found their son's body.

Life looked very promising for Amitha, says Ariyawathi mournfully, and he had big plans for the future when his life was abruptly ended by the soldiers. His mother goes on to explain that Amitha was well educated, was about to get married and on the day before the incident had received a promotion at the aluminum factory where he worked. Also, Amitha used to faithfully hand over his salary to his mother every month and the family survived on this income.

In 1990 says Ariyawathi, about 20 soldiers had once again visited the family home, this time in search of her husband and daughter. Luckily, they were not at home at the time. However, fearing for their lives, the family was forced to go into hiding for a long time thereafter.

The Presidential Commission into disappearances awarded the family 25,000 rupees (US\$ 250), but investigations into her son's disappearance never resulted in any arrests, sighs Ariyawathi.

Story twenty

Corpse on display for 24 hours

The disappearance of Yaman Gedara Jayasooriya

On the morning of 9 September 1989, Yaman Gedara Jayasooriya's wife Lalitha Padmini was at home, bathing her children and waiting for her husband to come home for lunch. Her husband was employed as a clerk at a tea estate in Ragalla, says Lalitha, and usually came home to have lunch with the family. While waiting, she suddenly glimpsed a jeep speeding past her home. A little while later, the village postman came running and told her that while he was on one of his rounds delivering mail, he had seen a man blindfolded and tied inside the jeep. After reaching his office, the postman had learnt that some unidentified persons had abducted her husband.

"I was terribly upset and didn't know what to do," says Lalitha. So she ran to her husband's parent's house and informed her in-laws that their son had been abducted. Upon hearing the news, Jayasooriya's parents and Lalitha went to the Panwilla police station to complain about his disappearance. Before going there however, they wrote down all the details they were told relating to his abduction.

They told their story at the police station, but a policewoman named Anulla ordered them to modify a portion of their complaint if it were to be accepted by the police. In her statement Lalitha had mentioned her husband's office as the place from which he was abducted, but the

policewoman demanded that it be changed to 'on the way to work' instead. Lalitha says that, "Since the police didn't allow us to write it correctly, we just did as we were told."

The postman was the only person to tell her about her husband's abduction. The day after his disappearance, one of Jayasooriya's co-workers named Wiratunga visited her home and gave her some money to search for her husband, but he was too scared to give details of what exactly happened to Jayasooriya, remembers Lalitha.

It was only almost a year after her husband's disappearance that Wiratunga finally told her exactly what transpired on that fateful day. There were initially three workers in their office. One of them, Jayawardena, went to a funeral ceremony, leaving Jayasooriya and Wiratunga in the office. Several persons with weapons had then come to the office and called Jayasooriya by name. They demanded that he come out immediately. So Jayasooriya and Wiratunga had gone, and according to Wiratunga, they were both trembling with fear as they did not know who would be abducted. These persons surrounded the two men, forced Jayasooriya into the jeep and left.

A few days after the abduction, Lalitha went to the Palegalle army camp to look for her husband, but her exertions were in vain. Later her father-in-law received information that his son was at the Wattedgama police station and went there to look for him. On the way he saw some dead bodies lying on the roadside, so he alighted from the bus and inspected the bodies. There he found the remains of his son's body.

"After my father-in-law came back home, he cried a lot," Lalitha remembers. "I was so confused, I simply could not think of what had happened. So he just told me to go to Katugastota, to my sister's place, without saying anything about my husband." After Lalitha left for her sister's house, her father-in-law and some relatives took her husband's body to the Mahiyawa cemetery and buried it.

Later Lalitha came to know that her husband's corpse had been lying at the Pitiyagedara junction. He had been shot in the forehead and the

back of his head was completely destroyed. His face was still intact though, so everyone recognized him. "Like this, his corpse was displayed for 24 hours," cries a distraught Lalitha. "There was also a notice on my husband's body saying, 'Yellow Cat.'"

Lalitha does not really know why her husband was abducted and killed. One of his friends told her that the alleged perpetrators were looking for Jayawardena, Jayasooriya's co-worker, and Lalitha thinks that when they could not find him, they had taken away her husband mistakenly. Alternatively, she thinks that it might be because her father-in-law was helping the People's Alliance (PA). All the neighbors knew that he was working for PA and also that Jayasooriya took over his father's job in 1977. But she is still puzzled because to her knowledge, her husband had not actively worked for the PA. He had not for instance, gone on poster campaigns or any other such political activity. Another alternative is that it might have been a private grudge, because says Lalitha, her husband's family were 'well to do' in the village and all his family members were engaged in good jobs. Someone who envied Jayasooriya may have instigated his abduction and murder.

She also says that people in those days were afraid to even talk to each other. They were afraid that if they helped a family member of a disappeared person, they too might incur the same fate. She clearly remembers the atmosphere of terror, when everyone was terrified. So if a family member of a disappeared person spoke out, he or she had to fight alone and thus one was not able to take any serious action against these illegal activities.

Lalitha adds that for about five years after the incident, she suffered from depression and found it hard to live a normal life. But she had to fight to live for her three children. She says, "The government didn't do anything. It didn't give me justice. I don't believe in any political parties because most politicians work for their selfish ends. And once they seize power, they do whatever they want. If this goes on, disappearances may happen again in the near future."

Story twenty one

To whom could we complain?

The disappearance of Upul Nishantha Kumara

Upul Nishantha Kumara was a 17-year-old student at the Dodanwalla School and at the time of his abduction on 9 January 1990 was studying for his Ordinary Level (O/L) examinations. His elder brother, H.G. Harischandra Vimalaweera, 27, who was working at a project at Mahiyanganaya, had come home and was sleeping when at about 11pm two persons banged on their front door and shouted 'open up'. When the door was not opened, these persons threatened in loud voices to break down the door and enter. Due to this threat their father opened the door.

The men entered and immediately turned off the lights. Then they went into the room near the door, in which Upul Nishantha was sleeping, and they dragged him out of the room. According to Upul Nishantha's mother, 62-year-old Hettiwatte Gedara Seelawathi, "We resisted with all our might. But they intimidated us into giving our son by telling us that we would be shot if we made a fuss. It was too dark to notice whether they had weapons or not because they put the lights off. We were so afraid in the darkness that we had no choice but to do as we were told," she laments.

However, before leaving the house, dragging her son along with them, the abductors identified themselves as army personnel, says Seelawathi.

“They definitely told us they were soldiers from Kadugannawa and instructed us to come the next morning to bring the child back.” But Upul Nishantha was never seen again.

Seelawathi says that the family could not do anything at that time because it was too late to go out. So they wailed and cried bitterly. Upon hearing the commotion, several neighbors came and inquired from them as to why they were weeping. The family told them about their son’s abduction and their neighbors advised them to wait till morning, then visit the Kadugannawa army camp to find their son.

On the following morning, Upul’s father and brother visited the army camp in search of him. But the army told them that Upul Nishantha was not at the camp and told them to go to the police and complain. So they trudged along to the Peradeniya police station to file a complaint, but the police refused to take down their complaint. Vimalaweera vehemently contends that, “The police and army were in it together and were responsible for most of the disappearances. So to whom could we go to make a complaint?”

The family visited every army camp and police station in Kandy and nearby in desperation, but they could not find their lost son. They went to meet politicians and respectable persons in the village to get news, any news, about Upul, but their efforts were not rewarded. They even wrote letters to many people in high-up places, including the President and Prime Minister, but received no response. They also wrote letters to both local and foreign organizations such as Amnesty International. People in the village had told them that their child might still be living somewhere without being killed. So hoping against hope they went across the country in search of their child—but they never found him.

Finally, they managed to lodge a complaint with the police, but this was only after intervention by the Assistant Government Agent (AGA). After submitting the police statement, they obtained Upul’s death certificate and the paltry sum of about 15,000 rupees (US\$ 150) as compensation. The money was meaningless compared to their son’s

life, the family says. So they spent the money on an alms-giving for their son.

“I think the abductors presumed my younger brother was a member of the JVP (Janatha Vimukthi Peramuna),” says Vimalaweera. “However, my brother was just a school boy. The only politics my family was involved in was to vote for the SLFP (Sri Lanka Freedom Party) at the elections.” According to Vimalaweera, if someone violates the law, they should be sent to be rehabilitated, not abducted and killed. But in Sri Lanka this was not the case. “What happened was not only a national crime but also an international crime. There was no difference between terrorist groups and the government.”

Between 1989-91, most people were helpless and most of those who disappeared were innocent. Such a situation prevailed all over the country at that time. Vimalaweera says that sometimes he felt that he too might have been taken away and killed like his brother. He goes on to explain that after the abduction of his brother, his father had taken ill and did not speak for about three days, and his mother had also become sick. His father had never stopped grieving for Upul and this sorrow finally brought about his early death.

Vimalaweera is also of the opinion that there should be a single organization uniting all people without differentiating between them on the basis of caste or color. This organization can ensure that such horrible things never happen in the future. Seelawathi hopes and prays that disappearances will never take place in the country again. “If such horrifying incidents recur, the rest of the children in our country will disappear too. These disappearances were caused by the government, so it is the government’s responsibility to take steps to prevent such brutal acts from being committed against the future generations of our land.”

Story twenty two

Amma, amma

The disappearance of Urakote Gedara Janaka Saman Kumara Siriwardana and Urakote Gedara Chaminda Srinath Weerasinghe
(Rev. Chandima)

Ten days before the abduction of Asoka Weerasinghe's two sons, 18-year-old Urakote Gedara Janaka Saman Kumara Siriwardana, and 17-year-old Urakote Gedara Chaminda Srinath Weerasinghe (Rev. Chandima), who was a novice Buddhist monk, a man was killed in Panvila village. This person was killed and decapitated right in front of Asoka's shop. Asoka was told that the murdered man had a seven-day-old daughter at the time. The villagers attended the funeral house, as did Asoka. There, Asoka found out that this death was not the only one in that house, for many people had been killed in the area and the perpetrators were alleged to be members of the Janatha Vimukthi Peramuna (JVP).

According to neighbors, while Asoka and her children were at the funeral house, several members of the JVP had banged on their door shouting and screaming for her two boys to come out of the house. Getting no response, they had left. Sometime later, she was also told that another group of people had visited her house—the neighbors did not know their identity—looking for her sons. Asoka was unaware of the reason that these people came in search of her children.

She later found out that when her elder son, Siriwardana, was getting on a bus to visit his younger brother Rev. Chandima several days earlier,

he had been involved in a heated argument with the conductor of the bus. The argument was over the conductor's refusal to allow two school children into his bus. Siriwardana had queried why the conductor did not allow the children to get on the bus, especially as they were already late for school. After the incident the bus conductor had come home and tried to assault Siriwardana. After quarrelling with him for a while the conductor threatened Siriwardana that 'he had only three more days to live'. As was tragically proven, these words were not uttered idly.

Asoka says that her nightmare began on 19 November 1989 at about 11pm, when the entire family was at home. Two people in white T-shirts with weapons in hand knocked on the door saying they were from the police. They also threatened that if the door was not opened they would break it and come inside. Only two of them came in but more people were outside. Asoka says that because they identified themselves as the police, she opened the door; otherwise she would never have opened it. The men went straight into the bedroom where her two sons were sleeping. One of them asked whether there was a member of the clergy among the family members. Also, probably due to the curfew that was on, they did not turn on the lights but used an oil lamp in the house to distinguish between family members.

Another man said 'these are the two children' and pointed to her sons, Asoka says. Then all of a sudden, they forced her boys out of the house and demanded that Asoka bring them two shirts to wear. The men told the family that they were police officers and they wanted a statement from the boys, but they did not mention the name of their police station. Then the rest of the family was pushed inside the house and the front door was blocked so that they could not get out. While they were dragging the two children away, Asoka heard her younger son, Rev. Chandima calling out to her 'amma, amma (mom)'. He was so young and he could not bear the fear, she says, and recalls sorrowfully that she felt so helpless that she could do nothing but scream and cry.

A few minutes later she and her husband heard the sound of a gun and she thought their sons had been shot. "We cried. But nobody came to our help because everyone was so terrified. However, my sons were

not killed at that moment. Thereafter I learnt that my sons were taken next door, made to kneel down in front of the house where their friend lived and forced to call their friend's name. Thus these perpetrators used my children to call out other children in the area. This way, they abducted five more children." Of the seven children abducted during that fateful night, two of them are alive now because one had jumped out and escaped from the jeep that was taking them away, while the other was released by his brother. Both these children were kept out of sight until the People's Alliance (PA) came to power in 1994.

Early the next morning, all the parents of the abducted children visited the Panvila police station. However the Officer-in-Charge (OIC), Mr. Wickramasinghe, denied any knowledge of the incident and also said the children were not inside the police station. "The police refused to record our complaints," laments Asoka.

Asoka says that she visited several army camps and the Wattedagama police station in search of her sons. "But the police at this station too refused to record my complaint. They told me that they didn't know anything about my son's abduction and therefore refused to budge." She then visited Pallekelle camp, Kandy police station, and Boossa and Poonai army camps, all with no result. Then, in a final bid to find the boys, Asoka sold her land and gave the proceeds to some people to try to find her sons. But she met with a blank wall wherever she went.

It was only in 1990 that the Panvila police station finally took down her complaint. Thereafter she obtained the death certificates of her sons and 30,000 rupees (US\$ 300) as compensation. But Asoka says, "I donated the money to a Buddhist monk as an alms-giving." She adds woefully that there is no justice in Sri Lanka and she is still living with fear.

Story twenty three

Missing from the police station

The disappearance of Santha Kumara

Santha Kumara, 15, had dropped out of school and did various odd jobs at home. On 9 November 1990 he had gone with his friends to play a game of cricket at a playground near Bogambara, when his mother, Weeran Kadirai, who was at home, was informed by several of his mates that her son and another boy had been assaulted and taken away by the police. She was told by others that someone's jewelry had been lost and the boys were accused of stealing the jewelry, so the police had taken them into custody.

After hearing this story, she frantically rushed to the Kandy police station, where she saw her son in the crime branch office. She tried to get her son released, but failing to do so, lodged a complaint about his arrest at the police station. Thereafter, she says, "I went to the Kandy police station every day to bring my son home. I also appealed to a lawyer. But the police kept telling me that my son would be released within a week, after their investigations were completed."

The police permitted her to meet her son while he was in custody for three days. Then on the fourth day when she attempted to meet with him, the police told her that her son had escaped from the police station. But she thinks the police tortured her son to death. According to her, "If my son escaped from the police station, I know he would have somehow contacted me. But to date, I have never heard from him—and I

still don't know where he is." And she pleads, "Please believe that my son went missing from the police station."

She also says that in those days many youth were taken into custody, and some people who went to the police station to visit their children had actually seen Santha being assaulted by the police. The other boy who had been arrested and detained with Santha was released within a week. According to Santha's mother, this was because his father, Abe, was a caretaker of police horses. When she met that boy, he told her that the police had forced them to work at the police station. She asked him, "Why did the police get my son to work when he should be at home?" She also asked him a lot of questions about Santha, but the boy was reluctant to answer. Later on, she learned that her son was tortured by the police because they wanted to force Santha into falsely confessing to the theft.

Santha's mother made many attempts to find her son. "I wrote letters to the President, the Presidential Commission (on disappearances) and other persons high-up in authority, but I did not receive any concrete information about the whereabouts of my son." Thereafter some police officers came from Colombo and searched the Kandy police station, but even they couldn't find Santha. "I even visited the area Superintendent of Police (SP) and was told that maybe my son was transferred to another detention centre. He promised to look for him, but I don't think any action was taken."

Furthermore, after his elder brother's disappearance, Siva Kumara, now 24, simply could not continue with his studies. He explains, "I had to stop my studies at the age of 10, because no one wanted to talk to me anymore. I was isolated and ignored by my friends because my brother was in police custody. I hope that this does not happen to anyone else in the world."

They received 15,000 rupees (US\$ 150) from the Presidential Commission to compensate for Santha's disappearance. However, his mother says, "Nothing is more valuable than my son. The government must ensure that at least in the future, innocent people like my son do not face such horrors again."

Story twenty four

A life is more precious than money

The disappearance of Rajaguru Brakmanage Samannatha and
Rajaguru Brakmanage Ananda Rajaguru

One day R.B. Samannatha, a schoolteacher by profession, agreed to keep his younger brother, Ananda Rajaguru at his home because Ananda supported the Janatha Vimukthi Peramuna (JVP) and his life was in danger. Ananda used to invite some of his friends and draw posters and write letters in the house. Then on 13 August 1989 he was taken away, never to be seen again. The same fate awaited his elder brother too.

On one fateful day, at around 11pm, about 20 people dressed in civilian clothes came to Samannatha's house and banged on the front door. They shouted that they would kill the entire family if the door was not opened immediately. As Samannatha was ill at the time, his wife Hewa Dawundage Malani Rajaguru, 32, approached the door with an oil lamp. When she opened the door, the visitors flashed a bright light on to her face, perhaps, she says, to prevent her from recognizing them. They then forced her to close her eyes and turned off the oil lamp in her hand. They rushed into the room in which her three small children aged nine, seven and six were sleeping and after rudely shaking them awake asked the identities of the persons sleeping on the adjoining bed. The frightened children replied that they were their uncles and their father.

“Pointing their guns and poles, they forced me to creep under the bed. They also forced the children into a position on top of the bed,” Malani says. “While I was under the bed they told me not to make a sound or else I would be killed. On fear of death I did not scream. But I felt so afraid and helpless that I began to weep. Then before leaving, the men warned me to close the door and forbade me to go outside.” When the men left, she emerged from under the bed to find her husband and his two younger brothers missing. “I couldn’t do anything, I was so helpless,” repeats Malini, and says that though these people did not identify themselves and in fact attempted to conceal their identity, she definitely thinks they were police.

On the following day she made her way to the Katugastota police station to lodge a complaint about the missing persons, but the police refused to entertain any complaint. She says, “I then went to the school where my husband was serving, because usually my husband took his salary on the 20th day of every month. I really did not know what else to do. The school principal told me to go to the police station and make a complaint as fast as possible in order to find my husband. So I went to the police station again.”

This time the Katugastota police suggested that she make a false complaint—the police demanded that she state that her husband and his brothers were taken away not by the police, but by persons unknown to her. Since this was the only way to make a complaint she did what they said and they then recorded her complaint.

Though she visited the Katugastota and Alladeniya police stations several times in search of her husband, the police chased her away, saying ‘go away, go away, we do not have your husband’. Ten days later she came to know that her husband and his brothers were detained at the Sylvester army camp in Kandy, as a person who had been there had seen the two younger brothers and told her so. “When I went to the said army camp I did meet my brothers-in-law,” says Malini, “And they told me they had been severely tortured by the police. They had been burnt with cigarette butts and hammered with poles and had nasty scars and bruises all over their bodies. They also told me the

police had beaten them daily. Also, for a while, they had been with Samannatha, but later he had been separated from them. So they did not know where their elder brother was.”

She says that she wrote to President R. Premadasa, Prime Minister D. B. Wijethunga, and the Assistant of Security, Ranjan Wijerathna. “I received letters from them that they would look for my husband but no real action was taken,” she contends sadly.

She continues, “The police may have thought that my husband had been assisting his younger brother, R.B. Ananda Rajaguru, in JVP activities. They also may have thought that his two brothers came to stay at our house because they were scared after doing something wrong. But they had no right to arrest my husband and cause his disappearance. They also did not have a right to torture the two brothers.” At the time, Malini recalls, people were very frightened and they could not live freely because the government caused people to disappear. Also, if someone spoke out against the government, they too would be abducted and killed. So people maintained their silence at all the injustices committed against them and their families.

After three months the two brothers were released. Malini received 75,000 rupees (US\$ 750) as compensation for her husband. However, she says, “Nobody can value a human being’s life in money. I’m not complaining about the amount of compensation. I can manage because I have my husband’s salary. But the government has a responsibility towards the many families who lost their sole wage earner and thus cannot even afford to buy a little food to feed their children. The government should be accountable to these destitute people and help them. But until now, little has been done for the families of the disappeared except paying paltry compensation.”

Story twenty five

Tell-tale pair of shoes

The disappearance of Lichchowi Nisanthe Weerasinghe

“I was a left party leader in my village and I was given a job as a schoolteacher by the People’s Alliance (PA),” says Gannoruwe Gedara Seelawathi, 71. “Thereafter, a leader belonging to the United National Party (UNP) in our area twice destroyed my house because I was helping the PA. This man and his colleagues tried to force me into quitting my job and supporting the UNP, but I resisted. So it is my contention that the UNP took revenge for my political affiliations by abducting and causing the disappearance of my child,” concludes Seelawathi.

On 16 November 1989 there had been a commotion at Seelawathi’s son’s school regarding the milk and buns being served for lunch. The agitation was that while students in Colombo schools were being given milk and bread for lunch, students in the Kandy schools and other areas outside were given quartered milk powder and bread. So the Advanced Level (A/L) students in Kandy, including those from the Wategama Maddumabandara Madya Maha Vidyalaya, organized several rallies and sent petitions against this alleged discrimination of the government. Seelawathi later learned that those 17 A/L students who participated in the rallies—including her son—had all disappeared.

After the milk incident, one day when her son, Lichchowi Nisanthe Weerasinghe, 19, returned home from school, Seelawathi found that

her son's clothes were in tatters. So she became afraid and told her son to skip school the next day. But he defied her and went to school. Before leaving, he also told her not to come looking for him at school because 'he was not a little boy anymore'. These were the last words Nisanthe uttered to his mother.

Usually Nisanthe used to return home at around 2pm, so Seelawathi waited for her son. But on this day, her son was late, so she went in search for him together with a person named Raja. When they arrived in the town, they noticed that many people were looking at them strangely, but no one said a word. Then suddenly a small child ran up to her and cried that some people had taken Nishanthe away. Then another person added that Nisanthe was taken away in an orange-colored van belonging to the Wattedagama police station.

On hearing this news, Seelawathi rushed to the police station where she saw the vehicle described to her earlier parked nearby. She went in and asked for her child. But the police insisted that they did not know where her son was and told her to find him herself. During that period a curfew was imposed, but prior to the curfew, her husband who was working at Deraniyagala also visited the police station. He came along in a van, so that they could search for their son more quickly. Since many people they knew suspected that Nisanthe was still at the police station, they went there again. The gate was closed and no one could enter the police station without permission. "I told the police at the gate that I had come to make a complaint about the disappearance of my son. But they told us that they had received orders from higher up not to allow anyone inside. I asked who ordered it but they didn't answer my question," Seelawathi says. The police did not even allow them to remain in front of the police station: "They chased us away with very filthy words."

On December 5, they obtained a letter from the Assistant Superintendent of Police (ASP) and were allowed to enter the police station. Upon entering, they were met by a Sergeant Lokubanda who immediately abused them using obscene language. They gave him the ASP's letter and he read it. Thereafter he recorded their complaint on

a scrap piece of paper, rather than in the formal police entry book. “I asked why he took down our complaint on the piece of paper, but once again he scolded me using dirty language and forbade me to ask any more questions. I was frightened to tell the police to write down my complaint correctly. But I wrote the correct version in my diary. If the police had not done something wrong, why didn’t they take down my complaint in the formal police entry book?” Seelawathi queries.

Later on, a driver working at the Ceylon Transport Board (CTB) named Shanthi Ibulawalla told her that he had driven a bus that transported the children abducted by the Wategama police station to the Pallekelle army camp. He was friends with Nisanthe and knew that he had been one of those children. After hearing this, Nisanthe’s parents went to meet the Officer-in-Charge (OIC) of the Pallekelle army camp, who denied that Nishanthe was at the camp and said that he may be in another camp. So they went along to the Boossa, Degana, Matale, and Palawatta camps but they could not find their son anywhere.

After about 4-5 months, the Presidential Commission (into disappearances) requested Seelawathi to bring a copy of her police complaint about her son’s disappearance. But when she went to the police, she found that her complaint was not recorded in their official books. She tried to find the complaint for about three months but failed. It was only five years later—and after she found her diary with her personal account of the incident—that she was able to lodge a complaint at the Wategama police station in a formal police entry book.

“I have searched for my son for 10 years,” laments Seelawathi. “The bus driver died of an illness and the family of the small boy who told me that the police had taken my son has been in hiding because they feared being killed.”

A few months after her son’s disappearance, a person named Priyantha Somasiri—in a state of intoxication—told her, pointing to her house, that he had helped abduct the child ‘in that house’. Seelawathi says that, “I had given a pair of shoes to my son as a present. And on the

day he disappeared he was wearing that pair of shoes. After my son's abduction, I saw Somasiri wearing my son's pair of shoes. Therefore I strongly suspect that Somasiri was one of the abductors who took my son away," she grieves. But she has not attempted to take any action against this man, because she fears that if she does, other family members could be harmed or killed. So she has chosen to keep her silence.

"When the disappearance of my son occurred," she adds, "My elder daughter was attending university, but she had to drop out on account of the trauma we were going through. One of my other sons also had to quit his computer studies because of the incident." Finally, the family received 15,000 rupees (US\$ 150) from the Presidential Commission, and Seelawathi spent the money to build a statue of the Buddha. "Do you think my son's life is worth 15,000 rupees?" she asks. "Can you calculate one person's life in money?"



Story twenty six

A bloody mistake

The disappearance of Kammalarange Sitragedara
Wasanthe Gamini Abewickrama

H.G. Yasohami, 63, was living in her brother's house in Maussawatte, with her son K.S. Wasanthe Gamini Abewickrama, a 22-year-old mechanic, when on 19 September 1989 at around 11:30pm two army jeeps with about 10 people came to the house. These persons, clad in army uniforms alighted from the vehicles and screamed out for Gamini. They threatened that if the door was not opened immediately it would be broken down. According to Yasohami, she was so scared that she could not help but open the door. When the door was opened, the intruders entered pointing guns and threatened her not to go out of the house or do anything else. When she started screaming she was told to shut up. Yasohami was so frightened with all this commotion, she says, that she lost consciousness for a short time.

The men searched for Gamini, who was sleeping at the time. They then dragged him outside and left as abruptly as they had come. The family did not see what happened to Gamini thereafter, or where the army jeeps were heading, because they were too scared to go outside. After they left, however, Yasohami discovered that her son's slippers as well as his bedsheet were also missing. She thinks that the bedsheet was used to cover her son, so that he would not be able to recognize his abductors, or see where he was taken.

On the following morning, Yasohami went to the temporary army camp at Madolkalle to look for her son, as she had heard that many who

were abducted had been detained there. When she went there, however, the army officers said that they did not have her son. She later heard from a person working at a tea estate that Gamini was seen behind the army camp.

She then visited the Wattedagama police station to lodge a complaint about the incident, but the police refused to entertain her complaint. After that Yasohami thought it futile to go back to the police station, so she simply searched for Gamini at the Matale, Pallekelle, Boossa and Pallewatte army camps.

One day when she was on her way to look for her son, she met a person in the bus. He told her what he had learned from listening to conversations between army officers. Apparently there had been an officer at the Madolkalle post office by the same name as her son, Gamini, whom the army was searching for. Someone had given the army wrong information to the effect that Yasohami's son was the officer Gamini. After they had arrested him and became aware of their error, they regretted arresting an innocent man, but since he was already in their custody, they considered it too late to rectify their mistake. Subsequently, the officer Gamini was also arrested and killed. Yasohami says she did not find out the name of the person who told her all this. "He didn't tell me his name, he just gave me the information."

Yasohami wrote to the Presidential Commission on disappearances about her son's abduction. She was only able to make a complaint at the police station in 1996, after the Commission began its function. But to date, she laments, she has been unsuccessful in finding her son.

Yasohami received 25,000 rupees (US\$ 250) as compensation for the loss of her son. "If my son was alive," she says, "He would be earning much more money than that. The truth is that I don't have my son anymore. I don't know what will happen in the future but it is essential that the government does something more to help the families of the disappeared."

*Story twenty seven***Danushka is not my brother!**

The disappearance of Kossinna Gamarallage Ranasinghe

K.G. Ranasinghe, 30, was an officer at the Hair Park tea-making factory and a union leader of the estate. According to his wife, subsequent to his working there, his factory was elevated to being the third best—from its previous ranking of 33rd—in the area. One reason for this was that during his work he became aware of many corrupt practices within the factory. In one such incident, some workers had robbed factory property, so he stemmed the corruption by apprehending and punishing the culprits.

His wife, Padma Ranasinghe, was living in Panwila. On weekends she visited her husband with their daughter and stayed at his quarters on the estate. Since there was widespread unrest in the area, many tea factories were closed for a while. After his factory closed, for about three months Padma did not allow her husband to go to work and instead she insisted he stay at her mother's house. Then one day Ranasinghe said that he needed to go to Hair Park to obtain the signature of his boss for a loan from the insurance company. So on 9 October 1989 Ranasinghe together with his wife and daughter set out. However, when they were returning they heard that someone had badly damaged their estate quarters. They had just decided to go to the police station and lodge a complaint, when they saw a vehicle without license plates coming towards them. They stopped the vehicle and requested a

lift to go to the Ududumbara police station, which was located a little far from the Hair Park quarters.

“About six people were inside the vehicle,” says Padma. “After listening to our request, they told me, ‘it is a simple case madam, so you don’t need to go with us. Your husband will come back after lodging the complaint’. Since then, I have never seen my husband again,” she continues wistfully.

On the same day, Padma learnt that two other workers at the factory, Senevirathna, a tea maker, and Karunadasa, a tractor driver, had also been abducted in that vehicle. Later Padma heard that the day before they arrived at their quarters, some rebels had planned to attack the army camp or the police station, but the plans had misfired. After the attack failed, the police and army officers had scrutinized everyone in the village and rounded up suspects. Padma was told that the perpetrators who took away her husband were army officers.

When her husband did not return she visited the Senior Superintendent of Police in search of her husband and to complain. But the police did not record her complaint, and said that they did not have her husband. They asked her to go to the army camp at Kotagala instead. When she went there, she recognized the persons who abducted her husband as well as the vehicle which was used. “I asked one army personnel where my husband was, but I was told that they had brought my husband to the Pallekelle army camp. I didn’t know how to go there with my three-year-old daughter.”

Subsequently, she did visit the Pallekelle army camp with the help of one of her husband’s friends. She met Major Mendis, Officer-In-Charge (OIC) of the camp and asked him about her husband’s whereabouts, but he told her that Ranasinghe was not in the camp. He further requested her to come the next day and promised to hold an identification parade for her benefit. “I went to the camp the following day,” Padma says, “But someone told me that they had more urgent matters to attend to and that the major was not in at that moment. They really didn’t care much about what I said. I went again on the

next day. They wrote the information I gave and said they would do something about my husband and let me know. But I never got a response from them," she finishes sadly.

Whenever she went to some police station or army camp, Padma says the officers gave her false information to go here and there, and this was extremely exhausting and demoralizing for her. Then one day, on her way home, she met a person named Karaliyadda in the bus, who told her that her husband was in the Kotagala army camp and thus not to waste time looking for him in other places. Thereafter she went to the Kotagala camp everyday, and she saw the perpetrators and the vehicle used to abduct Ranasinghe. She asked them to give her back her husband but in response they merely asked her to bring some clothes for Ranasinghe. This confirmed to her that Ranasinghe was in fact detained at that camp. She thus went to the Kotagala camp for about two weeks.

During this time, an army officer had told her that though he understood her plight, there was nothing he could do because he had got orders (to detain her husband) from higher up. "So I begged him to show my husband to my daughter," says Padma, adding that, "If she did not see her father, she would become sick. But he told me that only my daughter could enter the camp to see her father. However, I didn't give my daughter to be taken to her father as I knew I would never see her again if she entered that place, just like my husband."

Also, while at the army camp, Padma was told that if she handed over her brother named Danushka, they would release her husband. However, Padma said, "Danushka is not my brother!"

Later, she heard that her husband's body had been found burnt, at one of the factory junctions. So she went to the junction but she did not find any burnt body. "I don't believe my husband was killed," she says, "I am still searching for my husband."

She wrote to a society called the Democratic United National Front, which responded to her. Thereafter, she succeeded in lodging a

complaint at the police station with the help of a lawyer. “The police took down my complaint,” she describes, “but as my husband was thought to be a JVP (Janatha Vimukthi Peramuna) activist, his company did not give me his salary at least up to his abduction. But actually he supported the PA [People’s Alliance] not the JVP.”

In those days, violence was everywhere. If someone confessed that they witnessed a particular incident, they were also taken away and killed, so she did not find anyone to testify on her behalf in court. “People did not need to do anything wrong in those days, they only had to say something against the government, and they disappeared or got killed. The UNP (United National Party) ruled the country and they didn’t need any reason to kill someone. Instead the government killed anyone they wanted—not only the JVP but even those who worked against it,” She says.

“A political leader associated with the Kandy district PA MPs used to organize picketing campaigns and religious rituals for the families of the disappeared, but I think he was simply making use of the situation for personal gains, because after he came to power in 1994, these families were forgotten and nothing was done for them,” Padma contends.

Her husband was a government employee so Padma received 125,000 rupees (US\$ 1,250) as compensation. According to her, however, there is still no law outlawing the causing of disappearances so people cannot do anything against the terrible incidents. Therefore the government should make a law against causing disappearances because this kind of situation is happening on a small scale even now.

Story twenty eight

I cannot believe anyone anymore

The disappearance of Hettiwatte Gedara Sunil Rajarathna

At the time of his abduction, Hattiwatte Gedara Sunil Rajarathna was a laborer at the Rantabe and Randenigala irrigation project. On 6 January 1990, a police constable attached to the Peradeniya police station, six army personnel and another person came to his house at night and banged on the door. They shouted and threatened to break down the door if it was not opened immediately.

As H.G. Babanis, Sunil's father, opened the front door, these persons stormed into the house and demanded to know the whereabouts of his son. They then woke Sunil, who was sleeping in his room, and forced him out of the home. As Sunil was being taken out, one army officer pushed the rest of the family into a room, then closed and bolted the door. "We were not allowed to speak a word," says Babanis. "They pointed their guns and threatened us. We were so afraid. One of the abductors wore a facemask, but I identified him from his voice. He was a man who worked with the police and stayed at the Peradeniya police station for about six months. That's why I didn't succeed in lodging a complaint there."

Babanis waited until the morning and then went in search of Sunil. He visited the Kadugannawa army camp, the Balana temporary camp and the Pallekelle camp, but failed to find his son. At each of these camps

Babanis was told that his son was not there and that he was welcome to come in and see for himself. However, claims Babanis, when he tried to go into the camps, they stopped him and blocked his way.

Babanis then went to the Peradeniya police station to make a complaint about his son's abduction. When he first went there, he was not allowed to speak and the police refused to entertain his complaint. The policemen also threatened him into leaving. When he returned again and again to the police station he was not even allowed to enter, and instead was chased away. So he wrote to the Human Rights Commission with the help of Dr. Wickremabahu Karunaratna, a political leader of the N SSP (Nava Sama Samaja Party). As a result he was given 25,000 rupees (US\$ 250) as compensation.

The police stooge who came with the other perpetrators, says Babanis, was angry with his son. He explains that, "One day, my son was at a boutique when this man came and asked my son to buy him some cigarettes. But Sunil refused as he neither smokes nor consumes liquor. Therefore this man wanted to take revenge on my son," concludes Babanis.

During this period, no one came and helped others who underwent the same experience, due to the enormous fear that prevailed. As the government itself killed his son, Babanis wonders to whom he can go to complain. "Now I am old. If he were alive today, Sunil would be the one who would support our family. So our loss is great." He further says that though a lot of people were killed by the UNP, the compensation was paid out by a later government. He concludes, "I can't believe anyone anymore. Time has also passed, so I don't think the perpetrators will ever be punished."

Story twenty nine

The police had become Stooges of the Government

The disappearance of Kiripitige Shelton Fernando

After buying some vegetables, K. Shelton Fernando, a 28-year-old part-time construction worker, had just sat down at home to eat a plate of rice for breakfast, when his wife K. Ratnawathie De Mel noticed five men with pistols surrounding their house in Seeduwa. They entered the house and grabbed Shelton by his hair and began shaking and bullying him. When Ratnawathie asked why they were violently harassing her husband, the men said they needed to take Shelton for a while to get a statement from him. They kicked the plate of rice out his hands, and their children began screaming. The men put their guns to the heads of the children and ordered them to stop yelling. Shelton's hands were then pulled behind his back, and he was handcuffed, causing his *sarong* to fall down. Ratnawathie told them to put his *sarong* back on him properly as there were two young girls present. They tied his *sarong* though, says Ratnawathie, "Like a cow which has been taken to be killed." Shelton was then led out of the house surrounded by two men holding pistols pointed at him and another two men aiming sharp knives toward him, says Ratnawathie, "in a manner like the worst ever criminal" and put in a vehicle with no license plates. Shelton was never seen again after this day on December 7, 1989.

Ratnawathie and her three children went to the Seeduwa police station to report the incident and were told to wait and speak to Gamini

Madurata, the officer in charge (OIC) of the station, who was not there at the time. He finally returned at about 9 o'clock that night with his uniform dirtied with ash. After describing what had happened, the only reply she received was to come back the next day and lodge a complaint with the Criminal Investigation Department (CID), which she did, but again, nothing further was done by the police.

Ratnawathie visited other police stations in the area but was never able to find her husband. Shelton's parents, K. Wilbert Fernando and M. Maria Violet, also joined in the search. They wrote the president of the country, Ranasinghe Premadasa, and also visited the office of Wijepala Mendis, their member of parliament.

"We told the full story to Mr. Wijepala Mendis," says Wilbert, "And he told us every time that he would try to get our son today, tomorrow, but nothing materialised. Then we took a close associate of Mr. Wijepala Mendis called Mr. Sarath Peiris along with us and met Mr. Wijepala Mendis. Then he told us that our son cannot be given to us."

Ratnawathie says that after speaking to Wijepala Mendis they were told to meet a person called Mr. Kudahetti, who told them to go to the police station, but the police sent them back to Mr. Kudahetti, she says. Mr. Kudahetti then directed them to a particular place to view the bones of several burned bodies.

"These were the replies we received from them," explains Ratnawathie. "Then, from that day onwards, I did not go anywhere looking for my husband as I just could not do it any longer; I could not accompany my three children and go everywhere. By this time though, I had visited every possible camp looking for my husband."

"However, recently," she adds, "A death certificate was issued to me certifying that he was dead. This is the only positive reply I've received from the law enforcement authorities in our country."

"For many years," says Ratnawathie, "We lived in this manner, telling

our children that their father would return today or tomorrow; and whenever a new year dawned, the children used to cry, remembering their father.”

“Thus, no one came to our assistance,” recalls Ratnawathie. “His father and mother went all over to get details about their lost son as I could not go everywhere because I was compelled to earn a living for my children.”

“Today my eldest son is 19 years old, and I want to put my children on their feet,” says Ratnawathie. “Up to now no one is aware about how my husband died and who murdered him.”

When asked why no one in the village helped them, Wilbert explains that “All of the villagers were living in fear of being murdered. Consequently, they did not want to help in these matters. Some of the villagers too were directly or indirectly involved in these types of killings so they opted to stay away without helping anyone.”

“No, the people in the community would never have stopped these killings or disappearances in our country,” he says, “As Mr. Wijepala Mendis, a leading government cabinet minister, was also involved in these types of things taking place in our country. All of the high-ranking people in the UNP (United National Party) were jointly involved, together with the relevant ministers, in killing or disappearing people.”

Ratnawathie and Shelton’s parents speculate that Shelton was killed because he was an active supporter of the Sri Lanka Freedom Party (SLFP) and that local members of the UNP, the governing party, told the police that he belonged to the Janatha Vimukthi Peramuna, or JVP (People’s Liberation Front).

“We are 100 percent sure that it was the Seeduwa police officers who came and took our son away,” says Wilbert. “One thing is certain: Mr. Gamini Madurata, the OIC of the Seeduwa police station, is behind this incident.”

“The police did everything that the government in power asked them to do,” he adds. “In other words, the police had become the stooges of the government.”

Unfortunately, Shelton was not the first son of Wilbert and Maria who faced the violence of Sri Lanka’s law enforcement officers. Maria says that their second son was taken by the police in 1987. They brought him back home, says Maria, but today — 17 years later — he is still mentally unstable and still receives treatment at Colombo National Hospital. She remembers that fateful night:

“When my child was taken, it was about midnight, and I was preparing some string hoppers for sale the following day. Then a group of police or CID officers came into our house and ransacked our home and ate all of the string hoppers that I had prepared and took my son away. They told us to come the following morning to the Assistant Superintendent of Police’s (ASP’s) main office to bring our son back home.

“The following day when we went to the ASP’s office the officers were like devils and had taken frightful photographs of our son and others. They gave our son back and instructed us to bring him back to the office every week. Thus, we took him every week and showed him to them. Whenever we took him before the ASP, my son used to fall down before them. The police officers then told me not to bring the child to the police station and to take him to a hospital to get treated.

“This is how my son became a patient. We saw with our own eyes how the police had frightened my son and had taken dreadful photographs of my son at the police station as the photos were displayed to the public. My son continuously tells me that after the police took him that night they assaulted him and frightened him by doing various types of dreadful things to him. It seems the police put him in a dark room and did all of these things to him. Thus, after all of this mental torture, my son now is off his memory. As a result of his sorrowful health condition, he is unable to do any job and earn a living. It is I

who must do everything for him. This son is now 38-years-old and is totally dependent on me to feed him and to do everything for him.”

“I will never forget all these things which happened to my two sons,” concludes Maria. “Even if I get millions of rupees, I will not forget all of these dreadful memories. Until today I do not permit anyone to light fireworks and organise parties at our residence as we are still mourning the loss of our child. Because I am a mother, I really feel the loss of my son.”

For the death of Shelton, both his wife and parents each received 50,000 rupees (about US\$500). Do they feel justly compensated though?

“Even if a sum of 100,000 rupees or 1 million rupees was awarded for a person who had been murdered, it would be of no use,” answers Ratnawathie. “After all, how can you value a human life in rupees and cents? I have lost my husband. My three children have lost their father. What then is the use of getting compensation in even millions of rupees for my husband now?”

Ratnawathie believes that a law against disappearances should be enacted in Sri Lanka but lacks confidence that it will be effective in ending the deadly practice in the country in the future.

“There should be a law which should be properly enforced and implemented in our country by the so-called law enforcement authorities,” says Ratnawathie. “I make this comment as there was a commission appointed to probe into the causes of the disappearances. But what has happened to the findings of this commission? Nothing has happened! Consequently, how can one have confidence that, even if such a law is passed, it will be implemented in a just and fair manner in our country? Very often the so-called laws are restricted only to a piece of paper.”

Ratnawathie has some thoughts, however, about how the threat of disappearances can be eradicated in Sri Lanka.

"We must create and establish a society which values human life and upholds the rule of natural justice today when implementing the laws of our country," she says. "If we can achieve this, then we can have some sort of hope that the types of disappearances which happened to my husband may not reoccur in our country in the years to come."



Disappeared, but still alive in their minds

Impressions of Moon Jeong-ho, an intern at the Asian Human Rights Commission who did several of the interviews recorded in this book

“What are you asking your government to do for the families of the disappeared?” I asked the middle-aged woman I had just finished interviewing regarding the loss of her son. She did not answer. Instead she looked at me in a strange way with a cold smile hovering about her lips. I was puzzled. I also did not understand why her young daughter smirked at my question. It was only later I understood that this question—which was natural for someone like me, who had grown up in a law-abiding and democratic society—had little meaning for the families of the disappeared. Did her silence indicate cautiousness borne out of an instinctive fear that never left her, even after all these years? Or did she think that asking the government for anything was a rather futile exercise, as she never expected her demands to be taken seriously? Or else, did she simply not want anything from her government?

I was not really familiar with the phenomenon of disappearances until I came to Sri Lanka. Previously my knowledge on disappearances was limited to some summaries I had read in books and on the internet. When I first arrived in Sri Lanka, I was afforded an insight into the

background of disappearances by colleagues of a non-governmental organization that I was to work with. I was intrigued, so much so that I wanted to do something for the families who had suffered this terrible fate. I wanted to meet some of them and understand—or attempt to understand—what it was like to lose a loved one under such horrendous circumstances. I wanted to know their thoughts, their fears and their dreams. This is how I came to get involved in interviewing the families of the disappeared. While here, I linked up with an organization working with these families. Through the organization I met with 23 families living in Divulapitiya—a town 15km from Negombo—and also in the hill country capital of Kandy.

Most of the homes I visited for my interviews were simple, with the barest of essentials. It was obvious that the majority of them were extremely poor. This might be because these families have gone through great difficulties, financially, socially and psychologically. Some had lost their primary wage-earner, while all had spared no cost in running around the country for years, in search of their loved ones. As the interviews transpired, I saw that some had also lost the will to 'make money' and better themselves and their children with the loss of their beloved. However, no matter the living conditions, almost all the homes I visited had a photo of the missing family member displayed near the entrance, adorned with garlands, oil lamps or religious deities. I could not help but think that for these families, the disappeared persons are still alive in their minds.

Initially I worried about the welcome I would get, because after all, I was about to pry into painful memories. I was also told that some of the families were wary of revealing details of their story and openly sharing their thoughts, as they were still afraid. So I was relieved to be met with warm smiles and welcoming gestures. They looked so simple and innocent, as if their trauma was behind them and the emotional scars erased. However, when I started my questions, for just an instant, I thought I saw a dark shadow surreptitiously creeping into their bright smiles. This was not because of the purpose of my visit, I later learnt, but because it reminded them of their painful past, of the mental anguish, sleepless nights and endless journeys they

underwent in search of a son, husband or brother.

Most of them openly cried when describing in heart-rending voices the fate that befell their loved ones. Many were the times that I had to stop the interviews. And as the interviews progressed, I found myself close to tears as well. In fact, so emotionally charged was the atmosphere in almost all the interviews that I found myself interrupting the recording, not only for their benefit, but for mine also.

The police and army came out as the main protagonists in the saga of disappearances. Though many of the alleged abductors had attempted to conceal themselves by covering their faces, and perhaps the families did not sometimes recognize them, nonetheless, they all firmly believed their loved ones were taken away by law-enforcement officers or the army. After the abductions, most families did not have a clue as to where their loved ones were being detained and where to begin their searches. This is the reason they trekked along to camp after camp and police station after police station, looking for the disappeared. To further add insult to injury, most police stations refused to entertain and record complaints into disappearances and sometimes abused the families in obscene language or chased them away.

When I asked one father if he had any idea why the police would not accept his complaint, he replied, "The police took away my son but I don't know the reason. I went to the police station but they didn't accept my complaint because they told me that they had got an order not to receive complaints into disappearances. In this situation who could we go to?"

In the face of such helplessness, I was stumped for an answer. If I was the father who just lost his son, like him, I would not know what to do either. I attempted to answer him, but found that words were simply not enough. So was I asking foolish questions?

I pursued another question: "Why do you think many people such as religious and civil society leaders did not speak out about the disappearances at that time?" The simple answer was, "They could

have, but then they would have met with the same fate as that of my son.”

I later understood that the government of Sri Lanka at the time was making a rather well-organized attempt to control its citizens. When they found it difficult, they simply disposed of the ‘troublemakers’. Silence was imposed upon the country with threats of indiscriminate abductions, torture and murder. The government had given a free rein to the custodians of law to break the law.

When I first asked that question, I really wanted to know how neighbors, villagers and civil society at large responded to the catastrophe of arbitrary disappearances. But after several replies, I realized the simple answer was that most Sri Lankans were too frightened to care and respond. After all, I asked myself, if I were one of their neighbors when their son, husband or brother was spirited away, would I have gone to their help and protested? Would not I too have turned an indifferent eye to my neighbor’s grief to safeguard my own skin? I knew my answer and I did not like it.

At the end of each interview, I asked the family to show me a photograph of their loved one who had disappeared. One mother who had lost her son went to the kitchen and brought a towel, with which she carefully cleaned, then polished her son’s photo on the table before us. To me, she looked as if she was going to dress her son in his best clothes, tie his shoelaces and comb his hair. She treated the photograph as if it were her son alive.

During my stay in Kandy, I tried to interview families who have never shared their story with others. One mother refused my request. She was a mother of three sons, and had lost all three. When I told her why I was there, she cried, but refused to talk about her suffering. Her sister explained that she cried almost everyday for her lost children, and had never gotten over the trauma.

Other families, however, were more willing to share their stories. One woman told me that she felt relieved after retelling her experience of

looking for her husband.

In analyzing the main reasons for the disappearances, I was shocked to realize that in most cases it was a matter of sheer jealousy, although some cases involved links with the Janatha Vimukthi Peramuna. I gravely pondered how the emotion of jealousy could drive people to take advantage of a reign of terror and take the lives of others.

The United National Party government of that time is widely accused of condoning or encouraging the bloody rampage of the security forces. The People's Alliance government, which came to office in 1994, gave some consolation to the victims' families through the payment of compensation. But the families are asking why the murderers in their midst have not been brought to justice and why they are still in high places, and in some cases, going even higher.

Many families said they could not assess the value of their loved one in monetary terms, while others said they would willingly return the paltry compensation if their loved ones were to return. As the murderers and their accomplices are still in positions of power, most of the families are fearful that the reign of disappearances, killings and terror might erupt again.

The most valuable insight I received from my experiences with the families of the disappeared was that listening to their stories and encouraging them alleviated their sufferings, even if only by a little. This is the greatest motivation for me to continue with my work.

The pain has not disappeared

Impressions of Bruce Van Voorhis, a staff member of the Asian Human Rights Commission who did several of the interviews recorded in this book

Most of the interviews I conducted in Sri Lanka in 2003 related to the disappearances of 1989. Yet the families' emotional retelling of the disappearance of a spouse or child gave the impression that their loved one had disappeared 15 days earlier rather than 15 years earlier. Their pain has not subsided and will probably never do so. This impression of a tragedy that has freshly taken place is reinforced by the families' recollections of dates, times, places, suspected perpetrators and other details of their loved one's disappearance. The future of the entire family was affected too at that fateful moment when a spouse or child was snatched from them—savings were spent frantically dashing around the country trying to find their loved one, parents lost interest in their jobs and careers, the education of other children was disrupted. Thus, those responsible for the disappearances painfully touched the past, present and future of these families.

These interviews, though, were not only about the families of the disappeared but also about the abductors and murderers of the disappeared—both those who physically took people away and those who gave the orders to do so. What kind of people were they? How could

they order such suffering or take part in such acts? While there was, in essence, an undeclared civil war in the late 1980s and early 1990s between the government, led by the United National Party (UNP), and an opposition party, the Janatha Vimukthi Peramuna (People's Liberation Front), or JVP, the disappearances from the families I interviewed had little to do with this conflict in the south of the country. Even if the victims had been JVP members, it did not give the government a license to resort to abduction and murder. Rather, most of those who disappeared in the families I interviewed were taken away because they were affiliated with other opposition parties, defended people's rights, or because of personal grudges. Even a love letter was allegedly enough provocation to have 31 teenagers disappear in Embilipitiya! The callous and capricious manner in which people were forever separated from their families echoes through the stories these families told me. For those responsible for destroying lives, life apparently held no value.

It is also evident from the accounts of the families of the disappeared that impunity was well ingrained in the country's political and legal systems. Those responsible for upholding the law, protecting people's rights and defending the country, i.e., the police and army, were among those most often cited by the families as the ones who took away their loved ones. Moreover, the police and army are believed to have been acting on the orders of Sri Lanka's senior politicians, including members of parliament, the purported representatives of the people. It is noteworthy that in one of the cases a family described to me how their son was tortured at the law faculty premises of the Colombo University, where he was a student. Thus, an institution dedicated to training Sri Lanka's future judges and lawyers was instead used as a torture centre—a symbol of the breakdown of the country's legal system and a message to society about the utter disregard for the law by those entrusted to uphold it.

In such a distorted environment, it was easy for those in office to create a climate of fear in Sri Lanka. Rarely, according to the families I interviewed, did their neighbors or others in society, such as religious

figures or the media, assist them in their quest to find their loved ones. Most people, they said, avoided involvement in cases of disappearances because they did not want to suffer the same fate. The affected families themselves were also reluctant sometimes to pressurize the authorities too much because they did not want other family members to become victims as well. Consequently, the families were frequently left to struggle by themselves in their search for their loved ones and to suffer alone.

Sadly, many families today believe that the same widespread wave of disappearances could recur in Sri Lanka. Their logic is simple and sound: those politicians, army officers and policemen thought to be responsible for the disappearances from 1988 to 1992 are still politicians, army officers and policemen, except now they hold even more powerful posts after being promoted during the past 15 years. Moreover, the same atmosphere of fear can be easily recreated throughout the country, and impunity has never been erased from the national landscape because the necessary changes to the legal system have not been made.

Consequently, justice for many families of the disappeared today means reform of Sri Lanka's legal system. They look beyond their own sorrow and sense of loss and seek a legal system that will truly uphold the law and protect the country's future generations. They know that justice will never return their loved ones, but also know that a legal system that delivers justice instead of perpetuating injustice will spare others from future grief. They have little faith though, that the government or the courts in Sri Lanka have the will to transform the legal system, and thus, they seek support from people power, civic rights groups and the international community to make these reforms a reality.

After listening to the stories of the needless suffering that afflicted these families, it is easy to lose faith in humanity, and especially those who occupy positions of authority. Who do these authorities serve? Certainly not the people. From the families of the disappeared, it is sad to learn that life is so cheap that elected authorities would approve the

abduction and murder of others to purportedly attain the support of influential people in their constituency. It is sad to learn that politics in Sri Lanka has become a business in which the electoral winners hope to gain access to wealth through their political office. And it is tragic to learn that this system has existed for so many years and still continues to exist.

Hope, however, springs from these families who have lost their loved ones, and others who advocate change of the present system. The families of the disappeared have remembered those no longer with them by seeking to reform a system rooted in violence, impunity and fear that suddenly robbed them forever of their loved ones. Although their pain can never be erased, the present legal system in Sri Lanka can be reformed to prevent and prosecute disappearances instead of condoning them.

Photographs of the victims



S. A. Chaminda Luxman
Senanayake



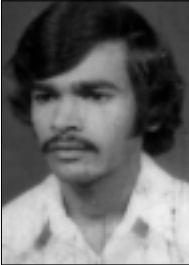
W. A. D. Peter Michael



B. Hemantha Ajith
Chandrasiri



H. P. Gamini Sugathasiri



A. G. Sudath Premasiri



Herath Mudiyansele
Ranjith



Sujeewa Pushpa Kumara
Prasanna Handuwala



Milan Manelka De Silva



Girambe Gedara
Samarasinghe



Galapita Gedara
Karunananda



A. R. Gunathilaka



Abeygoda Gedara
Gunawardana



M. Luxman
Gunawardhana



S. A. Samantha Kalyana
Senanayake



W. P. Lalith Wijerathna



W. P. Ranjith Wijerathna



Yaman Gedara
Jayasooriya



U. G. Chaminda Srinath
Weerasinghe
(Rev. Chandima)



U. G. Janaka Saman
Kumara Siriwardana



R. B. Samannatha



Lichchowi Nisanthe
Weerasinghe



K. S. Wasanthe
Gamini Abewickrama



Kossinna Gamarallage
Ranasinghe



K. Shelton Fernando

Photographs of the victims' families



Family of Milan Manelka De Sliva
(Story seven)



Family of A. R. Gunathilaka (Story ten)



Wife of A. G. Sudath Premasiri
(Story five)



Wife of G. G. Samarasinghe
(Story eight)



Family members of some of the children who
disappeared in Embilpitiya. (Story seven)



Wife of G. G. Karunananda (Story nine)



Family of A. G. Gunawardana
(Story eleven)



Wife of J.H.A. Amarapala
(Story twelve)



Mother of S. A. Samantha Kalyana
Senanayake (Story fourteen)



Family of S. A. Leelarathna (Story fifteen)



Family of H. U. Biyal Somarathne (Story seventeen)



Mother of Shiranta Peris
(Story eighteen)



Family of W. P. Ranjith Wijerathna (Story sixteen)



Wife of Y. G. Jayasooriya
(Story twenty)



Family of U. G. J. S. K. Siriwardana &
U. G. C. S. Weerasinghe (Story twenty two)



Family of Santha Kumara
(Story twenty three)



Family of Amitha Jayalath
(Story Nineteen)



Family of Upul Nishantha Kumara (Story twenty one)



Family of L. N. Weerasinghe (Story twenty five)



Mother of K. S. Wasanthe
Gamini Abewickrama
(Story twenty six)



Wife of R. B. Samannatha
(Story twenty four)



Family of H. G. Sunil Rajarathna (Story twenty eight)



Family of K. G. Ranasinghe (Story twenty seven)



Family of Kiripitige Shelton Fernando
(Story twenty nine)

Appendix one

Asian Legal Resource Centre Proposal for UN to Study the Exceptional Collapse of Rule of Law in Sri Lanka

Summary by Bijo Francis

*On 29 March 2004, the secretariat of the Sub-Commission received a copy of the communication addressed to the Secretary-General by the Asian Legal Resource Centre, a non-governmental organization in general consultative status with the Economic and Social Council, informing the Secretary-General of its intention to propose, under rule 5 (4) of the rules of procedure, an item for the provisional agenda of the fifty-sixth session of the Sub-Commission on the Promotion and Protection of Human Rights "to conduct a study regarding the exceptional collapse of rule of law in Sri Lanka and thus to make recommendations to the Commission on Human Rights as per the mandate of the Sub-Commission." This report is now published as a document by the Economic and social Council of the UN bearing number *E/CN.4/Sub.2/2004/3 7 June 2004*

- * The following is an abridged version of the complete report. The complete report is available at www.un.org or through www.alrc.net

Introduction

In 2004 the Asian Legal Resource Centre (ALRC) submitted a proposal narrating 22 reasons to the United Nations Sub-Commission on Promotion and Protection of Human Rights to conduct a study regarding the exceptional collapse of rule of law in Sri Lanka and thus to make recommendations to the Commission on Human Rights as per the mandate of the Sub-Commission.

This proposal was novel. It was the first-ever intervention made by any non-governmental organisation at the UN Sub-Commission level, requesting the Sub-Commission to amend its set agenda and include a suggested item in its session.

The ALRC had collected an immense amount of material regarding the

rule of law situation in various countries in Asia, including Sri Lanka, through research, interaction with numerous local groups, and active monitoring of the country situation. The ALRC decided to submit this report on Sri Lanka due to the exceptional collapse of the rule of law in the country as well as Sri Lanka's inability to correct the situation by itself.

The aim of the report was to direct the attention of the Sub-Commission at carrying out country-specific studies on the exceptional collapse of rule of law in a given country, rather than deliberating upon abstract themes on various regions. Such a study specifically addressing the rule of law situation in any given country would help the country to recover from the absolute and exceptional collapse of the rule of law. The report was accepted by the Sub-Commission and deliberated upon during its 56th session in 2004. However, due to immense pressure from interested governments, especially the government of Sri Lanka, the Sub-Commission finally decided not to include the country-specific study in its 56th session. The following is an abridged version of the full report submitted by the ALRC.

The purpose

The scope of the study was within the ambit of the Universal Declaration of Human Rights (UDHR) and in furtherance with common Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for international cooperation and assistance to provide effective remedies through competent judicial, administrative and legislative process and enforcement of such remedies thereby establishing the rule of law within the state. The failure of the State to provide for such remedies due to the exceptional collapse of rule of law has interrupted the realization of the obligations of the state as a signatory to the international conventions and to all its citizens. Several individual cases were attached to the report to substantiate this point. These cases were received from various reliable sources including local non-governmental organisations and individuals seeking urgent intervention. Many of these cases were reported by the UN Special Rapporteur on torture in his 2004 report (E/CN.4/2004/56/Add.1).

The available mechanisms for protection of human rights and for prevention of torture in particular, and for further redressal of grievances, are the courts and the national human rights commission. However, the National Human Rights Commission is not empowered or geared by way of sufficient resources to provide adequate remedies for violations of the rights of ordinary citizens due to soft legislation

and incapacity for execution.

The purpose of the proposed study was to aid the state to recover the now collapsed public trust and confidence in the institutions pertaining to the rule of law in Sri Lanka and thereby to augment the state's effort to establish stable and sustainable peace. As the rule of law practically must be understood in an institutional framework where effective and functioning administration of justice is the foundation, this is the basis for effective protection of human rights.

Reasons for the proposal

1. The inadequacies of the torture prevention policy

Welcoming the inauguration of the Torture Prevention and Monitoring Unit within the Human Rights Commission (HRC) of Sri Lanka, the ALRC observed that the prevention and monitoring unit should not end up as just another gesture intended only to make Sri Lanka's human rights record look good in the reports that the government submits to agencies abroad, including the UN agencies for human rights. There are many such 'units' referred to in various reports, but people living in Sri Lanka are often unaware of them, as they do nothing much to redress the grave violations of human rights taking place in the country.

Perhaps one way to reflect fruitfully on the task of this new unit is to examine why the HRC has failed to develop even a moderately effective programme to deal with the endemic torture that is taking place in Sri Lanka. The oft-repeated answer is that the Commission does not have sufficient financial resources. One hopes that the new unit will not be offering the same excuse after some time. Whatever the validity of this explanation, it is also very clear that the HRC is lacking a clear policy regarding the elimination of torture in keeping with the UN Convention against Torture. Even now, going by an official HRC statement made on 19 April 2004, it has not shown a serious understanding of how torture is deeply embedded in the country's criminal justice system.

The ALRC has identified a few key issues that should be immediately focused on, including proper investigation of all cases of torture, improvement of criminal trials, doing away with rogue investigators and HRC area coordinators, the need for witness protection, and post-trauma counseling, establishing institutional liability in cases of torture, and an active role played by the HRC in educating the public as well as officials on the prevention of torture and its consequences.

2. Country situation vis-à-vis ratifications

In keeping with its obligations under the international conventions mentioned above and the spirit of the UDHR, the state has enacted domestic legislation to prevent torture. However, the ALRC believes that the implementation of this domestic law has miserably failed due to the exceptional collapse of the rule of law. This has paved the way for total impunity and a lack of adequate prosecution in cases of human rights violations, especially in cases of disappearances, custodial deaths, summary executions and torture. Apart from the legal anomalies contrary to the state's international human rights obligations and thus in violation of the stipulations of the UDHR, the situation in the state, as far as the actual working of its domestic mechanisms to give effect to those international obligations is concerned, is completely negative.

There are umpteen observations and recommendations by various international bodies regarding the necessity for immediate action by the state in this regard. UN bodies like the Human Rights Committee, Working Group on Enforced or Involuntary Disappearances, Special Rapporteurs and others have requested and recommended the state to make internal arrangements so as to address the issue of the rule of law. The treaty bodies and the extra-conventional mechanisms named above also have had occasion to deal with numerous individual complaints from the state indicating an exceptional collapse of the rule of law.

Apart from these UN bodies, the International Bar Association, Amnesty International, World Organisation Against Torture (OMCT) and other international, regional and national non-governmental organisations have emphatically notified the state as well as the UN bodies about the total collapse of the rule of law in Sri Lanka. The ALRC, Amnesty International and the OMCT have on various occasions called upon the international community and the state to address the exceptional collapse of the rule of law there with reference to specific cases.

Despite such recommendations and appeals, the rule of law situation seems to have worsened. Currently, there seems to be no internal arrangement capable of moving the state out of this worsening situation.

The practice of horrendous torture and the culture of impunity prevail only in a society where there is absolute failure of the rule of law. Sri Lanka is such an example. The proposal to the UN Sub-Commission proved that the practice of torture in the state has further worsened and the rule of law is beyond the scope of any recovery by itself.

3. The prosecutor's office

The Attorney General's Department is an institution that needs reorganization if there is to be any change in the practices that currently ensure impunity. The most important aspect of such a reorganization would be the separation of the public prosecution function from the department, and the creation of a public prosecutor's office. Such a recommendation was made by various bodies in the past, starting from the Justice Soertsz Commission in 1946 to the Jayalath Committee in 1995.

While such a position was introduced in 1973 through the Administration of Justice Act, it was abolished in 1977. Due to the close connection between the department and the police, the very concept of impartiality has been negated. The Disappearances Investigation Unit and the recently established Prosecution of Torture Perpetrators Unit suffer from the same general defect as the department as a whole. For instance, while the Presidential Commission recommended the prosecution of a large number of persons, only a handful of them were prosecuted, and from this handful an even smaller number were convicted. Due to the large delay in prosecution, such as 12 years before vital witnesses make their statements in court, prosecutions are routinely abandoned.

4. Role of the Attorney General's Department relating to compensation for torture is negative

As a matter of principle, the Attorney General's Department does not appear for respondents in Fundamental Rights Applications under article 126. Though this is a positive step, representatives of the Attorney General's Department urge the court to reduce the quantum of compensation that may be granted by the court. This does not conform to principles of international law relating to compensation. Even where the Attorney General's Department admits to violations of rights, as in the instance of the torture, illegal arrest and imprisonment of Kurukulasuriya Pradeep Niranjana, who was in remand for 21 months after being falsely charged with the murder of Fr. Aba Costa, the Attorney General made an order to release him, no steps have been taken to compensate the victim and the family.

5. Policing

One of the basic institutions necessary for carrying out the obligations under the ICCPR by the state party is a proper policing system. Where the policing system is fundamentally flawed none of the rights in the ICCPR can be realized. In Sri Lanka the policing system is seriously flawed. The reasons are acknowledged by the government-appointed

commissions themselves, such as the Justice Soertsz Commission of 1946, Basnayaka Commission of 1970, Jayalath Committee of 1995, Commissions of Inquiry into Involuntary Removal and Disappearance of (Certain) Persons (Commissions on Disappearances), which were appointed in 1994 and made their final reports in 2001. Many other official documents have also acknowledged the serious defects of the policing system. The creation of the National Police Commission (NPC) under the 17th Amendment to the Constitution of Sri Lanka was for the depoliticization of the police force. The newly appointed NPC has on several occasions pointed to problems in the police force. The defects of the system identified by these commissions are as follows.

6. Militarization of the police system

The police have been used for riot-control purposes and later for control of civil conflict. For over 30 years since the early 1970s, Sri Lanka has gone through a period of violence which transformed the Sri Lankan police force from a crime-detection and law-enforcement agency to an insurgency-suppression mechanism. As shown in the reports published by the Commissions on Disappearances, police stations functioned as detention centres, torture chambers, and places where thousands of persons disappeared. The police stations throughout the country were used for these purposes. A profound transformation of the system took place as a result of this.

Extreme forms of torture used against suspected insurgents became a usual habit within police stations, and extreme forms of torture are being used on persons suspected of petty theft or even arrested for mistaken identity.

Reports are received from all over the country of various types of torture used at police stations, which clearly show that the habits formed in the past in dealing with insurgents are now being commonly and routinely used at police stations. Thus a central issue in relation to the implementation of article 2 of the ICCPR is the way to stop such methods and create a police force that is committed to the rule of law. When the police force itself is seen to be blatantly breaking the law it is not possible for the state party to implement its obligations under the ICCPR. Yet another result of the long period of civil conflict on the police was the negative impact on the documentation and keeping of records at police stations. For instance, it was widely publicized by the media in July 2003 that at the Negombo Police Station two information books were kept, one containing original statements and another containing manipulated records created by police officers. The latter was often produced for official purposes.

7. The politicization of the police

The politicization of the police was the acknowledged reason for bringing about the 17th Amendment to the Constitution of Sri Lanka. The consequence of this politicization has been the disruption of the command structure within the police force. The very meaning of politicization of the police is that politicians have begun to play a commanding role within the police force through their interference. This means that the normal principles of an organization driven by a unified command system have been seriously disrupted. The NPC on many occasions has declared that it would stop this process and that the police force would be brought within an internal command system. This objective needs to be achieved if its obligations under the ICCPR are to be respected and observed by the state.

8. Loss of competence in criminal investigations resulting in fabrication of cases against innocent persons as a substitute for the real culprits

A study done by the ALRC (*article 2*, Vol. 1, No. 4, August 2002) on custodial deaths and torture in police stations in recent years clearly establishes a pattern of implicating innocent persons in serious crimes as a substitute for the actual criminals whom the police have failed to detect. Often when many uninvestigated crimes are piled up at a police station, innocent persons are arrested and forced to confess to crimes that they know nothing about. Unresolved crimes may lead to strong public protest. However, if charges are filed against someone, it appears as if the police are taking action and may even result in promotions.

9. The loss of the disciplinary process of the police

In a statement issued by the NHRC of Sri Lanka on 4 September 2003, an agreement was reached by the NHRC with the IGP (Inspector General of Police):

“The NHRC agreed to draft guidelines together with the NPC and the IGP (Inspector General of Police) for the interdiction of officers who have been found to have violated fundamental rights by the Supreme Court.”

Meanwhile, the NPC is also engaged in drafting a public complaints procedure under Article 155 G (2) of the Constitution of Sri Lanka to entertain, investigate and redress complaints against police. However, while these measures are pending, there is no operative procedure to take disciplinary action against the police. In the absence of a proper and impartial disciplinary process, any investigations against the police are left in the hands of other police officers. Usually, a higher-ranking police officer such as the Assistant Superintendent of Police (ASP),

Superintendent of Police (SP) or Deputy Inspector General of Police (DIG) is assigned to investigate such complaints. It is quite well known that these officers try to work out some compromise rather than properly investigate a complaint.

Often complainants are even threatened into withdrawing complaints. The knowledge of the ineffectiveness of internal procedures relating to complaints against the police has imbued the officers with a sense of impunity, regardless of the violations committed. While a circular issued by the IGP in September 2003 stated that senior officers such as Officers in Charge (OICs) of police stations, ASPs and others will be held liable for custodial deaths and torture taking place at their police stations, there is no procedure at present to hold such officers liable for these actions.

10. Types of Torture

Judging by the documentation of torture cases filed, and from the Supreme Court judgments on non-criminal torture cases, it can be safely concluded that the following forms of torture usually take place at police stations:

- Sitting on the spine or beating the spine—this can result in dislocating discs in the spine resulting in full or partial paralysis;
- Hitting on the head or sometimes keeping books on the head and hitting with a pole—this can cause fractures in the skull and brain injuries;
- Tying hands behind the back, tying the thumbs together, putting a string through the thumbs and hanging the person from the ceiling from the thumbs—this way a person can lose the use of arms temporarily or permanently;
- Tying the hands and legs and putting a pole through the legs in a way that a person can be rolled round—while being rolled the person can be beaten on the head and the soles. This method is named by the police cynically as Dharma Chakra (literally meaning the wheel of the universal law of Buddhism);
- Beating while hanging—this can cause renal failure and other serious injuries;
- Hitting on the genitals;
- Inserting genitals into drawers and closing them to cause pain;
- Pumping water through fire hose pipes on genitals;
- Inserting S-lon (PVC) pipes and other objects like glass bottles into the vagina;
- Beating on the ear—a person could fully or partially lose hearing this way;

- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles with a pole;
- Forcing the fingers into glass bottles making it very difficult to remove them;
- Threatening to kill;
- Threatening to rape;
- Threatening to implant drugs and file cases in courts for possession of drugs.

11. Threats to those who make complaints

Those who make complaints against torture come under severe threats from the perpetrators. This happens in almost all cases. In the case of Lalith Rajapakse, after he made the initial complaint there was a plot to poison him. He had to make subsequent complaints to the NHRC and also to other authorities. The Asian Human Rights Commission (AHRC) intervened by writing letters and appeals to save his and his grandfather's lives. The victim had to live in hiding for about five months. Even now he has to be kept protected. In the case of Gerald Perera, he and his fellow workman received threats of assassination. In the case of Dawundage Pushpakumara (14 years old), attempts were made by the officers of the Saliyawewa Police Post to prevent the child from obtaining medical treatment for the torture injuries. It was only through the intervention of the National Child Protection Authority that the child was removed from the Saliyawewa police area to Colombo to get treatment. After that the police officers and a prominent politician threatened to burn down the house of the family if complaints against the police were not withdrawn. In this case also, the family's complaint was made known to the NHRC, NPC and other authorities by the AHRC. In the case of B. G. Chaminda Bandara who was tortured by the Ankumbura police and lost the use of his left arm due to the torture, his family was constantly threatened by the OIC of the Ankumbura Police. The victim went into hiding and is in hiding still. In fact, such situations arise invariably in almost all cases after complaints against the police have been made. One of the reasons for this is that despite the complaints, police officers, particularly OICs, remain at the police stations. OICs have enormous powers in their locality. Some OICs remain in the police stations even after the Supreme Court has found them guilty of having tortured a person. For example, OIC of the Wattala Police Station, was found to have violated the rights of Gerald Perera, but is still OIC there. All other OICs of the police stations named above are also still there.

As mentioned above, the major cause for the use of police torture as it

exists today is the breakdown of the policing system during the period from early 1970s. As a result the following things have happened:

- Breakdown of the command structure of the police—higher authorities of the police either being perceived as inefficient or corrupt;
- The OICs of the police stations who are in fact the real authorities within the police station being incompetent, inefficient and often accused of being corrupt;
- Lack of training in proper methods of criminal investigations and lack of forensic facilities. In such circumstances torture is perceived as not only a legitimate means of investigation but also as a necessary means;
- Increase of crime and public pressure to deal with crimes and having no real capacity to deal with crimes—this leads to police engaging in torture to create substitutes for actual criminals in order to answer the public criticism against them. As a result many innocent people get either severely tortured or even killed.

12. Corruption

A recent survey done by the Transparency International pointed to the police as being perceived by the public as the most corrupt institution within the country.

13. The lack of disciplinary procedure

In the recent past any disciplinary procedure within the police force has been almost completely lost. The only punishment that is resorted to is a transfer when there is public criticism. Dismissal for misconduct hardly takes place.

14. Absence of a proper and impartial public complaint mechanism

The complaints against the police are usually referred to higher police officers for investigations. It is quite well known that these officers try to work out a compromise rather than properly investigate a complaint. Often complainants are even threatened. As a result, the police officers know that no serious threat will come to them from public complaints. Psychologically this creates in the officers an attitude of having complete impunity. The NHRC, which could have dealt with the complaints against torture in the past, did not take a serious approach to such torture. It did not have a system of preliminary investigations. Its concern was to settle torture cases and it exerted pressure in the past on victims to accept settlements for such small sums as US\$ 10. In August 2003 the chairperson of the NHRC stated that she has given instructions to stop this mode of settlements and to seriously

investigate torture cases. Another move is the implementation of the constitutional provisions requiring the NPC to establish a public complaints procedure to entertain, investigate and redress complaints against the police. The AHRC has submitted a draft for such a procedure to the NPC. This is being considered at the moment by the NPC.

15. Delays in decision-making in Fundamental Rights Applications and institution of prosecutions under Act No. 22 of 1994

Though article 126 of the Constitution was to provide an expeditious remedy for violations of fundamental rights, the actual time taken for final determination is still too long. Though an application has to be filed within a month of a violation, the final determination usually takes two or more years. Persons who become victims of brutal torture at the hands of police officers and other state agents are thus required to wait too long before final determination of their cases. Meanwhile, the alleged perpetrators continue to hold office. Torture victims in almost all cases come under heavy pressure to give up or settle cases. They also live in great fear of reprisals for having filed such cases against the police. They also receive death threats. Thus, delays in hearing such complaints of violations of rights help to continue such violations.

The filing of criminal cases under the Convention against Torture Act, Act No. 22 of 1994, takes even longer. Of the 59 cases submitted by Police Special Investigation Teams under the Act to the Attorney General's Department in 2002, only 10 cases have been filed in courts. The rest of the files are with the Attorney General's Department. This is despite claims by the Attorney General's Department to prosecute offences under the Act.

16. Complaints of negligence at postmortems and other inquiries by state medical officers

In many cases of torture it has been revealed that there are serious doubts about the professionalism of some of the District Medical Officers (DMOs) and Judicial Medical Officers (JMOs). In the case of M. K. Lasantha Jagath Kumara, who was produced before a DMO the day before his death, the DMO did not examine him properly or prescribe immediate medical attention. There is also the case of Sunil Hemachandra, who died due to injuries suffered from torture in police custody. There are several eyewitnesses who saw him being severely beaten by the police. He was 32 years of age and had no history of epilepsy or any serious illness. His family specifically denies him having any fits at all. However, the medical report left out the possibility of injuries due to assault and speculated on the possibility of a fall due to fits caused by an illness. The family strongly believes that the medical

examination has not been carried out professionally.

17. Legal definition of torture

There are several provisions in Act No. 22 of 1994 which do not fully comply with the UN Convention against Torture.

Subsection (3) of article 2 of the Act stipulates that “the subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence”. This means that courts can impose cruel, inhuman or degrading punishments under the Penal Code and the Children and Young Persons Ordinance 1939. The latter provides that courts can impose whipping on male children as an additional punishment for certain offences.

Article 3 of the UN Convention against Torture, which provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, has not been given effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in another country cannot invoke this provision to contest their return to that country. The failure to include this prohibition in the Act is a matter of deep concern because article 3 of the UN Convention against Torture, in contrast to the UN Convention relating to the Status of Refugees, applies to all persons and not only to asylum seekers.

In fact despite criticisms by the Committee against Torture and international human rights organizations, no attempt has been made to bring Sri Lanka’s anti-torture legislation into conformity with the Convention against Torture.

Conclusion

Implementation of domestic mechanisms with regard to the protection of human rights within Sri Lanka is now lost in a vacuum of confusion, inefficiency and utter desperation. It is time for the international community, through considered opinion and conscious effort, to provide adequate support to the State in addressing and thus tackling this problem. A study by the UN Sub-Commission for Promotion and Protection of Human Rights regarding the exceptional collapse of the rule of law in Sri Lanka will help the country in the process of recovering its lost faith in basic guarantees of the rule of law and thereby to identify the problem and to suggest remedies.

As a member of the UN, even though the state through its reports has

tried to respond to the recommendations of the UN bodies, such attempts have only been cosmetic as well as superfluous. They are yet to deliver any tangible result. This is due to the reason that the rule of law in the state has collapsed to a hitherto unimagined extent and representatives of the state to the UN bodies are burdened with the moral responsibility to safeguard the image of the country in international summits. This, though understandable, is not what the state requires. Hence it is for an independent organisation like the ALRC to bring the fact to the attention of the Sub-Commission so that there could be an earnest attempt by the Sub-Commission in understanding the problem and thus undertaking a study regarding the rule of law situation in Sri Lanka.

Appendix two**New York, 21 September 2004 – UN Secretary-General Kofi Annan’s address to the General Assembly on the rule of law**

Mr. President, Excellencies, Ladies and Gentlemen,

It is good to see so many countries represented here at such a high level. I know this reflects your understanding that, in these difficult times, the United Nations is – as you stated four years ago in the Millennium Declaration – “the indispensable common house of the entire human family”.

Indeed today, more than ever, the world needs an effective mechanism through which to seek common solutions to common problems. That is what this Organization was created for. Let’s not imagine that, if we fail to make good use of it, we will find any more effective instrument.

This time next year you will be meeting to review progress in the implementation of the Millennium Declaration. By then I hope you will be ready to take bold decisions together on the full range of issues covered in the Millennium Declaration, helped by the report of the eminent Panel on Threats, Challenges and Change, which will be available before the end of this year.

As I said a year ago, we have reached a fork in the road. If you, the political leaders of the world, cannot agree or reach agreement on the way forward, history will take the decisions for you, and the interests of your peoples may go by default.

Today I will not seek to pre-judge those decisions, but to remind you of the all-important framework in which they should be taken – namely, the rule of law, at home and in the world.

The vision of “a government of laws and not of men” is almost as old as civilisation itself. In a hallway not far from this podium is a replica of the code of laws promulgated by Hammurabi more than three thousand years ago, in the land we now call Iraq.

Much of Hammurabi’s code now seems impossibly harsh. But etched into its tablets are principles of justice that have been recognised, if seldom fully implemented, by almost every human society since his time:

Legal protection for the poor.

Restraints on the strong, so that they cannot oppress the weak.

Laws publicly enacted, and known to all.

That code was a landmark in mankind's struggle to build an order where, instead of might making right, right would make might. Many nations represented in this chamber can proudly point to founding documents of their own that embody that simple concept. And this Organization – your United Nations – is founded on the same simple principle.

Yet today the rule of law is at risk around the world. Again and again, we see fundamental laws shamelessly disregarded – those that ordain respect for innocent life, for civilians, for the vulnerable – especially children.

To mention only a few flagrant and topical examples:

In Iraq, we see civilians massacred in cold blood, while relief workers, journalists and other non-combatants are taken hostage and put to death in the most barbarous fashion. At the same time, we have seen Iraqi prisoners disgracefully abused.

In Darfur, we see whole populations displaced, and their homes destroyed, while rape is used as a deliberate strategy.

In northern Uganda, we have seen children mutilated, and forced to take part in acts of unspeakable cruelty.

In Beslan, we have seen children taken hostage and brutally massacred.

In Israel we see civilians, including children, deliberately targeted by Palestinian suicide bombers. And in Palestine we see homes destroyed, lands seized, and needless civilian casualties caused by Israel's excessive use of force.

And all over the world we see people being prepared for further such acts, through hate propaganda directed at Jews, Muslims, against anyone who can be identified as different from one's own group.

Excellencies,

No cause, no grievance, however legitimate in itself, can begin to justify such acts. They put all of us to shame. Their prevalence reflects our collective failure to uphold the rule of law, and instill respect for it in our fellow men and women. We all have a duty to do whatever we can to restore that respect.

To do so, we must start from the principle that no one is above the

law, and no one should be denied its protection. Every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad must enforce it at home.

Yes, the rule of law starts at home. But in too many places it remains elusive. Hatred, corruption, violence and exclusion go without redress. The vulnerable lack effective recourse, and the powerful manipulate laws to retain power and accumulate wealth. At times even the necessary fight against terrorism is allowed to encroach unnecessarily on civil liberties.

At the international level, all states – strong and weak, big and small – need a framework of fair rules, which each can be confident that others will obey. Fortunately, such a framework exists. From trade to terrorism, from the law of the sea to weapons of mass destruction, States have created an impressive body of norms and laws. This is one of our Organization's proudest achievements.

And yet this framework is riddled with gaps and weaknesses. Too often it is applied selectively, and enforced arbitrarily. It lacks the teeth that turn a body of laws into an effective legal system.

Where enforcement capacity does exist, as in the Security Council, many feel it is not always used fairly or effectively. Where the rule of law is most earnestly invoked, as in the Commission on Human Rights, those invoking it do not always practise what they preach.

Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it.

Just as, within a country, respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global community. No nation must feel excluded. All must feel that international law belongs to them, and protects their legitimate interests.

Rule of law as a mere concept is not enough. Laws must be put into practice, and permeate the fabric of our lives.

It is by strengthening and implementing disarmament treaties, including their verification provisions, that we can best defend ourselves against the proliferation – and potential use – of weapons of mass destruction.

It is by applying the law that we can deny financial resources and safe havens to terrorists – an essential element in any strategy for defeating terrorism.

It is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict.

It is the law, including Security Council resolutions, which offers the best foundation for resolving prolonged conflicts – in the Middle East, in Iraq, and around the world.

And it is by rigorously upholding international law that we can, and must, fulfil our responsibility to protect innocent civilians from genocide, crimes against humanity and war crimes. As I warned this Assembly five years ago, history will judge us very harshly if we let ourselves be deflected from this task, or think we are excused from it, by invocations of national sovereignty.

The Security Council has just requested me to appoint an international commission to investigate reports of human rights violations in Darfur and determine whether acts of genocide have been committed. I shall do so with all speed. But let no one treat this as a respite, during which events in that devastated region continue to take their course. Regardless of their legal definition, things are happening there which must shock the conscience of every human being.

The African Union has nobly taken the lead and the responsibility in providing monitors and a protective force in Darfur – as well as seeking a political settlement, which alone can bring lasting peace and security to that society. But we all know the present limitations of this newborn Union. We must give it every possible support. Let no one imagine that this affair concerns Africans alone. The victims are human beings, whose human rights must be sacred to all of us. We all have a duty to do whatever we can to rescue them, and do it now.

Excellencies,

Last month, I promised the Security Council that I would make the Organization's work to strengthen the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of my tenure.

By the same token, I urge you to do more to foster the rule of law at home and abroad. I ask all of you here today to take advantage of the arrangements we have made for you to sign treaties on the protection of civilians – treaties that you yourselves negotiated – and then, go back home, and implement them fully and in good faith. And I implore you to give your full support to the measures I shall bring before you, during this session, to improve the security of United Nations staff. Those non-combatants, who voluntarily put themselves in harm's way

to assist their fellow men and women, surely deserve your protection, as well as your respect.

Throughout the world, Excellencies, the victims of violence and injustice are waiting. They are waiting for us to keep our word. They notice when we use words to mask inaction. They notice when laws that should protect them are not applied.

I believe we can restore and extend the rule of law throughout the world. But ultimately, that will depend on the hold that the law has on our consciences. This Organization was founded in the ashes of a war that brought untold sorrow to mankind. Today we must look again into our collective conscience, and ask ourselves whether we are doing enough.

Excellencies,

Each generation has its part to play in the age-old struggle to strengthen the rule of law for all – which alone can guarantee freedom for all.

Let our generation not be found wanting.

Thank you very much.

Appendix three

Enforced or involuntary disappearances in Sri Lanka

Written statement by the Asian Legal Resource Center (ALRC) to
the 60th session of the United Nations Commission on Human
Rights, E/CN.4/2004/NGO/39

1. The Asian Legal Resource Centre has brought the issue of massive enforced or involuntary disappearances in Sri Lanka to the attention of the Commission on Human Rights through numerous written and oral statements in the last few years, most recently at its fifty-ninth session (E/CN.4/2003/NGO/147). In its previous statements, the Asian Legal Resource Centre has emphasised that to date the Government of Sri Lanka has failed to implement most recommendations made by the Working Group on Enforced or Involuntary Disappearance in its December 1999 report (E/CN.4/2000/64/Add.1). These relate in particular to the prosecution of perpetrators and the making of legislative changes.

2. This year, the Asian Legal Resource Centre draws the attention of the Commission to two reasons why the families of disappeared persons in Sri Lanka are yet to obtain justice:

- a. The failure to promulgate a law to make enforced disappearances a crime, as recommended by the Working Group; and,
- b. The absence of effective investigations or prosecutions of alleged perpetrators.

3. In its Concluding Observations on 1 December 2003 with regards to the periodic report of the state party Sri Lanka, the Human Rights Committee stated that,

“It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished” (CCPR/CO/79/LKA).

4. In the same document the Committee recommended that

“The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators.”

5. The Government of Sri Lanka has at no stage explained why a law making enforced disappearances a crime has not been promulgated. No steps were ever taken to even begin drafting such a law. No instructions were ever issued by the government to carry out the recommendations of the Working Group. The lack of such indicates that Sri Lanka has no procedure for dealing with recommendations from United Nations human rights mechanisms. A procedure needs to be laid down, and made known both to the Commission as well as to the public, as an obligation under the International Covenant on Civil and Political Rights (ICCPR).

6. For the interim period, in the absence of a procedure, the Asian Legal Resource Centre suggests that the Government of Sri Lanka

- a. Inform all members of parliament when such recommendations are received.
- b. Direct the minister or ministers concerned to act on each specific recommendation without delay.
- c. Ensure that the cabinet minister responsible takes steps to see that the persons concerned are acting as instructed.
- d. Charge a competent body to carry out quarterly reviews of the above actions, and demand action where recommendations have not been pursued.

7. With regards to the making of a law on enforced disappearances in particular, the Asian Legal Resource Centre urges the Government of Sri Lanka to ensure that the Minister of Justice

- a. Refers the matter to the law drafting commission without delay.
- b. Directs the law drafting commission to prepare the said law in keeping with the spirit and letter of the Working Group recommendations.
- c. Ensures that he receives a draft as soon as possible.
- d. Places the draft before cabinet, and brings it as a bill before parliament immediately thereafter.
- e. Takes all necessary steps so that the draft goes through the normal procedure of entering into law without undue delay.

8. The Asian Legal Resource Centre urges the Commission to raise these concerns with the Government of Sri Lanka so as to make the recommendations of the Working Group meaningful.

9. Unfortunately, the mass disappearances carried out in Sri Lanka are quickly receding into memory, while the government has taken no steps to prosecute offenders. The four Presidential Commissions of Enquiry into disappearances submitted lists of specific persons against whom there is sufficient evidence to warrant further investigation and prosecution, but no action has been taken. It follows that there are many persons in Sri Lanka against whom there are prima facie cases for being engaged in causing disappearances, but about whom nothing has been done, as is normally the case when there is sufficient evidence of a crime. This failure points to a serious gap in how the law is enforced in Sri Lanka, which relates to the investigation and prosecution of crimes: the police investigate crime, but in the case of mass disappearances in Sri Lanka, they are also the suspects. Therefore, it is obvious why they have not investigated these crimes, which occurred on such a colossal scale. At no time also did the government appoint an independent body with the power to investigate and prosecute these crimes. Therefore, the Working Group's recommendations were ignored.

10. As indicated above, there needs to be a procedure to act on the recommendations by United Nations human rights bodies, in this case, to ensure successful prosecution of alleged perpetrators. The government must appoint the necessary authoritative bodies to ensure that its obligations under the ICCPR be fulfilled. As no such body has been appointed, to date the Working Group's recommendations have been meaningless. Various commissions without powers to conduct criminal investigations were appointed, but these have only resulted in the granting of virtual impunity to the accused. The fact-finding inquiries made by the National Human Rights Commission also are inadequate. And as pointed out in previous submissions, the current prosecution system, functioning within the Department of the Attorney General, is defective because it depends entirely on criminal investigation files to be made available by the police for the department to begin action on any crime. This allows the Department the excuse that it has not prosecuted known crimes because the necessary files have not been brought to it by the police. For the Government of Sri Lanka to meet its obligations under the ICCPR, therefore, it must appoint a separate body with powers and resources to investigate and prosecute the alleged perpetrators without delay.

11. If the recommendations of the Working Group on Enforced or Involuntary Disappearance are not to be forgotten altogether, the

Commission and other relevant United Nations agencies should at once resume discussions with the Government of Sri Lanka on these matters. The Human Rights Committee in its concluding recommendations of December 1 itself recommended many measures to address disappearances in Sri Lanka. Not only the Committee but also other relevant bodies, including those under the special procedures of the Commission, need to pursue diligently these recommendations for them to have any effect.

Appendix four

Disappearances in Sri Lanka

Written statement by the Asian Legal Resource Center (ALRC) to the 58th session of the United Nations Commission on Human Rights, E/CN.4/2002/NGO/74

1. The December 1999 recommendations of the Working Group on Enforced or Involuntary Disappearances to the Government of Sri Lanka (E/CN.4/2000/64/Add.1) have-all but for one-not been implemented. Although an Inter-ministerial Committee of Secretaries was appointed to look into implementation, it did not do anything substantial other than monitor payment of compensation to victims' families and pass on a list of alleged perpetrators of disappearances to the Department of the Attorney General. The recommendations and respective outcomes were as follows:

(a) RECOMMENDATION: "The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators."

OUTCOME: Due to the ongoing lack of such an independent body, there has been no investigation into tens of thousands of cases, nor has evidence been collected to prosecute cases. The usual excuse for not prosecuting is lack of evidence, yet there are people willing to give evidence unable to do so due to the absence of an independent authority to record it.

(b) RECOMMENDATION: "The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the out-come of investigations by the police."

OUTCOME: Tens of thousands of people await such justice and nothing is being done.

(c) RECOMMENDATION: "The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka

punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.”

OUTCOME: No steps have been taken to create such on offence. Not even a draft law has been made.

(d) RECOMMENDATION: “The Prevention of Terrorism Act and the Emergency Regulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners”.

OUTCOME: The Prevention of Terrorism Act remains in force. The Emergency Regulations were suspended in September 2001.

(e) RECOMMENDATION: “Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved.”

OUTCOME: No action has been taken to dissolve non-official places of detention.

(f) RECOMMENDATION: “The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission.”

OUTCOME: No register has been established. Even the National Human Rights Commission has not made any attempt to this end. While computerization would not be so difficult, due to communication advances in the country, the making of such a register is prevented as its existence would obstruct the style of law enforcement practices in Sri Lanka that violate international norms and standards. The National Human Rights Commission also lacks the resources to even carry out its most mundane tasks.

(g) RECOMMENDATION: “All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent

on the confirmation as 'proven' by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children."

OUTCOME: Payment of compensation has been haphazard. People in some areas have received payments while others have not.

(h) RECOMMENDATION: "The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families."

OUTCOME: The procedure for obtaining death certificates still does not help the displaced, as they have no access to divisional secretaries of their respective areas who should process applications for death certificates. Since the issue of certificates has to be carried out in the areas where the disappearances took place, a further obstacle is placed before internally displaced persons as many of the disappearances occurred during their displacement and they do not know at exactly what point it transpired.

(i) RECOMMENDATION: "The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead."

OUTCOME: A constitutional amendment has neither been made nor envisaged. The appropriate amendment would recognise the right to life as a fundamental right. Under article 126 of the Constitution dependents of victims would then be enabled to file rights cases. When the seventeenth amendment to the Constitution was discussed this matter could easily have been raised, but it was instead neglected. Meanwhile, a Supreme Court decision on fundamental rights has made it impossible for persons complaining of disappearances to find relief under the Constitution.

(j) RECOMMENDATION: "The Government should instruct the special unit in REPPA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified."

OUTCOME: The Asian Legal Resource Centre is not aware as to whether this recommendation has been adhered to or not.

2. The major obstacle to the implementation of these recommendations is the unsatisfactory performance of the national prosecutor's

office, which in Sri Lanka is the Department of the Attorney General. Recommendations to establish an independent prosecutor's office made by government-appointed commissions since 1946 have also been ignored. An independent and effective prosecutor's office is an integral requirement for correcting a serious legal breakdown. The mass disappearances in Sri Lanka are the manifestation of a justice system in serious crisis, thus posing a threat to the rights of people in all areas of life. Hence, in the view of the Asian Legal Resource Centre appointing an effective prosecutor to bring the perpetrators of mass disappearances to justice are essential to fulfill Sri Lanka's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR).

3. Under international pressure, the Attorney General had filed about 500 disappearance cases, however the number is insignificant in light of the mass disappearances recorded by four commissions and numerous other reports. Prosecutors and investigators have neglected many of these cases. One successfully prosecuted case was that of 24 schoolchildren disappeared by a school principal and some army officers, for which he culprits received around ten years imprisonment. Though an achievement, the case still raises many questions. The disappearance of 24 young children is a crime against humanity, however there is no such criminal offence in Sri Lanka. Even the causing of disappearances is not in itself a criminal offence. The most serious charge that can be filed against persons responsible for disappearances is abduction with intent to murder-but if bodies cannot be found, murder charges cannot be filed.

4. The above crime against schoolchildren was hushed-up for many years, despite complaints to the highest ranking army officers and head of the state. These high-ranking officers are therefore liable both criminally and under military disciplinary codes. But in general such cases if filed are only against junior officers. One reason for this is that the Disappearances Investigation Unit within the Police Department simply does not return files relating to senior officers to the prosecutors, claiming that its investigations are not complete. The Missing Persons Unit of the Attorney General's Department is then helpless to expedite action in those cases. Such delays are said to result from 'considerations of brotherhood'. Investigators are especially likely to protect senior officers at the expense of their juniors. The Missing Persons Unit has also chosen only cases where there is direct evidence of removal or disappearances, and has not looked into a large number of cases with strong circumstantial evidence. Victims removed involuntarily, detained and tortured and subsequently released or es-

caped have often been eyewitnesses to many atrocities in police stations and army detention centres but their information has not been utilized.

5. A remarkable feature of the 30,000-plus disappearances in Sri Lanka (excluding another 16,000 cases reported to the All Island Commission into disappearances that it did not have a mandate to investigate) is that they involved killings after arrest. Before being killed victims were normally interrogated in detention camps spread throughout the country. The state-appointed commissions of inquiry recorded these places of detention and the activities that took place in them but could not investigate further. In this regard the Final Report of the Presidential Commission of Disappearances, Sessional Paper No. 111 (1997) urged that a special investigation into 'torture chambers' run by the police and military be undertaken. The officers assigned to camps known to have housed torture chambers can be established through official records. However up to date no action has been taken against these officers, and not even an investigating body has been appointed.

6. The locations of mass graves spread throughout the country have also not been investigated. In the early 1990s a few attempts to dig up graves occurred but did not involve professionals. Some work was also done at the Chemmani site, but a systematic investigation of mass graves in Sri Lanka is yet to occur.

7. The Attorney General has charged around 500 police and security force personnel against whom there is to date inadequate evidence to prosecute. The disciplinary code holds that any state officer facing a criminal case is interdicted from service until its conclusion, and is dismissed if convicted. Nonetheless, only some of those charged had been interdicted, and on 5 January 2001 the Inspector General of Police issued a general order granting re-instatement of any officers interdicted in relation to pending disappearance cases. The Asian Legal Resource Centre condemns this action as a violation of disciplinary procedure and an attempt to protect persons accused of causing disappearances. Disciplinary enquiries have also not been initiated against police involved in disappearances for violation of departmental rules. For instance, disappeared persons were found in police custody, but no entries made in the relevant books to indicate this, and nor has disciplinary action been taken against the officers involved. Officers are also promoted without regard to their involvement in disappearances or other gross human rights abuses.

8. The report of the All Island Commission into disappearances was handed to the president over a year ago but still has not been made

public. The Asian Legal Resource Centre is aware that many people are still waiting to come forward and give evidence but are prevented due to lack of faith in judicial institutions that have failed to respond to mass disappearances with any degree of seriousness. The main responsibility for this failure lies with the Department of the Attorney General, which has failed to implement the recommendations of the UN Working Group cited above. We urge the UN Working Group and the Commission to seek a progress report on these recommendations from the Sri Lankan government.

Appendix five**Draft International Convention on the Protection
of All Persons from Forced Disappearance****PREAMBLE**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Taking into account that any act of forced disappearance of a person constitutes an offence to human dignity, is a denial of the purposes of the Charter and is a gross and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and reaffirmed and developed in other international instruments in this field,

In view of the fact that any act of forced disappearance of a person constitutes a violation of the rules of international law guaranteeing the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

Considering that forced disappearance undermines the deepest values of any society committed to the respect of the rule of law, human rights and fundamental freedoms, and that the systematic or widespread practice of such acts constitutes a crime against humanity,

Recognizing that forced disappearance violates the right to life or puts it in grave danger and denies individuals the protection of the law,

Taking into account the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations,

Recalling the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States Parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, and the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Affirming that, in order to prevent acts that contribute to forced disappearances it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly on 15 December 1989,

Taking into account also the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

Wishing to increase the effectiveness of the struggle against forced disappearances of persons throughout the world,

Have agreed as follows:

PART I

Article 1

For the purposes of this Convention, forced disappearance is considered to be the deprivation of a person's liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to

acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person.

This article is without prejudice to any international instrument or national legislation that does or may contain provisions of broader application, especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to at paragraph 1 of this article.

Article 2

The perpetrator of and other participants in the offence of forced disappearance or of any constituent element of the offence, as defined in article 1 of this Convention, shall be punished. The perpetrators or other participants in a constituent element of the offence as defined in article 1 of this Convention shall be punished for a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed. The perpetrator of and other participants in the following acts shall also be punished:

- (a) Instigation, incitement or encouragement of the commission of the offence of forced disappearance;
- (b) Conspiracy or collusion to commit an offence of forced disappearance;
- (c) Attempt to commit an offence of forced disappearance; and
- (d) Concealment of an offence of forced disappearance.

Non-fulfilment of the legal duty to act to prevent a forced disappearance shall also be punished.

Article 3

The systematic or massive practice of forced disappearance constitutes a crime against humanity.

Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2 of this Convention, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or massive practice of forced disappearances, however limited the character of their participation.

Article 4

The States Parties undertake:

- (a) Not to practise, permit or tolerate forced disappearance;
- (b) To investigate immediately and swiftly any complaint of forced disappearance and to inform the family of the disappeared person about

- his or her fate and whereabouts;
- (c) To impose sanctions, within their jurisdiction, on the offence of forced disappearance and the acts or omissions referred to in article 2 of this Convention;
 - (d) To cooperate with each other and with the United Nations to contribute to the prevention, investigation, punishment and eradication of forced disappearance;
 - (e) To provide prompt and appropriate reparation for the damage caused to the victims of a forced disappearance in the terms described in article 24 of this Convention.

No circumstance - whether internal political instability, threat of war, state of war, any state of emergency or suspension of individual guarantees - may be invoked in order not to comply with the obligations established in this Convention.

The States Parties undertake to adopt the necessary legislative, administrative, judicial or other measures to fulfil the commitments into which they have entered in this Convention.

Article 5

The States Parties undertake to adopt the necessary legislative measures to define the forced disappearance of persons as an independent offence, as defined in article 1 of this Convention, and to define a crime against humanity, as defined in article 3 of this Convention, as separate offences, and to impose an appropriate punishment commensurate with their extreme gravity. The death penalty shall not be imposed in any circumstances. This offence is continuous and permanent as long as the fate or whereabouts of the disappeared person have not been determined with certainty.

The State Parties may establish mitigating circumstances for persons who, having been implicated in the acts referred to in article 2 of this Convention, effectively contribute to bringing the disappeared person forward alive, or voluntarily provide information that contributes to solving cases of forced disappearance or identifying those responsible for an offence of forced disappearance.

Article 6

Forced disappearance and the other acts referred to in article 2 of this Convention shall be considered as offences in every State Party. Consequently, each State Party shall take the necessary measures to establish jurisdiction in the following instances:

- (a) When the offence of forced disappearance was committed within any territory under its jurisdiction;

(b) When the alleged perpetrator or the other alleged participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention are in the territory of the State Party, irrespective of the nationality of the alleged perpetrator or the other alleged participants, or of the nationality of the disappeared person, or of the place or territory where the offence took place unless the State extradites them or transfers them to an international criminal tribunal.

This Convention does not exclude any jurisdiction exercised by an international criminal tribunal.

Article 7

Any State Party on whose territory a person suspected of having committed a forced disappearance or an act referred to in article 2 of this Convention is present shall, if after considering the information at its disposal it deems that the circumstances so warrant, take all necessary measures to ensure the continued presence of that person in the territory and if necessary take him or her into custody. Such detention and measures shall be exercised in conformity with the legislation of that State, and may be continued only for the period necessary to enable any criminal or extradition proceedings to be instituted.

Such State shall immediately make a preliminary investigation of the facts.

When a State, pursuant to this article, gathers evidence of a person's responsibility but does not exercise its jurisdiction over the matter, it shall immediately notify the State on whose territory the offence was committed, informing it of the circumstances justifying the presumption of responsibility, in order to allow that State to request extradition.

Article 8

States Parties shall afford one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings relating to the offence of forced disappearance, including the supply of all the evidence at their disposal that is necessary for the proceedings.

States Parties shall cooperate with each other, and shall afford one another the greatest measure of legal assistance in the search for, location, release and rescue of disappeared persons or, in the event of death, in the return of their remains.

States Parties shall carry out their obligations under paragraphs 1 and 2 of this article, without prejudice to the obligations arising from any

treaties on mutual legal assistance that may exist between them.

Article 9

No order or instruction of any public authority - civilian, military or other - may be invoked to justify a forced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it. Each State shall prohibit orders or instructions commanding, authorizing or encouraging a forced disappearance.

Law enforcement officials who have reason to believe that a forced disappearance has occurred or is about to occur shall communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

Forced disappearance committed by a subordinate shall not relieve his superiors of criminal responsibility if the latter failed to exercise the powers vested in them to prevent or halt the commission of the crime, if they were in possession of information that enabled them to know that the crime was being or was about to be committed.

Article 10

The alleged perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall be tried only in the courts of general jurisdiction of each State, to the exclusion of all courts of special jurisdiction, and particularly military courts.

No privileges, immunities or special exemptions shall be granted in such trials, subject to the provisions of the Vienna Convention on Diplomatic Relations.

The perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall in no case be exempt from criminal responsibility including where such offences or acts were committed in the exercise of military or police duties or in the course of performing these functions.

The States Parties guarantee a broad legal standing in the judicial process to any wronged party, or any person or national or international organization having a legitimate interest therein.

Article 11

Each State Party shall ensure that any person who alleges that someone has been subjected to forced disappearance has the right to complain to a competent and independent State authority and to have that complaint immediately, thoroughly and impartially investigated by that

authority.

Whenever there are grounds to believe that a forced disappearance has been committed, the State shall refer the matter to that authority without delay for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

Each State Party shall ensure that the competent authority has the necessary powers and resources to conduct the investigation, including powers to compel attendance of the alleged perpetrators or other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention, and of witnesses, and the production of relevant evidence. Each State shall allow immediate and direct access to all documents requested by the competent authority, without exception.

Each State Party shall ensure that the competent authority has access, without delay or prior notice, to any place, including those classified as being places of national security or of restricted access, where it is suspected that a victim of forced disappearance may be held.

Each State Party shall take steps to ensure that all persons involved in the investigation - including the complainant, the relatives of the disappeared person, legal counsel, witnesses and those conducting the investigation - are protected against ill-treatment and any acts of intimidation or reprisal as a result of the complaint or investigation. Anyone responsible for such acts shall be subject to criminal punishment.

The findings of a criminal investigation shall be made available upon request to all persons concerned, unless doing so would gravely hinder an ongoing investigation. However, the competent authority shall communicate regularly and without delay to the relatives of the disappeared person the results of the inquiry into the fate and whereabouts of that person.

It must be possible to conduct an investigation, in accordance with the procedures described above, for as long as the fate or whereabouts of the disappeared person have not been established with certainty.

The alleged perpetrators of and other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention shall be suspended from any official duties during the investigation.

Article 12

Forced disappearance shall not be considered a political offence for purposes of extradition.

Forced disappearance shall be deemed to be included among the extraditable offences in every extradition treaty entered into between States Parties.

States Parties undertake to include the offence of forced disappearance among the extraditable offences in every extradition treaty they conclude.

Should a State Party that makes extradition conditional on the existence of a treaty receive a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition with respect to the offence of forced disappearance.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize the said offence as extraditable.

Extradition shall be subject to the procedures established in the law of the requested State.

Article 13

When a State Party does not grant the extradition or is not requested to do so, it shall submit the case to its competent authorities as if the offence had been committed within its jurisdiction, for the purposes of investigation and, when appropriate, for criminal proceedings, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State requesting extradition.

Article 14

Forced disappearance shall not be considered a political offence, nor related to a political offence, for purposes of asylum and refuge. States Parties to this Convention shall not grant diplomatic or territorial asylum or refugee status to any person if there are substantiated grounds for believing that he or she has taken part in a forced disappearance.

Article 15

No State Party shall expel, return (refouler) or extradite a person to another State if there are grounds for believing that he or she would be in danger of being subjected to forced disappearance or any other serious human rights violation in that other State.

For the purpose of determining whether such grounds exist, the com-

petent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State in question of situations indicating gross, systematic or widespread violations of human rights.

Article 16

No statutory limitation shall apply to criminal proceedings and any punishment arising from forced disappearances, when the forced disappearance constitutes a crime against humanity, in accordance with article 3 of this Convention.

When the forced disappearance does not constitute a crime against humanity in accordance with article 3 of this Convention, the statute of limitation for the offence and the criminal proceedings shall be equal to the longest period laid down in the law of each State Party, starting from the moment when the fate or whereabouts of the disappeared person is established with certainty. When the remedies described in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the prescription for the offence of forced disappearance shall be suspended until the efficacy of these remedies has been restored.

States Parties shall adopt any legislative or other measures necessary to bring their law into conformity with the provisions of the preceding paragraphs.

Article 17

The perpetrators or suspected perpetrators of and other participants in the offence of forced disappearance or the acts referred to in article 2 of this Convention shall not benefit from any amnesty measure or similar measures prior to their trial and, where applicable, conviction that would have the effect of exempting them from any criminal action or penalty.

The extreme seriousness of the offence of forced disappearance shall be taken into account in the granting of pardon.

Article 18

Without prejudice to articles 2 and 5 of this Convention, States Parties shall prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's forced disappearance, and shall search for and identify such children. As a general rule, the child will be returned to his or her family of origin. Here the best interests of the child must be taken into account and the views of the child shall be given due weight in

accordance with the age and maturity of the child.

States Parties shall give each other assistance in the search for, identification, location and return of minors who have been removed to another State or held therein. For these purposes, States shall, as needed, conclude bilateral or multilateral agreements.

States Parties whose laws provide for a system of adoption shall establish through their national law the possibility of reviewing adoptions, and in particular the possibility of annulment of any adoption which has arisen from a forced disappearance. Such adoption may, however, continue in force if consent is given, at the time of the review, by the child's closest relatives. In any event, the best interests of the child should prevail and the views of the child should be given due weight in accordance with the age and maturity of the child.

States Parties shall impose penalties in their criminal law on the abduction of children whose parents are victims of forced disappearance or of children born during their mother's forced disappearance, and on the falsification or suppression of documents attesting to the child's true identity. The penalties shall take into account the extreme seriousness of these offences.

Article 19

States Parties shall ensure that the training of public law enforcement personnel and officials includes the necessary education on the provisions of this Convention.

Article 20

Without prejudice to any legal remedies for challenging the lawfulness of a deprivation of liberty, States Parties shall guarantee the right to a prompt, simple and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority that ordered the deprivation of liberty and the authority that carried it out. This remedy, as well as that of habeas corpus and similar remedies, may not be suspended or restricted, even in the circumstances described in article 4, paragraph 2, of this Convention.

In the framework of this remedy, and without prejudice to the powers of any judicial authority, judges acting in these cases shall enjoy the power to summon witnesses, to order the production of evidence, and to have unrestricted access to places where it may be presumed that a person deprived of liberty might be found.

Any delay to or obstruction of this remedy shall result in criminal penalties.

Article 21

States Parties shall establish norms under their national law indicating those officials who are authorized to order the deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating the penalties for officials who do not or refuse to provide information on the deprivation of liberty of a person.

Each State Party shall likewise ensure strict supervision, in accordance with a clear chain of command, of all officials responsible for apprehensions, arrests, detentions, police custody, transfers and imprisonment, and of all other law enforcement officials.

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by the competent authorities or persons authorized for that purpose. There shall be no restriction upon or derogation from any of the human rights of persons under any form of deprivation of liberty that are recognized, binding upon or in force in any State pursuant to law, conventions, regulations or custom on the pretext that this Convention does not recognize such rights or that it recognizes them to a lesser extent.

Any form of deprivation of liberty and all measures affecting the human rights of a person under any form of deprivation of liberty shall be ordered by, or be subject to the effective control of, a judicial or other competent authority.

Competent authorities shall have access to all places where there is reason to believe that persons deprived of their liberty might be found.

Article 22

States Parties guarantee that any person deprived of liberty shall be held solely in an officially recognized and controlled place of detention and be brought before a judge or other competent judicial authority without delay, who will also be informed of the place where the person is being deprived of liberty.

Accurate information on the deprivation of liberty of any person and on his or her whereabouts, including information on any transfer, the identity of those responsible for the deprivation of liberty, and the authority in whose hands the person has been placed, shall be made immediately available to the person's counsel or to any other persons having a legitimate interest in the information.

In every place where persons deprived of liberty are held, States Parties shall maintain an official up-to-date register of such persons. Additionally, they shall maintain similar centralized registers. The in-

formation contained in these registers shall be made available to the persons and authorities mentioned in the preceding paragraph.

States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this Convention, States Parties shall make it a criminal offence for the responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is or should be known to be inaccurate in the custody record.

States Parties shall periodically publish lists that name the places where persons are deprived of liberty. Such places must be visited regularly by qualified and experienced persons named by a competent authority, different from the authority directly in charge of the administration of the place.

Article 23

States Parties guarantee that all persons deprived of liberty shall be released in a manner that allows reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and their ability fully to exercise their rights are assured.

Article 24

States Parties guarantee, in all circumstances, the right to reparation for the harm caused to the victims of forced disappearance.

For the purposes of this Convention, the right to reparation comprises restitution, compensation, rehabilitation, satisfaction, and the restoration of the honour and reputation of the victims of the offence of forced disappearance. The rehabilitation of victims of forced disappearance will be physical and psychological as well as professional and legal.

For the purposes of this Convention, the term "victim of the offence of forced disappearance" means the disappeared person, his or her relatives, any dependant who has a direct relationship with her or him, and anyone who has suffered harm through intervening in order to prevent the forced disappearance or to shed light on the whereabouts of the disappeared person.

In addition to such criminal penalties as are applicable, the acts referred to in articles 2 and 3 of this Convention shall render the State liable under civil law, and the State may bring an action against those responsible in order to recover what it has had to pay, without preju-

dice to the international responsibility of the State concerned in accordance with the principles of international law.

PART II

Article 25

There shall be established a Committee against Forced Disappearance (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in a personal and independent capacity. Membership of the Committee is incompatible with any post or function subject to the hierarchical structure of the executive authority of a State Party. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate not more than two persons from among its own nationals.

Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least eight months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties, the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council.

The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However,

the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

The United Nations shall be responsible for the expenses incurred by the application of this Convention.

Article 26

The Committee shall elect its officers for a term of two years. They may be re-elected.

The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

- (a) Six members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

With the approval of the General Assembly, the members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide in the light of the importance of the functions of the Committee.

Article 27

The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. In connection with the submission of the first report

of each State Party concerned, the Committee may make a visit to the territory under the control of that State Party. The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and access to such places and meeting with such persons as may be required for carrying out the mission of the visit. Thereafter the States Parties shall submit supplementary reports at the request of the Committee.

The Secretary-General of the United Nations shall transmit the reports to all States Parties.

Each report shall be considered by the Committee which may make such comments, observations and recommendations as it may consider appropriate and shall forward the said comments, observations and recommendations to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

The Committee may, at its discretion, decide to include any comments, observations and recommendations made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 33. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 28

If the Committee receives reliable information which appears to it to contain well-founded indications that forced disappearance is being systematically or widely practised in the territory under the control of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make an inquiry and to report to the Committee urgently.

If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to the territory under its control. At least one member of the Committee, who may be accompanied if necessary by interpreters, secretaries and experts, shall be responsible for conducting the missions which include visits to the territory under the control of the State Party. No

member of the delegation, with the exception of the interpreters, may be a national of the State to which the visit is to be made.

The Committee shall notify the Government of the State Party concerned in writing of its intention to organize a mission, indicating the composition of the delegation. During its mission the Committee may make such visits as it may consider necessary in order to fulfil its commitments. If one of the two parties so desires, the Committee and the State Party concerned may, before a mission is carried out, hold consultations in order to define the practical arrangements for the mission without delay. The consultations concerning the practical arrangements for the mission may not include negotiations concerning the obligations for a State Party arising out of this Convention.

After examining the report submitted by its member or members in accordance with paragraph 2 of this article, the Committee shall transmit its report to the State Party concerned, together with its conclusions, observations and recommendations.

After the proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultation with the State Party concerned, include the results of the proceedings together with the conclusions, observations and recommendations in its annual report made in accordance with article 33.

Article 29

A State Party to this Convention may submit to the Committee communications to the effect that another State Party is not fulfilling its obligations under this Convention. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Com-

- mittee and to the other State;
- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
 - (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solutions reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

Article 30

Any person or group of persons under the jurisdiction of a State Party or any non-governmental organization may submit communications to the Committee concerning a violation of the provisions of this Convention by a State Party.

The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompat-

ible with the provisions of this Convention.

Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy that may have been taken by that State.

The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the author of the communication referred to in paragraph 1 and by the State Party concerned. The Committee may, if it deems it necessary, organize hearings and investigation missions. For these purposes the Committee shall be governed by paragraphs 3 and 4 of article 28.

The Committee shall not consider any communications from an individual under this article unless it has been ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
- (b) The author of the communication has exhausted all domestic remedies. This shall not be the rule if, in the domestic legislation of the State Party, there is no effective remedy to protect the right alleged to have been violated, if access to domestic remedies has been prevented, if the application of the remedies is unreasonably prolonged or if it is unlikely that application of the remedies would improve the situation of the person who is the victim of the violation.

The Committee shall hold closed meetings when examining communications under this article.

In urgent cases the Committee may request the State Party concerned to take whatever protective measures it may deem appropriate, when there is a need to avoid irreparable damage. When the Committee is carrying out its functions of considering communications submitted to it, the request to adopt such measures and their adoption shall not prejudice its final decision.

The Committee shall forward its views to the State Party concerned and to the individual.

Article 31

The Committee may undertake any effective procedure to seek and find persons who have disappeared within the meaning of this

Convention, either on its own initiative or at the request of a State Party, an individual, a group of individuals or a non-governmental organization.

The Committee shall consider inadmissible any request received under this article which is anonymous or which it considers to be an abuse of the right of submission of such requests or to be incompatible with the provisions of this Convention. In no case may the exhaustion of domestic remedies be required.

The Committee may, if it decides that this is warranted, appoint one or more of its members to undertake an investigation mission and to report to the Committee urgently. The Committee shall be governed by the provisions of paragraphs 3 and 4 of article 28 of this Convention.

The Committee shall discharge this function in a strictly neutral and humanitarian capacity.

Article 32

The members of the Committee and persons accompanying them on mission in the territory of the States Parties referred to in articles 28, 29 and 31 shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 33

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

To ensure that its observations and recommendations are followed up, the Committee shall include in the report referred to in paragraph 1 of this article the measures taken by the States Parties to guarantee effective compliance with the observations and recommendations made in accordance with articles 27, 28, 29, 30 and 31 of this Convention.

PART III

Article 34

This Convention is open for signature by all States.

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 35

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36

No State can, at the time of signature or ratification of this Convention or accession thereto, make reservations concerning articles 1 to 24 and article 31 of this Convention, nor make a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention.

Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 37

This Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification or accession.

For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 38

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 34 and 35;
- (b) The date of entry into force of this Convention under article 37.

Article 39

This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

Appendix six

**Human Rights Committee finds Sri Lankan
Government has failed to provide an effective
remedy for a family member of a disappeared**

Sarma v. Sri Lanka

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CCPR/ C/ 78/ D/ 950/ 2000 31 July 2003

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HUMAN RIGHTS COMMITTEE Seventy-eighth session

14 July -8 August 2003

VIEWS

Communication No. 950/ 2000

Submitted by : Mr. S. Jegatheeswara Sarma

Alleged victim : The author, his family and his son,
Mr. J. Thevaraja Sarma

State party : Sri Lanka

Date of communication: 25 October 1999 (initial submission)

Document references: -Special Rapporteur's rule 91 decision, transmitted to the State party on 20 November 2000 (not issued in document form) -

CCPR/C/74/D/950/2000 decision on admissibility dated 14 March 2002

Date of adoption of Views: 16 July 2003

On 16 July, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 950/ 2000. The text of the Views is appended to the present document.

[ANNEX]

IEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNA-
TIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Seventy-eighth session concerning Communication No. 950/ 2000

Submitted by : Mr. S. Jegatheeswara Sarma

Alleged victim : The author, his family and his son,
Mr. J. Thevaraja Sarma

State party : Sri Lanka

Date of communication: 25 October 1999 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 16 July 2003,

Having concluded its consideration of communication No. 950/ 2000, submitted to the Human Rights Committee by Mr. S. Jegatheeswara Sarma under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, dated 25 October 1999, is Mr. S. Jegatheeswara Sarma, a Sri Lankan citizen who claims that his son is a victim of a violation by the State party of articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights (the Covenant) and that he and his family are victims of a violation by the State party of article 7 of the Covenant. He is not represented by counsel.

1.2 The Covenant and the Optional Protocol to the Covenant entered into force for the State party respectively on 11 June 1980 and 3 October 1997. Sri Lanka also made a declaration according to which “[t] he Government of the Democratic Socialist Republic of Sri Lanka pursuant to article (1) of the Optional Protocol recognises the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Democratic Socialist Republic of Sri Lanka, who claim to be victims of a violation of any of the rights set forth in the Covenant which results either from acts, omissions, developments or events occurring after the date on which the Protocol entered into force for the Democratic Socialist Republic of Sri Lanka, or from a decision relating to acts, omissions, developments or events after that date. The Democratic Socialist Republic of Sri Lanka also proceeds on the understanding that the Committee shall not consider any communication from individuals unless it has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement”.

1.3 On 23 March 2001, the Committee, acting through its Special Rap-

porteur for new communications, decided to separate the examination of the admissibility from the merits of the case.

The facts as submitted by the author

2.1 The author alleges that, on 23 June 1990, at about 8.30 am, during a military operation, his son, himself and three others were removed by army members from their family residence in Anpuvalipuram, in the presence of the author's wife and others. The group was then handed over to other members of the military, including one Corporal Sarath, at another location (Ananda Stores Compound Army Camp). The author's son was apparently suspected of being a member of the LTTE (Liberation Tigers of Tamil Eelam) and was beaten and tortured. He was thereafter taken into military custody at Kalaimagal School allegedly after transiting through a number of other locations. There, he was allegedly tortured, hooded and forced to identify other suspects.

2.2 In the meantime, the author and other persons arrested were also transferred to Kalaimagal School, where they were forced to parade before the author's hooded son. Later that day, at about 12.45 pm, the author's son was taken to Plaintain Point Army Camp, while the author and others were released. The author informed the Police, the International Committee of the Red Cross (ICRC) and human rights groups of what had happened.

2.3 Arrangements were later made for relatives of missing persons to meet, by groups of 50, with Brigadier Pieris, to learn about the situation of the missing ones. During one of these meetings, in May 1991, the author's wife was told that her son was dead.

2.4 The author however claims that, on 9 October 1991 between 1.30 and 2 pm, while he was working at "City Medicals Pharmacy", a yellow military van with license plate Nr. 35 Sri 1919 stopped in front of the pharmacy. An army officer entered and asked to make some photocopies. At this moment, the author saw his son in the van looking at him. As the author tried to talk to him, his son signalled with his head to prevent his father from approaching.

2.5 As the same army officer returned several times to the pharmacy, the author identified him as star class officer Amarasekara. In January 1993, as the "Presidential Mobile Service" was held in Trincomalee, the author met the then Prime Minister, Mr. D. B. Wijetunghe and complained about the disappearance of his son. The Prime Minister ordered the release of the author's son, wherever he was found. In March 1993, the military advised that the author's son had never been taken into custody.

2.6 In July 1995, the author gave evidence before the “Presidential Commission of Inquiry into Involuntary Removals and Disappearances in the Northern and Eastern Provinces” (The Presidential Commission of Inquiry), without any result. In July 1998, the author again wrote to the President, and was advised in February 1999 by the Army that no such person had been taken into military custody. On 30 March 1999, the author petitioned to the President, seeking a full inquiry and the release of his son.

The Complaint

3. The author contends that the above facts constitute violations by the State party of articles 6, 7, 9, and 10 of the Covenant.

The State party’s observations on the admissibility of the communication

4.1 By submission of 26 February 2001, the State party argues that the Optional Protocol does not apply *ratione temporis* to the present case. It considers that the alleged incident involving the involuntary removal of the author’s son took place on 23 June 1990 and his subsequent disappearance in May 1991, and these events occurred before the entry into force of the Optional Protocol for Sri Lanka.

4.2 The State party argues that the author has not demonstrated that he has exhausted domestic remedies. It is submitted that the author has failed to resort to the following remedies:

-A writ of habeas corpus to the Court of Appeal, which gives the possibility for the Court to force the detaining authority to present the alleged victim before it;

-In cases where the Police refuse or fail to conduct an investigation, article 140 of the State party’s Constitution provides for the possibility of applying to the Court of Appeal to obtain a writ of mandamus in cases where a public authority fails or refuses to respect a statutory duty.

-In the absence of an investigation led by the police or if the complainant does not wish to rely on the findings of the police, such complainant is entitled directly to institute criminal proceedings in the Magistrate’s Court, pursuant to section 136 (1) (a) of the Code of Criminal Procedure.

4.3 The State party argues that the author has failed to demonstrate that these remedies are or would be ineffective, or would extend over an unreasonable period of time.

4.4 The State party therefore considers that the communication is inadmissible.

Comments by the author

5.1 On 25 May 2001, the author responded to the State party's observations.

5.2 With regard to the competence of the Committee *ratione temporis*, the author considers that he and his family are suffering from a continuing violation of article 7 as, at least to the present date, he has had no information about his son's whereabouts. The author refers to the jurisprudence of the Committee in *Quinteros v. Uruguay 1* and *El Megreisi v. Libyan Arab Jamahiriya 2* and maintains that this psychological torture is aggravated by the contradictory replies received from the authorities.

5.3 To demonstrate his continued efforts, the author lists the 39 letters and other requests filed in respect of the disappearance of his son. These requests were sent to numerous Sri Lankan authorities, including the police, the army, the national human rights commission, several ministries, the president of Sri Lanka and the Presidential Commission of Inquiry. Despite all these steps, the author has not been given any further information as to the whereabouts of his son. Moreover, following the submission of the present communication to the Committee, the Criminal Investigations Department was ordered to record the statements, in Sinhala, of the author and 9 other witnesses whom the author had cited in previous complaints, without any tangible outcome to date.

5.4 The author emphasizes that such inaction is unjustifiable in a situation where he had provided the authorities with the names of the persons responsible for the disappearance, as well as the names of other witnesses. He submitted the following details to the State party's authorities:

1. On 23. 06.1990 my son was removed by Army soldier Corporal Sarath in my presence at Anpuvalipuram. He hails from Girithala, Polanaruwa. He is married to a midwife at 93 rd Mile Post, Kantale. She is working at Kantala Hospital.
2. On 09.10. 1991 Mr. Amerasekera (Star Badge) from the army brought my son to City Medicals Pharmacy by van Nr. 35 Sri 1919.
3. On 23. 06. 1990 Army personnel who were on duty during the roundup at Anpuvalipuram:

- a) Major Patrick
- b) Suresh Cassim [lieutenant]
- c) Jayasekara [...]
- d) Ramesh (Abeyapura)

4. During this period officers on duty at Plantain Point Army Camp. In addition to names mentioned in para. 3:

- a) Sunil Tennakoon (at present gone on transfer from here)
- b) Tikiri Banda (presently working here)
- c) Captain Gunawardena d) Kundas (European)

5. Witnesses

- a) My wife
- b) Mr. S. Alagiah, 330, Anpuvalipuram, Trincomalee. c) Mr. P. Markandu, 442, Kanniya Veethi, Barathipuram, Trinco.
- d) Mr. P. Nemithasan, 314, Anpuvalipuram, Trincomalee.
- e) Mr. S. Mathavan (maniam Shop) Anpuvalipuram, Trincomalee.
- f) Janab. A. L. Majeed, City Medical, Dockyard Road, Trincomalee.
- g) Mrs. Malkanthi Yatawara, 80A, Walpolla, Rukkuwila, Nittambuwa.
- h) Mr. P. S. Ramiah, Pillaiyar Kovilady, Selvanayagapuram, Trinco.”

5.5 The author also testified before the Presidential Commission of Inquiry on 29 July 1995 and refers to the following statement of the commission:

Regarding [...] the evidence available to establish such alleged removals or disappearances, [...] there had been large scale corroborative evidence by relatives, neighbours and fellow human beings [sic], as most of these arrests were done in full public view, often from Refugee Camps and during cordon and search operations where large numbers of people witnessed the incidents.

Regarding [...] 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 their culpability. [...]

5.6 The author maintains that these facts reveal a violation of article 6, 7, 9 and 10 of the Covenant.

5.7 The author argues that he has exhausted all effective, available and not unduly prolonged domestic remedies. Referring to reports of international human rights organizations, the author submits that the remedy of habeas corpus is ineffective in Sri Lanka and unnecessarily prolonged. The author also refers to the report of the Working Group

on Enforced or Involuntary Disappearances of 28 December 1998, which confirms that even if ordered by courts, investigations are not carried out.

5.8 The author submits that, during the period 1989-1990, in Trincomalee, the law was non-existent, the courts were not functioning, people were shot at sight and many were arrested. Police stations in the “Northern and Eastern Province” were headed by Sinhalese who arrested and caused the disappearance of hundreds of Tamils. As a result, the author could not report to the police about the disappearance of his son, for fear of reprisals or for being suspected of terrorist activities.

Decision on admissibility

6.1 At its 74th session, the Committee considered the admissibility of the communication. Having ascertained that the same matter was not being examined and had not been examined under another procedure of international investigation or settlement, the Committee examined the facts that were submitted to it and considered that the communication raised issues under article 7 of the Covenant with regard to the author and his family and under articles 6, paragraph 1, 7, 9, paragraph 1 and 10 of the Covenant with regard to the author’s son.

6.2 With respect to the application *ratione temporis* of the Optional Protocol to the State party, the Committee noted that, upon acceding to the Optional Protocol, Sri Lanka had entered a declaration restricting the Committee’s competence to events following the entry into force of the Optional Protocol. However, the Committee considered that although the alleged removal and subsequent disappearance of the author’s son had taken place before the entry into force of the Optional Protocol for the State party, the alleged violations of the Covenant, if confirmed on the merits, may have occurred or continued after the entry into force of the Optional Protocol.

6.3 The Committee also examined the question of exhaustion of domestic remedies and considered that in the circumstances of the case, the author had used the remedies that were reasonably available and effective in Sri Lanka. The Committee noted that, in 1995, the author had instituted a procedure with an *ad hoc* body (the Presidential Commission of Inquiry into Involuntary Removals and Disappearances in the Northern and Eastern Provinces) that had been especially created for cases like this one. Bearing in mind that this Commission had not, after 7 years, reached a final conclusion about the disappearance of the author’s son, the Committee was of the view that this remedy was unreasonably prolonged.

Accordingly, it declared the communication admissible on 14 March 2002.

State party's submission on the merits

7.1 On 22 April 2002, the State party commented on the merits of the communication.

7.2 On the facts of the case and the steps that have been taken after the alleged disappearance of the author's son, the State party submits that, on 24 July and 30 October 2000, the Attorney General of Sri Lanka received two letters from the author seeking "inquiry and release" of his son from the Army. Further to these requests, the Attorney General's Department inquired with the Sri Lankan Army as to whether the author's son had been arrested and whether he was still being detained. Inquiries revealed that neither the Sri Lanka Navy, nor the Sri Lanka Air Force, nor the Sri Lanka Police had arrested or detained the author's son. The author's requests were transmitted to the Missing Persons Commission (MPC) Unit of the Attorney General's Department. On 12 December 2000, the coordinator of the MPC informed the author that suitable action would be taken and advised the Inspector General of Police (IGP) to conduct criminal investigation into the alleged disappearance.

7.3 On 24 January 2001, detectives of the Disappearance Investigations Unit (DIU) met with a number of persons, including the author and his wife, interviewed them and recorded their statements. On 25 January 2001, the DIU visited Plainpoint Army Camp. On the same day and between 8 and 27 February 2001, a number of other witnesses were interviewed by the DIU. Between 3 April and 26 June 2001, the DIU proceeded to the interview of 10 Army personnel, including the Officer commanding the Security Forces of the Trincomalee Division in 1990/ 91. The DIU completed its investigation on 26 June 2001 and transmitted its report to the MPC, which, on 22 August 2001, requested further investigation on particular points. The results of this additional investigation were transmitted to the MPC on 24 October 2001.

7.4 The State party submits that the results of the criminal investigation have revealed that, on 23 June 1990, Corporal Ratnamala Mudiyansele Sarath Jayasinghe Perera (hereafter Corporal Sarath) of the Sri Lankan Army and two other unidentified persons had "involuntarily removed (abducted)" the author's son. This abduction was independent of the "cordon and search operation" carried out by the Sri Lankan Army in the village of Anpuwalipuram in the District of Trincomalee, in order to identify and apprehend terrorist suspects. During this operation, arrests and detention for investigation did indeed

take place in accordance with the law but the responsible officers were unaware of Corporal Sarath's conduct and of the author's son's abduction. The investigation failed to prove that the author's son had been detained at Plaintain Point Army Camp or in any other place of detention, and the whereabouts of the author's son could not be ascertained.

7.5 Corporal Sarath denied any involvement in the incident and did not provide information on the author's son, nor any acceptable reasons why witnesses would have falsely implicated him. The MPC thus decided to proceed on the assumption that he and two unidentified persons were responsible for the "involuntary removal" of the author's son.

7.6 With regard to the events of 9 October 1991, when the author allegedly saw his son in company of Lieutenant Amarasekera, the investigation revealed that, during the relevant period, there was no officer of such name in the District of Trincomalee. The person on duty in the relevant area in 1990/ 91 was officer Amarasinghe who died soon thereafter as a result of a terrorist attack.

7.7 On 18 February 2002, the author sent another letter to the Attorney General stating that his son had been "removed" by Corporal Sarath, requesting that the matter be expedited and that his son be handed over without delay. On 28 February 2002, the Attorney General informed the author that his son had disappeared after his abduction on 23 June 1990, and that his whereabouts were unknown.

7.8 On 5 March 2002, Corporal Sarath was indicted of having "abducted" the author's son on 23 June 1990 and along with two other unknown perpetrators, an offence punishable under section 365 of the Sri Lankan Penal Code. The indictment was forwarded to the High Court of Trincomalee and the author was so informed on 6 March 2002. The State party submits that Corporal Sarath was indicted for "abduction" because its domestic legislation does not provide for a distinct criminal offence of "involuntary removal". Moreover, the results of the investigation did not justify the assumption that Corporal Sarath was responsible for the murder of the victim, as the latter was seen alive on 9 October 1991. The trial of Corporal Sarath will commence in late 2002.

7.9 The State party submits that it did not, either directly or through the relevant field commanders of its Army, cause the disappearance of the author's son. Until the completion of the investigation referred to above, the conduct of Corporal Sarath was unknown to the State party and constituted illegal and prohibited activity, as shown by his recent indictment. In the circumstances, the State party considers that the

“disappearance” or the deprivation of liberty of the author’s son cannot be seen as a violation of his human rights.

7.10 The State party reiterates that the alleged “involuntary removal” or the “deprivation of liberty” of the author’s son on 23 June 1990 and his subsequent alleged disappearance on or about 9 October 1991 occurred prior to the ratification of the Optional Protocol by Sri Lanka, and that there is no material in the communication that would demonstrate a “continuing violation”.

7.11 The State party therefore contends that the communication is without merits and that it should, in any event, be declared inadmissible due to the reasons developed in paragraph 7.10.

Author’s comments

8.1 On 2 August 2002, the author commented on the State party’s observations on the merits.

8.2 The author submits that the disappearance of his son took place in a context where disappearances were systemic. He refers to the “final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces” of 1997, according to which:

[Y]outh in the North and East disappeared in droves in the latter part of 1989 and during the latter part of 1990. This large scale disappearances of youth is connected with the military operations started against the JVP in the latter part of 1989 and against the LTTE during Eelam War II beginning in June 1990 [...] It was obvious that a section of the Army was carrying out the instructions of its Political Superiors with a zeal worthy of a better cause. Broad power was given to the Army under the Emergency Regulations which included the power to dispose of the bodies without post-mortem or inquests and this encouraged a section of the Army to cross the invisible line between the legitimate Security Operation and large scale senseless arrests and killings.

8.3 The author emphasizes that one aspect of disappearances in Sri Lanka is the absolute impunity that officers and other agents of the State enjoy, as illustrated in the Report of the Working Group on Enforced or Involuntary Disappearances after its third visit to Sri Lanka in 1999. The author argues that the disappearance of his son is an act committed by State agents as part of a pattern and policy of enforced disappearances in which all levels of the State apparatus are implicated.

8.4 The author draws attention to the fact that the State party does

not contest that the author's son has disappeared, even if it claims not to be responsible; that it confirms that the author's son was abducted on 23 June 1990 by Corporal Sarath and two other unidentified officers, although in a manner which was "distinctly separate and independent" from the cordon and search operation that was carried out by the Army in this location at the same time; and that it submits that officers of the Army had been unaware of Corporal Sarath's conduct and the author's son abduction.

8.5 The author indicates that enforced disappearances represent a clear breach of various provisions of the Covenant, including its article 7 4 , and, emphasizing that one of the main issues of this case is that of imputability, considers that there is little doubt that his son's disappearance is imputable to the State party because the Sri Lankan Army is indisputably an organ of that State 5 . Where the violation of Covenant rights is carried out by a soldier or other official who uses his or her position of authority to execute a wrongful act, the violation is imputable to the State 6, even where the soldier or the other official is acting beyond his authority. The author, relying on the judgment of the Inter-American Court of Human Rights in the Velasquez Rodriguez Case 7 and that of the European Court of Human Rights, concludes that, even where an official is acting *ultra vires*, the State will find itself in a position of responsibility if it provided the means or facilities to accomplish the act. Even if, and this is not known in this case, the officials acted in direct contravention of the orders given to them, the State may still be responsible.

8.6 The author maintains that his son was arrested and detained by members of the Army, including Corporal Sarath and others unidentified, in the course of a military search operation and that these acts resulted in the disappearance of his son. Pointing to the overwhelming evidence before the Presidential Committee of Inquiry indicating that many of those in Trincomalee who were arrested and taken to Plaintain Point Army Camp were not seen again, the assertion that this disappearance was an isolated act initiated solely by Corporal Sarath, without the knowledge or complicity of other levels within the military chain of command, defies credibility.

8.7 The author contends that the State party is responsible for the acts of Corporal Sarath even if, as it is suggested by the State party, his acts were not part of a broader military operation because it is undisputed that the acts were carried out by Army personnel. Corporal Sarath was in uniform at the relevant time and it is not disputed that he was under the orders of an officer to conduct a search operation in that area during the period in question. The State party thus

provided the means and facilities to accomplish the imputed act. That Corporal Sarath was a low ranking officer acting with a wide margin of autonomy and without orders from superiors does not exempt the State party from its responsibility.

8.8 The author further suggests that even if the acts were not directly attributable to the State party, its responsibility can arise due to its failure to meet the positive obligations to prevent and punish certain serious violations such as arbitrary violations of the right to life. This may arise whether or not the acts are carried out by non-state actors.

8.9 The author argues in this respect that the circumstances of this case must establish, at a minimum, a presumption of responsibility that the State party has not rebutted. In this case, referring to the jurisprudence of the Committee 9 , it is indeed the State party, not the author, that is in a position to access relevant information and therefore the onus must be on the State to refute the presumption of responsibility. The State party has failed to initiate a thorough inquiry into the author's allegations in areas within which it alone has access to the relevant information, and to provide the Committee with relevant information.

8.10 The author argues that according to the jurisprudence of the Committee 10 and that of the Inter-American Court of Human Rights, the State party had a responsibility to investigate the disappearance of the author's son in a thorough and effective manner, to bring to justice those responsible for disappearances, and to provide compensation for the victims' families.

8.11 In the present case, the State party has failed to investigate effectively its responsibility and the individual responsibility of those suspected of the direct commission of the offences and gave no explanation as to why an investigation was commenced some 10 years after the disappearance was first brought to the attention of the relevant authorities. The investigation did not provide information on orders that may have been given to Corporal Sarath and others regarding their role in search operations, nor has it considered the chain of command. It has not provided information about the systems in place within the military concerning orders, training, reporting procedures or other process to monitor the activity of soldiers which may support or undermine the claim that his superiors did not order and were not aware of the activities of the said Corporal. It did not provide evidence that Corporal Sarath or his colleagues were acting in a personal capacity without the knowledge of other officers.

8.12 There are also striking omissions in the evidence gathered by the State party. The records of the ongoing military operations in this area in 1990 have indeed not been accessed or produced and no detention records or information relating to the cordon and search operation have been adduced. It also does not appear that the State party has made investigations into the vehicle bearing registration number 35 SRI 1919 in which the author's son was last seen. The Attorney General who filed the indictment against Corporal Sarath has not included key individuals as witnesses for the prosecution, despite the fact that they had already provided statements to the authorities and may provide crucial testimony material to this case. These include Poopalapillai Neminathan, who was arrested along with the author's son and was detained with him at the Plaintain Point Army Camp, Santhiya Croose, who was also arrested along with the author's son but was released en route to the Plaintain Point Army Camp, S. P. Ramiah, who witnessed the arrest of the author's son and Shammugam Algiah from whose house the author's son was arrested. Moreover, there is no indication of any evidence having been gathered as to the role of those in the higher echelons of the Army as such officers may themselves be criminally responsible either directly for what they ordered or instigated or indirectly by dint of their failure to prevent or punish their subordinates.

8.13 On the admissibility of the communication, the author emphasizes that the Committee already declared the case admissible on 14 March 2002 and maintains that the events complained of have continued after the ratification of the Optional Protocol by the State party to the day of his submission. The author also cites article 17 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

8.14 The author asks the Committee to hold the State party responsible for the disappearance of his son and declare that it has violated Articles 2, 6, 7, 9, 10 and 17 of the Covenant. He further asks that the State party undertake a thorough and effective investigation, along the lines suggested above; provide him with adequate information resulting from its investigation; release his son; and pay adequate compensation.

Examination of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

9.2 With regard to the author's claim in respect of the disappearance of his son, the Committee notes that the State party has not denied that the author's son was abducted by an officer of the Sri Lankan Army on 23 June 1990 and has remained unaccounted for since then. The Committee considers that, for purposes of establishing State responsibility, it is irrelevant in the present case that the officer to whom the disappearance is attributed acted *ultra vires* or that superior officers were unaware of the actions taken by that officer 13. The Committee therefore concludes that, in the circumstances, the State party is responsible for the disappearance of the author's son.

9.3 The Committee notes the definition of enforced disappearance contained in article 7, paragraph 2 (i) of the Rome Statute of the International Criminal Court 14: Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10). It also violates or constitutes a grave threat to the right to life (article 6).

9.4 The facts of the present case clearly illustrate the applicability of article 9 of the Covenant concerning liberty and security of the person. The State party has itself acknowledged that the arrest of the author's son was illegal and a prohibited activity. Not only was there no legal basis for his arrest, there evidently was none for the continuing detention. Such a gross violation of article 9 can never be justified. Clearly, in the present case, in the Committee's opinion, the facts before it reveal a violation of article 9 in its entirety.

9.5 As to the alleged violation of article 7, the Committee recognizes the degree of suffering involved in being held indefinitely without any contact with the outside world 16, and observes that, in the present case, the author appears to have accidentally seen his son some 15 months after the initial detention. He must, accordingly, be considered a victim of a violation of article 7. Moreover, noting the anguish and stress caused to the author's family by the disappearance of his son and by the continuing uncertainty concerning his fate and where-

about 17, the Committee considers that the author and his wife are also victims of violation of article 7 of the Covenant. The Committee is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant both with regard to the author's son and with regard to the author's family.

9.6 As to the possible violation of article 6 of the Covenant, the Committee notes that the author has not asked the Committee to conclude that his son is dead. Moreover, while invoking article 6, the author also asks for the release of his son, indicating that he has not abandoned hope for his son's reappearance. The Committee considers that, in such circumstances, it is not for it to appear to presume the death of the author's son. Insofar as the State party's obligations under paragraph 11 below would be the same with or without such a finding, the Committee considers it appropriate in the present case not to make any finding in respect of article 6.

9.7 In the light of the above findings, the Committee does not consider it necessary to address the author's claims under articles 10 and 17 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 7 and 9 of the International Covenant on Civil and Political Rights with regard to the author's son and article 7 of the International Covenant on Civil and Political Rights with regard to the author and his wife.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The Committee considers that the State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance. The State party is also under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has

undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.



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