

A SOCIOLOGICAL EXPLORATION OF
DISAPPEARANCES
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"Not even a person, not even a word..."

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A sociological exploration of disappearances in Sri Lanka

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Tel: + (852) 2698 6339

Fax: + (852) 2698 6367

We: www.humanrights.asia

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Backcover photo: Pictured is a poem by Basil Fernando embossed on the historic monument erected in memory of all the disappeared in Sri Lanka, the Wall of Mourning – an initiative of the AHRC working with the families of the disappeared in Sri Lanka, this monument stands today, at the four way junction at Raddolunva, Seedunva Sri Lanka, where two of the remains of the bodies of activists were found after they have been killed and partially burned.

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Not even a person, not even a word. No-one said “go on”. There was no encouragement.

- Mrs V, Matara District: Interview 2.

During the *Janatha Vimukthi Peramuna* insurgency of 1987-1990, two brothers of Mrs V disappeared after a younger brother was tortured by the police and hung from a lamppost. Her comments relate to the social ostracism of her family by relatives, friends and neighbours following these tragic events.

From 1977 to 1994, we had seventeen years of a ruling UNP government. During that time they tortured, put down and discriminated against normal villagers, the poor ... For the vote they did it.

- Mr W, Kandy District:
Interview 1.

On 30 January 1990, Mr W's 29-year-old son, a mechanic, was abducted by unidentified people in the company of a *goni billa* (masked informant). He was forced into a white van without number plates and disappeared. Mr W believed that his son was taken because he was a potential leader.

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- | | |
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Jane Thomson-Senanayake

Acronyms and Terms

AGA	Assistant Government Agent, a post in the Sri Lanka Administrative Service
AHRC	Asian Human Rights Commission
AI	Amnesty International
ALRC	Asian Legal Resource Centre
<i>Beeshana samaya</i>	era of terror
<i>Beeshanaya</i>	terror
Central Commission	Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces
CHRD	Centre for Human Rights and Development
CID	Criminal Investigation Department, Sri Lankan Police
Committee on Disappearances	} Committee on Disappearances of the Human Rights Commission
CP	
CRM	Civil Rights Movement of Sri Lanka
DIU	Disappearance Investigation Unit, Sri Lankan Police
DJV	<i>Deshapremi Janatha Viyaparaya</i> - Patriotic Peoples Movement, military wing of JVP
ENDLF	Eelam National Democratic Liberation Front
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
ER	Emergency Regulation

EROS	Eelam Revolutionary Organisation of Students
FP	Federal Party
GA	Government Agent, a chief administrative office at district level
<i>Grama Niladhari</i>	village official - local level administrative officer
<i>Grama Sevaka</i>	literally 'servant of the village' - village level administrative officer
HHR	Home for Human Rights
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crisis Group
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
IGP	Inspector General of Police
INFORM	Sri Lanka Information Monitor
IPKF	Indian Peace Keeping Force
JOSSOP	Joint Services Special Operations
JSS	<i>Jathika Sevaka Sangamaya</i> - National Workers Union
JVP	<i>Janatha Vimukthi Peramuna</i> - People's Liberation Front
LSSP	<i>Lanka Samasamaja Party</i> - Lanka Social Equality Party
LST	Law and Society Trust
LTTE	Liberation Tigers of Tamil Eelam
MPU	Missing Persons Unit, Attorney General's Department
NGO	Non-Governmental Organisation

North & East Commission	Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces
NSSP	<i>Nava Samasamaja</i> Party - New Equality Party
OIC	Officer-In-Charge, Police
OPFMD	Organisation of Parents and Family Members of the Disappeared
PA	People's Alliance
<i>Piraccinai natkal</i>	troubled times
PLOTE	People's Liberation Organisation of Tamil Eelam
<i>Pradesheya Sabha</i>	Regional Committee / Council
PRRA	People's Revolutionary Red Army
PSO	Public Security Ordinance
PSTD	Post-Traumatic Stress Disorder
PTA	Prevention of Terrorism Act
SMF	Southern Mothers' Front
SLA	Sri Lankan Army
SLFP	Sri Lanka Freedom Party
SLMM	Sri Lanka Monitoring Mission
SLMP	<i>Sri Lankan Mahajana Pakshaya</i> - Sri Lanka People's Party
Southern Commission	Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces
STF	Special Task Force, Police Commando Unit
TELO	Tamil Eelam Liberation Organisation
TNA	Tamil National Alliance

TULF	Tamil United Liberation Front
UNP	United National Party
USDOS	United States Department of State
UTHR-J	University Teachers for Human Rights -Jaffna
UNWEGID	United Nations Working Group on Enforced or Involuntary Disappearance
VLSSP	<i>Viplavakari Lanka Samasamaja</i> Party - Revolutionary Lanka Party

Preface

The last four decades of political violence in Sri Lanka have witnessed the enforced disappearance of tens of thousands of Sri Lankans. While much of the relevant literature has contextualised disappearance as a counter-insurgency strategy in the context of armed confrontation, the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 did not bring about an end to the phenomenon. The hypothesis of this study is that political competition was the motive behind disappearances, which served as an integral part of a system of state power and patronage to enable the political elite to immobilise all political opposition.

As a central component of this political project, disappearance enabled the ruling elite to manipulate local grievances which, when given political expression, led to greater violence in the permanent removal of local enemies whilst heightening mistrust within communities. In detailing the first disappearances in 1971 to the ceasefire agreement with the LTTE in 2002, this study considers how an alternative apparatus operated with impunity, due process was totally dismantled and Sri Lankan society became politicised and complicit with the regime, leaving survivors of political violence with no effective remedy for legal redress or common ground to demand social restoration.

This study explores the impact of the ruling elite's political project through the experiences of 87 relatives of the disappeared. It considers how their own political project to re-establish the socio-legal identity of the disappeared was exploited by the political elite and their own communities rendering them socially ostracised. Within this context, transitional justice mechanisms including prosecutions and social movements were manipulated and politicised along party lines as part of a ritual of conspiracy against the victims to deny state terror and protect those responsible for it.

Jane Thomson-Senanayake

CHAPTER 1

Disappearance as political competition

1.1 Political construction of violence

The hypothesis of this study is that political competition was the driving force behind the enforced disappearance of tens of thousands of Sri Lankans carried out by the state in the context of two Marxist insurgencies and conflict with Tamil separatists over three decades from 1971 to 2002. In the Sri Lankan context, disappearance has served as an integral part of a system of state power and patronage. Under this regime, political violence was sanctioned by the political elite with impunity and normal law did not apply leaving no effective means of legal redress for affected families. To understand the manner in which disappearance served a political purpose, this study explores the history of disappearance from 1971, providing an account of the political, legal and socioeconomic framework that allowed for the establishment of a 'shadow state' under which disappearances were carried out. While this study focuses on the state's response to the 1971 Marxist insurgency as its starting point, intolerance to political opposition including public protest emerged as a central characteristic of governance well before the 1970s. Given this fact and the long historical roots of political violence, this study details some of the characteristics of the state's response to public protest and dissent during the 1950s and 1960s to the extent that they inform discussion about state violence and its inextricable connection to political patronage. The study's historical scope extends to the 2002 peace process, which resulted in a suspension of direct hostilities between the state and Liberation Tigers

of Tamil Eelam (LTTE) but did not halt the disappearances and other abuses perpetrated both within and outside the context of the conflict.

In an attempt to deconstruct the pervasive effects of disappearance as a mechanism of terror, the second part of this study considers the experiences of affected families who embody the convergence of the political project and its socioóultural consequences for communities. Disappearances were highly effective in demobilising all forms of political opposition to the regimeô shown by the experience of these families whose own attempts to re-establish the socioólegal identity of the disappeared was exploited by the political elite leaving them socially ostracised within their own communities and without any effective remedy. By achieving two primary objectivesô rendering individuals permanently silent and neutralising social mobilisation against the stateô disappearance enabled the ruling elite to manipulate local grievances and tensions which led to greater violence in the permanent removal of local enemies and rivals while heightening mistrust.

Young rural men comprised the overwhelming majority of people who disappeared in Sri Lanka from 1971. These rural youth, with no stake in a political system that excluded them, a system that was nevertheless upheld within their own communities, formed the respective Marxist insurgencies and Tamil separatist movementô triggering violence between as well as within communities. The political elite perceived the countryø rural youth to be such a serious political threat to itself and the political establishment supporting its vested interests that it took drastic action. It devised an alternative -shadow stateø to secretly suppress the youth movements under the guise of a counter-insurgency operation and disassemble all forms of political opposition while subjugating the rural population under the

banner of national security and economic prosperity. While centralising political power and deliberately undermining the legislature and judiciary, the ruling elite's shadow state operated with impunity, targeting and eliminating rural youth considered a political threat and overpowering the rural majority. The United National Party (UNP)'s campaign of political violence conducted over 17 years of rule and recognised as the most violent in the country's history before the events of 2009 was justified in the name of state building but had the effect of state disintegration. The UNP's overall objective was to establish a one party state which would bring about national stability and rapid modernisation. But the coherence of this aim was undermined by its methods including the subjugation and disappearance of the country's rural youth, the displacement of ethnic Tamils in the north and east, and the total repression of regions under Janatha Vimukthi Peramuna or People's Liberation Front (JVP) and LTTE influence. The underlying nationalist ideology of the ruling elite of which political violence was an outward manifestation came into direct conflict with an alternate ethos represented by the country's rural youth who allegedly stood in the way of the country's future. In this sense, disappearance served a national security imperative to nation building.

The politicisation of Sri Lankan society⁶ fuelled by political violence, dependent on state resources and patronage and coupled with deep mistrust about the sources of violence⁷ created conditions whereby communities were effectively coerced by or became complicit with the regime's political project. Such coercion was made possible through interference in the public service recruitment process, politically driven decisions about the use of state funds, and the undermining of legislative and judicial independence. At the same time the democratic process was circumvented and control was

consolidated by referendum, media censorship and bans on opposition parties, public gatherings and trade unionism. Many Sri Lankans were forced into polarised political camps and became complicit in the political project of the ruling elite to avoid their own disappearance. Some believed the state propaganda that any measure (including disappearance) was necessary to deal with terrorism. In an environment in which everyone was seen potentially as an enemy, disappearance served as a control mechanism to produce a consensus based on fear. At the same time the disappearance of individuals became evidence of the threat of subversion and simultaneously normalised death as the price of political activism and opposition to the state. Indeed, the military defeat of the LTTE in 2009 did not result in an end to the 'white van phenomenon' the ubiquitous *modus operandi* for the abduction and disappearance of people across the country. The fact that disappearances continue to be regularly reported only confirms that the act has been far more than merely a counter-terrorist tactic but rather an institutionalised method of dealing with all forms of political opposition upon which labels such as 'terrorist', 'subversive', 'Tamil militant', 'criminal' are then imposed. Within this context of continuing terror conducted by the shadow state, official transitional justice mechanisms including prosecutions, truth commissions and reparations were strictly controlled and managed to serve political ends and confirm political divisions rather than provide a common path towards restorative justice, national unity and reconciliation.

The characteristics of political violence in Sri Lanka reflect the specific characteristics of election violence, which became an entrenched feature of Sri Lankan political life. People with a grievance generally have not directed their aggression at the politicians who have historically used state resources to reward their

own with jobs and other resources but rather at villagers and locals who were provided those jobs and resources (Höglund & Piyaarathne 2009:297-298). Similarly state and non-state groups, including the JVP and LTTE, directed their violence largely at civilians rather than enemy combatants. And even though families of the disappeared generally recognised that the state most likely carried out the disappearance of a loved one, they directed blame towards local tensions within their own communities. The illogical nature of the targeting of violence reflects how power was expressed and ordered through political hierarchies and patronage, affirming the socio-political division between the political elite and the rest.

The overall impression on the part of many families interviewed for this study is that the system exists to serve the narrow interests of the political elite who are untouchable. At the same time there is a tacit agreement between those wielding power across the political landscape that they have common vested interests to uphold. This sentiment was echoed by one interviewee, Mrs S, whose son disappeared in Jaffna in 1996. She said it was a big injustice that LTTE activists who denounced the movement were released by the army while *ōharm* has taken place to our sons [and we get no justice or recognition]ö (Mrs S, Jaffna District: Interview 2). Counter-insurgency served to centralise political power in the state, consolidating competition for access to resources, political office, and patronage. Consequently the state became intensely paternalistic and interventionist. Sri Lankan politics became transfixed with the resolution of who gets what (Uyangoda 1992:43). And paradoxically, therefore, the very institution upon which the majority of the population depended increasingly became the very source of its grievances. While Sri Lankan society became highly politicised, most of the population was excluded from political power structures on

which they depended. A paradigm of dependence and exclusion within a framework of violence served as a means of coercing and subjugating the population. Under this scheme, rural youth represented the greatest threat not only to the vested interests of the political elite but also to the preservation of the social conditions that sustained the urban middle class to which the rural majority aspired to become (Nesiah & Keenan 2004:11). Moreover, as the political elite harnessed state resources for its own vested interests while upholding a system of access based on patronage, everyone was vulnerable because he or she had something to lose and became complicit in the violence (Cohen 2001:155).

1.2 Beyond the human rights dimension

While disappearance is framed under the International Convention for the Protection of All Persons from Enforced Disappearance (the convention) as a serious abuse of human rights carried out by the state, its influence and power extend well beyond that of a human rights abuse. However, to date, research on disappearance particularly in the Sri Lankan context has been approached almost exclusively from a human rights and legal perspective as a crime against the person. The convention, to which Sri Lanka is not a signatory, defines a disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or persons/groups acting with the authorisation, support or acquiescence of the state. By definition, such detention is followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law (Article 2). The United Nations Working Group on Enforced or Involuntary Disappearance (UNWGEID) noted in 1983 that a reading of the Universal Declaration of Human Rights

and the International Covenants on Human Rights show that to a greater or lesser degree practically all basic human rights of a person [who suffers enforced or involuntary disappearance] are infringed (E/CN.4/1983/14:47). Recognition that disappearance entails a plethora of abuses against the person implies that the act might violate a range of socio-cultural and political norms. Also, the concept of state denial upon which disappearance is based sets this violation apart from other human rights abuses as relatives will remain silent in the hope that such action will keep the disappeared person alive. However, ambiguity regarding the socio-legal status of the disappeared person makes it impossible for families to secure pensions, purchase land, take out a loan, or even enrol children in school let alone seek justice, demand accountability and secure compensation. Such matters are made even more complicated when state officials question the very existence of the individual victim. Furthermore, the concept of disappearance as an ongoing crime so long as the fate or whereabouts of the disappeared person remains unknown indicates that its reach goes beyond the individual affecting not only the fundamental relationship between citizenry and state but also the very foundations on which societies are based and ordered – foundations such as safety, stability and trust. Perhaps more than any other violation the act of disappearance is not only directed at the individual but also their community with the purpose of totally rupturing and undermining social and cultural norms and replacing any sense of normality in everyday life with fear, insecurity and mistrust. While the concept of disappearance as an ongoing and therefore unresolved crime is inextricably linked to the ongoing and unresolved trauma experienced by the relatives of those disappeared, it is also directly associated with the ongoing impunity and untouchable status of those in power who resist efforts to establish the truth and justice for victims. Disappearances enable a state to turn the

world on its head, the normal into the abnormal and the extraordinary into the routine by providing a means to act against its own citizenry, which conceals the identity and motive of the perpetrators and victimises the victims. Non-violent institutions such as the courts otherwise responsible for safeguarding rights and protecting victims are complicit in the process, upholding the impunity of the perpetrator, and serving the interests of the ruling elite against the population. Within this context, concepts of human rights and their realisation in the traditional sense exist in the abstract (Coomaraswamy 1993b:155).

The impact of disappearance, as a socioópolitical phenomenon, assaults any sense of community, shared identity or trust and dismantles communities. Social cleavages based on class, caste, power and patronage are exploited by the act of disappearance, by simultaneously deepening such divisions and creating new grievances. The presence of dumped corpses in public places serves as both a reminder of the power and impunity of the regime as well as the costs of political activism. The absence of the disappeared body does likewise, but also perpetuates an endless psychosis of terror which can suspend individuals and their communities in a state of acquiescent silence for fear of inadvertently killing off their missing loved one or being abducted themselves. At the same time, disappearance assaults social and cultural norms in both application and consequence as funeral and mourning are permanently suspended, concepts of natural justice are totally quashed, the socioólegal status of surviving relatives remains ambiguous while social relations are distorted by mistrust and open to manipulation and exploitation. Normalcy of daily life is completely disrupted with culturally proscribed boundaries between public and private, victim and perpetrator, life and death eroded. Relatives of the disappeared as the nexus between the state and the disappeared are marked as both politically suspect and socially

polluting. A consensus of fear is produced as entire communities become complicit in a ritual of conspiracy against the victims to avoid their own disappearance. Inadvertently, their silence serves as a form of sanction in the denial of state terror and protection of those responsible for it. In the Sri Lankan experience, the families of the disappeared have become the polluted excuse with which the state is able to constantly remind the population of the price of political opposition.

To identify the reasons why disappearance became a central feature of state terror and to consider its implications for those immediately affected and for their communities, this study provides a comprehensive account of political violence in Sri Lanka and its aftermath. As a political history of the phenomenon of disappearance, it is the first study of its kind to establish the connection between the causes for disappearances, the means by which they were carried out and the social impact in the Sri Lankan context. It considers how disappearances on such a significant scale could take place under what appeared to be a functional democracy and considers the characteristics of the state which facilitated and concealed such abuses over decades. It also explores the consequences for families and communities, surveying and drawing on political, socio-cultural, legal and economic factors that contributed to and engendered disappearances. The central tenet of the thesis is that, the underlying intention behind disappearance is political competition which has served as an integral part of a political project directed at preserving the interests and power base of the country's political elite. This study reveals that a democratic system based on the rule of law was transformed through the imposition of legal and political measures that served the interests of the powerful elite intent on demobilising alternative politics and destroying the opposition regardless of the costs.

As democratic practices were curtailed and due process was politicised and dismantled, an alternative political apparatus or shadow state flourished. As an expression of the benefits of winning, disappearances served as a constant reminder of the untouchability of those in power while amplifying for political rivals the costs of political activism. As an integral part of a national project to demobilise collective politics by destroying all possible alternatives, disappearances were carried out to eliminate rivals and politicise prevailing divisions within communities to exclude, repress and target particular categories of society.

1.3 Transitional justice foregone

This study considers the experiences of families of the disappeared in relation to the state and their communities to establish an understanding of the impact of the political project at the societal level. It also considers the various transitional justice mechanisms in relation to disappearance including prosecutions, presidential commissions of inquiry into disappearances and reparations including compensation, as well as efforts to establish the truth and prevent further abuses as expressed by mothersø movements and disappearance organisations. In placing disappearance within the framework of a highly politicised and divided Sri Lankan society, this study determines that transitional justice mechanisms were systemically politicised to the point where they confirmed social divisions, widened mistrust, further polarised communities and victimised the victims. Such mechanisms merely served a political imperative to uphold the legitimacy of the ruling party, ensuring that neither unification nor political inclusion was achieved.

In the field of transitional justice, disappearance as a serious and ongoing violation against the individual and their families became a catalyst for local protest, international mobilisation and the creation of the convention. The introduction of human rights into international politics though these mechanisms made accountability for such crimes a condition of international respectability. However, in the Sri Lankan experience, human rights were manipulated as the commissions of inquiry into disappearance established by the ruling elite served a political rather than reconciliatory purpose. The commissions enabled the ruling elite to maintain a façade of accountability while tightly controlling the commissions' work, politicising their findings to delegitimise opponents and ignoring their recommendations for legislative and political reform.

Commissions of inquiry, which have become the state's preferred means of transitional justice discourse, have served as a forum to silence victims and ridicule opponents. Situated between state and non-state violence on the one hand, and the state and the disappeared on the other, the families of the disappeared have been positioned as guilty by the very fact of their victimhood. Further, any appeals for national reconciliation were politically motivated and designed to polarise Sri Lankan society by emphasising that aspirations such as the decentralisation of political power or separatism had to be totally abandoned as the prerequisite for reconciliation.

The theoretical approach of this thesis is inductive. It investigates the disappearance event and its aftermath through the experience of individual survivors in order to theorise the logic, aims and consequences of the practice. The event of disappearance and both institutional and societal responses including the failure of accountability as well as intimidation, silencing and ostracism provide

the empirical basis for developing a grounded theory on disappearance in Sri Lanka. By detailing the various legislative provisions that facilitated disappearance and its concealment including the emergence of a shadow state, the study builds a body of evidence to demonstrate that disappearances were carried out with the intention of producing impunity.

1.4 Scope and methodology

Studies on political violence in Sri Lanka usually mention disappearance but without providing insight into how or why disappearance became so widespread (Ponnambalam 1983; Chandraprema 1991; Wijesinha 1991; de Silva 1998; Gunaratna 2001; Dias 2003; Human Rights Watch 2008). Most studies rarely go beyond outlining the way the emergency powers provided impunity for the perpetrators and overlook the social impact of the phenomenon. The focus has largely rested on the legislative mechanics rather than the political intent behind the abuse. However this thesis, by recognising and contextualising disappearance as a counter-insurgency strategy deployed in response to the violence of the Marxist JVP and separatist LTTE, analyses the wider political landscape of which disappearance was an integral part. It contributes to a more comprehensive understanding of its impact on individuals, communities and their relationship with the state. However this study does not attempt a comparative analysis of disappearance in the Sri Lankan context with its practice in Latin America or elsewhere. It focuses specifically on the Sri Lankan experience to address the lacuna of the lack of comprehensive study of disappearance in that country which needed to be filled. By locating the study of disappearance in the experiences of the families of the disappeared who served as the nexus between the state, affected communities and

the disappeared individual, this study contributes to an understanding of the sociology of disappearance. It attempts to provide the fullest account of how and why the practice of disappearance became widespread in an otherwise apparently functional democracy together with its legacy on individuals, communities and democratic institutions.

The research methods applied in this study include 87 open and semi-structured interviews in eight districts across Sri Lanka with people whose relatives had disappeared over three decades. As the overwhelming majority of disappearances occurred in two specific contexts, the JVP insurgency centred in the southern, western and central provinces from 1987 to 1990 (commonly referred to as the south) and the conflict with the LTTE focused in the north and east from 1983 to 2002, interviews were conducted in four districts in the south, west and central provinces and four districts in the north and east provinces. The appendix provides an overview of the interviews. While women and men of all ages have been subject to disappearance, overwhelmingly the disappeared comprise young rural men. This fact is reflected in the interviews conducted for this study, which focuses on the disappearance of this demographic group.

Disappearances affected all communities across Sri Lanka including that of the Muslim community primarily located in the east. However, this study is focused on those that took place in Sinhalese and Tamil communities. The last national census in 1981 revealed that the Sinhalese comprised 74 percent of the then population of 14.8 million (which is now estimated at 21 million), Sri Lankan Tamils 13 percent and Muslims 7 per cent (ICG 2011:1). Sinhalese were concentrated largely in the southwest and central parts of the island while Tamils primarily occupied the north and east of the country and Muslims the

east. While impacting all ethnic groups, disappearances were almost exclusively carried out in rural communities where, according to a 2001 census, 80 percent of the Sri Lankan population resided.

There is no official estimate of the number of people who have disappeared in Sri Lanka since 1971. The reports of the Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons established by the People's Alliance government in 1994 serve as the official record of disappearances carried out from 1 June 1988. The four commissions established the disappearance of 23,087 persons. However, estimates provided by disappearance organisations including the Organisation of Parents and Family Members of the Disappeared (OPFMD) suggest that over 60,000 people disappeared between 1987 and 1991 alone (Kumarage 2005).

This study serves as a series of counter-narratives to that of the official version offered by the respective political parties and the elite of what happened during a period of political violence. While it deals with a specific period of 1971 to 2002, it challenges the simple ethnic conflict construction of violence, which remains the official position on the conflict with the LTTE, by recognising it in the contexts of the political elite and their manipulation of political constituencies, particularly middle class fear and anxiety. Given the fact that it was men who disappeared and women who were left to deal with the ramifications, these counter-narratives reflect a collective memory of a gendered crime. However, with a few key exceptions including within the country's leadership, Sri Lankan women have not been recognised in the country's history outside the symbolic as mothers in a master narrative of the nation (de Alwis 1995; de Mel 2001).

Rather than focus on some of the more well-known and therefore well documented cases of disappearance such as that of Richard de Zoya or the Embilipitiya disappearances, this study documents the experiences of people whose stories had yet to be documented or heard. Such stories, which remain ignored, undermined or overlooked in the anthology of political violence in Sri Lanka, are central to understanding both the impact of the violence and its aftermath. Interviews were conducted in 2004 and yet, the *modus operandi* for disappearances which continue to be reported has remained largely the same while the victims continue to be criminalised and demonised and their surviving relations socially ostracised. As an institutionalised form of repression which continues to be used against political opposition, disappearances are still carried out with impunity under the cover of anti-terrorist legislation and on the pretext of re-establishing law and order.

CHAPTER 2

Disappearances 1971

The first recorded cases of enforced disappearance in Sri Lanka took place in the context of an armed insurrection in 1971. In response to a JVP insurrection, the United Front (UF) coalition government imposed a state of emergency that facilitated disappearances and paved the way for the institutionalisation of political violence. Prolonged recourse to Emergency Regulations under which the police and security forces were granted wide powers of arrest and detention extended the power, reach and control of the state. This was to become a central feature of governance over the following decades. The JVP's 'one day revolution' was a reaction to patronage politics that served the interests of the urban political elite at the expense of the country's majority. However, rather than address the grievances that triggered the insurrection, the UF government used emergency powers and introduced the 1972 constitution to institutionalise patronage within the political system. By declaring Parliament the supreme repository of power rather than the law, the UF was able to concentrate power in the hands of the executive for the benefit of its own vested interests.

2.1 Nexus between state welfare, nationalisation and political patronage

The roots of political authoritarianism in Sri Lanka can be traced to a range of political and constitutional developments (Warnapala 1994:161). While the country gained full political independence from Britain in 1948 without bloodshed, the British transferred power into

the hands of the Western-educated, highly urbanised, high caste elite (Singer 1964:37 cited in Ponnambalam 1983:71). In short, the socio-economic class who most closely resembled the British in terms of values, attitudes and interests. This exclusive class ōsetō had, moreover, dominated Sri Lanka's political establishment before independence as restricted franchise until the mid-1930s had permitted only men of wealth and education to vote (de Silva 1993:4; Vijayalakshmi 2001:12). The ruling class was made up of two groups of bourgeoisie, the traditional bourgeoisie represented by the *Govigama* (cultivators) and other upper castes along with traditional land holders, and the new rich or colonial bourgeoisie largely comprising *Karāva* caste elites. This group built their wealth on newly created industries such as graphite mining and bolstered their prestige through a Western education ōan important attribute and determination of status (Roberts 1995:279). Historical rivalry and conflict between these two sets of elites over resources grew in intensity from the 1900s, exploding into open and violent attacks by the *Karāva* on the prestige, power and alleged caste superiority of the *Govigama*. However, this conflict had been temporarily put aside in favour of common vested interest in the economic continuity of British rule and the colonial patronage system on which it was based (Roberts 1995:291; Jayawardena 2000:299,316-7). Subsequent transfer of power was one of continuity of leadership between the last stage of colonial rule and the early stages of independence with the elite set to dominate Sri Lankan politics and political life (de Silva 1993:8-9; Ivan 1989:6). Rupesinghe argued that the post-colonial state was created by the colonial power ōas a supreme political and legal authority to manage and maintain the political economy of colonialismō (2000:19). No genuine cultural or socio-political transformation took place at the time of independence, therefore, as the ruling elite sought to maintain the socio-political and economic

status quo. Moreover, rather than forming the basis of a national movement for full independence, the bourgeoisie gained both power and privilege over the rest of the local population by using a patronage system based on the use of English with an English education as the primary means of social advancement. They had, therefore, a vested interest in the preservation of the colonial structure (Ponnambalam 1983:43-44).

In the post-colonial period, Sri Lanka's ruling class set about transforming some of its wealth into social and political capital (Jayawardena 2000:349). Initially part of the United National Party (UNP) established by the colonial bourgeoisie to form government at the time of independence, in 1951 the traditional bourgeoisie broke away and established the Sri Lanka Freedom Party (SLFP) in pursuit of its own class-based interests. When their conflict re-emerged following independence, it found common expression in a form of a populist nationalism or Sinhala-Buddhist nationalism that became the ruling ideology of both sets of bourgeoisie (Jayasundara-Smits 2011:83). The centralised political system that evolved led to the emergence of a 'dynastic democracy' whereby political power was recognised as the means through which class and clan interests could be advanced by a few competitive and highly powerful elite few (Jayasundara-Smits 2011:76).

While the elite committed themselves to the continuation of a colonial economic structure, the presence of a strong alternative political movement represented by the two Marxist parties restrained their ambitions. The 'popular, democratic political tradition' already established in the country represented by a politically active and unionised urban workforce effectively forced the hand of the ruling elite to divert a substantial proportion of government revenue into

welfare, health and education (Hettige 1999:301). Throughout the 1940s and 1950s, Sri Lankan governance was characterised by a welfare ideology (Kloos 1999) with 56 per cent of government revenue absorbed by the main welfare services of the state at independence (Peiris 1993:181). Such services and measures including colonisation schemes enhanced and extended the government's role over almost all basic aspects of life including food, health and education. The manner in which decisions were made about the allocation of resources and the identification of beneficiaries were of critical importance, therefore, to the lives of the majority. Conversely, in light of the importance of state subsidies and grants, securing control over such activities through the political process provided opportunity to wield considerable power (Peiris 1993:182). According to Ponnambalam, the economic policies of the UNP regime of 1947-1956 were directed towards promoting and securing the party's own vested interests and power using state control and English-language based patronage networks (1983:85). The use of state resources to solidify its power base became an entrenched characteristic of governance. It contributed to the high stakes involved for the public (which held a deeply rooted expectation of state assistance) creating a dynamic in which the majority became dependent on state resources while at the same time excluded from but complicit in the political process through which such resources were apportioned. This emerging dynamic found expression in public protest on the one hand and intolerance towards such protest by the state on the other. In 1953, when the masses came out to peacefully demonstrate against the abolition of the national rice subsidy and increased prices on essential goods and services, Prime Minister Dudley Senanayake deployed the army against them under a state of emergency, which he extended for more than 1000 days (Ponnambalam 1983:86; Vijayalakshmi 2001:27). The public

backlash to the abolition of the subsidy was so great that Mr Senanayake was forced to resign and the subsidy promptly restored. The existence of a significant alternative political movement represented by the two Marxist parties, the Lanka Samasamaja Party (LSSP) and Communist Party (CP) which enjoyed a large unionised labour support base prevented efforts by the UNP to adopt free market policies until 1977 when the UNP launched an extensive package of liberal economic policies (Hettige 1999:301). From 1953 to 1977, food policy was guided by electoral considerations as food subsidies became a deeply rooted public expectation (Peiris 1993b:209). At the same time, the state had demonstrated a total lack of proportionality in response to the protest, a reality that characterised governance from that time on (Wimal Fernando, *personal communication*).¹

The 1956 election won on the basis of the 'Sinhala only' language policy of the SLFP-led coalition brought communal identity to the fore where it remained. S.W.R.D. Bandaranaike's victory represented a rejection of Sri Lankan nationalism, recognising pluralism as a fundamental feature of the democratic political system and embracing Sinhala-Buddhist nationalism, which was 'fundamentally divisive in its impact on the country' because of its 'Sinhalese and Buddhist orientation' (de Silva 1993:11). Emphasis placed on a Sinhala-Buddhist rather than multi-ethnic polity was reinforced by the importance given to Buddhism above all other religions by the state (de Silva 1993:13). In the face of deteriorating economic conditions and heightened conflict over resource allocations, Buddhism was placed at the forefront of national affairs to legitimise a narrow self-

¹ Wimal Fernando established the Movement for the Defence of Democratic Rights in the 1980s and formed the Movement for Free and Fair Elections in the 1990s.

interested and discriminatory policy agenda and derive prestige for the regime (Warnapala 1994:8; Jayasundara-Smits 2011:81). Political power and language reform became the tools through which the self-proclaimed Sinhalese SLFP government of 1956 was able to change the terms on which ethnic groups competed for jobs in the government sector (Roberts 1994:260). Indeed, during its nine-year tenure (1956-1965), the SLFP played the race and religion card in pursuit of its own economic interests with Sinhalese-Buddhism confirmed as the dominant ideology of the ruling elite (Bastian 1999: 7). When Minister of Agriculture, Philip Gunawardena, then sought to introduce mildly radical agrarian reform legislation, 10 ministers had him expelled from the cabinet (Ponnambalam 1983:100). Considerable parliamentary majorities enjoyed by both parties at various times further entrenched a pervasive role for the government in all areas of economic, social or cultural activity (Wanasinghe 1994:61) and led to a situation whereby the state became highly antagonistic to minority and opposition opinion. State control became an end in itself – the Sinhalisation of the government service resulting from the implementation of the *Official Language Act No. 33 of 1956* (Sinhala only Act) provided the government with an opportunity to stack the public service with its own supporters, paving the way for the politicisation of the bureaucracy (de Silva 1993:19-20; Roberts 1994:260).

In the early 1960s, the SLFP government responded to a shortfall in foreign exchange by extending state control over many industries and continuing its nationalisation program by channelling an even wider range of consumer goods through government-sponsored cooperatives. Life insurance was made a state monopoly and the only local bank in the country was nationalised along with the distribution of petroleum and kerosene. Similarly the assets of oil companies operating in the

country were taken over by the state (de Silva 1981:535). In 1963 the traditional village headman system was replaced by the state-imposed *Grama Sevaka* (village level administrator) system. The *Grama Sevaka* functioned as the lowest level of state administration. Underlying this move was a desire by the SLFP to erode the support base of the UNP within the state bureaucracy by stacking it with its own supporters (de Silva 1993c:89). The politicisation of the public service and the manner in which recruitment, promotion, transfer and dismissal depended on political power led to the erosion of its independence, reaching a point in the 1980s when it was totally compromised and committed solely to serving the interests of the government of the day (de Silva 1993c:90; Presidential Commission on Youth 1990:2).

The UNP attempted to reverse the nationalisation program of the previous government when it returned to power in 1965. However, its reluctance to hand over control of key aspects of the economy led to few substantial reforms. The nationalisation program then returned in earnest under the 1970-elected SLFP government. The SLFP ruled for 16 of the 21 years between 1956 and 1977, and its nationalisation policies entrenched state dominance over all areas of social and economic life (Wanasinghe 1994:61). As a result, the electorate became increasingly dependent and expectant upon the state for services, goods and employment (Wimal Fernando, *personal communication*). Given the scarcity of resources, the political system and thus the political parties within it, became the primary means of access to and control over such resources. Thus, political affiliation became a key criterion for the distribution of state benefits, and access to political power became the principle means of obtaining wealth and controlling resources, controlled through the plethora of licences and permits managed by members of parliament (MPs). Securing the

patronage of powerful politicians became the primary means of securing state resources and services. The relationship that began to emerge between state and citizenry was one of exclusion from the political process, which served the interests of the political elite, and dependence on state resources managed by MPs. As the nationalisation of key industries strengthened state power and influence, new jobs became available as did greater opportunities for politicians and middle-persons to enjoy kickbacks (de Silva 1993:20-21). Indeed, according to de Silva, the successive increase in the voting population since 1960 can be explained not just by population growth but also by the emerging phenomena of the state through MPs becoming the primary source of employment in a society which already placed a high premium on state sector employment (de Silva 1993:20-21).

MPs evidently favoured their own supporters in the distribution of state resources, which predictably intensified antagonism among opposition parties and their supporters. Elections became a battleground between the two major parties and their supporters as an election win provided the means to capture political power and secure control over national resources and wealth but also to undermine enemies, ridicule rivals and secure revenge. As power shifted over the years between the two main parties and the elite families they represented, politics became both increasingly personal and violent (de Silva 1993:23). In a winner takes all system in which both major parties came to power with considerable majorities, negotiation was seen as demeaning, a form of unnecessary compromise while the election victory was an opportunity to humiliate opponents (Coomaraswamy 1993b:159). By the time of the 1971 insurrection, successive governments had used election victories to exact revenge on rivals and to reward supporters with employment and state

concessions, thereby securing support for future elections. Securing political power through patronage and election violence became accepted political practice. Thus, while patronage was a key determinant of power in Sri Lanka long before independence, it became increasingly entrenched from 1970 to the point where it began to undermine the democratic process (Wimal Fernando, *personal communication*).

2.2 Decline of parliamentary socialism and rise of revolutionary socialism

The leftist parties, including the Trotskyist *Lanka Sama Samaja Party* (LSSP) and CP, enjoyed considerable working class support and emerged as the most serious challenge to the UNP government in 1956 when the head of the LSSP, Dr NM Perera became the leader of the opposition. By the 1960 election, however, Sinhalese Buddhist populism represented by the *ōSinhala onlyö* Act and upheld by both major parties of the day effectively cut across class and caste differences within the Sinhalese community decimating the leftist parties at the polls. Indeed, the ethos of *ōSinhala onlyö* had permeated all aspects of Sri Lankan politics while sectionalist claims by religious and ethnic groups were labelled *ōcommunalistö* and subsequently denied legitimacy (Roberts 1994:251). In a context where any form of negotiation with *ōcommunalistsö* was seen as a weakness rather than strength, the multi-ethnic secular policies of the leftist parties were politically disadvantageous. The LSSP's adoption of *ōSinhala onlyö* as official policy in June 1964 for reasons of political expedience marked a political turning point after which no major party in Sinhalese-dominated regions upheld equal language and other rights of both ethnic Tamils and Sinhalese (de Silva 1993:15; Ponnambalam

1983:129). Compromising on the issue of language and injection of Sinhalese chauvinistic policies into their mandate to gain popularity with the country's working class actually had the opposite effect. They lost their multi-ethnic support base, political influence and relevance and left a representation gap in national politics for the country's working class. After 1964, generations of Tamil voters who had previously backed the leftist parties redirected their support to the Tamil-dominated Federal Party or withdrew from the democratic process and formed militant organisations in pursuit of a separate Tamil state (Roberts 1994:9-10; Bopage 2003).

The vacuum created by the demise of the 'traditional' left parties including the LSSP and CP and disillusionment with their inability to affect social reform was to be filled by the 'new' left JVP who mobilised in rural areas and among the school and university student population. Uyangoda observed that the demise of socialist political discourse coincided with or provided the opportunity for the rise of nationalist politics among both Sinhalese and Tamil youth (Uyangoda 1992:47). The formation of the JVP coincided, moreover, with the re-emergence of the parliamentary democracy versus revolution debate within the left movement (Hoole 2001:9). Given the failure of the democratic system to initiate equitable change and improvement in the quality of life for the majority and with the traditional leftist parties split, divided and compromised, there was growing acceptance amongst Sinhalese youth of the idea that violence was a legitimate means through which genuine social reform could be achieved (Wimal Fernando, *personal communication*).

2.3 Unemployment and youth alienation

The economic policies of both the 1965 UNP and 1970 SLFP-led governments failed to make any significant impact on the unemployment crisis which emerged as the key socio-economic issue of the country in the 1960s (de Silva 1981:537). The unemployment crisis was fuelled by a dramatic rise in the country's population. From 1946 to 1960, the number of people between 15 and 65 years of age (who comprised the working population) increased from 5.25 million to over 7.5 million. A July 1972 International Labour Organisation report stated that 64 per cent of the country's 750,000 unemployed were between 19 and 25 years of age (cited in Vijayalakshmi 2001:25). At the same time, the unemployed workforce amounted to one-twentieth of the country's population (de Silva 1981:538). Thus, a vast proportion of the country's population was young and unemployed. Up to 42 per cent of the total population was under 15 years of age, many of whom would have made up the country's 65 per cent living below the poverty line (Ponnambalam 1983:153; Selvaratnam cited in Alles 1976:237).

Increasing youth unemployment in turn placed additional pressure on the university system, as secondary school leavers sought university entrance. University of Ceylon enrolments rose from 2,000 in 1950 to 12,000 in 1970 (Peiris 1993b:198). Countrywide, students seeking university admission rose from 5,377 in 1960 to 30,445 in 1970 and yet the number of university places only increased marginally from 1,812 to 3,471 over the same period (Ponnambalam 1983:175). Similarly, with free education and the *swabhasha* (local languages) policy of the 1950s, secondary school enrolment rose from 65,000 in 1950 to 225,000 in 1960 (Ponnambalam 1983:175). Because the country's education system and wider society encouraged a university

education and white-collar employment at the expense of vocational alternatives, considerably more school students aspired to a university education than the system could handle. There was, moreover, a heavy expectation on the state to provide educational opportunities and subsequent employment given its dominance in all aspects of the economic, social and political life. However, few of the 250,000 students who graduated from the country's schools and universities each year were able to obtain meaningful employment (Nadesan 1988). University students graduated with skills that were unmatched by the requirements of the economy. They found the manual jobs that were available in fishing, plantations, mining and agriculture totally unappealing, expecting instead the state to provide public sector employment (Bopage 2003; de Silva 1981:538; Hettige 1999:305). The UNP's social welfare and agricultural policies were out of touch with the expectations of the young generation which sought white-collar employment (Gunatilleke, Tiruchelvam & Coomaraswamy cited in Marino 1989:11). Moreover, the government's 'green revolution' of 1967 which primarily focused on rice and potato cultivation as well as other state agricultural production schemes were mismanaged and misdirected, providing opportunities for village middle-men to get rich and thereby exacerbating the gap between the rural rich and poor and ultimately contributing to the massive swing against the UNP at the 1970 election (Vijayalakshmi 2001:8).

At the time of the 1971 insurrection, a substantial proportion of the country's youth found themselves educated but without the means to access employment or the patronage system it provided for. When the newly-elected United Front-coalition government of 1970 not only failed to deliver on its promise of social reform and employment within three months of coming to power but also openly appointed its own loyalists and supporters to scarce positions, it further alienated

rural graduates and students. An increasingly disenfranchised youth concluded that the UF had behaved no better than the previous UNP regime. They took the view that state power under the self-declared socialist government of Mrs Bandaranaike and those before her simply served as a means by which the ruling elite protected and promoted its own vested interests. In stark contrast, many Sinhalese youths were attracted to the JVP because its five lectures sought to address the daily problems specifically facing rural communities.² The JVP asserted that the social oppression of villagers and inequalities that rural youths faced resulted from government malpractice and that armed revolution was the only means of liberation from such constraints (Gunaratna 2001:62). The fact that the traditional left parties saw the movement as a threat to their support base, legitimacy and power, merely made the JVP more attractive to rural youths.

2.4 Growing intolerance of the state

In 1947 the State Council passed the repressive *Public Security Ordinance No. 25, 1947* (PSO) in response to a massive but peaceful demonstration of the country's working class against colonial rule and transfer of power to the local elite (Ponnambalam 1983:65-66; Hoole 2001:15). Under the PSO, emergency laws could be enacted in pursuance of powers granted by the ordinance. The demonstration shook the establishment which relied on the security forces and repressive legislation to stifle the public unrest. Thereafter, the political elite systematically set about destroying the solidarity

² While the five lectures were developed and adapted over time, in the late 1980s, the five lectures included 'The crisis of the capitalist system', 'There is no solution to the old leftist and capitalist systems', 'How can we solve this crisis', 'The history of the JVP' and 'The path to socialism in Sri Lanka' (Gunaratna 2001:62).

between the Sinhalese, Tamil and Indian Tamil plantation working classes that threatened the elite's control over political power and state resources. This was achieved by the enactment of the *Ceylon Citizenship Act No. 18 of 1948* and the *Indian and Pakistani Residents (Citizenship) Act of 1949* which denied citizenship to Indian Tamils coupled with the *Ceylon Parliamentary Elections Amendment Act No. 48 of 1949* which disenfranchised them (Ponnambalam 1983; Kloos 1999; Hoole 2001; Warnapala 1994).

The imposition of the PSO in 1947 marked a key moment in Sri Lankan history, given that rule by emergency legislation was to become a feature of every administration thereafter. The combination of Emergency Regulations (ERs) and military force was the preferred means of dealing with dissent rather than addressing the structural inequalities and grievances that had given rise to it. While the imposition of ERs was often justified as a response to hostilities such as the anti-Tamil violence in 1956, the regulations were also misused by the state to enforce its own will on the Sri Lankan public and in particular the Tamil community (Hoole 2001:15). A contradictory trend began to emerge. When concessions to the Tamil community were considered by the government of the day, anti-Tamil riots instigated by the political opposition followed. Thereafter, a state of emergency would be imposed leading to the suppression of citizens who advocated for Tamil rights. In 1958, under a state of emergency imposed in the wake of anti-Tamil riots, 150 Tamils including 10 Federal Party MPs were arrested while 10,000 Tamils displaced by the riots were shipped off to Jaffna (Ponnambalam 1983:113; Roberts 1994:331). In 1961 the Federal Party launched a peaceful disobedience campaign against the SLFP government which had declared Sinhala to be the national language of administration, paralysing government administration in Tamil areas (Ponnambalam

1983:121-2). Mrs Bandaranaike's government responded by imposing a state of emergency, as previous governments had done in the wake of peaceful action, and deploying the army to occupy the north and east provinces. According to Ponnambalam, the repression that followed in the north and east was of such severity that an official inquiry was established to probe into the actions of the security forces (1983:122). From 1953, successive governments were increasingly reliant upon emergency rule which was imposed on at least eight separate occasions and for increasingly extended periods before the 1971 JVP insurgency (Tamilnation 15 November 2007). The UNP government of 1965-1970 imposed emergency regulations and thereby suspended normal law for three-and-a-half years of a five-year term (Halliday 1971:8).

2.5 “Che Guevara’s” revolution

In 1965 Rohana Wijeweera formed the JVP which mainly attracted educated and unemployed rural youth intent on becoming revolutionaries modelled on Che Guevara. The *Che Kalliya* (Che Guaras) as they were known enjoyed a membership of 100,000 by early 1971 comprising university staff, students, workers and *bhikkus* (Buddhist monks) most of whom were Sinhalese Buddhists and between 16 and 25 years of age (Gunasekara 1988:24; Gunaratna 2001:9; Alles 1976:247). While the JVP kept its activities out of the public eye, thousands of youths are believed to have attended JVP lectures. Some were simply curious, but others were genuinely interested, providing assistance to the movement and its membership.

The JVP initially endorsed the UF-coalition campaign at the 1970 election. However, in May it withdrew its support for the new government and by August the same year, launched a campaign of

intimidation against the UF, threatening violent action unless state policies were reformed (Alles 1976:64). In response, the Secretary of the Ministry of Defence and External Affairs, Mr Ratnavale stated on 9 August that the JVP should be eradicated given that its main objective was to overthrow the government (Alles 1976:207). Four days later, he publicly declared that the JVP was 'the government's public enemy No.1 and one which had to be relentlessly pursued and eradicated'—an exercise for which, Mr Ratnavale noted, the government was considering amending the law (cited in Gunaratna 2001:86). By late August, JVP members and supporters across the 19 districts where the movement was active were assaulted by the police with thousands arrested over the following months (Gunaratna 2001:86). According to official records, some 5,067 persons were held in detention in 18 police divisions before the JVP insurgency of 5 April 1971, including 263 held in Jaffna (Gunaratna 2001:105).

On 13 March 1971 the JVP leader, Rohana Wijeweera, was arrested in Amparai District. The JVP was proscribed, ERs imposed and security forces deployed with the intention of 'wiping out' the movement (Alles 1976:106; Gunaratna 2001:105; Nadesan 1988:20). With hundreds of members including its leader in detention, the JVP launched its revolution on 5 April, attacking 93 police stations around the country (Criminal Justice Commission 1976:409). The state's response was brutal. Deployed with extraordinary powers under the ERs and a mandate to crush the insurgency, the state security forces and police abducted, tortured and extrajudicially executed suspected JVP members (JVPers) while also engaging in helicopter bombing and mortar shell attacks. Despite the fact that most police stations were re-captured in less than a week, the state's response to the 'one-day revolution' was not only totally disproportionate to the risk posed

by the JVP but was to amount to years of repression (Alles 1976:145; Gunaratna 2001:99).

2.6 Emergency Regulations and disappearances

The ERs imposed in March 1971 to deal with the JVP threat provided the police and security forces with wide powers of arrest and detention without the normal checks on their actions or safeguards for those held by them. The elements contained in the 1971 ERs had the effect of placing both the detainee and the officer responsible for their arrest and detention outside the reach of judicial review.

The 1971 ERs gave power to police to arrest without a warrant and detain on suspicion for up to 15 days at any location designated by the Inspector General of Police (IGP) without having to bring the detainee before a magistrate. The police could, therefore, take someone off the streets, detain them *incommunicado* in police custody without charge or trial and not report that detention to any authority or the family of the detainee for 15 days (Civil Rights Movement of Sri Lanka (CRM) 1979:16). As the use and threat of violence and other forms of harassment were already well-established police practice (CRM 1979; Nadesan 1988), the ERs gave the police considerable scope to brutalise and abuse those within their custody. Indeed, allegations of police brutality by those detained under the ERs were still being made up to four years after the insurrection (Amnesty International (AI) 1975:50). At the end of 15 days, detainees were supposed to be automatically transferred to prison under a mandatory remand order issued by a magistrate, at which time prison authorities would notify their next-of-kin (Permanent Secretary to the Minister of Justice cited in AI 1975:2). In many instances, however, detainees were never

brought before a magistrate at the time the warrant of committal to prison was signed (AI 1975:4).

The ERs further facilitated the violation of human rights by state officials by the admissibility of statements made in police custody as evidence in court. The deliberate removal of the safeguard under normal law against forced confessions and the implied accompanying abuses used to extract them effectively gave the police licence to detain arbitrarily and torture. As police brutality was already an undeniable feature of our society (CRM 1979:17), the ERs were deliberately drafted to provide a framework for the prolonged detention of suspects without accompanying legal safeguards including the writ of *habeas corpus* which was suspended. In addition, the ERs removed the power of the courts to grant bail, which could only be granted by order of the executive (CRM 1979:91). By removing magisterial powers in favour of political power, the function of magistrates was eroded to that of a rubber-stamp on the police application (CRM 1979:91&96). Finally, the lawfulness of the detention order issued by the Defence Minister could not be challenged in court. In this manner, decisions about arrest, detention and bail were placed beyond the normal controls of the courts and put in the hands of the police and executive.

In addition to the power to arrest on suspicion without a warrant and effectively hold an individual *incommunicado* on political rather than legal grounds, the ERs gave the Assistant Superintendent or Officer-in-Charge or any personnel authorised by them the authority to dispose of bodies (Nadesan 1988:25; Bopage 2003). Bodies could be disposed of without adhering to any requirements under normal law about independent inquest, or the issuing of a death certificate or any other record of death. There was also no requirement under the ERs to

retain a record of the identity of the person who died (Nadesan 1988:25; CRM 1979:16-17). In fact, when somebody died in state custody, the only legal requirement under the ERs was to dispose of the body. These provisions placed the life and death of a detainee in the hands of a politicised police force which was renowned for its violence during periods of normalcy (Police Commission 1970; Nadesan 1988:2).

As early as 1946, a Police Commission established for a 12-month period to inquire into and report on the police service and identify methods to improve public confidence in the force held that the system of promotions and transfers within the police force lent itself to 'favouritism, nepotism and corruption' (Police Commission 1946). By 1970, a second Police Commission highlighted the level of political interference in appointments and promotions and the obligations upon police officers to their political patrons (Police Commission 1970). Furthermore, immediately before the imposition of the ERs and as part of the government's preparations to crackdown on the JVP, the UF had withdrawn commissions from a number of military officers, replacing them with officials with the same political affiliations as those of the ruling parties (de Silva 1993e:356). The combined effect of the ERs, politicisation of the key positions with the police and security forces and government rhetoric regarding the need to do what was necessary to protect the nation from the JVP gave official sanction to the torture, disappearance, killing and disposal of suspected JVPers while enabling the authorities responsible to legally conceal their actions.

As bail and other matters pertaining to criminal justice process became political rather than legal decisions, opportunities arose for those with personal vendettas to make accusations against their

enemies and have them detained on the basis of a complaint alone (CRM 1979:89; Obeysekera cited in Alles 1976:247). Regulation 60 of the ERs effectively encouraged such a practice as it permitted as evidence a statement made by one person against another. This led to scores of arrests following the insurgency ðon the sole basis of denunciation of personal enemiesö (AI 1971:3-4). In this way, the imposition of a state of emergency and the extraordinary powers bestowed on the police and security forces provided the perfect cover for dealing with the government's political and personal rivalries from the highest to lowest levels of power.

Under the guise of fighting an insurgency, the ruling alliance targeted members of opposition parties and other opponents (Marino 1989:14). Thousands of suspected JVPers and other opponents of the ruling parties disappeared following arrest (Lord Avebury cited in Gunasekara 1988). Deployed as a counter-insurgency tactic, disappearance was facilitated by the combined effect of the abandonment of normal safeguards regarding arrest, detention and constraints on police action, the extension of police powers to dispose of dead bodies without inquest and the suspension of the writ of *habeas corpus*. The government's pronouncements about the need to crush the JVP served as a signal to state officials that they would enjoy impunity for their actions. Reports emerged of captured and surrendered JVPers being executed, either immediately after skirmishes or following interrogation, torture and forced confession (Nadesan 1988:28-31). Youths were hanged, beaten to death and shot, and their bodies were often publicly displayed (Gunaratna 2001:106). According to Nadesan, the police justified shooting such persons ðon the ground that there was no way of keeping them in prison and that there were no facilities for transporting them or for accommodating themö (Nadesan 1988:29). The same argument evidently applied in

relation to those who disappeared in state custody. In one reported case of state abuse, police officers arrested scores of youths and took them to the Dadalla cemetery where they were summarily executed after being forced to dig their own graves (Gunaratna 2001:100). Given the strategy of repression employed by the government which permitted the disposal of dead bodies without any form of official documentation, the actual figure of those who disappeared and were killed in state custody will never be known. At the same time, no independent inquiry has been conducted into state violations in the context of the 1971 insurgency. For these reasons, the actual scale of the abuses is unknown. Official records acknowledge that 41 civilians and approximately 1,000 JVPers and law enforcement personnel (including 63 security officials) were killed during the insurrection (Kearney 1977:517-518). However, other estimates of casualties range from 8,000 to 10,000 (Gunaratna 2001:105; Criminal Justice Commission 1976:435).

Without a complete official record, estimates of the number of people who disappeared vary. According to Lord Avebury, òthousandsö disappeared in 1971 while approximately 15,000 were held in detention without trial (cited in Gunasekara 1988). Gunasekara noted that tens of thousands were killed or disappeared (Gunasekara 1988:6). Amnesty International stated that while approximately 18,000 people were held in detention, òan unknown numberö disappeared (37/08/86). Kumarage argued that 17,000 persons disappeared during the 1971 insurgency (2005:116).

Along with those who were killed or disappeared, thousands more were held in prolonged pre-trial detention in deplorable conditions at considerable risk of disappearing in state custody. Statistics on detention, like that of disappearances, varies. In December 1971,

according to statements in Parliament, approximately 16,000 persons were in custody (CRM 1979). In January 1972, however, 7,703 were reportedly released from detention followed by the release of 13,500 in mid-1973 leaving an estimated 4,500 in detention at the time (Gunaratna 2001:119). By January 1975, reports suggest that 2,000 persons were still held in detention and having not gone before the Criminal Justice Commission (CJC), faced the distinct possibility of indefinite detention (AI 1975: ii & 14). As the ERs provided for detention for extended periods without charge or trial, most suspected JVPers did not know what charges would, if ever, be brought against them. Even if detainees were informed of their charges, they were denied access to legal representation (AI 1971:6). Under such circumstances where the writ of *habeas corpus* was suspended, families of people forcibly abducted by the security forces or simply missing during the insurrection had no legal recourse available to them (Gunaratna 2001:106). Because the government did not establish a central registry or official body to assist families of missing people trace their whereabouts (AI 1971:7), it was extremely difficult if not impossible to locate individuals taken into state custody let alone to discover their fate. The task for civil society organisations such as the Civil Rights Movement of Sri Lanka of establishing whether powers provided to the police and security forces under the ERs had been utilised in an extrajudicial manner to torture, kill and dispose of bodies to cover up such offences was made, therefore, equally impossible. In fact, the ERs effectively quashed any public complaint against police abuse as the spread of false allegations was made an offence. Any person who made a complaint against a police officer faced the risk of arrest for making a false allegation. To cover up such an arrest, the police could resort to killing the complainant and disposing of their body without the knowledge of any other party (Nadesan 1988:32).

Under mounting pressure from the international human rights community to deal expeditiously and humanely with the substantial pre-trial population of JVP suspects, the government enacted the *Criminal Justice Commission Act of 1972*. It was one of the most controversial pieces of legislation introduced by the UF government because it compromised the internationally accepted standards of criminal justice and long-standing legal procedures, amounting to a 'distortion of the criminal trial' (de Silva 1981:559; AI 1975:8-11). Established outside of common law, the Act recognised as admissible hearsay evidence and accomplice evidence without corroboration, and gave greater weight to statements made in police custody (many of which were extracted under torture) than those made before the CJC established under the act. Although it argued that some complaints of police abuse were 'exaggerated', the CJC recognised that excesses on the part of the police had taken place. At the same time, however, the commission accepted every statement made by suspects in detention as an 'authentic record' of their involvement in the insurrection and JVP movement (CJC 1976:110). While the CJC had sole discretion to decide what procedure to undertake during the trial, those found guilty of the charges against them were handed a sentence with no right to appeal.

The CJC charged 2,919 people with criminal offences of whom 2,322 were released on suspended sentences (AI 1975:ii&6). Forty-one JVP leaders and suspected architects of the insurgency (only one of whom actually participated in the events of 5 April) were charged with treason and conspiracy to overthrow the government (CJC 1976:2; Alexander cited in Marino 1989:12). Their trial lasted over two and a half years and key JVP leaders including the supreme leader, Rohana Wijeweera were found guilty of attempting to overthrow the government and sentenced to life imprisonment (Gunasekara

1988:7&36). However, central questions about the charge of conspiracy to overthrow the state were deliberately precluded from the CJC's inquiry as it was debarred from concluding that no insurrection took place. In essence, therefore, a central tenet of the prosecutor's case was proven before the trial that a conspiracy occurred. Moreover, state officials only appeared before the CJC to assist with inquiries rather than to account for their actions. Rather than serve the cause of justice, the entire process served political interests (AI 1975:9-11).

There is very little analysis of the 1971 disappearances because of the lack of information about the insurrection and deliberate efforts on the part of the state to conceal its activities. ERs imposed in September 1971 prohibited reporting on evidence in criminal prosecutions against police and armed force personnel. According to Amnesty International, this regulation was introduced specifically to prevent the public from knowing the facts about a murder case in which soldiers had killed a famous beauty queen (AI 1971:3). Evidently, this is the only legal case that came to light. It may represent the totality of legal and disciplinary sanctions imposed on state officials for extrajudicial activities carried out under the ERs. Therefore, fundamental questions about disappearances carried out during this period remain. At their core is the reason behind the UF-government's compulsion to draft and impose ERs which facilitated resort to extrajudicial acts including disappearances against what was a poorly equipped and trained group, let alone those arrested on mere suspicion of attending JVP lectures. The disproportionate violence imposed by state forces demonstrated the extent to which the UF parties recognised the JVP, or more critically the ever-growing ranks of discontented unemployed educated youth of which the JVP represented only a small proportion, as a real threat to their power and vested interests. At the same time,

the ideologies espoused by the JVP regarding social oppression, and the need to destroy the social order and bring down the political system on which it was based represented the greatest threat to the legitimacy and power base of the socialist SLFP and its Marxist coalition partners. The UF decided on an extraordinarily violent counter-insurgency approach to destroy the JVP and its youth base and thereby eradicate the possibility of an alternative national anti-state political movement (Halliday 1971:18).

The insurgency was a struggle of mostly poor, unemployed rural students without the establishment's old boys club elite English school political connections against the ruling urban elite and those who benefited from its patronage (Obeyesekere 1974:379-380). In this sense, the 'one-day revolution' was an expression of a generational war focused on eradicating a colonial status and order that had remained largely untouched (de Silva 1981:541; Chandraprema 1991:31). It also gave expression to historical class tensions over resources and power traditionally associated with the two bourgeoisie elites (the traditional bourgeoisie and the colonial or new rich bourgeoisie).

A survey conducted by Alexander of 11,400 suspected JVPers found that many were the sons of rural Sinhalese-speaking *mudalali* (traders, capitalists) who reacted to the dominance of the English-speaking and Westernised *pelantiya* (landlords) in rural communities and their complete control of goods and services provided by the central government (cited in Marino 1989:13). Nationalisation and state monopolies over goods and services marginalised the socio-economic power of the *mudalali* in rural areas making them dependent upon licences and political relationships with the *pelantiya*. Therefore, at the local level, the insurgency was a rebellion against *pelantiya*

control over the local power structure in a highly centralised economy. At the national level, it was a violent reaction of marginalised rural youth to the political and economic domination of the urban English-speaking ruling elite (Jiggins 1979:126). It was an attack on the elites who made up the political and bureaucratic leadership of the country irrespective of their political or ideological commitments (Obeyesekere 1974:378). As the insurgency was a reaction to the political system upheld within local villages, violence was directed between as well as within communities. JVPers attacked police stations which symbolised the system ruled by the local *pelantiya* and national political elite while *pelantiya* members of both government and opposition parties fully supported the counter-insurgency by accompanying the army on patrol, drawing on local knowledge to provide names of suspected JVPers to the police and engaging in reprisals (Alexander cited in Marino 1989:14).

By calling into question the efficacy of the social reforms introduced by the self-proclaimed socialist SLFP, the JVP and its youth support base threatened the very basis on which the SLFP-led coalition had come to power, not to mention the political structure on which its power rested. The JVP, therefore, had to be totally eliminated. Given its growing popularity among rural communities where support for the two major parties was weakest, it was the potential for popular revolution and alternative politics that the JVP represented which had to be repressed. Indeed, two years after the insurrection, the IGP as the highest police authority in the country, admitted that the police force had been used as the strong arm of colonial power to 'keep down the aspirations of the people of our country' (cited in CRM 1979:78).

While the army and police had no experience in armed combat let alone guerrilla warfare when they were deployed by the state to quell

public protests, they had had exposure to counter-insurgency tactics. Before the imposition of the ERs, the army's head, Major-General Attygalle, had undergone military training in Yugoslavia where Marshal Tito operated as a dictator of a police state and imposed harsh repressive measures against dissent (Muttukumarn 1987 cited in Marino 1989:11; Lees 1997:54; Rizman 2009: 46-47). Similarly, senior army officers had been sent to Malaysia to undergo training with General Sir Gerald Templer whose counter-insurgency tactics against the Malaysian communist insurgents had included the public display of corpses (Muttukumarn 1987 cited in Marino 1989:11). In 1970 special agents from Israel's intelligence organisations, Mossad and Shin Bet, assisted the Sri Lankan security forces in undercover and intelligence operations. Keeny Meeny Services, an off-shore British security firm, made available former Special Air Service (SAS) soldiers to train Sri Lanka's Special Task Force, an elite police force which later used disappearance as a primary counter-insurgency tactic in the east against the LTTE (Hoole *et al.*, 1990:196). Indeed, during the 1971 insurgency, the military coordinator of Kegalle District, Lieutenant Corporal Cyril Ranatunga, was reported as stating that: 'We have learnt too many lessons from Vietnam and Malaysia. We must destroy them completely' (International Herald Tribune 20 April 1971 cited in Bopage 2003). Ranatunga went on to be appointed as a diplomat.

In the aftermath of the insurrection, no assistance was provided to the families of detainees or compensation given to families of those extrajudicially executed or who disappeared in state custody (AI 1971:7). While many such families were left destitute with the imprisonment or death of a primary breadwinner, surviving relatives including the children of suspected JVPers were stigmatised and marginalised. The effect of such discrimination and appalling

disregard was to last for generations and ultimately led to a second JVP insurgency. For ex-detainees, many of whom were never tried on the charges against them, discrimination by the state coupled with social alienation made life extremely difficult. Directives were issued to state departments and public corporations not to employ anyone released from detention unless they had been previously in their employment. Cabinet also barred from teaching at least 183 teachers who had been arrested on suspicion of involvement in the insurrection and subsequently released for re-employment (AI 1975:20-21). In other cases, ex-detainees were ordered to report regularly to local police stations while restrictions were placed on their freedom of movement and political activity. In one case, an ex-detainee who had been acquitted by the CJC was barred from participating in political activity, entering university and leaving the vicinity of his home without police permission (AI 1975:20-21). Many detainees released on suspended sentences had the guilty verdict noted in their criminal records which only further impeded their ability to secure employment (AI 1975:6). Yet, many had pleaded guilty before the CJC in order to secure their own release when it became known that suspended sentences resulted in immediate discharge.

Such deliberate acts of discrimination designed to exclude ex-detainees from public life forced scores of JVP suspects and activists into a state of permanent unemployment and socio-political marginalisation (AI 1971:9). Indeed, many of those who surrendered to the police had only attended one or two of the JVP's lectures at most and were advised by their families to surrender rather than face arrest or had been informed upon by others and although subsequently forced to the socio-economic periphery had nothing to do with the insurgency itself (Obeyesekere 1974:368; Perera 2001:198). The government freely admitted that it had detained many

people who had no connection whatsoever with the violence of the insurgency. This was made all the more probable given that the public was urged to provide information on suspects for which monetary rewards were offered by the government. This further alienated the rural youth from democratic governance and was ultimately a tragedy of the government's own making (AI 1971:2; Obeyesekere 1974:368). The impact on the involved youths was profound as Jayatunge observed. Even 38 years after the event, some JVPers were still experiencing the post-traumatic reactions including intrusions, avoidance and emotional numbing (Jayatunge 2010).

2.7 Emergency Regulations and the 1972 Constitution

The regulation empowering police to dispose of dead bodies was withdrawn in May 1972. However, the state of emergency imposed in 1971 to deal with the JVP remained in place for the rest of the SLFP-led government's rule and provided the means through which the party retained total power (Gunasekara 1988:6). As the threat of the insurrection had passed, the prolonged imposition of the ERs was used for purposes well outside the context that had justified their original imposition. Whereas historically ERs were imposed to suppress freedom of expression and popular protest, the SLFP government went a step further by artificially extending the life of existing elected bodies under a state of emergency and thereby undermining the democratic process. Under the ERs, the life of at least 15 village councils, five urban councils, four town councils and two municipal councils were extended by decree rather than democratic election and were then stacked with state appointees (CRM 1979:73). Emergency powers were used to curtail all forms of democratic practice including freedom of expression, the right to bargain collectively, the right to demonstrate peacefully and the right to impartial information from an

independent media. Before September 1972 when the regulation was withdrawn, public meetings and processions, which served as one of the few avenues for free expression of dissent, were not allowed to take place without government approval. Furthermore, the Prime Minister was empowered to proscribe any organisation and publishing institutions had to submit material to the state for clearance before publication (AI 1971:2-3).

Regulation 21 provided for the death penalty for threatening a Member of Parliament, Regulation 26 prohibited the distribution or display of posters and hand bills, and Regulation 30 made the possession of 'subversive literature' an offence (AI 1971:3). The 'Competent Authority' of the state controlled religious gatherings, which meant that the text of any sermon that was to be delivered by a Buddhist priest over the radio had to be submitted to the authority in advance (AI 1971:3). Trade union activity was severely curtailed by Regulation 38 which permitted the automatic sacking of employees in major industries who were absent for more than a day. Boards of Directors and managers of public corporations were given 'absolute discretion' to suspend any worker on suspicion of any activity prejudicial to the interests of or dangerous to the security of the government (AI 1971:3; CRM 1979:10). According to the CRM, suspension from employment could not be challenged before any court or tribunal and suspended workers were not entitled to their salary during the period of suspension unless the Board of Directors decided to pay half (CRM 1979:10). In this manner, the space for protest and public opposition to UF rule became extremely narrow and the monthly extensions of ERs served as an effective means of dealing with dissent (de Silva 1981:546).

In this process of political encroachment during the SLFP's rule, the 1972 constitution marked the low point as Parliament was made supreme in the name of the people. The constitution effectively reversed the supremacy of law under the 1947 Soulbury Constitution (Hoole 2001:11). Under the new constitution, state power was vested in the National State Assembly without meaningful constitutional or institutional checks on executive power (de Silva 1993b:46). Thus, Parliament became the supreme body with almost unfettered powers including sole discretion over the promulgation and repeal of ERs (Coomaraswamy 1993:131-133). The 1972 constitution was introduced, therefore, as an instrument of the party in power rather than as the fundamental law of the country (Coomaraswamy 1993:130). Despite the inclusion of a fundamental rights chapter in the new constitution, article 18(2) allowed for the limitation of such rights by broad and largely undefined principles including that of state policy, national economy and public safety. This had the effect that there was no single case of fundamental rights decided by the courts during the six-year long tenure of the 1972 constitution (Coomaraswamy 1993:134). The new constitution affirmed the Sinhala language as the state language at the expense of minority languages, made the state the protectorate of the Buddhist religion at the expense of secularism and provided Buddhism the foremost place at the expense of minority religions. The constitution not only reflected the dominance of the ideology of Sinhalese-Buddhism in the Sri Lankan polity but also marked the starting point of a new phase in communal antagonism in the relationship between the ethnic Sinhalese and Tamil communities (de Silva 1981:550). The Tamil community viewed the new constitution as discriminatory, confirming their second-class status as Tamil speakers and majority Hindus (de Silva 1981:550). Thus, while the 1972 constitution was seen as a victory to the Sinhalese-Buddhist community in elevating the status

of both the Sinhala language and Buddhist religion and was for these reasons unopposed by the opposition UNP, its enactment simultaneously heralded the beginning of the Tamil separatist struggle and served as the turning point in Sinhala-Tamil relations (Coomaraswamy 1993:132).

The 1972 constitution politicised the bureaucracy by removing the powers of appointment vested in the Public Service Commission, as well as removing the checks and safeguards protecting appointments and promotions of public servants from political influence. It did this by placing appointments, promotions and disciplinary action of public servants directly under the purview of cabinet or boards appointed by cabinet (Presidential Commission on Youth 1990:5; de Silva 1993c:89). Political patronage became not only institutionalised within the bureaucracy but was legitimised by the 1972 constitution and was a fundamental component of the political culture. Predictably enough, appointments based on political affiliations and personal connections cultivated the conditions for corruption to flourish. Thus, the concept of an independent civil service was obliterated as the entire administrative structure of the country was brought under cabinet, reducing the public service to a biased instrument of the elite existing only to serve executive demand (Coomaraswamy 1993:133-134). At the same time, as power was centralised in the hands of cabinet, the judiciary was undervalued and increasingly seen as the protector of the vested interests of the elite from social reform. Thus, the separation of powers (legislature, executive and judiciary) was abolished. The constitution placed executive action and parliamentary bills outside the reach, scrutiny and control of the judiciary while cabinet was empowered to appoint judges and other state officials with a former SLFP MP appointed as a Supreme Court judge almost immediately (Coomaraswamy 1993:134; Ponnambalam 1983:164).

Thereafter, all judges and judicial officers, government employees and even lawyers in private practices were required to take an oath to uphold the constitution (Ponnambalam 1983:167 &180). At the same time, the *Interpretation Ordinance of 1972* severely weakened the power of the courts to hear appeals against *mala fide* (in bad faith) administrative decisions – thus removing a meaningful restraint upon the misuse of administrative power for political purposes by the government against its opponents – (de Silva 1981:546).

Upon the enactment of the 1972 constitution and complementary legislation, the government used the machinery of state and political control of administrative regulations to intimidate political opponents and reward its own supporters (de Silva 1981:546-547). At the same time, in response to increasing pressure to provide employment opportunities particularly for the country's unemployed youth, the UF established a number of public corporations across a range of sectors and stacked them from the top to bottom with its own, an initiative which not only established a state monopoly in key industries but also extended state control over a substantial proportion of the economy. Similarly, within their electorates, disbursement of state benefits gave MPs tremendous power and influence over issues including land, housing, electricity, water and employment where they were able to consolidate their own support base by favouring their supporters.

Bribery and other forms of corruption flourished and became an integral feature of the vetting process in regard to both politicians and the bureaucracy (de Silva 1993c:90-91). At the same time, politics at all levels became extremely personal and acrimonious given the high stakes involved. As politics affected every aspect of life, society became extremely politicised rather than politically engaged with the issues of national importance. The vote was inextricably linked with

party patronage rather than policy. The need to establish and maintain political connections at a personal and professional level encouraged voter turn-out at elections on the one hand and the political alignment of public institutions, associations and bodies to whatever national leadership was in power on the other (Coomaraswamy 1993:157b; de Silva 1993c:93-94). The scope to engage in community-based politically neutral activities and associations became extremely narrow. The institutionalisation of political patronage across every facet of life marginalised both the supporters of opposing political parties and the entire Tamil community and was a key contributing factor to the political instability and violence of the following decades. Furthermore, while elections would otherwise provide an opportunity for the politically marginalised to effect a change of government, the UF used the 1972 constitution and its two-thirds majority in Parliament to extend its term of office by two years to May 1977. By exploiting the political process, the UF had systematically denied Sri Lankans the opportunity to use the peaceful democratic process to express their views on the government of the day. At the same time, additional restrictions were placed on the media with some independent newspapers closed and legislation introduced to provide the state with licence to distort news with impunity (CRM 1979:58). Protests held by the UNP and other parties against government action were met with violence and intimidation from police and army. In 1974 such tactics failed to stop a UNP campaign of protests against media censorship leading the UF to re-impose emergency regulations in June under which UNP meetings were banned for a year (de Silva 1993b:48).

In September 1975 the LSSP was dismissed from the government and launched a series of trade union strikes in retaliation. Given the falling standard of living, many pro-government trade unions joined the

strikes. By early 1977 the CP had also withdrawn from the government. Faced with ongoing strikes that were violently repressed coupled with growing agitation in Parliament, the Prime Minister announced that elections would take place in July 1977. It would be the first election with no electoral pact between the SLFP, LSSP and CP against the UNP since March 1960. The fact that these three parties were now to compete for votes contributed in no small measure to their decimation at the 1977 poll and the monopoly on power enjoyed by the newly elected UNP allowed President Jayewardene to pursue a form of personal rule branded by the rise of the 'shadow state'.

The 1971 JVP insurgency was characterised by two dynamics which informed political violence for the following decades. First, the insurgency was a violent reaction to centralised patronage politics and election violence, which had become entrenched political practice and undermined the moral authority of the state. Second, the insurgency provided the ruling elite with an opportunity to destroy the JVP while crushing the potential for an alternative youth-based national political movement to emerge. Disappearance as a counter-insurgency strategy served the purpose of concealing this wider political project of silencing disaffected youth and immobilising a wider support base. Thereafter the threat of non-state violence was used as a pretext by successive governments to crackdown on parliamentary opposition parties and all forms of dissent from within the community.

CHAPTER 3

Institutionalisation of political violence

The first decade of the 17 years of UNP rule was characterised by the institutionalisation of political violence which fuelled social radicalisation and culminated in an explosion of non-state violence. During this period, the UNP established an alternative political apparatus under which terror was unleashed to destroy legal and democratic political opposition. While maintaining an appearance of a democratic and functional state, the political elite's alternative apparatus or 'shadow state' existed outside the normal legal framework to extend a system of patronage and power. A radical program of economic liberalism that coincided with the centralisation of political power enabled the UNP to abolish the welfare system and establish new lines of patronage which largely excluded the rural poor. Dismantling of the democratic process and political violence enabled the UNP to discipline, coerce and exclude anyone perceived as a threat to its economic liberalisation agenda. However, by ultimately widening the gap between the affluent political elite and the rest, the UNP's policy agenda caused widespread social instability and perpetuated the radicalisation of educated Sinhalese and Tamil youths denied opportunities of social mobility and to express their grievances through the democratic process.

This chapter details elements, laws and policies, which, when considered in isolation, violated, deviated from or undermined a democratic, legal or political norm and when used in combination, set the conditions for an apparatus of terror or 'shadow state' which

operated behind the façade of a democracy.³ Many of these laws were put in place before the LTTE and JVP amounted to a threat to national security. Under this new political framework, of which key aspects have remained in place under successive governments, all traditional forms of legal and political recourse which would normally apply were rendered totally ineffectual. Ironically, however, in its efforts to institute total power, the UNP's program inadvertently created the political space and social justification for militant resistance.

3.1 Supremacy of the Executive President over the legislature and judiciary

In February 1978 a new constitution was promulgated, establishing a presidential system of governance under which the centre of power shifted to an Executive President whose powers were almost untouchable and virtually dictatorial (Sieghart 1984:7; Warnapala 1994:162; Coomaraswamy 1993:136; de Silva 1981:559). Immune from legal proceedings both in his official and private capacity while holding office, President JR Jayewardene became both head of state and cabinet with powers to appoint and dismiss ministers and deputy ministers, the Attorney-General and all public officials under the constitution (Hyndman 1985:81).

Given the considerable parliamentary majority enjoyed by the UNP, such powers provided the distinct possibility that Parliament would

³ William Reno's definition of the 'shadow state' in the context of post-colonial Africa is informative. This form of personal rule is characterised by control over the state to 'write laws and manipulate regulations to reward loyal political allies' while maintaining a façade of a functional state to enable, among other things, receipt of foreign aid and military assistance (2003:3-4).

serve as the President's rubber stamp (Warnapala 1994:162; Wijesinha 1991:26-27). Indeed, the objective of the 1978 constitution was to provide the President with what President Jayewardene termed as power 'not subject to the whims and fancies of an elected legislature' (Jayewardene cited in Dissanayake 2002). By-elections were abolished under the new constitution with any member of the same party being able to fill a post rendered vacant (Wijesinha 1991:33). In this manner, the government circumvented the democratic process and undermined the principle that democratically elected representatives should act according to their conscience and on behalf of their constituents given that any seat left vacant when an MP resigned or was expelled would be filled by a (President-endorsed) nominee (CRM 1979:129).

By making the Executive Presidency supreme, the 1978 constitution undermined the independence of the judiciary and curtailed its powers. It granted the President the power to appoint and reappoint the Chief Justice and judges to the Supreme Court, Court of Appeal and High Courts (Wijesinha 1991:32; Hyndman 1985:81). Under Article 163, all judges ceased to hold office when the new constitution was promulgated and almost immediately, the UNP moved to stack the judiciary by removing 13 judges and rapidly promoting their replacements ahead of more experienced judges (CRM 1979:132; Wijesinha 1991:32). Furthermore, by requiring judges to take an oath to uphold and defend the constitution, the UNP placed the question of the constitution's legality outside judicial review (Ponnambalam 1993:198). Having politicised the judiciary, the UNP also limited the power of the courts to provide checks on executive action as presidential decisions including amendments to the ERs were imposed without judicial review.

At every stage, the judiciary was intimidated by executive authority (Pinto-Jayawardena 2010:32). Any challenge by the judiciary to state-sponsored human rights abuses or the legal framework in which they took place would have amounted to challenging government policy and the basis on which the legitimacy of the state rested (Fernando 2010). Moreover, during its tenure, the UNP government directly defied the judiciary by ignoring its rulings, promoted officials who had been convicted of violating fundamental rights, and subjected judges and high ranking officials to indignities which affect the honour and prestige of office (Presidential Commission on Youth 1990:2). By November 1982 the Chief Justice stated that executive action had eroded the position of the Chief Justice and judges of the Supreme Court to the point whereby they were unable to act as the bulwark of justice for the country (Ponnambalam 1983:167).

The promulgation of the 1978 constitution coincided with the implementation of draconian anti-terrorist legislation and recourse to almost continuous imposition of ERs which further consolidated political power in the President. ERs were in force nationwide from 1971 to 1977, reimposed in late 1978 and applied almost continuously to 2001 (Weerakoon 1994:39; Coomaraswamy 1993:133; Tamilnation 15 November 2007; Asian Tribune 2011; Coomaraswamy & de los Reyes 2004:272). When laws were enacted as an ER, the normal legislative process was waived and the President became, in effect, the legislator in place of Parliament (Weliamuna 2002:13). The role of Parliament to debate and pass laws and the role of the judiciary as a safeguard against executive action were eroded (Coomaraswamy 1993:133). The President had the power, without needing parliamentary approval, to introduce regulations authorising any action deemed necessary or expedient in the interests of public security, the preservation of public order and the suppression of

mutiny, riot or civil commotions, or for the maintenance of supplies and services essential to the life of the community, including the detention of personsö (Ordinance, sec. 5). The UNP and later administrations used this provision to impose a diverse range of regulations, many of which had nothing to do with national security.

3.2 Suspension of rights and the powers and immunities of the security forces

Although it recognised human rights, the 1978 constitution also provided for wide restrictions to those rights in the interests of national security, public order, the protection of public health and morality, and other matters (CRM 1979:126) with the effect that the limitations on rights provisions were given the same prominence and level of constitutional protection as the rights themselves (Coomaraswamy 1993b:149). Even non-derogable rights (that is, rights that cannot be suspended even in a state of emergency, as set out in the International Covenant on Civil and Political Rights) such as freedom from torture could be limited in the name of the ògeneral welfare of a democratic societyö (cited in Coomaraswamy 1993b:149). Indeed, because they could be suspended by the ERs, fundamental rights guaranteed under the constitution were severely restricted for prolonged periods. The combined effect of such provisions and repeated government declarations of the need to wipe out terrorism was a general acceptance that excesses on the part of the security forces were unavoidable, and even acceptable, to preserve national security, regardless of the context in which they were carried out. At the same time, with power being centralised in the hands of an Executive President immune from prosecutorial action and the scope for state violence widened, the judiciary's ability to provide the checks

and balances on the use of force were deliberately weakened to the point where the judiciary could provide only a marginal role in the protection of civil liberties. The Executive President was at liberty to pursue whatever objective and policies he thinks fit (Fernando 2010: 25).

The pervasiveness of ERs further weakened the judiciary's ability to provide safeguards in relation to detention practices and conditions given that indefinite detention could take place without reference to the courts and additional regulations could be promulgated under the ERs in secret (CRM 1979:111). The ERs often operated in unison with the *Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 10 of 1982* (PTA) introduced in 1979 and made permanent law in 1982, despite the term 'temporary' within its title. The PTA violated international standards pertaining to arrest and detention procedures by effectively placing the detainee and the arresting authority outside the reach of the courts. Under the PTA, any person involved in any unlawful activity, or even suspected of connection with it, could be detained for a successive period of three months and up to a maximum of 18 months at the discretion of the minister and at a location and in conditions determined by the minister without the need to bring the detainee before a magistrate.

When the PTA first came into force in July 1979, a state of emergency was declared in Tamil areas under the Public Security Ordinance. Thereafter, the government sent an army battalion under the command of the President's nephew, Brigadier Weeratunge, to Jaffna to wipe out the terrorists by the end of the year (Ponnambalam 1983:10; Hoole *et al.*, 1990:26). Within the course of a month, 12 Tamil youth disappeared after arrest. The bodies of six were later recovered, of which four had been mutilated and dumped for public display

(Ponnambalam 1983:10, 203; Hoole *et al.*, 1990:26; Sieghart 1984:51). Thereafter a pattern of arbitrary arrest and detention began to evolve in which torture was used systematically (AI 1980 cited in Ponnambalam 1983:203). By 1984, despite the fact that a Parliamentary Select Committee had recommended in July 1982 further investigation into the disappearance of six of the youths documented by the International Commission of Jurists, no action had been taken with regard to the disappearances and killings of the Tamil youth (Sieghart 1984:81). Instead, one of the police officers named in the inquest into the death of one of the six was promoted (Nissan 1996:16). Indeed, promotion of state officials responsible for or implicated in the violation of human rights became a hallmark of the UNP administration, along with payment of compensation, court costs and fines imposed on such individuals by the courts (Pinto-Jayawardena 2007).

The 1979 incidents were the first reported cases of disappearance in the context of Tamil militancy in the north and east. While at this stage such incidents were isolated, within five years, disappearance would be an integral component of a counter-insurgent strategy against Tamil militants in the north and east provinces. The PTA effectively facilitated disappearance, providing the security forces wide powers to arrest without a warrant and without any obligation to inform relatives of the arrest or place of detention. Moreover, because detainees could be held at any location determined by the relevant minister, without charge or judicial review, or access to a lawyer or relatives, they were effectively placed outside the reach of normal legal processes (Sieghart 1984:8; Ponnambalam 1983:9). The PTA further permitted police officers to remove people from prison for interrogation without judicial oversight, and confessions extracted by the police under such circumstances were admissible in evidence.

Upon release, anyone previously held under the PTA could be subject to a range of restrictions by the relevant minister (Nissan 1996:16). Once the ERs were introduced in July 1979, police could dispose of the bodies of people who had died in custody without any official procedure or notification of any authority about their identity or location of their burial. Together, the ERs and PTA allowed authorities to arbitrarily arrest, deprive liberty, place individuals outside the protection of the rule of law and dispose of the bodies without revealing their fate or whereabouts. When considered in isolation, each action constituted directly or through its interpretation, a violation of human rights under normal law. When committed in combination by politicised personnel, such a series of actions could constitute an act of disappearance under the International Convention for the Protection of All Persons from Enforced Disappearance as detailed in chapter 1. Indeed, the pattern of disappearance that emerged in the mid-1980s was consistent with such actions and while the regulation permitting the disposal of dead bodies was revoked shortly after introduction in July 1979, during its short life, a number of disappearances and custodial deaths were reported (CRM 1979b).

The establishment of an alternative political apparatus or shadow state was strengthened by the existence of a politicised police force whereby officers took orders directly from politicians. The extension of the life of Parliament in 1972 and 1982 by referendum rather than election gave elected MPs an additional six-year term without having to lobby their constituents and further centralised political power in the hands of an elite few. While appointments and promotions were subject to political interference in the 1960s (Police Commission 1970), the respective referenda led to the institutionalisation of political influence which was an integral part of police investigations, appointments and promotions (Police Committee 1995 Part V:2).

Indeed, the politicisation of the police force enabled politicians to subvert the police service in the name of law and order under the guise of political and vested interests. A politicised police force could also be drawn on to serve individual politicians' interests including that of death squads. At the same time, the Executive President was provided constitutional power to appoint the heads of the armed forces and all other public officers. In February 1985, moreover, the President used his constitutional powers to assign himself the functions of a number of ministries including Defence, Higher Education, State Plantations and Power and Energy (Hansard 20 February 1985 cited in Hyndman 1985:81). The country effectively came under the control of a single individual who was, during his term of office, totally immune from prosecution.

Compounding the granting of extraordinary powers to (politicised) security and police personnel, indemnity legislation was introduced which established a culture of impunity. The *Indemnity Act, No.20 of 1982* provided immunity from legal proceedings for violations that took place in the course of law enforcement activities by the security forces, MPs, civil servants and anyone operating alongside them. The legislation provided that no legal proceedings, whether criminal or civil, could be instituted for an act done or purported to have been done by a Minister, Deputy Minister, member of the security forces or any public servants 'whether legal or otherwise' for the purpose of restoring law and order from 1 August to 31 August 1977 (Pinto-Jayawardena 2010:25). Resort to indemnity legislation contributed to arbitrary violent behaviour on the part of the security forces and further undermined the power of the judiciary (Kloos 1999). The violence of 1977, for which the indemnity was imposed, had taken place in the context of a parliamentary election and broke out immediately after the UNP had been declared the winner. While over

5,600 complaints of election violence were reported against UNP supporters for attacks directed at SLFP supporters, the newly established UNP government initially suspended law and order, providing scope for accumulated resentment to be unleashed before finally imposing a state of emergency some days later (de Silva 1993b:56; Warnapala 1994:168; Gunasekara 1988:7). In 1988, the *Indemnity Act, No. 60 of 1988* was introduced to extend the period of immunity from 31 August 1977 to 16 December 1988 to cover the July 1983 anti-Tamil pogrom and lead up to the 1988 presidential elections. Such legislation provided not only a guarantee of protection from prosecution for past abuses but also served as a signal to state officials that they operated above the law and had the political backing and licence to engage in extrajudicial measures to preserve the government's vested interests. The legislation was introduced at a time when regulations permitting the disposal of dead bodies without inquest remained in force. Moreover, given the extent to which government officials were involved in the orchestration and implementation of the July 1983 pogrom including prominent UNP MPs, the government recognised the necessity for such legislation to protect its own from prosecution. The fact that no single conviction was made under the PTA from 1978 to 1981 demonstrates the extent to which the indemnity provision was relied upon and the arbitrary manner in which the PTA was applied (Leary 1981:50). The ERs and PTA allowed practices including arrest without a warrant, failure to provide identification and to inform families of those arrested of the location of detention, and use of plain clothes as well as vehicles without number plates during arrests to disguise the arresting authority from detainees and their families. Such measures became synonymous with disappearances under the UNP and the People's Alliance regime that followed it. Furthermore, despite the likelihood that state officials would use their considerable and unchecked powers to abuse and

abduct individuals within their custody, impunity was provided to security force personnel under Article 26 of the PTA which stated: "No suit, prosecution or other proceedings, civil or criminal, shall lie against any officer or person for any act or thing done in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under the Act. Such legislation facilitated and effectively justified human rights abuses by the armed forces while enabling the ruling party to subvert the rule of law for its own political advantage.

3.3 Curtailment of freedom of expression

In response to growing support for autonomy within the Tamil community which discriminatory government policies inadvertently fuelled, the UNP took the decision early in its rule that the "Tamil problem" could be resolved by a low-risk military solution rather than high-risk and potentially longer-term political engagement and compromise. The introduction of the PTA provided the means for that policy to be realised. Described as the "most draconian law ever to enter the statute book of Sri Lanka", the PTA enabled the government to ban any party or group that advocated but didn't actually engage in violence (Ponnambalam 1983:9; CRM 1979:118). Proscription could be imposed on any group and any protest against the ban (for example, by requesting a hearing) amounted to engaging in an activity connected with or related to the proscribed organisation, and was therefore an offence. The intention behind the PTA was to provide ruling party MPs with the means to detain suspected Tamil militants unconditionally (Ponnambalam 1983:9). However, the legislation was later used more widely to undermine the democratic process by proscribing three leftist parties including the JVP and to detain any suspected opponents of UNP rule.

Other legislation providing the executive with greater powers than the judiciary included the *Criminal Procedure (Special Provisions) Act, No. 15 of 1978*. It was introduced along with the PTA and imposed compulsory prison sentences and restricted bail rights. According to the CRM, the legislation was a clear attempt on the part of the state to interfere with the exercise of freedom of expression as any form of discontent or disaffection with the government was grounds for arrest (CRM 1979:121). The legislative measures introduced in 1979 were a clear affront to civil and political rights and demonstrated the state's intent to protect itself against the people rather than provide protection to the population against excesses by the state. Indeed, such legal remedies were imposed to instil fear and silence dissent under the guise of law and order (CRM 1979b). Whereas previously, democratic norms were abandoned in isolation and for a specific period on the grounds of national security and terrorism, under the PTA and related legislation, such a departure became itself the norm and any voiced discontent with government policies could be interpreted as anti-state and therefore a threat to national security.

Provisions denying the right to engage in peaceful assembly, contained in the 1978 constitution and complementary legislation were designed to quash demands for Tamil separatism and any other potential source of dissent including the trade union movement (Coomaraswamy 1993b:152-3). While the courts upheld the right to association as a fundamental right, the trade union of the ruling party dominated working class politics. Independent and opposition-sponsored trade unions were increasingly undermined by the prevalence of the UNP's union and supremacy of its patronage networks. In 1979, the *Essential Public Service Act* was introduced to provide the government with 'sweeping powers' to outlaw trade union activity in the state sector which cemented the position of the

UNP union (de Silva & Wriggins 1994 cited in Dunham & Jayasuriya 2001:6). Membership and patronage of the UNP's union, the *Jatika Sevaka Sangamaya* (JSS), became an important determinant for employment and promotion (Bastian 1987:175). Efforts by the opposition party trade unions to challenge state authority (given their inability to voice opposition to the government in Parliament) led to a series of strikes which prompted the UNP to dismiss hundreds of public sector employees who had taken part. In response to one of the largest strikes held in July 1980 opposing rising inflation and failure on the part of the government to substantially increase public sector salaries since 1978, a state of emergency was declared and the army mobilised (Wijesinha 1991:43). The UNP deployed the JSS, which was progressively used for political thuggery and came under the direct authority of the extreme Sinhala-Buddhist nationalist and MP, Cyril Mathew. Because the JSS kept services operating the strike collapsed. However, more than 40,000 employees were subsequently dismissed and the trade union movement never recovered (Moore 1990:364). While the JSS became synonymous with political violence in the lead up to and during the 1983 pogrom (Obeyesekere 1984b cited in Spencer 1990:95), the involvement of Mathew ensured that complaints to the police were almost always totally ineffective (Hyndman 1985:193).

Other independent civil bodies came under direct government control. UNP supporters infiltrated the Press Council so that by 1978 it was staffed by government nominees. In universities, a dramatic rise in complaints of infringement of academic freedom by way of interdiction, transfer of academics and administrative staff and the arbitrary suspension of students reflected the UNP's encroachment into the academic environment (CRM 1979:140-1). From 1982, state-sponsored thugs disrupted and attacked meetings by opposition parties

and religious groups with greater frequency, in an environment in which organised violence became a feature of life (Hyndman 1985:99). Thus, violence by politically-sponsored thugs including the JSS was increasingly relied on to persistently disrupt or break up peaceful demonstrations, meetings and strikes.

3.4 Circumvention of the democratic process

The consolidation of centralised power made possible under the 1978 constitution not only perpetuated a growing chasm between the political order and politicised youth but also represented a total rejection of demands for the devolution of power which might otherwise have helped address common grievances (Bastian 1999:15; Uyangoda 1992:44). The 1978 constitution destroyed any last remaining hope that the country's power structure could be opened up and systems of governance restructured in favour of decentralised and democratic power. Moreover, as the 1978 constitution was an instrument of the ruling party like that of its 1972 predecessor, a series of amendments to it began which 'circumvented the democratic process and amounted to a process of delegitimisation' (Coomaraswamy 1993:143-144). Each amendment was designed to strengthen the political position of the UNP by undermining the relative power of opponents.

The first amendment to the 1978 constitution enacted on 16 October 1979 put in place legal provisions which enabled the ruling party to deprive the Leader of the Opposition and former Prime Minister of her civic liberties for seven years, effectively neutralising the opposition (Coomaraswamy 1993:143-144). Given that the SLFP was already in a weak position having only retained eight seats at the 1977 election, the effect of the amendment crippled the party and strengthened the

relative position of the UNP (de Silva 1993b:56). The second amendment gave members of the SLFP the right to join the government while denying reciprocal rights to government MPs to join the SLFP opposition (Wijesinha 1991:35). The third amendment introduced in 1982 enabled the President to seek re-election for a second six-year term only four years into his first term (Sieghart 1984:8). Given the weakened position of the judiciary from sustained political interference, when the UNP flouted the electoral process and substituted the general election with a referendum, the Supreme Court upheld the government's decision (Pinto-Jayawardena 2007). Following the presidential elections, the ruling party enacted a fourth amendment and used its parliamentary majority to hold a referendum under a state of emergency to extend the life of Parliament for an extra six years thereby overriding the need for parliamentary elections otherwise due in August 1983 (Wijesinha 1991:26-27; Vijayalakshmi 2001:149; Sieghart 1984:8). President Jayewardene claimed that the referendum was necessary to ensure that the undesirable leftist parties including the 'Naxalite' SLFP (a term used pejoratively to refer to militant Communist groups) did not enter Parliament (Wijesinha 1991:61-2). At the time of the parliamentary referendum, stringent censorship was already in place under the ERs which provided for the pre-censorship of material before publication and banning of publications (CRM 1983:27). Many newspapers, radio broadcasting and the country's two television channels all operated under the control of the state regardless of the emergency laws (de Silva 1993b:56). Before the referendum, moreover, Jayewardene held that any UNP MP unable to ensure a win in their constituencies would lose their posts leading many of them to deploy all means available to ensure victory. UNP supporters were given free licence to intimidate those opposed to the referendum (Wijesinha 1991:65-66). After the referendum Jayewardene demanded undated letters of resignation

from all UNP MPs with a view to dating and dispatching them as and when required (Wijesinha 1991:34), providing further confirmation of the total lack of separation of powers between the executive and legislature.

The referendum, which was beset by widespread malpractice, election violence and the intimidation of political opponents, secured for the UNP its two-thirds majority in Parliament (Gunasekara 1988:7-8; Bastian 1999:15). The JVP's leader, Rohana Wijeweera, challenged the results in court but was forced a year later to go underground as the JVP was proscribed and the case dismissed.

The extension of Parliament using a rigged referendum effectively brought the legitimacy of the entire election process into question (Presidential Commission on Youth 1990:2). Public confidence in the electoral process was totally shattered and the manner in which the referendum was won eroded the credibility of the party in power and its mandate to govern (de Silva 1993b:58). Because the referendum, as the only avenue available for the non-violent transfer of power, was severely undermined and as key institutions including the judiciary and legislature were seen to be subject to political influence, the argument that the only viable means of change was the violent overthrow of the state gained legitimacy or at least sympathy (Presidential Commission on Youth 1990:xvii). Indeed, a growing number of the country's youth now believed that political power had to be taken by force as political parties themselves had resorted to unwarranted methods to retain political power (Presidential Commission on Youth 1990:xvii). While the rules and norms of electoral politics had effectively been re-written to suit the party in power, there was an upsurge in organised violence in the shadow of the state, posing an additional threat to democratic politics in the

country (Spencer 1990:11). The 1982 parliamentary referendum, like that which extended the term of office of the previous UF administration in 1972, was a key event triggering a rise in extra-parliamentary unrest and violence in the south in the late 1980s. It also demonstrated to the Tamil community how a referendum could be used to deny concessions to ethnic minorities (Coomaraswamy 1993:141).

3.5 State responsibility to protect and the Buddha *Sasana*

The 1978 constitution drew on a tradition of Sinhalese monarchical society whereby kings were advised by the *Sangha* (Buddhist clergy) directing the state to protect and foster the Buddha *Sasana* (Buddha's teachings). The status accorded to Buddhism in the 1972 constitution and upheld in the 1978 constitution implied that the state had a special role in relation to both the religion and its clergy. Politicians and military leaders publicly secured the blessing of the clergy before elections and military campaigns, a ritual which symbolically represented a form of spiritual justification for their actions. At the same time, such rituals gave the clergy a legitimate role in politics as the custodians of the Buddhist religion and thus the Sinhala-Buddhist nation. Sacred Buddhist space became the domain of ruling party politicians and the military hierarchy as both sought symbolic acceptance as defenders of the Buddhist nation and thus popular acceptance as the righteous leaders and moral crusaders of the country. Army regiments began to name themselves after ancient Sinhalese kings famous for having defeated (Tamil) invaders (Bastian 1999:12). By allowing the military hierarchy to take up an increasingly active public role in events including Buddhist festivals,

the intention of the government was to establish an understanding that their actions (extrajudicial or otherwise) were instituted for the greater Sinhala-Buddhist cause and unquestionably honourable. Anyone who did question them was thereby rendered as politically and morally suspect. The military's growing presence in public life also reflected the government's dependence on state violence to repress and control the wider community. Finally, the strong association between the military and Buddhism indicated that the forces had undergone an almost complete process of Sinhalisation with 90 per cent of all armed personnel ethnic Sinhalese (Bastian 1999:13).

The 1978 constitution upheld religious rights but made them conditional on not being in conflict with the secular objectives of the state and populist Buddhism the two becoming largely indistinguishable (Warnapala 1994:8). The 1978 constitution did however contain three elements which were an attempt to meet Tamil grievances. Firstly, special status was provided to Tamil as a national language (even though Sinhala remained the sole official language). Secondly, the distinction between citizens by descent and registration was removed thereby providing the same fundamental rights to the latter, including the right to participate in local government elections (de Silva 1981:560). Thirdly, the new system of proportional representation introduced with the constitution was seen as an assurance that minority parties would have a greater voice in national politics. Moreover, the strengthened fundamental rights provisions within the constitution gave minority communities some hope that their rights would be safeguarded (Bastian 1999:15). This hope was further strengthened by the fact that the Supreme Court was given jurisdiction over alleged violations. However, such provisions were to be systematically undermined by the extensive powers granted to the security forces in the north and east, coupled with the prolonged

suspension of a number of constitutional safeguards against rights abuses by way of extraordinary provisions in the wake of growing Tamil militancy (Nissan 1998).

3.6 Open economy based on a righteous society

To complement the UNP's legislative and constitutional program to centralise power and provide for a political apparatus free from the constraints of normal legal process and democratic practices, a series of social and economic reforms were introduced. These had the effect of solidifying the UNP's support base at the expense of the country's poor and marginalised groups. The economic policies of the 1977 UNP government are represented by its two key slogans: *nidahas arthikaya* (open economy) and *dharmista samajaya* (righteous society). While deliberately drawing on the Sinhala-Buddhist notion of a 'righteous society', trade liberalisation was for the UNP the means by which a just, affluent and open society would be achieved. By adopting religion and, by extension, Sinhala ethnicity as the cultural symbols underpinning its economic vision, the UNP promoted the idea that its policies were ideologically driven and would bring about dignity and economic stability for the Sinhalese majority (Rogers 1987:583). The UNP argued that the constitutional changes imposed would perpetuate UNP rule and the security of foreign investment, which were both in the 'nation's long-run material interest' (Moore 1990:268). In reality, the constitutional and legislative reforms implemented to centralise power and circumvent the democratic process ensured that its economic reforms 'could not be challenged or derailed' (Dunham & Jayasuriya 2001:6). Tax incentives, liberalising access to foreign exchange, imposing tariffs on public sector imports, abolishing or raising ownership ceilings on agricultural land and residential property, abolishing retail price

controls and substantially reducing consumer subsidies while providing support for direct foreign investment and private sector provision in health and education were some of the liberalisation measures pursued (Moore 1990:350-1). The policies were implemented through a highly politicised system which allowed corruption to flourish. Ultimately, however, the changes to resource allocation and benefits were imposed to ensure and entrench the party's political domination and settle many old debts in the process (Dunham & Jayasuriya 2001:3). While promoted as a public good, the new economic regime fostered rampant consumerism, favouring the private sector and stringently means testing the welfare payments. Consequently, the costs of living escalated leading to widespread strikes (Wijesinha 1991:43).

The two aspirations of an open economy and righteousness found expression in the government's development plans which deliberately invoked the symbols and imagery of a grand Sinhalese Buddhist past. The largest and most symbolic was the Accelerated Mahaveli Development Project, an irrigation and hydro-electric power scheme involving construction of six reservoirs. This project promised cheap electricity and new paddy land for farmers as well as the recapture of the landscape and values of the Buddhist kings of the past (Spencer 2004:5; Bastian 1999:11). This and other large-scale irrigation schemes were implemented in the dry zone which encompassed parts of the north and east. However, the ambitious economic agenda of the UNP represented by these grand development projects also served as a means to consolidate the ruling party's substantial parliamentary majority and support base. Although foreign aid subsidised these grand schemes, jobs and contracts were given to political supporters to consolidate party-based patronage, triggering politically-connected prosperity like never before. Contracts and commissions generated

through projects such as the Mahaveli project offered ðalmost unlimited scope for patronage and financial gainö (Dunham & Jayasuriya 2001:7). Any disruption of the political status quo threatened a long line of benefactors and, given such stakes, those who profited from their political position were prepared to do whatever it took for the ruling party to retain power (Spencer 2004:6). In this way, the politics of development became synonymous with the political culture of patronage, exclusion and elitism.

A state-led campaign to reconstitute the present in the image of a glorious, homogenous Sinhala-Buddhist past, symbolised by the Mahaveli project, appealed to the SinhaleseóBuddhist community. It also provided a legitimate means to exclude the rest (Spencer 1990:162). Colonisation of projects, both national and especially those in the north and east, by ethnic Sinhalese was imbued with the rhetoric of Sinhala nationalism and the right to reclaim a glorified past. Stacking the workforce in this way also transformed the electoral demographics. State-sponsored Sinhalese migration took on a historical importance to the Sinhalese majority, overriding any negative social impacts and enabling the UNP to change the demographic landscape of the country and especially the electoral power balance in the east (Wijesinha 1991:49). Sinhalese colonisation schemes and development plans were, in effect, part of a grand UNP nation-building plan which increasingly found expression in a desire to divide and rule the country by three policies. The first was to undermine Tamil dominance in the north and east to prevent separatism and other expressions of common grievance and anti-government sentiment while also opening up the economy in the region. The second was to separate and divide Sinhalese farming communities in the south to counter any possibility of collective action based on common grievances. And the third was to establish an

open economy under the patronage of the ruling party allowing for rapid modernisation and wealth. Disappearance of young rural men was to become central to achieving these policies. Under the state resettlement schemes initiated throughout the late 1970s and into the 1980s, the migration of thousands of Sinhalese farmers took place before the initiative was abruptly suspended in 1984 in the face of a series of LTTE attacks (Hoole 13 February 2002 & 2001:310; Swamy 1996:137-138).

Having come to power on the promise of establishing a free market economy and free press under the economic changes instituted by the UNP, the private sector expanded at the expense of the public sector (Hettige 1999:305). Given the flow of large volumes of foreign aid into the economy and extensive development projects on offer, MPs continued to act as the conduit for the distribution of almost all of the state's now considerable resources (Spencer 1990:11; Lakshman 1992:97). Some politicians who were engaged in development projects compared themselves with the kings who built ancient irrigation systems (Bastian 1999:11). Political patronage remained the most important means for socioeconomic advancement during the UNP's rule and securing an MP's recommendation *ōchitō* was the prerequisite for public service employment. Thus, the *ōsystem of MPs' chitsō* became the commonly expressed term for the patronage system (CRM 1979:101) which rewarded patronage over merit. Political affiliations became the central focus of the government's economic strategy thereby further entrenching socioeconomic inequalities (Lakshman 1992:97-98). Supporters of opposition parties, the ethnic Tamil community and the country's rural youth were excluded from this process (Abeyratne 2004:1313).

The UNP freed up access to foreign exchange and foreign goods while lowering state expenditure on welfare measures. State benefits of production subsidies, tax incentives and cheap credit were provided to the affluent on the pretext of encouraging investment, and a restrictive wage policy was introduced to keep labour costs to a minimum. The withdrawal of food subsidy entitlements from half the population (Moore 1990:352) and other changes to welfare expenditure were, according to Dunham and Jayasuriya, purely ideological and had no economic basis. They argued that President Jayewardene interpreted the historical continuation of consumer subsidies as the unwarranted political power of the left and union movement⁶ by cutting the entitlements he could destroy the remaining power and influence of the union movement (2001:5). Moore suggests that the cuts remedied weakness in the political system whereby 'the relatively indiscriminate and inefficient' distribution of considerable material patronage purchased 'little lasting support for the party in power' (1990:352). In their place, new forms of patronage were forged in the form of government contracts and housing schemes (Moore 1990:367) which could be more easily targeted and managed. The diversion of state resources through such patronage networks (and justified as a form of state building) contributed to the development of a shadow state. This state operated in parallel with the democratic state but ultimately undermined formal governance structures and institutions rendering the ruling elite dependent upon disappearance and other illegitimate forms of violence to maintain power.

Inevitably, the UNP's economic liberalisation policies weakened the financial position of the country's working class and exacerbated the relative position of the country's poor (Lakshman 1992:97). Samarasinghe noted an increase in the 'ultra poor' from less than 10 per cent of the population in 1977⁶ to 25 per cent in 1981⁶ (cited

in Winslow and Wooste 2004:57) By embracing the ideology of economic liberalism and materialism which coincided with political centralisation, the UNP further alienated the rural poor from the urban central government and its elite clientele, cementing their existence on the socio-economic periphery. The Jayewardene regime widened the schism in Sri Lanka society, making the contrast between affluence and privation more glaring (Vijayalakshmi 2001:125). Reflecting the UNP's orientation to business and middle-class interests, new winners (in the form of a new business and urban middle class) were created through shifts in power and re-alignment of class and ideological forces brought about by trade liberalisation while the traditional nationally-oriented, rural petty bourgeoisie that had historically relied on the state for socio-economic support lost power under the post-1977 economic regime (Hettige 1999:300). Such policies brought to the fore historical tensions between the UNP urban English-speaking ruling elite and the traditional rural elite of nationalist Sinhala-speaking village teachers, traders, monks and students (Nissan and Stirrat 1990 cited in de Silva 2006). Nearly half the population was pushed below the poverty line from 1973 to 1982, as the income of this new middle class group rose (Bandarage 2009:79). At the same time, empowered with a range of political and legislative mechanisms already detailed in this chapter, the UNP could control, buy or punish those who may become a problem for the reform agenda (Bastian 2010:109). They bound the emerging middle class constituents to the ruling elite by appealing to their newfound status and wealth and perpetuating fears about anti-state forces such as marginalised rural youth as a threat to continued prosperity. For the rest of the population, dependence on state resources and simultaneous exclusion from the political process created a paradigm of complicity.

By the mid-1970s, the number of educated unemployed youth stood at over 500,000 (Hettige 1999:305). Many searched for white collar employment in the state sector, which had contracted with the expansion of the private sector under the 1977 reforms. At the same time, the jobs created with the expansion of the urban informal sector under the liberalisation scheme such as opportunities in trade and personal services were not those which the educated youth were looking for (Hettige 1999:306). For these reasons, young mostly *swabhasha* (local language) educated rural and property-less lower-middle class youth joined the Tamil militant movement and JVP. As Hettige observed, without patronage and English, this single social stratum could progress up the social ladder only within a sheltered, nation-state which protects them from competition (1999:307). Gamage also noted that the UNP reform agenda deepened the division of society between English-speaking and *swabhasha*-speaking populations which remained an undercurrent in the violence that was to follow (1999:331). Unprepared in the new competitive economic environment, such youths across both Sinhalese and Tamil communities faced the real prospect of being relegated to the bottom of the emerging social hierarchy. This was in stark contrast to the welfare ideology and ideal, social and moral order that the country's nationalist leaders promised to create at the time of independence (Hettige 1999:307). However, social and geographic segregation of Tamil and Sinhalese youth, coupled with the fact that they were forced into competition over limited opportunities for social advancement and encouraged to recognise the other as the source of their own grievances, ensured that they remained isolated and would never unite against the political elite (Hettige 1999:308). The respective conflicts divided the youth constituencies of the north and south into the radical camps of the LTTE and JVP. At the same time, the politicisation of ethnicity had the effect of diluting class

differences within both respective communities. Many poor Sinhalese youths without employment prospects joined the security forces and fought and died under a predominantly Sinhalese command while the LTTE and its leadership were exclusively Tamil (Gamage 1999:335).

Changes to the education standardisation policy introduced by the UNP in 1978 denied Tamils access to higher education (Ponnambalam 1983:4). State education policy in theory and practice was perceived by the Tamil community as blocking the last resort they had to professional employment thereby contributing to the substantial decline in the employment of Tamils in professional, clerical and managerial posts (Nithiyanandan 1987:128). Such changes were a direct consequence of state educational and *swabhasha* policies (Manogaran 1987:129 cited in Thangarajah 2002:4-5). By denying Tamil students entry to university on the basis of standardisation, the UNP effectively created a generation of politically disillusioned Tamil youth, many of whom went on to lead or join armed Tamil secessionist groups (Ponnambalam 1983:4; Gunasinghe 1987:70). Moreover, Sinhala-only legislation and its underlying discriminatory ethos continued to have an impact on both educational and employment opportunities for Tamils, leaving them under-represented in the public service, public sector corporations, the teaching profession and in the police and armed forces where recruitment of ethnic Tamils dwindled to negligible after 1970 (Ponnambalam 1983:174-175). Unemployment of Tamils rose in parallel with a fall in per capita income across Tamil communities. Unemployment of high school graduates who had qualified to enter university rose to a staggering 44.4 per cent of the workforce in 1973, of which a substantial proportion comprised Tamil students from lower-middle class families (Nithiyanandan 1987:126-128). They, like higher class Tamil students, were denied university places, but unlike higher class

students, had no other means of gaining employment. Reflecting the serious social disruption to the social environment, suicide rates tripled from 1955 to 1974 from 6.9 to 22.1 per 100,000 population, with the 15-29 age range and Tamil-dominated communities including Jaffna, Vavuniya and Batticaloa suffering the highest rates (Kearney & Miller 1986:5 & 14). From 1977 to 1978, the suicide rate increased from 2,996 to 3,012. At the same time, use of narcotics began to skyrocket with an estimated 24,000 users by 1986 from 6,000 in 1980 (Gunaratna 2001:66). Given their socioeconomic insecurity enforced by a series of educational, linguistic and patronage barriers coupled with an inability to express their grievances by democratic means and rigid caste and kinship bonds, many such students were frustrated into active militant engagement (Gunaratna 1987:17; Nithiyanandan 1987:128-9).

The free market economy and society it encouraged provided opportunities for the affluent to flourish as avenues for advancement, primarily through education and state employment, were gradually cut off for the rest of society. The three most important factors to securing an education and employment became increasingly inaccessible to the majority: fluent English, an education from an elite school and an elite family background (Lakshman 1992:96). The politicisation of the state bureaucracy, which accounted for 25 per cent of the country's employment, the extension of its control through state employment schemes and the political appointment of district and other local-level administrators led to concentration of state control at the district level. This enabled the UNP to strengthen its influence, reach and control over all aspects of people's lives. While rewarding its own with jobs, promotions and opportunities for advancement, the UNP imposed a range of limitations on supporters of opposing parties and others assumed to be non-compliant with the regime (Gunaratna 2001:64).

Indeed, the legal grievances reflected this reality as the most common cases taken to court before July 1983 involved education and employment focused on allegations of discrimination, political victimisation, and lack of due process in transfers, dismissals and promotions (Coomaraswamy 1993b:152). Growing social disaffection with the UNP's openly discriminatory policies and the pervasiveness of the patronage system ironically provided the space for discussion about the very existence and purpose of the state. Rather than call for elections, therefore, there was growing acceptance among the disaffected of the argument that because the state was used to widen the country's social, political and economic inequalities, it had to be totally dismantled along with the political system on which it was based. Indeed, the pervasiveness of the patronage system alone was recognised as a primary reason for youth disillusionment with the establishment and a contributing factor to the 1987 JVP insurrection (Coomaraswamy 1993:131-132).

The combined effect of the constitutional, legislative and socio-economic policies not only legitimised demands for armed confrontation but also radicalised youths across both Tamil and Sinhalese communities for whom a change of government was not enough. In this context, the JVP and LTTE emerged as movements against the established political system (Abeyratne 2004:1302). The accepted view among many rural youths was that the political system had corroded to the point where it merely existed to serve the narrow interests of the political urban elite (Presidential Commission on Youth 1990:1). However, with the prohibition imposed on both the LTTE and JVP coupled with the politicisation of the judiciary and legislature which would otherwise serve as the traditional non-violent means of address, armed revolt became the only way to express the sense of injustice and socio-political alienation felt by such youth. At

the same time, as anti-government violence escalated, the UNP increasingly relied on its shadow state or alternative political apparatus. Rural youth who had already demonstrated a total disinterest in manual labour such as farming and fishing and following in their parents' footsteps, were not considered by the ruling elite as reserve labour force which could help realise its economic aspirations. Rather rural youth were seen as a potential menace and antagonistic force which posed as a considerable threat to its economic goals (Marino 1989:2:3) and wider political aspirations. Disappearance served as a means by which the ruling party could eliminate such a threat while upholding its national building agenda and façade of a functional democratic state.

3.7 Politics of intolerance and polarisation

The Tamil-dominated Tamil United Liberation Front (TULF) had become the main parliamentary opposition at the 1977 election, winning 18 parliamentary seats. However, the anti-democratic approach of the UNP and its politics of intolerance effectively neutralised the TULF's role (Ponnambalam 1983:193; Nithiyanandan 1987:147). Because the TULF advocated separatism, the UNP found that the most effective response to any form of opposition was to claim that such parties sought to destabilise the country as a requisite for separation (Ponnambalam 1983:194). Thus, parliamentary confrontations were promptly polarised between the Sinhalese government and minority Tamil opposition which both perpetuated and reflected the ethnic polarisation of the country (Bastian 1999:14). At the same time, mounting UNP antagonism towards Tamil demands in Parliament coincided with increasingly frequent incidents of organised violence against the Tamil community (Thangarajah 2002:12; Sieghart 1984:15). The first outbreak of such violence took

place within weeks of the 1977 election as a direct reaction to Tamil demands for separation and consequent warning not to undertake any action to separate the country (Leary 1981:20). The violence was triggered by Tamil youth killing two policemen in the north and led to widespread attacks on Sri Lankan Tamil and Plantation Tamil communities and property over a period of two months, leaving thousands dead and hundreds of thousands displaced (Orjuela 2011:15; Nissan 1998). However, both the government and the Sansoni Commission responsible for investigating the violence concluded that the rioting was a consequence of Tamil demands for separation and sheeted the blame onto the Tamil community. The imputation was that such violence could be avoided if demands for separatism were abandoned (Wijesinha & Kulatunga 2002:3). Not only were the police and army complicit in the violence against Tamil civilians but in the period following the violence, security provided to Tamils in the south significantly declined (Wijesinha & Kulatunga 2002:3; Ponnambalam 1983:196).

Discriminatory state policies were upheld in a context of growing intolerance and antagonism not only towards Tamil demands for separatism but also in relation to the rights and entitlements of the Tamil community. The UNP's preference for a military response to what was gradually perceived as a 'Tamil problem' rather than genuine grievances from within the Sri Lankan community found expression in various government policies—policies which magnified rather than understated the differences between the two communities on the basis of language, religion and ethnicity. The widely held perception within the Tamil community was that the UNP was committed to promoting Sinhalese interests at its expense. Although the first calls for succession made in response to the 1972 constitution enjoyed support only among a small band of young Tamil extremists,

there is a clear correlation between separatism becoming the principle objective of the main Tamil party and state policies and practices. In short, the demand for separation grew in parallel with state repression as Tamil radicalisation was a response to government policy (Kloos 1997). Tamil youth groups challenged the traditional strategies of political engagement employed by Tamil parliamentarians such as compromise and accommodation through the parliamentary process, and thereby agitated not only against the government but also against their own leaders (Kloos 1997). But because the TULF and the militant movement shared a common goal, perception in the north grew that the political leadership was complicit with the militants (Hoole *et al.*, 1990:13). It also provided the scope for militants and particularly the LTTE, once it secured a monopoly over the separatist cause to justify its violent, anti-democratic and autocratic methods as the means to achieving the goal of Tamil Eelam.

While there had been a number of low-scale incidents of violence and theft as well as minor confrontations between the militants and security forces in the north in the 1970s, the first major incident was the assassination of the pro-SLFP Jaffna Mayor, Alfred Duraiappa in Jaffna on 27 July 1975 whom militants had condemned to death as a traitor to their cause (Wijesinha 1991:25). In response, the security forces rounded up more than 100 Tamil youths, holding them in custody for more than a year without charge or trial under the 1971-imposed emergency which had remained in force (Ponnambalam 1983:184; AI 1975:22). For its part, the TULF had declared a commitment to resolve the 'Tamil question' by advocating autonomy of land use and settlement in Tamil areas (Hoole *et al.*, 1990:23). However, the UNP's determination to solve Tamil demands militarily provided the opportunity to eradicate all potential threats to the government's reform agenda across the Tamil community. Such

aspirations found expression in the PTA and complementary legislation under which thousands of rural male Tamil youths were arbitrarily arrested, detained and disappeared. Only a small proportion of educated unemployed Tamil youths joined the separatist movement. Similarly, only relatively few Sinhalese youth joined the ranks of the JVP in the late 1980s. However, as the prospect of a radicalised generation of Tamil and Sinhalese youths posed a threat to the ruling elite and the prevailing political structure, the militant movements themselves merely provided the UNP with a pretext to crack down on an entire generation.

While Tamil militancy continued to spread, by mid-1983 state intelligence established that the number of militants stood at a mere 2,000 (Swamy 1996:97; Gunaratna 2001:238). However, when a series of interventions by the central government to impose political control in Jaffna and break the power base and prestige of the TULF totally backfired, the UNP held that the TULF leader, Mr Amirthalingam MP, was acting against the interests of the country and brought a no-confidence motion against him.⁴ The no-confidence motion led to a walk out of TULF, SLFP and CP MPs but was passed with the UNP's majority in Parliament on 24 July 1981 (Ponnambalam 1983:209). The Tamil community now more readily recognised that the UNP was disingenuous in its efforts to address

⁴ The UNP tried to rig the District Development Councils (DCC) elections by deploying 300 police personnel and 150 UNP loyalists to replace election officials to supervise the polls. When the UNP candidate for Jaffna and supporters were shot and the TULF secured all DDC six seats, the security forces went on a rampage which lasted for days destroying the historically significant Jaffna Library, shops, houses and TULF headquarters. The DCCs found themselves with little power and subject to continual government interference (Nissan 1996:16; Ponnambalam 1983:206; Bastian 1999:16).

Tamil grievances and that without democratic representation, the state would be used as an instrument of the party in power to violently suppress their national democratic rights (Rupasingha 2000:21).

3.8 1983 anti-Tamil pogrom

The violence that had begun in July 1981 spread to other parts of the country with the UNP's involvement clearly established (Ponnambalam 1983:21; Leary 1981:21; Wijesinha 1991). A state of emergency was eventually declared on 17 August by which time thousands had fled their homes (Leary 1981:21). The riots of 1981 were a culmination of rising tension between the Tamil community and the state given militant attacks and military retaliation in the north, arbitrary use of the PTA primarily against Tamil youth, arson and looting undertaken by the police, and greater polarisation than ever before between the state forces and Tamil civilians in Jaffna (Leary 1981:20). It also served as a warning to the Tamil community that demands for separatism would not be tolerated. Indeed, a pattern had emerged whereby the UNP repeatedly asserted that violence perpetrated against Tamils, which became increasingly common during the early 1980s, was permissible if not a justified response to Tamil demands for separatism. Such violence was also part of a pattern of communal violence which had become a deliberate strategy to deal with the Tamil community (Hoole 2001:41). The government's response to the 1983 anti-Tamil riots, which amounted to a state-sponsored pogrom, was characterised by the same sentiment. Indeed, the legislation put in place before the riots, the manner in which the violence was carried out and the indemnity legislation providing impunity for state officials involved was the turning point in the country's history and placed it on a path towards armed confrontation.

The 1983 pogrom demonstrated the manner in which the various elements of the UNP's alternative political apparatus operated in unison. Evidence suggests that the government was preparing for a massive use of force against the Tamil community before the riots (Dr Nesiah, *personal communication*). A month before the July 1983 events, the 1971 ERs were promulgated to permit the disposal of bodies by security officials in the north without post-mortem inquiry with the intention that the armed forces 'are in no way harassed by the law' (government report cited in CRM 1983b). Furthermore, regulations had been framed to provide powers to state officials to destroy refugee settlements set up after the 1977 and 1981 violence in the north and east. During the 1983 violence itself, at least 600 Indian Plantation Tamils who had fled to the north and east were forcibly transported back to the hill country in the middle of the carnage (Hoole *et al.*, 1990:63; Bastian 1990:300). A statement by Jayewardene less than two weeks before the riots demonstrated the extent to which the government now openly recognised the Tamil community as expendable. He emphasised that 'we cannot think of them, nor about their lives or their opinion about us' (cited in Wijesinha & Kulatunga 2002:2). In this way, the killing of 13 soldiers in the north by landmine attack provided an opportunity for the government and its support base to teach Tamils a lesson for holding separatist aspirations. The anti-Tamil violence broke out in Colombo and spread across most Sinhalese areas of the country. At the peak of the riots security regulations were relaxed and Sinhalese gangs could rampage through Tamil communities with no risk of government retribution (Bastian 1999:16). Indeed, Dr Nesiah, Government Agent of Jaffna at the time of the riots, held that they 'were not controlled because there was no longer any need to control' - the tie was broken. It was punishment. It was a warning not to do that again' (*personal communication*). Thus the July 1983 violence was not spontaneous

nor a popular response to the killing of the 13 soldiers but rather a series of deliberate acts, executed in accordance with a concerted plan, conceived and organised well in advance (Sieghart 1994:76-77).

Many of the gangs engaged in the violence were armed with electoral lists identifying Tamil properties and houses (Roberts 1994:317). The lists were provided by high ranking government officials including cabinet ministers (Cheran *et al.*, 1993) and scores of Tamil men named on them disappeared (Rubin 1987:31). The JSS, civil servants, business people and monks linked to government ministries were involved in initiating and motivating attacks while truckloads of men were waved through curfew areas by the police at the time of the violence (Warnapala 1994:166; Piyasasa 1984 cited in Roberts 1994:326-7 endnote; Wijesinha 1991:75). Indeed, given the fact that the primary target of the riots was not Tamil homes so much as Tamil commercial establishments, it was clear that those close to the government with vested interests took part in directing the riots (Warnapala 1994:166). In many places, the army and police were either directly involved in the riots or stood by and watched the rioters do their worst (Nithiyanandan 1987:153). Yet President Jayewardene justified rather than condemned their role in the riots by stating: 'I think there was a big anti-Tamil feeling amongst the forces. They also felt that shooting the Sinhalese, who were rioting, would have been anti-Sinhalese, and actually in some places we saw them encouraging (rioters)' (cited in Hyndman 1985:183). During two days of targeted attack, 50 Tamil detainees at Colombo's maximum security Welikada prison, including LTTE leader Kuttimani, were killed by army personnel (Hoole *et al.*, 1990:64; Nissan 1988; Swamy 1996:94). Evidently, no impartial inquiry was conducted into the killings and no one was found guilty of the crimes, which were planned at the highest levels (Hoole *et al.*, 1990:64).

On 28 July President Jayewardene addressed the nation sympathising with the Sinhalese mobs whose violent reaction he lamented was understandable given Tamil militants' efforts to divide the country. Jayewardene concluded that the government had not been adequately tough with the separatists and legislation was introduced in the form of the sixth amendment to the 1978 constitution to proscribe any party that advocated separatism. This reform was backed up by the requirement that all public servants and MPs take an oath of allegiance to a unitary state (Wijesinha 1991:76). Those who advocated separation would now lose their civic rights and face a prohibition from holding office, practising professions, or joining movements and organisations (Jayewardene cited in Hyndman 1985:176). Such action effectively rendered advocating separation through the democratic system null and void and with it the main parliamentary opposition. When the TULF parliamentarians were forced to forfeit their parliamentary seats all efforts to achieve Tamil nationalist aspirations by constitutional means came to an end (Nissan 1998). With Tamil political parties driven out of Parliament and the wider democratic process, Tamil militants filled the vacuum as the spokespeople of the Tamil community (Coomaraswamy 1993b:154-155).

In every subsequent speech on the anti-Tamil violence, the President played on public fears of anarchy and national division claiming that the violence was part of a Marxist conspiracy to overthrow the state requiring the proscription of the three leftist parties: Nava Sama Samaja Party (NSSP), CP and JVP despite a lack of evidence to support his claims (Wijesinha 1991:77 Spencer 1990: note 2:261). Leaders and members of all three parties were arrested and faced indefinite detention without trial (Hyndman 1985:190). TULF leader

Amithalingham openly challenged the government stating that Cyril Mathew and the security forces, as well as others close to the government, were responsible for not only the July events but also the attacks on the July 1980 strikers and judges' houses a month before the July 1983 riots (Hyndman 1985:192). However, consequent official statements reiterated the government view that the opposition parties were responsible despite never having provided any evidence to support the claim (Spencer 1990:235). At the same time senior UNP ministers appeared on television, radio and in the press declaring that the response of Sinhalese mobs was understandable and justified (Bastian 1999:17). As the government dismissed the riots as a normal response to militant activity (Nissan 1998), there was no investigation into the killing of an estimated 3,000 Tamils which took place during the riots and no action was taken on the Welikada prison killings (Hoole *et al.*, 1990:71). The Secretary of the Ministry of Defence held that it was not the appropriate time to hold inquiries into complaints about the failure of the security forces to protect Tamils in the riots as the government relied on the same troops to deal with militants in the north (Hyndman 1985:183). Thereafter, the *Indemnity (Amendment) Act No. 60 of 1988* extended the period for which the indemnity applied to 16 December 1988 to cover the period of the 1983 pogrom (AI 1990:3). Given the extent to which government officials were involved in the orchestration and implementation of the riots, the government recognised the necessity of imposing this blanket legislation to protect its own from prosecution.

The 1983 riots enabled the UNP to ban or render ineffective the main parliamentary opposition and three opposition parties. It also gave the UNP's support base an opportunity to eliminate rival Tamil businesses and thus economic competition. The proscription of the JVP, which immediately forced the movement and its leader underground, was

seen as a direct response to its public opposition to the government and to its court case challenging the legality of the 1982 referendum. By shifting responsibility for the violence onto its political rivals and driving them out of the democratic process, the UNP sought to destroy the threat that they and particularly the JVP posed to its rule (Wijesinha 1991:67; Gunasekara 1988:8). The government openly promoted the idea that anti-UNP forces in the south were linked to the LTTE in the north as part of common efforts to bring the government down. By promoting the argument that all political opposition, especially Tamils and leftist parties, were inherently anti-Sri Lankan, the UNP created a fear psychosis particularly among its political constituents in the urban upper and middle class to create complicity with the regime's violent aims.

The consequences of the 1983 riots for the Tamil community were numerous and wide-reaching. First, the moderate Tamil leadership and civilians were marginalised as the militants took control of the Tamil response (de Silva 1993b:60). Second, the militant movements grew substantially in both numbers and resources having gained support from Tamils abroad. Third, this led to an even greater diversion of state resources to the defence budget while administrative reform was perpetually put on the backburner (de Silva 1993b:60; Swamy 1996:104). For the Tamil community, lack of state protection let alone direct state involvement in the riots demonstrated a need to find alternative forms of security (Nithiyanandan 1987:154). Thereafter, excesses by the security forces usually directed at the civilian population benefited the militants by driving Tamil civilians to them for protection during intensive fighting. The militants also enjoyed growth in membership and community support by way of sustenance and information (Nithiyanandan 1987:150). The central Indian government, which sought greater influence over Sri Lankan

policies on the Tamil issue, ordered its national intelligence agency, the Research and Analysis Wing, to provide arms and training to the Sri Lankan militant groups (Nissan 1998; Gunaratna 2001:238). With such funding and support, an estimated 15,000 cadres were trained over a five-year period in camps near India's top military academy, Dehradun (Gunaratna 2001:238).

The UNP's intolerance of Tamil militancy emanated from the Tamil's challenge to the concept of a unitary state, and the threat it posed to Jayewardene's personal rule and his economic and political legacy. Throughout the 1980s, the shadow state typified by the phenomenon of disappearance operated in parallel with official counter-insurgency methods to enforce the government's agenda in relation to the Tamil militants, leading to an increasing escalation of state and shadow state violence and counter-violence (Sieghart 1984:17). Having undergone training with the Israeli forces in 1983, the Sri Lankan security forces deployed an Israeli strategy of totally decimating areas in which acts of terrorism had occurred. This was the central tenet of its counter-insurgency approach (Wijesinha 1991:93). Inferior military equipment was used to justify military excesses while more frequent militant attacks were matched with abuses of Tamil civilians and the roundup and detention of greater numbers of Tamil youth (Wijesinha 1991:93; Warnapala 1994:184). Civil society and individual attempts to challenge state violence and demand political leadership were undermined by media censorship and excessive controls on freedom of speech. The UNP's objective to systematically immobilise all forms of dissent was justified on the grounds that dissent was anti-Sri Lankan and contrary to the interests of national security. Such propaganda sought to establish consensus with the state's project through fear. Civil society became a target of both government and subversive violence rendering the price for activism too great

(Muttetuwegama cited in Fernando 1998:4). Tamil academics and activists who represented an alternative political ethos to state repression and spoke out against the LTTE's growing authoritarianism were forced to leave the country or face the threat of state or LTTE violence for their independent views. At the end of 1983, almost every section of civil society in Colombo and in the south⁶ from the press to academia, religious bodies to research groups, human rights organisations to legal bodies⁷ was compromised, given, on the one hand, severe state-imposed restrictions and on the other, lack of common agreement across civil society on the Tamil 'problem' which had become the national question (Hoole 2001:8). At the same time, changes to the political structure brought about by the 1978 constitution created conditions whereby politics took on a greater importance than civic engagement given the subordination of popular institutions to the will of the party in power. Confrontational party politics rather than restorative community engagement became the preferred means of resolving private disputes (Spencer 1990:200). Some civil society groups and organisations managed to continue operating throughout the violence. They generally contained their activities to documenting human rights abuses and passing information to the international community to exert pressure on the Sri Lankan government, and did so at tremendous risk. The Civil Rights Movement of Sri Lanka (formed in 1971 after the first JVP insurrection to safeguard civil and political rights) and the Movement for Inter-racial Justice and Equality (formed in the late 1970s) also managed to continue their work. However, the scope of their activities was confined by legal conditions and tight controls. Organisations also emerged out of the violence of the 1980s such as the Lawyers for Human Rights, established in 1986 to provide free legal advice to victims of human rights abuses. The University Teachers for Human Rights (Jaffna) (UTHR-J) and the Sri Lanka Information Monitor

(INFORM) were both formed in 1988 and kept a low profile but managed to operate throughout the terror. However, such activities had a price. A founding member of the UTHR-J and outspoken human rights activist in Jaffna, Dr Rajani Thiranagama, who was head of the Department of Anatomy at the University of Jaffna, was killed allegedly by the LTTE in September 1989. Other UTHR-J activists were forced to leave Jaffna in 1990. During years of terror, lawyers who filed *habeas corpus* petitions had to leave the country or face death threats from vigilante groups and, in Tamil areas, academics and activists were persecuted by the LTTE.

Within a climate of growing state violence and reactive yet still containable militant violence, the UNP chose to construct a regime of terror legitimised by the manipulation of historical fears within the Sinhalese community about Tamil invasion. As the security forces were deployed to do what was necessary to defend the nation, wide powers of arrest and detention coupled with impunity, executive control and marginalisation of the legislature and judiciary fostered the conditions for widespread abuses to take place. The centralisation of power at the expense of the legislature and judiciary enabled the UNP to push its economic liberalisation agenda forward and impose sanctions on those opposed to it. While only a small portion of educated unemployed rural youth from Tamil communities who had been marginalised by the liberalisation reform agenda took up weapons against the state, the UNP seized the opportunity to enact emergency regulations and indemnity legislation, thereby paving the way for the disappearance of thousands of Sri Lankans.

CHAPTER 4

Dealing with the ‘other’

The growth in Tamil militancy in the early 1980s provided a pretext under which the UNP pursued its political agenda in the north and east. Intent on diluting the Tamil population in both areas while pursuing a policy of Sinhalese colonisation, the political apparatus established by the UNP enabled the government to camouflage these wider political objectives under the guise of dealing militarily with the Tamil militants and crushing terrorism. Doing so escalated the level and intensity of violence which ultimately led to a civil conflict. Disappearance served as a means by which the ruling party could achieve its political aspirations of eradicating a militant threat and permanently altering the demographic composition of the north and east while upholding the image of a democracy based on the rule of law. The modus operandi of disappearances became common across all contexts of violence in the north, east and later in the south. What changed over time, however, were the range of actors involved and respective objectives behind the offence.

4.1 Disappearances and the demographic composition of the north and east

From the 1940s, successive administrations had maintained a program of Sinhalese colonisation in the north and east under the auspices of irrigation programs which altered the ethnic composition of the area (Kapferer 1988:223). In Trincomalee District, the proportion of Sinhalese rose from 3 per cent in 1946 to 30 per cent by 1971 while

Batticaloa District was divided into two electoral and administrative divisions in 1963 to accommodate the Sinhalese-dominated Amparai District (Wijesinha 1991:49). When it came to power in 1977, the UNP not only continued the colonisation policy but gave it a Sinhalese nationalist identity to encourage Sinhalese families to repopulate what it promoted as the ancient territory of Sinhalese civilisation in the north and east to reclaim and recreate a glorified Sinhala-Buddhist past. However, the policy directly undermined the two primary grievances of the eastern Tamil community, namely population density and proportional representation, and antagonised Tamils in the north. The settlements established under the policy became, therefore, a primary target of the LTTE and other separatist groups (Marino 1989: Part 2:2). The extent to which the policy affronted the Tamil community at large was explained by Somasundaram:

A major area of ethnic conflict and one of outstanding grievances of the Tamils is the change in the demographic pattern of the northeast by state sponsored Sinhalese colonisation. The Tamils perceive the influx of Sinhalese as a threat to the integrity of their traditional homeland where they want to retain their voting majority, control over their own affairs and cultural identity, if not, at least the names of their villages. The dominant Sinhalese politics on the other hand does not recognise this claim to exclusive territoriality but looks upon the whole island as belonging to the Sinhalese (Sinhalaadipa).

- Somasundaram 1998:32

With the enforced suspension of Sinhalese resettlement initiatives in late 1984 following a series of LTTE attacks, the need for a counter-insurgency response gave the government an opportunity to realise its political aspirations to undermine Tamil dominance in the region.

Even though Tamils had been forcibly removed from their homes months before the LTTE attacks, a dual approach of enforced disappearance and forced eviction was implemented to dilute the Tamil population and break up militant networks (Hoole 2001:327). The forced eviction of Tamil families could now be justified as necessary in the fight against terrorism. Disappearance carried out in the shadow of the state was denied outright, enabling the government to also deny the reality of this wider political agenda. Such tactics were applied in combination with ER provisions including curfews and restrictions on movement which permitted the security forces to cordon off Tamil areas from the rest of the country (Mr VS Ganesalingam and Mr F Xavier, Home for Human Rights, *personal communication*). In this manner, various political and economic objectives merged to facilitate the annihilation of separatists and anti-government sentiment while also effecting demographic change in the region.

To advance this political project, public acts of violence perpetrated against civilians including extrajudicial killings committed by uniformed security personnel were replaced with clandestine tactics such as disappearances and blanket denials of arrest and detention even when they took place in front of witnesses (AI 1994:26). At the same time, torture became routine practice at Elephant Pass, Palaly, Vavuniya, Jaffna Fort and Boosa camps leading to deaths in custody either during or following interrogation (AI 1985:245). Furthermore, ER 55B-G which permitted disposal of dead bodies without inquest or the need to inform any party, was promulgated on 14 June 1984. The provision served as a legal cover for serious transgressions and remained in place until March 1990. A pattern quickly emerged whereby people arrested during cordon and search operations or abducted by state officials without reference to any legal process,

disappeared in state custody. While disappearances had taken place under the UNP before 1984, they could be dismissed by the state as 'excesses' or individual and undisciplined acts by lower ranked officers which transgressed a norm. However, the emerging scale and widespread nature of the crime from 1984 implicated the highest levels of government. As the following evidence reveals, 'excesses' soon became the norm while the mechanism of terror created by the alternative political apparatus represented a supreme or ultimate excess.

The first large-scale incidents of disappearance in the north took place in retaliation for the 11 November 1984 killing of 62 Sinhalese civilians who had moved to a new open prison camp at the Kent and Dollar Farms in Vavuniya. Approximately 100 Tamil men were subsequently removed from their homes in Vavuniya by the security forces and disappeared in state custody (AI 37/08/86). While the violence perpetrated against the Tamil community during the 1980s was totally disproportionate to the scale and size of the militant threat, its purpose was to influence the demography of the region in the name of nation-building and the UNP's ideology of a righteous society. The need for a counter-insurgency response to Tamil militancy merely provided a pretext. By June 1985 about 40,000 predominantly Tamils had fled their homes in response to the violence (CRM E01/6/85). At the same time, over 500 complaints of disappearances from Vavuniya, Mannar, Jaffna and Batticaloa were reported from 1983 to April 1986 (AI 37/08/86:5-6; AI 1987). Thousands of others were held in detention including an estimated 6,000 'militant suspects' arrested in Jaffna in 1987 during a military operation and transported to the Boosa army camp and other detention facilities in the south (Gunaratna 1987:26). At the end of 1986, moreover, scores of ethnic Sinhalese had disappeared in the south while hundreds of Sinhalese

and Estate Tamils were held in detention under the PTA and ERs (AI 37/08/86; AI 1987). Now applied well outside the grounds for which they were initially intended, these extraordinary provisions were to become the mainstay of state terror. Indeed, once the infrastructure was in place, it had the potential to be used against any enemy of the day (Coomaraswamy 1993b:161-2).

4.2 Political apparatus at work

The encroachment of military control upon civil and administrative functions in the north and east which took place throughout the late 1980s ensured that both regions were, essentially, ruled by the gun (Coomaraswamy 1993b:155). In October 1983, under Presidential decree, the Joint Services Special Operations (JOSSOP) was established with the dual purpose of coordinating all anti-terrorist activities in Vavuniya, Mannar, Mullaitivu and Trincomalee while overseeing civil affairs including land settlement (Hoole 2001:313). In this way, the government was able to interweave its economic and political agenda into what was officially recognised as a counter-insurgent strategy. JOSSOP's second-in-command was the Additional Secretary for Mahaveli Development—the government's largest and most symbolically important land development and resettlement scheme (Hoole 2001:313; Nissan 1996:24). Official policy was to settle Sinhalese farmers, fisher folk and prisoners nearing the end of their sentence to the Mahaveli and dry-zones of the north and east (Hoole 2001:323). In October 1984 JOSSOP oversaw the forcible eviction of hundreds of ethnic Tamils from the east while preparations were made to settle 200,000 Sinhalese in the north as part of an official publicly announced plan to solve the 'Tamil problem'. However, the LTTE attacked the Kent and Dollar Farms and thereby

forced the suspension of the settlement program triggering a change in tactics (Hoole 2001:323-326).

With the signing of the Indo-Lanka Accord in 1987, an elite Special Task Force (STF) commando unit within the police force was formed to manage security in the east. Established by Ravi Jayewardene, the President's son and security advisor, and reporting to him, the STF was trained by former Special Air Services (SAS) soldiers of the British military (AI 37/08/86; Hoole *et al.*, 1990:196). The STF was authorised to operate clandestinely while functioning at the same time as the primary security agency in the east with restrictions imposed on the army's presence in the region under the terms of the accord. In this way, military control encroached upon civil and administrative functions with military considerations taking precedence above all else. Unlike the police force, the STF were not trained in community relations but rather as an elite commando counter-insurgency unit and its deployment in the east coincided with reports of scores of disappearances (AI 37/08/86:3).

In the north, the authority of the local Government Agent (GA) who represented civil administration at the district level was totally undermined by the appointment of army officials as Coordinating Officers with overriding jurisdiction over civilian administration. For many within the Jaffna community it appeared as though the counter-insurgency methods were the main mechanism of governance in the region. In the late 1980s when civilian administrative functions were limited to relief and rehabilitation and the courts stopped functioning, the authority of the army as the representative of security and state administration was further extended to a monopoly over civil affairs and due process (Coomaraswamy 1993b:155). Responsible for fulfilling contradictory tasks and devoid of any legitimacy with which to govern, the army relied on ever-increasing and disproportionate

violence to exert authority. In this way, civil and legal processes, which provide a legal avenue for airing grievances and seeking solution without resort to violence, were cut off from the civilian population (Coomaraswamy 1993b:155).

Complaints about disappearances were met by state officials with an official response which changed little over the years regardless of the circumstances or context in which people went missing. While not directly acknowledged, disappearances were termed 'excesses' by the government and politically justified as understandable 'excesses' carried out by state officials in the course of defending the nation (senior member of government cited in Marino 1989:10). Alternatively, they were described as the result of panic or a spontaneous reaction on the part of inexperienced security officials to the pressures of military combat. At the same time, however, the state legally concealed the scope and manner in which disappearances were carried out. Security force personnel who engaged in extra-legal activities, including disappearances and death squads under political direction, were then responsible to official deny such actions while the entire state apparatus became complicit in concealing abuses carried out by shadow forces. While the political leadership admitted to 'excesses' as though they were a natural consequence of the situation, the victim was either deliberately blamed or it was implied that they were politically or morally suspect. Given the extent of censorship, misinformation and rumour, such imputations were directed at establishing in the mind of the general public the view that the disappeared must have done something wrong or that their immoral actions made them somehow unworthy of the state's protection anyway. As detailed in chapter 7, families of the disappeared around the country heard the official response (that the victim was to blame) repeated by state officials at police stations, army camps, detention

facilities, and in their local MPs' offices and in Parliament. It served as an excuse for failing to acknowledge or document their complaint while also providing an opportunity to bring into question the character of the disappeared. As the state was reoriented by political means to engage in the robust concealment and denial of such abuses rather than to protect the citizenry, enforce the law and thereby provide remedies to victims of abuses, families found the police, local administration, courts and political leadership totally ineffectual in assisting them to establish the truth, let alone bring those responsible to account. By turning victims into suspects, blurring the distinctions and boundaries between terrorists and the state and creating a context in which the sources of violence were impossible to identify, the new political landscape was defined by impunity.

4.3 Sources of violence

The two main sources of violence in the north and east during the early 1980s were initially that of the military and police on the one hand and the various Tamil militant groups on the other. The security forces were deployed with considerable resources, facilities and scope by way of extraordinary powers, both constitutional and legislated. However, the range of groups and actors drawn into the violence grew as the operations of the shadow state extended to respond to the escalation of violence. These groups included the STF, as well as Muslim and Sinhalese civilian Home Guard units. In this way, local communities were politicised and drawn into the conflict.

The 1983 riots brought about a rise in the membership and strength of Tamil militant groups, principally the LTTE, Tamil Eelam Liberation Organisation (TELO), People's Liberation Organisation of Tamil Eelam (PLOTE), Eelam People's Revolutionary Liberation Front

(EPRLF), Eelam Revolutionary Organisation of Students (EROS) and Eelam National Democratic Liberation Front (ENDLF). In the early days, they engaged in frequent and violent robberies and extortion as well as intimidation and assault within the Tamil community (Hoole *et al.*, 1990:74). However, rivalries and tensions between the respective groups soon spilt over into internecine warfare for political supremacy resulting in considerable loss of life and confusion about the origins of the violence (Thangarajah 2002:16). During this time, people were forcibly removed off the streets, from their homes, at their workplaces, and vanished. Whereas initially the LTTE and other such groups used forced abduction to extract ransoms (Swamy 1996:186), over time and particularly once the LTTE had created its own proxy state, abductions were carried out to achieve political rather than material objectives. The emergence of the LTTE as the dominant group in 1986 coincided with the emergence of a pattern of violence whereby the LTTE forcibly removed suspected opponents within the Tamil community including prospective Tamil leaders of rival groups or anyone suspected of providing support to the security forces. The LTTE tolerated no dissent within the Tamil community and maintained its stranglehold on the population through intimidation, forced abduction and killings. Indeed, once the LTTE had gained its footing as the dominant separatist group in the Jaffna peninsula, it refused to permit any other Tamil group or party to operate in areas under its control (Nissan 1998).

In addition to the array of pro and anti-government groups and militias, from 1987 to 1990, under the Indo-Lanka Accord, a 6,000 strong Indian Peace Keeping Force (IPKF) was deployed in the Jaffna peninsula. Not only did the IPKF engage in disappearances themselves, anti-LTTE Tamil militant groups including the EPRLF, ENDLF and Tamil National Alliance (TNA) which aligned

themselves with the IPKF and took part in joint operations, were also responsible for a number of abductions which occurred during the course of roundup operations (North & East Commission 1997b:51-52). Amnesty International reported the disappearance of 43 people during the IPKF era, but Hoole *et al.*, maintained that the IPKF was responsible for the disappearance of at least 300 during this time (AI 37/14/91:4; Hoole *et al.*, 1990:308-9). With the withdrawal of the IPKF, anti-LTTE militant groups transferred their allegiance to the Sri Lankan government thereby heightening their influence on the conflict with some even co-opted into the army as auxiliary units responsible for identifying LTTE suspects and engaging in joint operations (Jayatilleke 1999:8-10; Thangarajah 2002:19). At the same time, disappearance carried out by the pro-government militias became a feature of counter-LTTE operations. Indeed, during the IPKF period, an unknown group in Jaffna believed by the All Island Commission to have been the EPRLF was responsible for the disappearance of many people (2001:57). The EPRLF used its relationship with the central government to command greater political influence over the local population leading to its success at the 1988 North-East Provincial Council elections in conditions unconducive to a free and fair election. The EPRLF consequently exploited the power which came with such an appointment to engage in the extrajudicial execution of scores of civilians (UTHR-J 1992:3; Bastian 1999:19). In this way, an additional mechanism of local government and its infrastructure was misdirected towards violence in the name of narrow vested interests rather than meeting the needs of the local population. Furthermore, the EPRLF and other anti-LTTE militias were able to embrace parliamentary politics while using their own military factions to pursue political interests, making it extremely difficult for civilians to express any political opinion without fear of reprisals from either side of the conflict.

4.4 Politicisation and militarisation of civilians

The multiplicity of violent groups plus the fact that all sides engaged in disappearance or abduction made it extremely difficult if not impossible to establish both the source and motives behind individual incidents. This situation, compounding the state's intervention in everyday life which politicised and polarised social relationships, provided opportunities for personal and private rivalries and tensions to find expression in violence. The deliberate use of clandestine tactics including disappearance encouraged retaliatory abuses against civilians by both sides. In the early 1980s, the primary counter-insurgency tactic deployed by the security forces trained by Israeli soldiers was that of a raid or assault in areas where militants had previously attacked and killed security force personnel (Nissan 1996:17; Wijesinha 1991:93). From the outset, therefore, civilians were placed at the centre of the violence as Tamil, Sinhalese and Muslim villages and homes became the theatre of war. This counter-insurgency tactic became common practice throughout the early 1980s in response to the killing of security force personnel and Sinhalese civilians by the LTTE and other militant groups (Nissan 1996:17). However, such a strategy inadvertently fuelled rather than disarmed the militants and by deliberately targeting civilians, entire communities were drawn into the conflict and forced into political camps which reflected the ethnic polarisation of the country (Nissan 1998; Nithiyanandan 1987:150; Kearney cited in Warnapala 1994:171).

Sinhalese and Muslim communities in the border villages between LTTE and government-held territory in the north and east were drawn

squarely into the conflict in December 1984 when the government decided to establish, arm and train 'home guards' or civilian defence forces to be responsible for law and order in their own villages. UNP MPs became local commanders of the home guard units which constituted UNP members and supporters almost in their entirety (Warnapala 1994:186). The consequences of this initiative were numerous, given that summary justice had effectively been given political licence. Local disputes and rivalries were couched in the language of politics and separatism, finding expression in violence with UNP patrons at a distinct advantage. By formally drawing civilians into the conflict, villages with home guards became an attractive target for Tamil militant attacks. In addition, the *Mobilisation and Supplementary Force Act No. 40 of 1985* introduced a form of conscription where children as young as 16 were eligible for paramilitary training with some training centres directly controlled by ruling party politicians (Warnapala 1994:184-186). In this manner, a range of government-sponsored armed groups came into being under the direction, control or influence of ruling party MPs. At the same time, given that approximately 75 per cent of the population lived on land allotments allocated through government-sponsored settlement schemes or occupied houses constructed in part or full with government assistance, the UNP used its patronage networks to wield considerable influence and power over the country (Peiris 1993c:266-267). While the UNP had politicised the police force and the President was empowered to appoint the heads of the armed forces, initiatives such as the home guards provided greater and more direct political control over security and reflected the increasing privatisation and outsourcing of violent means.

In the north and east, life for the civilian population was made extremely tenuous with the ever-changing dynamics within and

between militant factions and patrons, together with the militarisation of civilian functions and the inaccessibility of the rule of law. The volatility of the political temperature and allegiances of both pro and anti-state militant groups ensured that the distinctions between *us* and *them* became decidedly blurred. The ability to uphold and demonstrate any form of neutrality in the hope of securing safety was impossible. Given the intense mistrust that emerged within communities and neighbourhoods which had otherwise lived in harmony, providing information voluntarily to various parties became a way of securing their protection. Such a tactic also gave summary justice a longer leash as informing on others became a short-cut to resolving local rivalries and disputes. At the same time, because it was impossible to know the source of abuses such as disappearance and abduction, given the range of groups engaged in violence, it led to speculation that local animosities and tensions provided motive. In 1985 Mrs V's 26-year-old brother who worked at the local Milk Board was abducted off the street in the Amparai District by a group in the company of soldiers and taken away in a white van. She believed that information was given to the army that her family supported the LTTE because others were jealous of her family's relative affluence which was due to her brother's position (Mrs V, Amparai District: Interview 8). Mrs V's inquiries at the local army camps were met with total denial and a report to the Akkaraipattu police station amounted to nothing.

Summary justice enacted by militants, the security forces, pro-government armed groups and militarised civilian bodies increasingly filled the vacuum created by a breakdown in the rule of law, inaccessibility of the courts and a partial police force. People who retained administrative functions in the north and east were not immune from pressure to demonstrate political compliance to their

patrons. The Government Agent of Jaffna who administered the district from 1984 allegedly discouraged the public from making complaints about the army, leaving complainants with no other option but to appeal to the LTTE for summary justice (Dr Nesiah, *personal communication*). As more communities were drawn into and implicated in the conflict, violence embedded itself even further into social relations across ethnic and religious communities. From 1985 Tamil militants attacked Muslim communities with two major consequences. Firstly, the Muslim community of the north and east were driven towards the state in search of security. Secondly, targeted violence spurred growing militancy among Muslim youth leading to a series of clashes with the LTTE and culminating in the 1990 LTTE killing of approximately 140 worshippers at the Kattankudy mosque in the east and expulsion of an estimated 120,000 Muslims from the LTTE-occupied north (Nissan 1996:21). For its part, the UNP played a direct hand in provoking the Muslim community into the conflict and the creation of Muslim Home Guards merely fed the violence as a pattern of reprisal killings by the LTTE and home guards emerged. From 1987 to 1990, reports suggest that at least 40 Muslim men were abducted by the LTTE (Hoole 2001:327; Nissan 1998; AI 37/08/96:23).

4.5 Violence made permissible

By January 1987 the unprecedented violence in the north and east had led to the deaths of over 10,000 Tamils at the hands of security force personnel and their allies and approximately 1,000 Sinhalese had been killed by Tamil militants (Hoole *et al.*, 1990:119). Tens of thousands, predominantly Tamils, had fled their homes and thousands more were in detention around the country. As discussed, the legislative and constitutional framework established under the UNP's political

apparatus facilitated such violence and provided scope for a range of groups and individuals with varying motives to engage in violence. However, it was the ruling party's exploitation of the Sinhalese majority's fears of a division of the country that made such violence possible. Fears that the Buddhist Sinhala nation could be destroyed provided the moral justification for dealing with the 'Tamil issue' militarily rather than by political means. Although civil and human rights groups raised concerns about the extent of unchecked powers contained in the PTA and ERs, the majority of the population was indifferent to the measures or accepted that the security forces should do whatever was required to defeat separatism and uphold the unity of the Sinhala-Buddhist nation. The general consensus that the ends outweighed the means provided scope for abuses to be carried out against Tamil civilians in the north and east and these were soon replicated across the country.

The militants threatened the prospect of jobs and the nation-building reforms and development projects on offer along with the promises they held of recapturing the grandeur of the ancient Sinhalese kingdoms. By reframing the historical past, the nationalistic rhetoric that accompanied such projects and the wider modernisation agenda of the UNP drew on what were historical confrontations between regional rulers to perpetuate contemporary fears regarding ethnic identity, contextualising Sinhalese colonisation into predominantly Tamil areas and the accompanying violence as part of a historical continuum. Resort to disappearance facilitated this falsehood by impeding the verification of reality and enabled the UNP to deny a political reality through misinformation.

The disappearance of tens of thousands of Sri Lankans that was to follow over the forthcoming years was the reality of the UNP's

õrighteous societyö. Rather than providing for a just and equal society, the UNP's vision of righteousness translated into a society based on exclusion, affluence and competition. As the 'ethnic issue' and with it prospects for a resolution, became defined largely in military terms, violence became the preferred expression of this ideology of ethnic cleansing, as the ruling party became transfixed with eliminating the unrighteous, the impure and those professing any other society. Disappearances served as the mainstay of this regime by providing a means of purification and its concealment. Therefore, efforts to recover the disappeared through social, political and legal means were attempts to re-establish the individual in relation to the state and thereby recover the state's obligations towards its citizenry in terms of law and order, justice and basic human rights protections.

There is no question that the LTTE and JVP were extremely violent regimes in their own right. However, if the government's intention had been just to weaken or even eliminate these movements, it would have set the country on a very different political path. It might have used the rule of law and democratic process to address their grievances before they were expressed in terms of violence. Or the government could have at least strengthened the rule of law to ensure that the counter-insurgency was proportionate in its response and upheld international human rights norms.

By the mid-1980s, all forms of political agitation within the Tamil community were almost exclusively the domain of armed militants who, in contrast to their parliamentary predecessors, saw any form of concession or compromise as an act of treason. When offers for concessions did come from the government, they were rejected by the intransigent Tamil leadership as too little too late. As the LTTE challenged the territorial integrity of the state, their demands grew in

parallel with their ability to challenge the state militarily, rendering the aspirations of the previous Tamil leadership for decentralisation or devolution of power totally inadequate (Wilson 1998:349). At the same time, the Sinhalese community saw any concessions offered by the central government as a threat to the very existence of the nation, and totally rejected them. Both sides had been politically polarised by the violence they both perpetrated against civilians, legitimised by their self-serving rhetoric. The death and destruction wrought by the security forces was carried out in the name of the territorial integrity of the nation. The LTTE's attack on Sinhalese civilians was a means of securing Tamil rights and exemplified the need to establish a Tamil homeland where such rights were assured (Warnapala 1994:172).

In 1985, under pressure from India, the Sri Lankan government offered devolution of executive power and the establishment of elected provincial councils as a way of providing some autonomy to the Tamil community. It also introduced a legislative amendment providing for linguistic equality (Coomaraswamy 1993:144). The Tamil leadership believed the reforms did not go far enough in devolving power and meeting their demands. For the Sinhalese majority, however, they were evidence that the President had given in to the militants at the cost of the country's unity because provincial power could be used by the LTTE as a stepping stone to secession (Marino 1989: Part 4:5). The Tamil community's perceived temerity in rejecting such offers further polarised both communities on the basis of unalterable ethnic differences.

The politicisation and polarisation of ethnicity was further compounded in 1987 when the Indo-Lanka Peace Accord of 29 July granted autonomy to the Tamil community in the north and east by way of devolution of power. It was greeted by Tamils as a chance for

peace and as a total betrayal by the Sinhalese to Sinhala-Buddhist nationalism as well as Indian interference in the affairs of a sovereign state. Mr S from the Sinhalese-dominated Gampaha District recalled that at the time of the accord, he was told by a policeman that the President was going to give half the country away (Mr S, Gampaha District: Interview 14). In contrast, for many within the Tamil community, the accord was at least initially viewed as an opportunity to end hostilities and achieve peace. Mrs P from the east recalled that many Tamils went to meet the IPKF when they first entered her area: *“I myself went to meet them. A feeling came to me like we were going to be liberated, like one of our own had come”* (Mrs P, Amparai District: Interview 10). But rather than liberation, the widening political gulf between the two majority communities entrenched their polarised positions in the wake of the accord and led to unprecedented political violence.

Under the pretext of destroying terrorism, the UNP pursued a wider policy objective of Sinhalese colonisation during the early 1990s, destroying solidarity within Tamil communities in the north and east and between Sinhalese villages in the south. Sponsorship of local paramilitary groups and establishment of civilian home guard units under specific political direction served to conceal disappearances and other extra-legal abuses. However, the outsourcing of violence and militarisation of the civilian population ultimately led to an escalation in the level, reach and intensity of violence. The parallel militarisation of public administration and due process and encroachment of military involvement in civilian affairs dismantled non-violent avenues to resolve conflict in the north and east, paving the way for the military to serve as the arbiter in matters pertaining to the conflict.

CHAPTER 5

We have the democratic power to do anything.

- President Jayewardene⁵

Political violence and manufactured chaos

When the JVP launched its southern insurrection against the ruling party in 1987 in the wake of the Indo-Lanka Accord that divided the nation, the UNP used the JVP threat as a pretext to reinforce its own political agenda. Its political project was directed at eradicating all forms of anti-government sentiment. Rural communities already rife with violence, corruption and political hostility and disfigured by JVP hostilities were not protected by the state but rather were considered sympathetic to the JVP and were brutalised accordingly. Moreover, efforts on the part of the JVP to attract rural male youth to its cause gave the ruling elite a pretext to target rural youths who were viewed as a threat to the patronage politics on which UNP rule was based. The political project was overtly violent and its methods clandestine. Death squads and paramilitary groups operating in the shadow of the state deliberately copied the JVP's tactics, concealing from the public the source and motive behind the violence and thereby manufacturing chaos and disorder. In the politically constructed haze of confusion, fear and impunity otherwise termed the *beeshana samaya* (era of terror), space was created for the violent expression of private and political vengeance from the highest levels of government to the rural villages caught up in the violence. Within this context, disappearance provided the ideal means by which this political project could be carried out

⁵ President Jayewardene cited in Marino 1989:8.

and concealed at the village level all the way up to the highest office in the country.

In 1994 when a new People's Alliance government came to power having defeated the UNP, it established three geographically focused Presidential Commissions of Inquiry to investigate reports of enforced disappearance perpetrated by state and non-state actors, which took place from 1 January 1988 in all provinces of the country. The three commissions received 27,526 complaints and inquired into 16,742 cases of enforced disappearance and forced abduction.⁶ A fourth All-Island Commission was established in 1997 to investigate 10,136 outstanding cases from the previous three commissions. However, an additional 16,305 cases were received by the fourth commission but were not investigated as its mandate prohibited investigation of new cases.

In their final reports, the Southern and All Island Commissions noted that anti-government political affiliation was the main operative factor in regard to the disappeared, irrespective of whether the party concerned was lawful (SLFP) or unlawful (JVP) (Southern Commission 1997b:30; All Island Commission 2001:10). The Southern Commission concluded that police and military personnel operating under an unofficial political command structure were

⁶ Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces (herein Central Commission), Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces (herein North & East Commission) and Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces (herein Southern Commission).

directed to carry out disappearances and killings in order to achieve the total subjugation of the population for narrow political (and personal) ends which had nothing to do with reinforcing the law (Southern Commission 1997b:53). Contrary to popular view, disappearances were not a consequence of the civil war between the JVP and state or a purge emanating from a military coup. Rather, they were carried out under the direction of an alternative political apparatus or shadow state established by the democratically elected ruling party to pursue personal and political interests by undemocratic and illegitimate means. The violence of the JVP provided the perfect excuse for the UNP to unleash terror against its enemies and reassert control over rural communities in order to immobilise the possibility of dissent and establish for President Jayewardene ðunchallenged personal ruleö (Gunasekara 1988:87). The political leadership used this political apparatus to destroy opponents by abducting members and supporters of opposition parties and young male youth seen as a threat to its vested interests and political authority.

5.1 Political apparatus at work

In response to the threat posed by the JVP, the same legal and administrative features that had provided scope for disappearance, torture and extrajudicial execution in the north and east in the early 1980s were applied to the rest of the country. The PTA, ERSö including ER 55FF introduced in late 1988ö and the indemnity legislation comprised the main features. Provision of such extraordinary powers to a politicised police force and military, and the relaxation of safeguards surrounding arrest and detention with executive rather than judicial oversight, provided significant room for political interference. In a speech in the deep south in 1987, President

Jayewardene made his intentions clear when he told an audience of security force personnel to “Kill and kill and kill the brutes” (cited in Gunasekara 1988:9). Months later, the *Indemnity (Amendment) Act 1988* came into effect, providing the guarantee required by the security forces to carry out the President’s wishes with impunity. While enabling the shadow state to thrive, such measures weakened the formal legal structures and law enforcement institutions to the point where they were unable to provide remedy to survivors of political violence. Furthermore, the military ultimately became reliant upon extra-legal methods leaving the ruling elite with little alternative to violence to assert its will.

The existence of an alternative political apparatus was exemplified by the establishment of unofficial detention facilities near army camps and police stations across the southern and central provinces (Southern Commission 1997b: 56 & 194). Death squads and paramilitary groups comprising law enforcement officials promised rapid promotions through the official ranks and large monetary rewards in contravention of the Police Ordinance and equivalent legislation came into being (Southern Commission 1997b: 35 & 79). Marino argued that whether engaged in official or unofficial activities, state security personnel operated exclusively on behalf of their political patrons (Marino 1989: Part 4:2). Many police stations received lists of alleged insurgents from UNP MPs and appeared to act on information from the MPs “as if this had the status of orders from the executive or of instructions from the judiciary” (Marino 1989: footnote 6:6). Similarly, electoral lists from the provincial council and parliamentary elections where many opposition party representatives and particularly leftist party members had registered for nomination were used by ruling party politicians to identify political opponents for eradication (Chandraprema 1991:243). If atrocities were attributed

to unidentified death squads, any police investigation or magisterial review into them were halted (AI 37/21/89:6). President Jayewardene summed up the relationship between the political leadership and military in December 1988 at the height of the violence when he stated that the security forces operated under 'perfect control' and had been permitted to engage in activities against human rights, which were 'regrettable' but 'cannot be helped' (*The Times* 17 December 1988 cited in Marino 1989:6). At that time, up to 20 youths were abducted every day by armed men in civilian clothes in the south and disappeared (Gunaratna 2001:288).

The extent to which the UNP directed violence during the *beeshanaya* was demonstrated in the central provinces where most of the 6,443 complaints of disappearances inquired into by the Central Commission took place in 1989 following the December 1988 presidential election and parliamentary election of February 1989.⁷ In the central provinces, the *athurudahanwoowo* (disappeared) largely comprised SLFP organisers, activists and supporters who would have been easily identified by the ruling elite through campaigning and electoral lists. Such people were 'branded' JVPers and had their names placed on lists provided to the police and army for elimination (Central Commission 1997b:5).⁸ Of the 8,739 cases of disappearance reported to the Southern Commission between January 1988 and December 1996, approximately 5,742 (or 66 per cent) took place in 1989 and half of those (or 2,824 disappearances) between October

⁷ The Central Commission received 15,045 complaints and by April 1997 had inquired into 6,443 cases (Central Commission 1997b:1)

⁸ Lt General Rohan Daluwatta, Commander Sri Lanka Army, stated before the Southern Commission that a then minister had given him a list which he came to know comprised the names of SLFP members and supporters (Southern Commission 1997b:35).

and December 1989 (Southern Commission 1997b:18). In April 1989, death threats issued in the name of the JVP were made to the families of service personnel which led to a dramatic escalation in violence. However, evidence before the Central Commission suggested that the ruling establishment issued the threats in the JVP's name. The Central Commission revealed that security personnel had initially been reluctant to eliminate the JVP because it was seen as a potential ally against Tamil militancy.⁹ Chairperson of the Central Commission, Mr Suntheralingam explained that President Premadasa organised the killing of certain persons: one or two family members of police in remote areas which then spurred the police and army into action (*personal communication*). The Central Commission concluded that it was not certain whether the death threats were part of the government's ploy to make the Police and Armed Forces go all out to wipe out the Sri Lanka Freedom Party supporters under the guise of crushing the JVP's (Central Commission 1997b:5). However, many survivors of political violence recognised such tactics as those of the ruling elite. Mr S's 26-year-old son, a science undergraduate at Colombo University, disappeared in October 1989.¹⁰ He explained the rationale:

⁹ The JVP leadership had earlier declared the armed forces the patriots of the motherland in the context of the struggle with Tamil militancy (Chandraprema 1991:186). The publication that appeared in April 1989 purporting to represent the JVP stated that it had abandoned its policy of not killing the armed forces and that the 'only reply to massacre is massacre' (cited in de Silva 1998:177).

¹⁰ The disappearance of Mr S's son took place in the context of the extremely violent and highly politicised university environment where the JVP and various student unions carried out abductions and killings. The son's membership of a rival student union to that of the Independent Students Union (believed to have formed the death squad PRRA to target the JVP in

Even in war if you catch the enemy, wounded or not, they are produced in the courts but there was no law and order at that time here. For example if an army soldier is living here and then goes elsewhere for duty, when he is away from home, the government used the paramilitary to kill his family and left a receipt killed because your son or husband is in the army so when he comes home, he sees it and began acting against the JVP.

- Mr S, Gampaha District: Interview 14.

The wave of violence that was unleashed coincided with a transfer of responsibility for national security from the police to the army and release of posters declaring 'twelve of yours for one of ours' (Chandraprema 1991:296). Six months after the threats, an estimated 15,000 had been killed and up to 50 dumped bodies began to appear daily along the roadsides (Chandraprema 1991:293-312).

5.2 Disappearance of political opponents

The UNP used the December 1988 presidential and February 1989 parliamentary elections to draw out political opponents for elimination and to consolidate power (Iqbal 2002:92). To ensure a low voter turnout, deliberate efforts were made to create fear and uncertainty using provocative posters attributed to the JVP and radio messages to stay calm. During the day of the election, UNP politicians and their gangs accompanied by senior police officers engaged in widespread election malpractice (Wijesinha 1991:167,188). These tactics brought President Premadasa to power with only 55 per cent of the ballot cast in an election with the lowest-ever voter turnout in the country's

retaliation for the killing of its own members) resulted in his abduction and disappearance.

historyô which, in some districts, was as low as 19 per cent (Wijesinha 1991:188; Warnapala 1994:169).

Potential political rivals both within and outside the UNP were specifically targeted before the February 1989 election while defeated UNP candidates ordered the disappearance of successful rivals after it (Chandraprema 1991:234). According to Spencer, the elections were held in a context in which organised violence òin the shadow of the stateô threatened the continuation of traditional politics in the country (Spencer 1990:11). While the JVP had threatened voters with death in the lead up to the 1988 elections, the killings that took place were concentrated in SLFP areas, a fact which confirms that the JVP were not the primary instigator of violence (Wijesinha 1991:188; Warnapala 1994:169). Of 7,239 proven cases of disappearance in the southern province, the JVP was responsible for 779 of them (11 per cent) whereas 4,585 disappearances (67 per cent) were carried out by security force personnel (Southern Commission 1997b:29).¹¹

As the primary opposition party, it was the SLFP that was a key target of state terror during this period. The òBlack Catsô death squad was believed responsible for the disappearance and extrajudicial execution of at least 60 SLFP activists in the central region carried out during the three month election period (December 1988 to February 1989) (*The Island*, 6 April 1992:2). When the UNP was returned to power with 125 of 225 parliamentary seats in an election characterised by violence and low voter turnout, SLFP candidates and supporters were

¹¹ In 21 per cent (or 1,543) of the remaining disappearances, the identity of the perpetrators was unknown. However, it is more than likely that security personnel were responsible as JVPers were not known to conceal their identity. A further 59 disappearances were attributed to personal rivals acting in concert with the security forces or paramilitaries.

again the primary target (Vijayalakshmi 2001:136). Mrs G believed that her husband disappeared during the election period because he campaigned on behalf of the SLFP in Kurunegala District. While he was taken from their home by unidentified persons during a curfew, she attributed his disappearance to the UNP as the government of the day responsible for security (Mrs G, Kurunegala District: Interview 2).

Intensified violence provided the opportunity to broaden the definition of subversion to fulfil a greater range of political and other objectives. Known critics of the government and security forces were labelled JVP sympathisers and disappeared or killed outright (AI 37/21/89:6). State protection was deliberately denied to people who had been attacked for their dissident views, providing scope for their disappearance (Southern Commission 1997b:36-28). Others such as the husband of Mrs S disappeared after direct threats were made by UNP politicians or supporters. On 4 November 1989, after speaking out against a UNP minister at a strike of 2,400 sacked textile workers (including himself), the husband of Mrs S was threatened by UNP supporters immediately before his disappearance. Mrs S observed that the government of the day 'was not accepting people talking and protesting against them so the easiest way to get rid of them was to disappear them' (Mrs S, Gampaha District: Interview 12).

Political competition had become a violent struggle over life and death as the ruling party increasingly relied on violent, illegal methods and mass intimidation to assert authority. Unprecedented election violence, intimidation and deaths in polling booths characterised the elections and secured the UNP's election victory (Gunasekara 1988:489). Thereafter President Premadasa was able to assert that as the legitimate and popularly-elected government of the day, the UNP had a mandate to eradicate all forms of terrorism and subversion. The

JVP was eliminated a year after Premadasa came to power. As no parliamentary party could legitimately lobby against the exercise of the democratic process or indeed a suspension of it under an increasingly autocratic regime, the UNP was able to sustain a façade of electoral representation while sanctioning widespread atrocities. The political regime highlighted acts of brutality by the JVP and other anti-state actors in the press during a prolonged state of emergency, which disguised the fact that its authority and power rested solely on its own excesses. However, rather than strengthen the role of the state, such authoritarian measures were to threaten its very foundations as the state itself was totally disfigured as an instrument of coercive force. As Warnapala explained, all institutions and methods associated with the state were made totally subservient to the need to establish and strengthen the structures of repression and coercion (1994:161). When the violence officially ended in 1990 and the country enjoyed a change of government in 1994, the apparatus that provided for state terror largely established by Jayewardene and Premadasa remained in place and violence carried out in the shadows of the state continued.

5.3 Disappearance of those with “potential”

The JVP recognised disenfranchised Sinhalese youth as a potential source of mass recruitment. Whereas Tamil youth viewed the university standardisation schemes of the 1970s as evidence of deliberate discrimination against them, for many Sinhala-educated youths, the continued use of the English language by the country's ruling elite in all aspects of political, social and economic life highlighted their total exclusion from political power and social advancement (Presidential Commission on Youth 1990:xvii). A university degree, let alone secondary education, could no longer guarantee a decent job with youths comprising 49 per cent of the

country's two million unemployed (or 26 per cent of the country's total workforce) 31 per cent of whom were university graduates who had to wait around four years to secure employment (Vijayalakshmi 2001:125; Gunaratna 2001:64). Even though youth comprised a substantial proportion of the country's population, traditional parliamentary parties had failed to appeal to the youth vote and maintain youth ranks. Thus, the mobilisation of Sinhalese youth (like that of Tamil youth to militia groups in the north and east) took place outside the traditional domain of the electoral process and democratic competition (Uyangoda 1992:39).

The JVP used Sinhalese youth disaffection and the growing social fissures behind it to establish a grip on university politics during the early 1980s, capitalising on their grievances about political elitism which appealed to otherwise apolitical students alienated from electoral politics (Chandraprema 1991:158,111). However, the JVP relied on violent methods, including forced abduction of rival student union representatives, and when violence between rival unions became a key feature of university politics, campuses were closed (Chandraprema 1991:158). Such closures transformed violent university political activism to clandestine engagement in underground movements (Warnapala 1994:174-5). At the same time, school students forced onto the streets by the JVP to demonstrate against the government became a target of police violence and prompted the closure of schools. With schools and universities closed in many parts of the southern and central provinces, many students were forced to take up menial work or wait at home for the violence to end. Some took the view that the only way out of poverty was to join the JVP (Gunaratna 2001:66). Having completed their studies only to be denied employment and social mobility, many rural youths had no stake in the system which perpetrated their socio-political exclusion.

They had viewed the UNP's extension of parliament in 1972 and 1982 as an affront to the people and induction into unwarranted methods designed to achieve retention of political power (Presidential Commission on Youth 1990:xvii).

State repression exemplified by the arrest and torture of scores of individuals who were sympathetic to the JVP's economic policies but opposed to the use of force turned otherwise neutral bystanders into active JVP supporters (Gunaratna 2001:203). Indeed, state repression justified the JVP's call to arms in 1984 which it termed as necessary for self-defence, thereby legitimising for their members and supporters, the need for 'pre-emptive' attacks on the state (Chandraprema 1991:65). In March 1987 all JVP lectures and classes were replaced with weapons training as the JVP prepared itself against what it saw as an imminent state onslaught (Chandraprema 1991:66). In seeking to bring down the centralised government, the JVP insurrection specifically targeted ruling party MPs as well as public office holders, public servants and individuals asserting the right to vote or contest an election (All Island Commission 2001:11).

Initially, anti-government political affiliation was the main factor in disappearances (All Island Commission 2001:10; Southern Commission 1997:30). However, the ruling party's rationale was that those of low socioeconomic status were collectively sympathetic to the JVP (and potentially SLFP) and it therefore targeted poor rural communities (AI 1990:7). At the same time, as the JVP was believed to have specifically enlisted young males considered natural leaders in their own communities, the political apparatus also targeted the same demographic group for disappearance and elimination whether they were affiliated to the JVP or not (Southern Commission 1997b:31). Mr K's 17-year-old son showed leadership potential when he

organised an anti-JVP student protest at his local high school. This resulted in his arrest on 14 October 1989 and subsequent disappearance (Mr K, Matara District: Interview 6). As noted by the Southern Commission, the elimination of 'potential groups' became a permanent counter-subversion tactic (1997b:31). One such potential source of anti-state activism was the 76 per cent of the country's youth who lived in rural areas and were mostly poor. Growing unemployment and underemployment among rural youths highlighted the widening gap between the government rhetoric and the reality while reflecting a deepening social division between the English-speaking and *swabhasha*-speaking populations. Rural youths were perceived, therefore, as a threat on two levels - as potential dissidents and as a threat to the prosperity promised by the ruling party and its political longevity (Marino 1989:2:3). The potential for this demographic group to participate in an ideologically motivated campaign that challenged the hegemony of the new urban middle class and wider liberalisation agenda was 'quite substantial' (Hettige 1999:315). They were highly politicised, having been first influenced by a tradition of leftist politics and subsequently under the 'guidance of radical anti-systemic youth movements', and had been educated under a universal free education system. Rural youths of low socio-economic status with no stake in the current political system and marginalised by economic reforms represented the potential of an alternative ethos to that propagated by the ruling elite (Hettige 1999:315). Efforts on the part of the JVP to attract this demographic to its cause provided the perfect pretext to eradicate the threat of rural youth and destroy their communities. The Southern Commission revealed that while the level of unemployment among those disappeared in the south was probably considerably higher than the 10 per cent recorded, the disappeared were male (98 per cent), young (with the 20-24-year-old age group the most vulnerable) and literate

(with 63 per cent having a secondary education) (Southern Commission 1997b:17).¹² In many instances, disappearances were carried out purely on the basis of the age and socioeconomic status of the victims.

5.4 Politicisation of local grievances and tensions

Political violence coincided with a dramatic rise in criminal violence in the southern provinces including rape, murder and abduction perpetrated primarily for reasons of personal vendetta and family rivalry (Chandraprema 1991:168). Such crimes reflected the collapse of traditional dispute resolution mechanisms and systems of legal redress brought about by the prevalence of an alternative political apparatus to that of the legal system— an apparatus that depended upon political violence, corruption and impunity to achieve its objectives. Village officials who would traditionally mediate in local disputes were politically appointed. They were therefore mistrusted and unable to resolve disputes which were left to escalate among villagers often divided along political party lines (Robinson cited in Spencer 1990:11). Traditional authority structures that had prevailed in villages and towns as mechanisms to resolve conflict and redress wrongs were undermined and dismantled by the politicisation of such appointments (Obeyesekere 1993:16). At worst, state officials became an important medium of patronage and power who rewarded ruling party supporters at the expense of political opponents. These conditions, along with the political violence that characterised

¹² The Southern Commission noted that a considerable percentage of persons recorded as employed were in reality persons who were under-employed or seasonally employed. It concluded that the actual number of unemployed persons was probably higher than the 10 per cent recorded (Southern Commission 1997b:17).

governance, provided the scope and opportunity for summary justice to thrive. Without access to traditional means of reconciliation, social cleavages along the lines of class, caste, resource allocation, employment and political affiliation deepened and forced parties into opposing political camps. Such divisions provided the opportunity to use the prevailing violence to resolve disputes while emerging criminal gangs and political parties exploited such divisions for their own advancement. The availability of weapons from the north and east ensured that such violence was often lethal (Chandraprema 1991:168). Of the 1,604 murders and over 200 abductions reported by police in the southern provinces during the first half of 1987 in relation to private disputes, the majority had been tangled in protracted disputes over land (Chandraprema 1991:169). Long-held grievances over land distribution, natural resources and unemployment had come to the fore in the lead up to the JVP insurrection (Marino 1989: Part 2:2) and political violence provided a means of expressing such divisions with impunity (Spencer 1990:12).

Violent expression of local tension in rural communities in the south was exploited by the JVP, which filled the power and law vacuum in rural areas. Polarisation along party lines, the deepening cleavages that developed and the lack of solidarity that prevailed enabled the JVP to impose its will through a system of summary justice which regressed into collective terror (Keenan 2002:7). It imposed rules about both public and private conduct in which the latter was increasingly forced into the public arena for scrutiny and punishment including death regardless of age, status or gender. By doing so, the JVP scrutinised and regulated village life, isolated villages and broke economic and social ties in order to stifle dissent (Southern Commission 1997b:45; de Silva 1998:182). Rather than protect or shield these communities from such violence, the army and police

interpreted the presence of the JVP in a village as adequate evidence to implicate the entire community against whom counter-insurgency measures were then applied. Similarly, if an individual disappeared, a shadow of suspicion was cast over the entire family who became vulnerable to harassment, arrest and disappearance. The execution of Mrs V's brother by the People's Revolutionary Red Army (PRAA) death squad in November 1988 led to the disappearance of two other brothers in army custody. A fourth brother remarked at the time that 'this can happen to me anytime and you'll find my body on the road because now we're a terrorist family' (Mrs V, Matara District: Interview 2).

As soon as the JVP imposed curfews and work stoppages or issued instructions about funerals, counter-instructions were issued by security force personnel and paramilitaries exposing locals to violence from both sides. While tit-for-tat demands and counter-demands perpetuated violence and anxiety, the UNP also issued posters in the name of the JVP countering normal JVP demands and creating total disorder and confusion (Chandraprema 1991:254). Such strategies, along with the prevalence of political violence and social discord in rural communities, encouraged a view among many in the south that the ruling party had gone to war against the rural poor. Mrs M from Kandy District, whose husband was abducted by the army on 4 December 1989 and disappeared, maintained that the 'poor were targeted for disappearance as a means of social control'. She continued:

People need jobs but when they are killed you don't have to give them jobs ... It happened only to the poor from the villages not the rich. I think because the poor are a problem for the country. Because for the poor they have to give jobs,

compensation, aid and many things so if you keep the rich, it's enough for the country.

- Mrs M, Kandy District: Interview 2.

In other instances, people who antagonised the JVP and therefore came to public attention subsequently disappeared following abduction by the security forces (Mrs K, Matara District: Interview 3). Such was the fate of Mrs M's husband, an electrician in Kandy District. Threatened by the JVP for ignoring their curfews and for speaking out against the movement, Mrs M's husband came to the notice of the army in whose custody he disappeared in December 1989 (Mrs M, Kandy District: Interview 2). At the same time, locals were singled out and forced to serve as a *goni billa* (masked informant) to identify suspected JVPers and other subversives and thereby act against family, friends and neighbours. The term *goni billa* became a key word in the lexicon of terror. Literally translating as bogey man, a mythical character in traditional storytelling, the term was appropriated during the JVP insurgency to refer to an informant whose mere presence intimidated and terrified the entire populace. Argenti-Pillen maintained that male villagers were removed during cordon and search operations and forced to serve as *goni billa*, responsible for identifying JVPers for arrest, torture and often disappearance before being killed themselves (Argenti-Pillen 2003:74). It was also customary in many areas for local politicians, policemen and local government officials, including the *Grama Sevaka* and Assistant Government Agent, to operate as *goni billa*. They identified constituents who they suspected of being JVP activists and provided their names to security personnel. Mr Suntheralingam, Chairperson of the Central Commission, argued that *Grama Sevakas* played a particularly important role in providing information to the security forces. With intimate knowledge of the villages over which

they presided, *Grama Sevakas* were instructed to provide information on families considered anti-government regardless of which political party they supported (*personal communication*). Other local administration officials, including members of provincial councils, were also alleged to have directly participated in disappearances by serving as informants (Central Commission 1997:2). In this manner, the role of the local administration was totally subverted. The deceit of the involved public servants who lived within the affected communities they betrayed was both personal and political as it provided an opportunity to act against one's own political and personal rivals. Such was the case for Mr W's 29-year-old son who disappeared from Kandy District on 30 June 1990. His name along with the names of 34 others who disappeared was placed on a list written up by a local *goni billa*. According to Mr W, the *goni billa* was a former employee of the Agriculture Department who provided his son's name to end an eight-year land dispute between the two families (Mr W, Kandy District: Interview 1).

The security forces were fed false information by individuals eager to have their personal enemies eliminated under the guise of counter-insurgency operations (AI 37/21/90; Southern Commission 1997b:29; Iqbal 2002:89). Personal jealousy over sporting or educational skills and other talents as well as petty inter-communal grievances were seen by many families interviewed for this study as key motives⁶ and often the primary motive⁶ in the disappearance of their loved ones. The fact that politics had become embedded in all aspects of everyday life and centred on the distribution of state resources and patronage had created a context in which private disputes were often couched in the language of party politics and actively pursued during the southern violence (Spencer 1990:259). This reality, framed in the context of a 'dirty war' in which the identity of the perpetrators and their motives

were unclear, provided fuel to the perception that much of the violence was personally driven.¹³ It was widely believed that information about the identity and whereabouts of alleged JVPers was given to the police and military in the form of anonymous letters and tip-offs confirming the view held by many families of the disappeared that their relatives were taken on the basis of (localised) personal knowledge rather than purely political reasons. As Mr S explained:

If a person is a friend of the police or military and tells to an officer, ðI have a problem because my neighbour is taking coconuts from my treesö, or ðwe can't sleep because the neighbours are always fighting in the houseö, the friend in the police or military would say, ðlet's do something about thatö and they would take them. This also happened because of land disputes or to bright students who people told were JVPers. The police or army said, ðjust give us the nameö and they were all taken.

- Mr S, Gampaha District: Interview 14.

Mr S from Matara District expressed a similar view when he said:

The Army didn't do any justice here. They took all the innocent people. For example, if there is a person I don't like, I'll write a complaint to the Army camp and he'll be taken away. Here for

¹³ The period of systematic terror in Argentina (1976-1983) or 'dirty war' of the military junta against subversives was characterised by the abduction, torture and disappearance of 30,000 people (Taylor 1997:11). Robben noted that disappearance was the preferred tactic of the military against the counter-revolutionary movement. He observed that, 'The most immediate military objective was to sow terror and confusion among the guerrilla forces, but the repressive method soon spread to civil society as a whole' (2000:71).

land disputes, people sent petitions and they used the situation for their personal things.

- Mr S, Matara District: Interview 5.

5.5 Manufacturing chaos

Violence saturated the socioópolitical landscape and was so pervasive, yet carried out in such a clandestine manner, that it was impossible to determine with any certainty who was responsible for specific killings and abductions. The ruling elite manufactured chaos not only to conceal the sources of the violence and the motives for it but also to create fear and mistrust across the country. Fear within rural communities served the purpose of immobilising villages into silent acquiescence to counter any possibility of collective resistance. In contrast, the ruling elites deliberately heightened fear in urban centres to establish consensus with its goal of eradicating subversion. By highlighting its mandate to preserve national security and uphold a way of life threatened by the JVP and those it believed sympathetic to its cause, the UNP was able to secure tacit agreement with, if not indifference to, the methods employed to destroy subversion.

Security force personnel operating as part of death squads were renowned for deliberately concealing their identity or forging an alternative to protect themselves from counter-attack, to cover-up abuses and to deliberately confuse the local population about the author of violence and source of danger. During the *beeshana samaya*, often the only evidence of atrocity was that of a dumped, charred body in a public place. Employed as a tactic by the security forces to mirror the tactics of the JVP, it instilled fear into those who were either sympathetic to the JVP specifically or anti-UNP generally (Gunaratna 2001:285). The result was total paralysis. Mrs P from Kandy District

whose 25-year-old son disappeared in September 1989 recalled that "People were not in the streets at that time. If there was a sound of a vehicle, everyone hid. There was the sound of gunfire everywhere" (Mrs P, Kandy District: Interview 6).

In direct contrast to the clandestine operations in the north and east of the 1980s when the bodies of the disappeared were rarely found, in the southern violence, mutilated bodies or parts of bodies were regularly displayed in public as a part of the state's terror campaign (AI 1994b:28). Of the 779 killings carried out by the JVP in the southern provinces, bodies were found in 628 cases (Southern Commission 1997b:25). The bodies of people killed by the JVP were usually destroyed in as public a manner possible and then dumped with a placard bearing a message such as "Death to Informers". Instructions were given that the body was to be buried without a ceremony and that the coffin should not be carried above the knee (Southern Commission 1997b:30). In January 1988 retaliatory killings of suspected JVPers also took on a public spectacle. Focused on mirroring the tactics and abuses of the JVP, the modus operandi of state-sponsored death squads and paramilitaries comprised forced abduction in as public a manner as possible followed sometime later by the dumping and burning of mutilated bodies in public locations which made identification impossible (Warnapala 1994:193). These bodies were often left in public places with no claim about the perpetrator. However, atrocities by paramilitary groups such as the PRRA were identifiable because they claimed responsibility by tying a notice around the body of the victim (Southern Commission 1997b:30; Warnapala 1994:191). Yet, attribution on the body to a paramilitary group whose identity, power and reach were unknown was as confusing as that of no attribution at all. Such acts not only instilled greater uncertainty about the motives behind the violence but

the mutilated bodies themselves served as an open threat to the entire community and a means of social control. They demonstrated the price of disobedience but for what and to whom? They also indicated to the community a wider project of disappearance and thereby highlighted the ambiguity about the fate of the disappeared. As the bodies of victims of state-sponsored abuses were found in less than 20 per cent of cases by the Southern Commission, the public display of mutilated bodies represented the tens of thousands of others who were not publicly displayed but had been disappeared in the hands of state agents (Warnapala 1994:193).

Given only 191 people were released from detention following abduction in the south and four reported instances of reappearance among the thousands who disappeared from January 1988 to 1995, the evidence demonstrates that the primary objective was that of permanent removal (Southern Commission 1997b:25). This intent was reflected in the fact that individuals were often simply abducted or lifted without reference to any legal provision whatsoever. Furthermore, in almost all disappearance cases that came before the Presidential Commissions, there had been no entry of arrest or detention made by the police and security forces as both had persistently denied any involvement. Thereafter, the police either refused to record complaints of disappearance or recorded them in the minor complaints book where they were deliberately distorted (Iqbal 2000:92-3). The use of plain clothes, masks, unmarked vehicles and false claims by police and security personnel points to a deliberate attempt to conceal their identity and evade accountability. However, unlike similar groups which operated under military rule across Latin America including Argentina and Uruguay, the Sri Lankan death squads were confident enough of their ability to evade identification and prosecution that they operated, not under the cover of night, but at

any time of day (Simpson & Bennett 1985:79; Servicio Paz y Justicia 1989:69). In 1988 most people whose disappearance from the southern provinces had been reported to the Southern Commission were abducted between 4pm and 8pm, while in 1989 most were taken in broad daylight (Southern Commission 1997b:21). People were not only taken from their homes but also from public places including bus stands, markets and the main street, often on the direction of a *goni billa*, before being forced into an awaiting vehicle.

Such abductions were made as publicly as possible (Southern Commission 1997b:30). The objective was to rupture cultural divisions between the public and private world while demonstrating the omnipresence of the regime which could strike anywhere, against anyone at any time. People who had been ordered to sign in weekly at the local army camp or police station as routine security procedure disappeared during such visits (AI 1990). Others were taken off the roads by the security forces on the pretext of providing road directions or some other form of assistance, or to have a chat at the police station. In many cases, therefore, the overall impression of affected families was that such disappearances were in fact a mistake rather than a deliberate act. However, as in the north and east, the use of death squads and private groups operating outside the legal framework enabled the ruling party to create an impression that such violations were the work of a few rough officers rather than systematic practice.

The subversion of all levels of state administration under an alternative command coincided with the merger of politicians' unofficial private armies and death squads with that of state security under the patronage of the ruling party. State-sponsored paramilitary groups or death squads comprising police, army personnel and UNP

thugs, such as Black Cats and Green Tigers, were formed in 1987 and 1988 to protect UNP MPs from JVP attack⁶ and to eliminate any form of dissent to the ruling party including from within the security forces themselves (Chandraprema 1991:140). The Black Cats, comprising an estimated 100 hand-picked individuals, were paid a bonus for each person killed on top of a basic salary allegedly from the defence budget (Warnapala 1994:191; *Aththa*, 8 April 1992 cited in Kloos 1999). From July to November 1989 alone, at least 830 people allegedly disappeared and were executed at the hands of the Black Cats (*Sunday Times* 5 April 1992:1). According to Wijesinha, the death squads were deliberately given names similar to that of the LTTE to demonstrate President Jayewardene's intention to use LTTE tactics to pursue his own political objectives and to confuse the identity of the perpetrators (Wijesinha 1991:142-143). At the same time, in the lead-up to the 1989 and 1999 elections, ruling party politicians hired armed personnel as their own official security guards. They were given a rank and emoluments of an army officer and paid by the army but remained under the control of their political patrons. While appearing to serve an official function, the role of such groups was to identify and act against the personal enemies of their political patrons, free of any legal constraints (Southern Commission 1997b:80). The incorporation of politicians's thugs into death squads effectively formalised an emerging customary practice whereby the will of ruling party politicians was enforced by their private armies (Perera 1998:25). Indeed many groups that emerged during the time of terror operated as vigilantes with some even carrying out acts of violence in the name of established death squads. Such was the case when the Green Tigers disbanded and other hit squads emerged and killed in their name (Gunaratna 2001:274). The merging of gangs and death squads under the single command of UNP leaders ensured that the personal and political objectives of their patrons could be

simultaneously achieved. Armed at state expense to counter the vulnerabilities of UNP MPs against JVP attack, these private groups proliferated. According to Amnesty International, a substantial proportion of the estimated 30,000 killings that took place in 1988ö 1989 were carried out in late 1989 when active vigilante groups multiplied (AI 37/21/90:13).

Directives to engage in disappearances and other abuses were issued from the highest political authorities of the executive and parliament (Marino 1989:5). The Southern Commission recognised disappearance in the context of the time of terror as an orchestrated phenomenonö (1997b:32). However, recourse to disappearance as the most blatant form of atrocity by deceptionö implied the clear intent by those responsible to lie, hide and conceal (Hayner 2002:27). Notwithstanding the extraordinary violence of the JVP, the political violence in the south was not the consequence of a civil war or indeed a military coup but rather politically orchestrated, implemented, manipulated and covered up by democratically elected political leaders to destroy their opponents (Marino 1989: footnote 1:6; Chandraprema 1991:211; Gunasekara 1988:18; Fernando 2001). As Mr D from Matara District observed, öthe UNP used the time [of terror] to get rid of their own rivals pretending they were JVPersö (Mr D, Matara District: Interview 1). The violence was an integral part of a wider political project to maintain political power and social control rather than merely counter an insurgency. This fact was clearly demonstrated in early 1988 by President Jayewardene himself when six months after declaring the JVP ödogs to be killed without mercy,ö sought the support of the JVP to fight the IPKF in the north (Marino 1989: footnote 1:6; Chandraprema 1991:211). The violence was perpetrated not by a military government but rather by a civilian government to whom the armed forces remained loyal. The offences

including disappearance which took place on a massive scale during this period were political and deliberate, and in a context where the civilian establishment retained political supremacy over the armed forces the entire time. Such counter-terror strategies led to the institutionalisation of a reign of terror upon which the political leadership became totally dependent.

While violence perpetrated by actors intent on mirroring the tactics of others and protecting their own identities encouraged the impression that chaos reigned, the violence unleashed by the state and those associated with it was the consequence of political decisions (Marino 1989: Part 4:2). The political project began long before the JVP amounted to any physical threat and during the time of terror, the violence would stop for days. In May 1988, the proscription of the JVP was temporarily withdrawn to enable it to sign a ceasefire pact with the government which lasted days and could never have taken place had anarchy prevailed (Chandraprema 1991:216). The violence was ordered but implemented in such a way as to give the impression of total disorder. It could be called off at will and continued well after the insurrection had been quashed, providing for a range of political and personal motives to find expression in violent political terms. The pervasiveness of violence fuelled rivalries within the ruling party leading some UNP leaders to collaborate with the JVP by providing information or arms. Many killings allegedly perpetrated by the JVP had their origins in competition within the ruling party itself (Fernando 1998; Marino 1989:footnote 1:6). Ruling party politicians and other key actors engaged in political violence or its instigation were deliberately vague and confusing about their political intentions and alliances. Statements by Premadasa and his cabinet supporters about JVP violence were deliberately ambiguous (Marino 1989: footnote 1:6). According to Marino, many people in the south

believed at the time that the JVP targeted Jayewardene's rather than Premadasa's men. Others maintained that it was Premadasa who used the violence as a cover to eliminate Jayewardene's men and other political rivals (Mr Suntheralingam, Chairperson of the Central Commission, *personal communication*). Yet again, others took the view that the destruction in the south was almost entirely the work of a faction within the UNP led by the Minister for Science and Industries, Cyril Mathew, who was considered to be Jayewardene's right-hand man (Spencer 2004:3; Hoole 2001:105). Questions were asked about whether there was either a disagreement between the two UNP leaders (Jayewardene and Premadasa) on the JVP issue or rather an agreement to play two distinctly different public roles on the matter to deliberately distract and confuse (Marino 1989: footnote 1:6).

The SLFP was also deeply involved in the violence making it difficult to establish whether it was an instigator or a victim. Not only did the party fail to condemn the violence perpetrated by the JVP but many SLFP members are believed to have joined the movement expecting it could be used to serve the SLFP's political ends (Wijesinha 1991:141&165). Memberships of the SLFP and JVP overlapped and the SLFP's silence on the violence perpetrated by the JVP gave the overall impression that it condoned JVP atrocities if not engaged in concealing them (Marino 1989:2). Indeed, the SLFP's consistent refusal to condemn JVP violence in the lead up to the 1988 and 1989 elections led many voters to believe that an SLFP government would be tantamount to JVP rule (Chandraprema 1991:248; Marino 1989:2). For its own part, the JVP preferred to take full credit for killings rather than to acknowledge any possible association with either of the two major parties. Overwhelmingly, however, attempts to establish ultimate responsibility for killings, abductions and disappearances and identify the motives of those behind the violence were all but

impossible. At the same time speculation remains about the identity and motive of some of the paramilitary death squads that emerged during the time of terror. According to Chandraprema, PRRA was the original creation of minor left wing party activists while Gunasekara believed that it was aligned with the Independent Students Union (Chandraprema 1991:240; Gunasekara 1988:302). The fact that speculation still surrounds the identity, patrons and motives of such groups, let alone the true extent of the involvement of the political leadership, demonstrates the extent to which uncertainty prevailed.

5.6 Finishing the “match”

By early 1990 the JVP movement effectively collapsed with the annihilation of its entire politburo and a substantial number of its rank and file leaving no JVP leader alive to face trial (Southern Commission 1997b:42). Despite this, the state of emergency was further extended on 25 January 1990. In defending such action, the Deputy Defence Minister, Ranjan Wijeratne, stated that, “We have finished the first eleven and the second eleven. Now we are tackling the under fourteen fellows” (Hansard Vol 62. Column 1249, 25 January 1990). And so, disappearances continued albeit at a slower rate. Those targeted included former JVP suspects who had been released from detention, SLFP activists and increasingly, young Tamil men suspected of links with the LTTE (AI 1991:211; AI 1994c:22). While the official operations of the security forces were brought to an end in April 1990 with the creation of the Independent Surrender Committee, young people in affected areas, whether involved with the JVP or not, continued to live in constant fear of the death squads (Warnapala 1994:198).

Of 2,000 suspected JVPers wanted by the authorities, 1,871 surrendered to the committee (Warnapala 1994:198). An estimated 14,200 youths were placed in rehabilitation camps. However, when the army redeployed to the north and east later that year, scores of corpses were found near the abandoned camps. Officially, these were the bodies of individuals who had tried to escape or were caught up in cross-fire but no investigations were ordered into the circumstances of the deaths (AI 1991:210). In other instances, detainees were released to their relatives or discharged by a magistrate and abducted on their way home. Others who had surrendered to the authorities in the presence of their relatives or the Government Agent for rehabilitation subsequently disappeared (Southern Commission 1997b:26-27). Such disappearances were an integral part of the state's wider objective to conceal the extent and nature of political violence perpetrated during the *beeshana samaya* and demonstrated the extent to which the political project continued well after the JVP insurrection was crushed. Hundreds of suspected JVPers remained in detention at one of the country's 400 detention centres, some of whom were held for years under the ERs and PTA without trial or charge. However, reports suggest that most were eventually released by the People's Alliance government when it came to power in August 1994 (US Department of State (USDOS 2005). The legacies of the violence, however, remain unaddressed and when the UNP was returned to power in December 2001, many survivors of the *beeshanaya* feared that history would be repeated. Mrs M whose husband disappeared on 4 December 1989 said, 'I thought there's no use; they'll kill the rest also' (Mrs M, Kandy District: Interview 2).

CHAPTER 6

War against civilians

Disappearance became both a means and an end for the military in the fight against the LTTE in the north and east during the 1990s. While disappearance was employed as a counter-insurgency strategy against the LTTE in the anticipation of destroying the movement, it also served to conceal an increasingly wide range of political and personally motivated crimes. In this way, disappearance provided the means by which the diverse objectives and interests of various agencies and actors converged, leading to the blurring between political and criminal violence. The military's reliance upon extralegal solutions and the government's use of the power structure established by previous regimes to outsource extralegal violence to private and political groups, paved the way for the emergence of a political-criminal nexus between the ruling elite, paramilitary and private groups and elements of the security forces. Perpetuation of the conflict served all their vested interests.

6.1 Armed actors and their motives

On 11 June 1990 an official ceasefire between the government and LTTE, which had held for 14 months, was broken when the LTTE surrounded police stations in the east and killed eight soldiers in Kalmunai. According to reports, the government ordered up to 1000 police officers to surrender to the LTTE who proceeded to kill several hundred Sinhalese and Muslim policemen before withdrawing into the jungle (UTHR-J 1992:3). Scores more were abducted and although several Tamil police personnel were later released, the disappearance of 21 officers was brought to the attention of the North & East

Commission (North & East Commission 1997b:48). A month later, a number of the Tamil officers who had been released by the LTTE in Amparai District disappeared while in STF custody (AI 37/14/91:23). On 18 June, as the army and STF advanced on the east, President Premadasa proclaimed that the JVP's fate awaited the LTTE (UTHR-J 1999:40; 1992:3).

Months before the June 1990 events, the LTTE had launched a campaign to eliminate families of rival organisations in the north who attempted to flee to India as the IPKF began its withdrawal. Many such killings were believed to have been carried out by the LTTE and government in a *de facto* alliance (UTHR-J 1992:16; Asia Watch 1992:1). Given that many anti-LTTE Tamil militias had assisted the IPKF in their campaign against the Tigers and particularly the EPRLF, with the withdrawal of the IPKF, the LTTE turned its attention to annihilating these 'traitor' groups. Further, when the alliance of convenience with the LTTE was no longer mutually beneficial following the withdrawal of the IPKF, the government once again used Tamil militants as part of its own campaign against the LTTE to 'steal, abduct, torture and kill' (UTHR-J 1992:19). However, the LTTE was able to consolidate its position as the strongest armed Tamil separatist group. Given that its leadership was highly autocratic, militant and intent on achieving a separate Tamil state at any cost, there was little hope that the peace negotiations that took place at various stages of the conflict would lead to a political solution, let alone the liberation of the Tamil populace (UTHR-J 1998:5; Bastian 1999:24). Once it had established a monopoly on the separatist aspiration and territory in the north and east, the movement set about establishing its own administration complete with a police force, judiciary and intelligence unit under which scores of people were abducted (All Island Commission 2001:55).

As part of its efforts to establish a Tamil homeland or Eelam and counter any assistance provided by the Muslims to the security forces, the LTTE attempted to expel the entire Muslim population from the north and east in 1990 and 1991 and attacked those Muslims who were reluctant to leave (AI 37/14/91:10; Asia Watch 1992:4). The government's response—arming and training extra-military forces and anti-LTTE Tamil militias and maintaining Muslim Home Guards to fight alongside the armed forces—led to a greater number and range of combatants involved directly in hostilities. Thereafter, the conflict in the north and east during this period, otherwise known as the *piraccinai natkal* or troubled times, developed several characteristics. Although the political apparatus that had facilitated state-sponsored terror remained largely untouched, a wide range of combative groups including home guards and pro-government Tamil paramilitaries, private armies and death squads were used to carry out extralegal activities. While some were directed by individual politicians, all such groups worked alongside and in collaboration with the security forces. Recourse to such groups for security and counter-insurgency operations totally undermined a number of fundamental concepts, including chain-of-command control emanating from the government of the day and established procedures given that under law, state security officials are the only personnel authorised to carry out law enforcement and security functions. This situation generated three dynamics. First, because they remained outside the military apparatus and gave the appearance of operating outside military control and government reach, such groups were increasingly relied on to carry out disappearances and other abuses. Second, the impact of this trend was that state violence was decentralised and outsourced to the point whereby the reforms that were introduced by the newly installed PA government from the mid-1990s had no effect. Third, while disappearance and abduction remained a central tactic of both sides to

the conflict, a plethora of actors involved reflected the wide ranging motives behind such abuses for which some state and non-state groups found common cause, leading to the blurring of political and criminal violence. As state-sponsored groups were given the scope to pursue their own agenda through state-sanctioned violence, disappearance became a means not only of concealing politically motivated crimes but also of petty offences including theft and personally motivated crimes such as rape. As Father Paul noted in Batticaloa, disappearance became an issue more closely related to corruption than war-specific matters (Father Paul, *personal communication*).

Many of the combatant groups had their own political agendas whereas others took direction openly or covertly from different political sponsors within the government. Unlike the paramilitary groups and death squads which operated in the south and comprised largely security force personnel and UNP thugs, the groups that operated in the north and east were put in charge of security in specific areas and given free rein to impose their own administration. Although such groups were given state resources including weaponry, many also engaged in robberies to supplement their earnings. The People's Liberation Organisation of Tamil Eelam (PLOTE) was put in charge of Vavuniya and used its newfound power to rob and loot, all the while preventing the local population from making a complaint to the police when disputes arose or crimes were committed. In the commission of their own offences, PLOTE members were believed to have been joined by low-ranking soldiers against whom local government officials and the police were rendered powerless (INFORM 1991:1). The Eelam People's Democratic Party (EPDP) was made responsible for security in the Kayts islands and in the internally displaced persons camps in Colombo where it engaged in abductions (INFORM 1992:13). Throughout the 1990s, pro-

government paramilitary groups including PLOTE, EPDP, EPRLF and TELO were responsible for rights violations including disappearance as well as massive and arbitrary arrests targeting Tamils throughout the island (HRW 1994; LST 1994:46; North & East Commission 1997:37). In many instances, surviving relatives were threatened by such groups not to speak out about the disappearance of their loved ones (AI 37/08/96:15). PLOTE, TELO and others operated their own detention and torture facilities where state-held detainees were often transferred as part of efforts to conceal detention, torture and extrajudicial executions (LST 1994:44; AI 37/08/96:20).

As paramilitary groups increasingly fought the war for the government (ICG 2007:11), they attained disproportionate political influence and wealth through violence's benefits that would have otherwise been unattainable in a context of peace and functional democracy where law and order prevailed. Some used their power and influence to advance their respective political cause by securing parliamentary seats. The EPDP won all but one of the seats for the Jaffna District at the 1994 election, using its monopoly on power in the Kayts islands to prevent any other party from contesting the election (UTHR-J 1998:47). By 1998, moreover, the government had become reliant upon the support of the EPDP in Parliament for which it enjoyed state patronage and protection in return (UTHR-J 1998:47). Rather than being required to put down its weapons and condemn all forms of violence when entering the democratic mainstream, the EPDP was able to use both its political influence and the threat of force to impose its will on communities under its control with impunity for political and criminal ends.

Private armed guards with the rank and emoluments of army personnel were used as back up in army operations despite the fact that they did not operate under the authority of the army and were not controlled by it. Employed by MPs and provincial counsellors at state expense, such guards operated as private armies.¹⁴ The Committee on Disappearances of the Human Rights Commission (Committee on Disappearances) made the following observations about their role:

These soldiers saw their role not as protecting the population but rather in moving against personal enemies, acting for personal benefit or moving against the opponents of the politicians concerned.

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Committee on Disappearances 2003:48.

Such bodies served as the militia of political parties operating in the north and east. However, rivalry with the regular police often led to an escalation of political violence, especially during election periods (Special Rapporteur on extrajudicial executions E/CN.4/1998/68/Add.2:10). There were also reports of internal tensions leading to armed confrontation between the army and police which placed civilians in greater danger. As more guns and other weaponry made their way into the hands of paramilitaries and civilians, violence not only escalated but also became a common means of resolving disputes. For communities in the north and east, the early 1990s was characterised by repeated reports of unidentified men forcibly entering homes at night, blindfolding and then removing

¹⁴ Each of the country's 225 MPs were authorised to have eight armed security guards while each of the 300 provincial counsellors were authorised to have a maximum of four armed security guards (E/CN.4/1998/68/Add.2:10).

people in marked vehicles, never to be seen or heard of again. Mass arrests became a common response to LTTE atrocities but also remained an integral part of the political strategy of the government at election periods (AI 1994b:5). From May to December 1993, over 150,000 people were arrested under the ER in Colombo alone. They were believed to have been arrested solely on the basis of their ethnicity (LST 1994:40). Others were held in custody without charge for prolonged periods (LST 1994:41).

By transferring responsibility for abuses onto paramilitary groups, the government could allege that such groups were uncontrollable and outside its influence. Such a scenario made for the perfect crime (Scouvazzi & Citroni 2007:10). However, the decentralisation and outsourcing of security functions provided greater scope for a wider range of offences and motives to be concealed under the cover of fighting terrorism. Given the widespread use of disappearance and general overlap of methods and intentions of respective combative groups, it was impossible to establish exactly what offences had been carried out and by whom. At the same time, the LTTE's deliberate tactic of attacking Sinhalese and Muslim communities and the military's counter-offensive which often amounted to retaliatory violence against Tamil communities, coupled with the arming of home guards and civilian units which operated alongside the army, placed civilians at the centre of the conflict (UTHR-J 1992:8; AI 37/14/91:10). The combined effect of having a range of armed actors operating with impunity, ERs which circumvented the usual safeguards regarding arrest, detention and the disposal of dead bodies, a military dependent on illegal methods and official denial of extralegal activity, led to an inevitable escalation of violence and abuse that was largely directed at the civilian population (HRW 1990; AI 37/14/91:7). From June to October 1990, over 1,600 civilians in

the north and east were believed to have been killed and over 3,000 people disappeared from June 1990 to September 1991 (AI 37/14/91:4; US Department of State cited in Asia Watch 1992:3). Mrs P explained the impact in her village in the eastern Amparai District:

In 1990 as far as I could remember on 21 June, the army and Muslims joined together and came, walked into Tamil houses, breaking those houses í Some elderly people were asked to move to a side and they took all the men over fifteen years away for an inquiry. All above fifteen years were taken to the church. Father spoke on behalf of them and one or two were released. Some were in the age range of thirteen years. This I saw with my own eyes but I heard they took people on two busesóófull of people to the camp. One of those was my brother í in the bus they tortured the men í My brother was released. He came back and from then on never wanted to stay in this country. Three times he tried to go abroad and he got to the Netherlands.

- Mrs P, Amparai District: Interview 10.

According to Amnesty International, although the vast majority of the disappeared were young Tamil men, women and children of all ages also disappeared including babies along with their mothers (37/14/91:4). The Batticaloa Peace Committee reported over 2,500 complaints of disappearance from the time of the ceasefire collapse in June 1990 to July 1999 with the number rising in 1992 at a rate of 100 people a month. Yet, the North & East Commission investigated only 1,219 disappearances in Batticaloa. Of them, 70 per cent were below 29 years of age and 90 per cent earned less than 1,500 rupees a month (equivalent to 10 Australian dollars). The disappeared were predominantly male youths engaged in agriculture or fishing. Although most were taken by the army, a wide range of perpetrators

were identified including the LTTE and a number of other Tamil groups, paramilitaries as well as home guards. The zonal North & East Commission established that disappearances most often took place in one of five contexts over the period of its review: arrest during cordon and search operations as described earlier by Mrs P; arrest at refugee camps; arrest on the high seas; arrests in other locations; and by way of abduction (North & East Commission 1997b:29). Of the 756 disappearances inquired into by the zonal commission that took place in 1990, a substantial number were reprisals carried out during cordon and search operations following the LTTE's killing of policemen in Batticaloa and Amparai in June 1990 (North & East Commission 1997b:9-10, 64). Mrs K's husband, a labourer, was one of those who disappeared at that time. He was arrested by the army along with seven other men on 24 June 1990 at a school in the Amparai District. That day, the army arrested 38 people in the area. Mrs K, who was pregnant at the time and had a four-year-old daughter, recalled the event:

When my husband refused to go, one of the army showed a knife and threatened him. The army had removed his shirt and tied both his hands with it. Along with the other men arrested, my husband was taken away. I was holding my daughter and went crying behind them but the army chased us away, so half way, because we were scared they would shoot us, we came back home. Everyone was screaming and shouting. I don't know what they did with my husband. For the past fourteen years we are still searching and looking for him ... Up to now, I don't know. I don't know whether he's alive, whether they've detained him or whether they've killed him.

- Mrs K, Amparai District: Interview 3.

Despite the fact that many were taken away by security force personnel in full public view, the state's strategy remained that of total denial. By 1998, the MP for Batticaloa, Joseph Pararajasingham, held that the number of disappearances in the province had reached over 13,000 since 1990 leaving the region with 8,500 widows of whom 70 per cent were aged between 18 and 21 (TamilNet 1 April 1998). However, most complaints of disappearance in the Eastern Province have never been investigated. The All Island Commission received details of the disappearance of 6,452 people from the Batticaloa Peace Committee and other groups but which could not be investigated as they fell outside its mandate, given it could only inquire into outstanding cases of the previous commissions (All Island Commission 2001:138). During inquiry hearings of the North & East Commission in April and May 1995, November 1995 and February 1996, the conflict was still going. Throughout the Batticaloa hearings, the LTTE was engaged in an attack on the local police station. The commission recognised that those who did come forward in such a context were not likely to be a 'true representation' of the number of people subject to disappearance from 1988 (All Island Commission 2001:63). Similarly, in Amparai District where approximately 3,000 of the 90,000 Tamil population were killed in the five months after June 1990, while an estimated 60,000 were internally displaced (UTHR-J 1990:9 & 14; UTHR-J 1993:12), the actual number of people who disappeared from the district, as with the rest of the country, will never be accurately established.

The zonal commission and All Island Commission received 979 complaints in relation to disappearance in the Jaffna District (North & East Commission 1997b:57; All Island Commission 2001:5). Of them, a considerable number of disappearances took place in 1990 when the army was advancing on Jaffna. The Jaffna peninsula had been under

LTTE control from 1990, with the withdrawal of the IPKF, until late 1995. Revealingly, the All Island Commission did not receive a single complaint of disappearance in 1995 covering the period when Jaffna had been under the control of the LTTE (2001:47). Although scores of people were believed to have been abducted by the LTTE from 1989 to 1995, òmost families are still too scared to take up a case against the LTTEö (Mr Chandrasekara, Jaffna Regional Coordinator, National Human Rights Commission, *personal communication*). Similarly, some seven years earlier, the zonal commission had noted that of 30 complaints before it where witnesses were unwilling to disclose the identity of the perpetrators, such unwillingness was òin fact an indication of the identity of the Group to be the LTTEö (All Island Commission 2001:56). One complaint that was raised before the zonal commission concerned the disappearance of a Jaffna University undergraduate abducted from campus in May 1991. His father's evidence to the commission gives some insight into life under LTTE control:

When I opened the door of my house in the morning, I saw the body of my son left in front of my house. At that time anyone who was against the LTTE was punished in that manner. There was no army or police in Jaffna at that time. The LTTE was in full control of Jaffna then and there was nobody else. There were so many bodies lying on the road during those days.

- A Jaffna father cited in North & East Commission 1997b:55.

6.2 “A war for peace”

On 8 January 1995 a cessation of hostilities was agreed between the PA government and LTTE with representatives of both parties meeting in Jaffna for talks on four occasions. However, shortly after

the completion of the fourth round on 18 April, the LTTE announced its withdrawal from the talks and blew up two naval ships in Trincomalee harbour (Nissan 1996:19). A month later, the PA proclaimed that it had launched a *ōwar* for peace. However, a state of emergency, which had been temporarily lifted for the 1994 election, was re-imposed in the north, east and in Colombo following the assassination of presidential candidate, Gamini Dissanayake, at an election rally along with over 50 others. The state of emergency was gradually extended to other regions and by mid-April 1996, re-imposed throughout the whole country (E/CN.4/1998/68/Add.2:4). With the resumption of the conflict, the number of reported cases of disappearances and extrajudicial killings in the north and east as well as in Colombo rose rapidly (AI 1995). LTTE attacks on Sinhalese villagers bordering the north and east were directed at antagonising the security forces into retaliatory action. In one such massacre of 19 Sinhalese civilians in the Moneragala District, not one person was a legitimate military target and despite the high presence of home guards in the area at the time, none of them were among the dead (AI 1995). Such killings were met with reprisals in the form of counter-killings, disappearances and the torture of Tamil civilians, as well as the rape of Tamil women and girls by security force personnel and their counterparts (AI 1996; 37/24/97:1).

When the security forces launched their assault on Jaffna in late 1995, the LTTE ordered the entire Jaffna community south to Kilinochchi. Those who refused were forced to move by means of intimidation, threats of execution as traitors, manipulation and violence (AI 37/08/96:8). When an estimated 250,000 civilians later returned to government-controlled Jaffna town in April and May 1996, their return coincided with a new wave of disappearances (AI 37/08/96:9). During the conflict in the north and east, villages that fell under

different regimes at different times were particularly vulnerable to disappearance and other forms of abuse by both sides. The security forces were, moreover, fully aware that during 10 years under LTTE occupation, Tamil civilians in the north volunteered or were compromised into working for the LTTE for one reason or another. Conversely, such communities were susceptible to exploitation and blackmail at the hands of the LTTE and became extremely vulnerable to arrest and ill-treatment by both sides (UTHR-J 1999:9). Amnesty International noted that anyone suspected of even the most minimal contact with the LTTE faced the risk of detention, disappearance or death (AI 1991:210). Many were forced into acting as informants by the security forces during cordon and search operations and later disappeared (UTHR-J 1998:23). The fact that the LTTE drew on the local population to provide various forms of support for its cause (forced or otherwise) justified a counter-insurgency focused on the harassment, arrest, torture, disappearance and killing of Tamil civilians. Similarly, as the LTTE recruited children often by force, the security forces responded in turn by targeting youths during cordon and search operations (AI 37/13/96).

According to the University Teachers for Human Rights-Jaffna (UTHR-J), the large number of disappearances in 1996 suggested that a decision was taken at the highest level to eliminate persons suspected of helping the LTTE (UTHR-J 1999:15). However, this decision translated into an approach which recognised virtually all civilians as collaborators with the subversion (UN Special Rapporteur E/CN.4/1998/68/Add.2:8). In this way, peasants become the main victims of human rights violations in areas where there is armed conflict (E/CN.4/1998/68/Add.2:8). Any distinction between civilians and combatants was made extremely tenuous as all civilians were effectively on the front line and answerable to both sides.

Shopkeepers near Sittandy were forced to serve LTTE cadres operating in the jungle outside of the village at night while also facing the possibility of arrest by day for doing so. Those who refused to sell to the LTTE or who sold produce to the security forces were abducted by the LTTE (Human Rights Task Force 1993:26; North & East Commission 1997b:56). Similarly, farmers who were unable to cultivate their fields without the permission of one side or the other were forced into performing errands to earn permission but which ultimately led to their disappearance or abduction by the opposing side (Human Rights Task Force 1993:27).

When the military launched its attack against the LTTE in Jaffna in 1996 and 1997 it also imposed strict censorship under the ERs. It took over the function of regional government and administered humanitarian needs using resettlement to remove unwanted individuals and communities (ICG 2006:17). In this way, the military extended its control over every aspect of life in the north and to a large extent in the east (in areas government control) with local government administration effectively subordinate to military command. The arbitrary dissolution of provincial councils and culture of political violence eroded confidence in the political order and produced a generalized crisis of legitimacy (Rupesinghe 2000:21). Indeed, the state and the LTTE enforced regimes of violence whose authority totally depended on the repression of those under their control (Montealegre 1982 cited in Manz 1995:158).

Manz argued that under environments of terror, in which a blurring of the distinction between fact and rumour fuels an atmosphere of suspicion and mistrust, individuals must continually prove and re-prove both innocence and loyalty (1995:160). However, in the north and east during the conflict with the LTTE, the taking and re-taking of

territory, coupled with the range of agencies and actors involved in the violence, made such a prospect impossible. In this paranoid world, everyone was continually considered suspicious by both sides, as Mrs P in Amparai explained:

If we become friendly with the army, the LTTE suspects us of giving information to them but if we get friendly with the LTTE, the army suspects we are LTTE.

- Mrs P, Amparai District: Interview 10.

In this context, the common response was passivity, to do nothing and deny any knowledge of anything or anyone for fear of attracting unwanted attention. People held their tongue and acted blinded because of the prevailing atmosphere of absolute fear (Cohen 2001:152). The very fact that the army arrested and abducted scores of people on trucks in front of entire villages during round up operations in broad daylight and then totally denied detaining anyone compelled communities into silence. Given the prevailing view that Tamils were targeted for being Tamil and that everyone was a potential target, the remote possibility of demonstrating innocence or loyalty was made both totally irrelevant and meaningless when ethnicity served as evidence of guilt and justification for abuse. Mrs C's view, which was commonly shared by other interviewees, was that the army's sole idea was that every resident, every citizen in this place was LTTE, even a small infant and that the intention of the security forces was to round up and arrest all men of the peninsular (Mrs C, Jaffna District: Interview 3). Mrs N argued that both the government and the army made no distinction between Tamil ethnicity and LTTE membership. She noted that her son disappeared at the hands of the army even though he worked for the municipal council and must, therefore, have been a person known to the local government (Mrs N, Jaffna District:

Interview 7). Mrs P, whose husband disappeared in June 1990, recognised a direct relationship between state-sponsored abuses and the vocalisation of rights on the part of the Tamil community:

In the beginning when the Tamils didn't demand anything from the government there were no problems but when the Tamils voiced their rights, problems started. If the government had recognised this problem from the beginning this matter wouldn't have gone so far. Also they branded all Tamils as terrorists. That is why they didn't differentiate between the older and younger generation, they arrested everybody.

- Mrs P, Amparai District: Interview 10.

In a context of widespread suspicion, fear and insecurity where everyone is a potential target, many people maintained a state of immobile silence to ensure personal security. For the families of the disappeared, such a response from relatives, neighbours and friends at the very moment they most needed support was devastating. As people who disappeared at the hands of the army were assumed to have some involvement with the LTTE, their families were left alone and found themselves, like the families whose relatives disappeared at the hands of the LTTE, with few friends (UTHR-J 1999:25). Mrs P observed that many families of suspected LTTE cadres were themselves targeted by the army for harassment and even torture. 'As to my knowledge, so many families whose boys joined the LTTE were sent out of the village by the army ... Their families were severely harassed by the army and some severely tortured', she said (Mrs P, Amparai District: Interview 10). In other instances, relatives of persons who were elusive to the security forces were disappeared in their place (Committee on Disappearances 2003:9).

6.3 Disappearance as the nexus between criminal and political crimes

As in the southern violence, local animosities and personal rivalries were settled on the basis of incriminating information given to the security forces resulting in disappearances (Committee on Disappearances 2003:9). From the early 1990s, members of the Muslim community provided lists of local suspected Tamil militants to the security forces leading to arrests, disappearances and extrajudicial killings. It is believed that such lists were utilised by local rivals to eliminate opponents and to target potential leaders such as government servants and other prominent Tamils (UTHR-J 1990:5). Meanwhile, Muslim Home Guards used their newfound influence to exert power and found temporary concurrence in the aims of the State (UTHR-J 1990:37; AI 37/14/91:16). In Amparai, Muslims interested in Tamil paddy land, residential areas and property found at least temporary common cause with the security forces eager to clear the district of Tamils (UTHR-J 1990:9; AI 37/14/91:27). In Pottuvil, one such list included a doctor and headmaster who disappeared. When the military first took over Akkaraipattu in June 1990, 37 public servants named on a death list were rounded up and extrajudicially executed (UTHR-J 1990:7; AI 37/14/91:16). The security forces knew that the death lists were mostly prepared on the basis of misjudgements, vindictiveness and ambitions over territory and power but made a deliberate decision to act on them anyway (UTHR-J 1990:7). The UTHR-J concluded that the ideological presumption on which the security forces were acting implied that killing Tamils was essentially a good thing (UTHR-J 1990:36). With territory changing hands periodically, those targeted and the scale of the crimes depended to some extent on the prevailing power structure

at the relevant time in each locality (Committee on Disappearances 2003 Chapter 2:15). According to Father Bernard, a human rights advocate in Jaffna, the army exploited local inter-community tensions while the paramilitaries used their power and influence with the security forces to resolve personal grudges and abduct people. He argued the paramilitaries would keep families of known LTTE cadres in a state of agitation and use the slightest excuse to abduct them (Father Bernard, *personal communication*). As with disappearances in the south, people who disappeared during the 1995-1996 military operations in Jaffna District were most commonly considered individuals with special skills or leadership qualities. The Committee on Disappearances recognised that such people were deliberately targeted because such qualities may have been attractive to the LTTE or marked them out in their own communities as a potential threat to groups or institutions intent on subduing the local population (Committee on Disappearances 2003:9).

Pro-government paramilitary groups and the LTTE also carried out abduction for the purposes of forced conscription. In 1997, local boys were abducted, often on their way home from school, by paramilitary groups working alongside the armed forces, had their heads shaven and were forced to sign enrolment papers before being directly sent into battle in the Vanni (North & East Commission 1997:54). In Jaffna, individuals were abducted by security personnel intent on appropriating their skills or services in army camps before their ultimate elimination (Committee on Disappearances 2003:9). In other instances, people were abducted to serve as an informant, in some cases for many years, before their own disappearance. Women were also abducted for the purpose of sexual abuse or their male partners disappeared to enable access to them (Committee on Disappearances 2003:22). As in the south, disappearance became an effective means

of covering up other offences and the instigators behind them by eliminating both witnesses and victims. Indeed, many of the reported cases of disappearance in the north and east shared characteristics with those in the south including the *modus operandi* (use of white vans, round up operations and total denial on the part of state agents), persons targeted (usually poor male youth) and the use of the security forces to eliminate people implicated by locals to end local disputes or rivalries. However, disappearances in the north and east were taken a step further and became both a means and an end for the military. While the range of combatants engaged in the conflict provided the security forces greater leverage with which to carry out abuses and suppress the local population, financial gain appeared to be a key factor behind many disappearances. Looting, abduction for ransom and bribes became characteristic of security force operations and disappearance the means to conceal such crimes (AI 1994b:2; 37/08/96:20; LST 1994:43; UTHR-J 1990:7-8). The zonal commission noted that in Vavuniya, robbery often led to abduction and disappearance. Similarly, during the 1996-1997 military takeover of Jaffna, appropriation of personal belongings was a 'motivating factor' and even sometimes the sole factor in arrests or abductions leading to disappearances in some instances. In almost all 281 cases of disappearances in Jaffna investigated by the Committee on Disappearances, the possessions of those who disappeared including watches, cash, jewellery, and vehicles also went missing (Committee on Disappearances 2003:8). In other instances, the security forces returned to the homes of people last seen in their custody to remove their valuables and personal effects (Committee on Disappearances 2003:18). The fact that disappearance was increasingly used to conceal the crimes of robbery, rape and other related offences had primary effects. First, by enabling criminal and political interests to merge, disappearance became the preferred means of concealing

offences carried out by state security officials, armed groups and criminal elements operating initially within and later outside the context of the conflict and often in collaboration (AFP 2007; HRW 2008:87). Second, the merging of security force personnel with criminal elements who carried out disappearances and abductions for ransom effectively blurred the distinction between political and criminal violence. Additional factors contributed to this phenomenon such as the rapid rate with which soldiers deserted the army. By 2005 there were more than 55,000 army deserters who had not been delisted, many of whom had deserted with their weapons (TamilNet 1 April 2005). At the same time, the dysfunctional legal machinery, militarisation of society and normalisation of violence perpetuated by the rise of the underworld bolstered in numbers and influence by army deserters saw with it a rise in violent crime and criminal gangs (TamilNet 1 April 2005). When the conflict with the LTTE ended in May 2009 disappearances continued to be reported almost daily partly for these reasons.

6.4 Reliance on extralegal methods

The PA, which had come to power on a platform of peace, justice and reform, had to balance the need to realise its mandate for rights and prosecutions with the practical realities of the conflict in the north and east. The collapse of the ceasefire agreement in April 1995 brought the dilemma between securing justice for past abuses and engaging the LTTE in warfare to a head. In trying to balance these contradictory interests, the government faced the challenge of appeasing the international community and local civil society by initiating reforms while also pacifying the military on which it depended to fight the LTTE. However, a pre-election commitment to amend the 1978 constitution was left largely unfulfilled and amendments to the ERs

reintroducing some safeguards regarding arrest and detention were not made enforceable and were either ignored or not effectively applied (Fernando 2002b:12; UN E/CN.4/1997/34:1996). Undisclosed detention facilities remained in operation in Jaffna, Colombo and Vavuniya in contravention of amendments to the ERs and presidential directives concerning arrest procedures initially introduced in 1993 were only partly acted upon in 1997 (LST 1994:39; AI 37/004/98:9; UTHR-J 1999). Despite other modifications to the ERs and PTA, evidence suggests that they were routinely flouted with impunity (Committee on Disappearances 2003:30). Furthermore, a directive sent to the army commander by President Kumaratunga in December 1996 to place 200 army personnel who had been directly implicated in disappearances by the presidential commissions on compulsory leave was never implemented (UTHR-J 1999:20). It is alleged that Deputy Defence Minister, Anuraddha Ratwatte, convinced President Kumaratunga not to enforce the directive for fear of devastating morale in the north and east, making it impossible for the government to control the army (Rajakulendran 2001; Coulthart 2001).

According to Hoole, the failure to implement the President's directive had a òdirect bearingö on more than 300 disappearances in Jaffna that took place over four months from July 1996 (Hoole 1999). Mr Janaka Perera, put in charge of the 51 Division in the north, was implicated in disappearance and related abuses by the Southern Commission (UTHR-J 1999). During his tenure, he was reported to have stated that as his soldiers were risking their lives for their country, he allowed them free rein, instructing them not to leave any evidence of incidents which might otherwise lead to human rights investigations (Asian Human Rights Commission (AHRC) 2011). Six soldiers responsible for the September 1996 disappearance, torture and killing of 18-year-old Krishanthi Kumaraswamy, her mother, brother and friend

following detention at the Chemmani checkpoint were serving under Perera's command at the time of the offences (UTHR-J 1999:6). However, rather than being charged or at least reprimanded, he was rewarded with a promotion to Deputy Chief of Staff of the army and retired a year after serving as the Chief of Staff (Dr Victor Rajakulendran open letter to the Australian Minister for Foreign Affairs, the Hon Alexander Downer MP, Minister for Foreign Affairs, 10 May 2001). Upon hearing the verdict in relation to the Kumaraswamy case, one of the convicted officers stated:

Just as society hires butchers to kill animals for consumption and pays them a living, I too joined the Sri Lankan Army, and was paid for killing when those in command wanted me to kill in cold blood. Now why are you punishing and humiliating me, why the officers who wanted us to kill are getting their promotions and decorations, and are being lionised as national heroes?

- Indrajith Kumara cited in UTHR-J 1999:18.

Janaka Perera was never indicted or even named during the trial and when his term in Jaffna ended in December 1996, reports suggested that a change in command coincided with a dramatic improvement in the human rights situation. Major General Janaka Perera went on to become the Sri Lankan Ambassador to Australia. Despite emerging reports of abuses in the context of the north and the Southern Commission's recommendation that Perera be sent on compulsory leave for his involvement in disappearances in the south so that prosecutorial action could be undertaken, Australia's then Foreign Affairs Minister, the Hon Alexander Downer MP, supported Perera's appointment, stating in Parliament that:

We have been made aware of claims, and we have sought to indicate that the circumstances of the high commissioner's military service meant that he was likely to have served in areas where human rights abuses were alleged to have occurred, but none of these claims, my department advises me, has been backed by any direct evidence of his involvement.

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Minister for Foreign Affairs, the Hon Alexander Downer MP,
House of Representatives Hansard, 18 June 2001:27693.

The message from the security forces early in the PA's tenure was that if the government wanted to sustain the conflict with the LTTE, the status quo should prevail. By ignoring the amendments to the ERs reintroducing some safeguards, the military was sending a signal to the government that it should not be touched. Vested interests within the military and political elite, and the state apparatus implicated in disappearances and other state crimes, would not tolerate reform. Evidently, ERs remained in place which provided for preventive detention without judicial review and enabled security force personnel to bypass inquests into deaths alleged to have occurred during armed confrontation (AI 37/08/96:13; E/CN.4/1998/68/Add.2:15-17). Such regulations could only have signalled to the security forces of a political intent to grant impunity to those responsible for abuses. Indeed, the very public manner in which people were arrested suggests that the security forces operated with the confidence that their own actions would attract impunity.

As the war took hold, the culture of violence and impunity which characterised the previous UNP regime continued albeit on a far smaller scale. With the apparatus of violence and those responsible for instituting it left virtually untouched, it was not difficult for the ruling

politicians to pursue violent practices which had continued largely unabated (Pinto-Jayawardena 2007). In 1992, Asia Watch stated that unless the conflict in the north and east and violence in the south was resolved with statesmanship, it would distort all organs of society and 'make the Army arbiter in national issues' (cited in North & East Commission 1997b:63). This demonstrated the extent to which the military had come to rely on extralegal methods and the fact that the entire state apparatus was implicated in disappearances. The military did, in fact, become the arbiters of the conflict with the LTTE as the ruling party's reliance upon the military strengthened in power and influence in parallel with the disintegration of democratic institutions which 'maintained democratic exteriors but internally were subdued and modified to fit the changed political reality' (Fernando 2002b:13-14).

As the central feature of governance, political violence 'facilitated by extraordinary legislation and the existence of an alternative political framework under which extrajudicial activities were sanctioned' had become the norm to the point where the security forces knew they could act with violence or not at all. At the same time, high-ranking military officials with friends in high places were accused of taking commissions during the purchase of military supplies and had a vested financial interest in both maintaining the status quo and continuing the fighting (Balakrishnan 2000:27). The systems of impunity that politicians had created to break down the democratic ethos in order to maintain power created a situation in which they became dependent, to some extent captured, by the very forces empowered and unleashed to impose their will. The message to the establishment was therefore, 'keep your hands off us or we can't act at all' its extralegal action or nothing' (Dr Deepika Udagama, Head of Department, Faculty of Law, Colombo University, *personal communication*). The perception in the

Jaffna District where the army was recognised as an occupying force was that the army had become more powerful than the government. Mrs R whose 19-year-old son disappeared at the hands of the army expressed the view that while President Kumaratunga had ordered the army to arrest the LTTE, 'the army went on a rampage and arrested all the innocent people' (Mrs R, Jaffna District: Interview 4).

This was not a case whereby the military directly intervened in the nation's politics, unlike that of Argentina or other countries which faced military coup. Indeed, historically, the armed forces had for the most part remained subordinate to civilian authority and had little reason to rebel. At the same time, however, the civilian authority established through democratic means had become authoritarian and totally reliant on political violence largely perpetrated by the military to retain power and control during the UNP era. By providing for military control over civil matters, including civil administration, and relying on a framework of extralegal action carried out by the military which totally eroded normal legal safeguards, law enforcement procedure and skills, the military had emerged as the strongest factor in Sri Lankan politics and most important pillar of governance. While the PA came to power with aspirations of instituting accountability in relation to law enforcement practices and preventing abuses, it ultimately accepted the military's ultimatum for these reasons and abuses were soon to characterise its own rule.

ERs promulgated in 1995 were broadly drafted to prevent any negative news coverage of the police and armed forces, including possible exposure of corruption in the procurement of arms and misconduct by state authorities (Article 19:1996). Thereafter, other pre-election promises to dismantle the political apparatus of terror were permanently postponed including the abolition of the

Executive Presidency, which centralised considerable political power and influence at the expense of the parliament and judiciary. At the same time, however, plans that the PA put forward in 1995 and 2000 for a new federal constitutional structure to address the 'Tamil problem' were blocked by the opposition UNP in Parliament (ICG 2011:12). A historical tradition of political opposition to and politicisation of government efforts to address the 'Tamil issue' was upheld by the UNP. As Mr E, a vegetable seller from Matara District, explained, 'Because there are now many parties in this scene and if one goes for peace, only that party's name will glow and the other parties don't like it and will try to cut them down' (Mr E, Matara District, *personal communication*).

In 1997 the UN Special Rapporteur on extrajudicial executions stated that violations had been so numerous and serious over years in the north and east that they could not be dealt with as isolated or individual cases of misbehaviour of middle and lower-ranked officers without 'attaching any political responsibility to the civilian and military hierarchy' (E/CN.4/1998/68/Add.2:29). The Committee on Disappearances noted of the situation in Jaffna that the scale of disappearances carried out in 1996 discounted the claim that they were stray instances resulting from the actions of a few errant service personnel but rather 'part of a definite pattern'. Further, the committee maintained that such disappearances could not have taken place on such a scale without the complicity of many at the middle levels of the hierarchy and that at the highest levels, if no direct complicity, there was 'indifference and inefficiency in enforcing discipline, as well as complicity in the cover up' (2003:33-34). As noted by Amnesty International in 1996, despite lobbying from the international and local human rights community, since coming to power the PA refused to amend provisions in the PTA and ERs which

provided for disappearances while the Minister for Foreign Affairs held that disappearances continued to occur because the government was fighting a war (37/08/96:11). In 1997 approximately 100 cases of disappearances were reported from Jaffna, Batticaloa, Mannar and Kilinochchi (AI 37/004/1998) and reports of disappearances continued throughout the rest of the PA's tenure believed to have been carried out by security force personnel and paramilitaries including PLOTE and EPDP as well as home guards (HRW 2002; USDOS 2001). However, again, the exact number was impossible to establish given censorship surrounding security force operations and controlled access to the north and east. The US Department of State noted that in 2000, there was no attempt 'as in the past, to use the ER to cover up security force misdeeds' (USDOS 2001).

6.5 Politicians peace process

The UNP returned to power in December 2001 on the promise of engaging the LTTE in peace talks. On 23 February 2002 a cease-fire agreement in the form of a memorandum of understanding (MOU) between the UNP and LTTE was reached and formal negotiations began to identify a political solution to the protracted conflict. In September the same year, the government agreed to lift its ban on the LTTE in return for the LTTE dropping its demand for statehood and agreeing to settle for regional autonomy. UTHR-J and the human rights community lamented the lack of an 'explicit human rights dimension' by way of clear human rights protections built into the MOU and its enforcement. Reports of abuses persisted while Article 2 of the ceasefire agreement prohibiting assassinations, abductions and hostile acts against the civilian population was breached to the point where the LTTE was accused of routinely violating the MOU (UTHR-J 2003:190). The Sri Lanka Monitoring Mission (SLMM), responsible

for monitoring the ceasefire agreement, was rendered toothless, empowered to document allegations under Article 2 but with limited capacity to investigate the crimes independently. Once certain of the facts, the SLMM could approach both parties to the conflict but in many instances there was no follow-up to their recommendations (Committee on Disappearances 2003:5). However, as human rights were not established as an integral part of the ceasefire and measures to dismantle the political apparatus of state terror by legislative and other means were not undertaken, the ceasefire marked a decline but not an end to abuses. In fact, shortly after the signing of the MOU, 10 people were abducted in white vans in the east and disappeared (Committee on Disappearances 2003:7).

Disappearance throughout Sri Lanka's contemporary history had served as an institutionalised means of dealing with all forms of political opposition upon which labels such as terrorist, subversive, Tamil militant are then imposed as justification for the act rather than serving as a counter-insurgency tactic. The fact that disappearances continue to be reported in the post-conflict context merely demonstrates the extent to which the national political framework was diverted and corrupted to serve the interests of an elite minority. For this reason, the peace process was never going to stop disappearance as state practice. Ultimately, as Fernando explained, democratic methods to achieve peace were pursued by civil society within an 'undemocratic system' or non-democratic structure (2012). Father Bernard of Jaffna recognised the political process and the peace process as two separate matters requiring parallel address (*personal communication*).

Any expectations, therefore, that families otherwise rendered silent would come forward and use the opportunity of the peace accord to

document the abduction or disappearance of a relative, were never going to be realised. Conversely, expectations amongst families that peace would trigger the release and return of their loved ones were not realised. At a time which should have provided hope for the future, the peace process came to represent for involved families, death rather than life. Furthermore, as the UTHR-J argued, the conduct of the government and Norwegian negotiations gave Tamils a real sense that they were being handed over to the LTTE, while the monitors themselves appeared to take a restricted view on abuses of civilians, playing down frequent reports of Article 2 violations by the LTTE and leaving many reports of abuses unchecked (UTHR-J 2003:190). As there were only two parties to the ceasefire agreement, the government and LTTE, the MOU effectively affirmed the dominance of the LTTE in the north and east and advanced the movement's standing towards that of a state (Wagner 2004:19) but failed to enforce upon it the responsibilities of a state. In this way, the ceasefire agreement largely limited itself solely to the interests of the two combatants without any genuine commitment to the protection of the civilian population (Peace Support Group 2003:231).

As the negotiations dragged on, it became apparent that both sides were using the lull in the fighting to stockpile weaponry and to recruit. The continued recruitment of child soldiers by the LTTE, despite amounting to a clear violation of the MOU, continued largely unabated (AI 2004). Violations were raised by both sides not out of any genuine concern but rather to discredit and embarrass their opponent (Ganesalingam 2006:4). Despite the fact that the armed conflict over its 19 years had cost the lives of over 60,000 people and was marked by gross rights violations including the abduction and disappearance of thousands, implementation of the MOU largely avoided addressing ongoing abuses by both sides and intimidation by

the LTTE, let alone the plight of the tens of thousands of internally displaced people across the country. The MOU represented a formal agreement made at the highest political level, serving to extend the rule of both sides and secure greater leverage and legitimacy in relation to the international community. Because the MOU was negotiated without any recognition, interaction or involvement of civil society, it was widely viewed as a politician's rather than people's peace process (Thomson November 2002). Such views and the wider cynicism about the manner in which Sri Lankan politicians operated were expressed by the husband of Mrs S whose son disappeared, "When you want my vote you come to my house but when I come to you, you are sleeping and have bodyguards so I can't see you ... Today the army is on good terms with the LTTE. The EPDP is on good terms with the army so all don't want to let down one another" (Jaffna District: Interview 5). An overwhelming sense that the MOU served the interests of the political elite was as expressed by Mr Sasiharan of the Consortium of Humanitarian Agencies in Batticaloa District:

The army continues to body check everyone in Batti[caloa] at various checkpoints but do not stop the LTTE. But they say it is for our own security. Sometimes we know that it is the LTTE cadres with the new clothes, nice shoes and good bikes and they go without a helmet or license plates on the roads and wave at the army fellows who wave back at them and we continue to be stuck in the middle.

- Mr Sasiharan, Consortium of Humanitarian Agencies,
Batticaloa District.

The overriding view among many Sri Lankans was that the cessation of hostilities was a tokenistic gesture grounded in opportunism and that there was still no democratic accountability. Alluding to a form of

complicity between the security forces and LTTE and more broadly the nature of political power in Sri Lanka, Mrs K argued that while disappearance was a policy of the army, only children, rather than combatants, disappeared: 'The army was only arresting and releasing LTTEers but children who are innocent were disappeared', she said (Mrs K, Jaffna District: Interview 1).

Although the government and LTTE held six rounds of talks, the greatest challenge appeared to be the refusal by the main nationalist Sinhalese parties to cooperate. This tension was played out in the dealings between the President Kumaratunga from the PA and Prime Minister Wickremasinghe of the UNP with the President on several occasions accusing the Prime Minister of 'endangering national security' for initiating peace talks with the LTTE. The squabble culminated in the President taking over three ministries in November 2003 (Perera 2003). As Wagner suggested, as in the 1950s and 1960s, the main opposition came from the south rather than the north and east (2004:19). Ironically, however, by propagating an ideology of Sinhala-Buddhist nationalism, the two major parties contributed to the polarisation of Sri Lankan politics which found expression in Tamil parties demanding separate Tamil state.

In April 2003 the LTTE announced that it was suspending talks on the grounds that it was being marginalised by the process and although the ceasefire lasted a further three years, war resumed in 2006. That year, 1000 cases of disappearance were reported and in the first three months of 2007, 100 disappearances were reported from Colombo, Batticaloa and Jaffna (Gardner 2007). In March 2007 Sri Lankan police admitted that its own security personnel had been involved in kidnappings for ransom which had now spread to Colombo. Again, disappearance provided the means to commit other crimes (AFP 2007).

Thereafter, the lines between disappearance and abduction for ransom were completely blurred, with political groups including the EPDP and criminal gangs using these tactics to line their pockets and advance their own interests (HRW 2008:7).

CHAPTER 7

No-one even gave us a glass of water.

- Mrs J, Kurunegala District: Interview 6.

Social positioning and stigmatisation

The state project of disappearance sought to isolate individuals and dismantle rural communities through arbitrary violence and mistrust thereby immobilising any form of solidarity or collective action. The extent to which this was achieved was demonstrated by the manner in which surviving relatives of the disappeared were exploited and ostracised. Following the disappearance of their loved ones, surviving families faced political intimidation, social stigmatisation and discrimination which limited their rights, opportunities to seek justice and the truth, and ability to cope with the disappearance. At the same time, mistrust and suspicion created by disappearance and other forms of state terror encouraged families themselves to suspect those within their own communities of engaging in or supporting the disappearance of their loved ones. The emerging contradictions and tensions created a context of extreme paranoia which contracted social relations and made the possibility of collective opposition remote. As the nexus between the disappeared, the state and the community, surviving families were labelled politically suspect and subjected to culture-specific exploitation for years after the violence had ended.

7.1 Dislocation of the social and spiritual words

Over the decades in which disappearance was the preferred method of dealing with political opposition, there were only rare instances when

the body was retrieved, making it impossible for the affected families to verify whether the disappeared person had died. Indeed, the insidious practice of making unavailable the violated body as evidence was an integral part of a state project to censor memory (de Alwis 2009:379). The disappeared are denied, therefore, a place among the living and among the dead (Blaauw & Lähteenmäki 2002:769). Sasanka Perera (1995, 1998, 1999), Somasundaram (1998), Bulankulame (2005) have highlighted that without a body, relatives are unable to conduct important ceremonial rites and funeral rituals. Such activities link this world to the next. However, studies on disappearance in the Sri Lankan context have not fully considered the spatial positioning of or the vacuum inhabited by the disappeared in relation to their surviving relatives which is central to the sociology of disappearance.

Political violence ruptures the cultural divisions between public and private worlds, family and community, victim and perpetrator, safety and danger, life and death. By deliberately breaking and blurring these demarcations and boundaries, the political project of repression intimidates, isolates and silences the individual and dismantles their community. Through the technique of disappearance, those in power exploited existing cultural and social divisions as a strategy of control. Without a body to mourn, which would otherwise demarcate life from death, affected families are caught in a limbo of ambiguous loss in which they are torn between grief and hope, unable to either return to the past or to plan for the future. In direct contrast to any other crime in which the facts including that of a death are known, in the world of disappearance, everything is mysterious, indefinite and surrounded by a tangle of conjectures, indeterminacies and doubts (Mellibovsky 1997:27). Anything could be true or false and society, authority and justice contradict each other (Independent Commission on

International Humanitarian Issues 1986:25). In challenging and blurring the boundaries between the social and spiritual worlds, the offence of disappearance not only violated the rights of the individual concerned but also the socioöcultural traditions and values that underpin Sri Lankan society, including those of funeral rites and rituals.

Without a body, the social and religious order is disturbed as both Buddhist and Hindu funeral and almsgiving rituals are suspended. These rituals address the dead by urging them to move on for the purposes of rebirth and allow relatives to say farewell and express grief and loss. The Buddhist tradition of *pansakula* (the blessing of the departed) requires relatives to pour water from a vessel to an overflowing cup to symbolise the transfer of merit to the deceased while the Hindu *śraddha* ceremonies also require the provision of offerings to deceased loved ones (Kariyawasam 1995:44; Klostermaier 2000:39; Duraiswamy 1997:152). They encourage the safe and final passage of the departed from this world to the next and enable the transfer of merit by the living to the dead as a *dakkhina* or offering so that the departed may find relief from any ōnhappy realm wherein they might have been bornö (Kariyawasam 1995:44; Klostermaier 2000:39). Almsgiving rituals carried out at intervals after the funeral are important for families and their communities to integrate the experience of death into daily social reality. Vansina highlighted the importance of funerals in bringing surviving kin closer together and to increase their solidarity as a celebration of ōkinship and neighbourhoodö (2011:ix). As an institutionalised form of collective action, funerals unite people while providing the means through which grief finds expression in collective experience. For families without a body and unable to conduct funeral rites, this

collective experience is replaced by one of social isolation and inter-family discord and tension.

For most Sri Lankan Buddhists and Hindus the dead occupy an uncontested and defined public space for a specific period of time, as the body is placed in the family home before their spirit moves on to a defined spiritual place. Disappearance ruptures this process as the disappeared cannot be located in the social world of the living or the spiritual world of the dead because they *æ*exist outside all space and time. The disappeared are afforded no human destiny by those responsible who condemn them *ø*neither to live nor to die *ö* (*Agupacion* member cited in Schirmer 1988:41). In addition to the ambiguity of death and life, Buddhists believe that if the dead has not been virtuous, s/he may be reborn as a *pr  tar* or hungry ghost who has no chance of making merit on their own initiative, which is required to be reborn in a better state (Gombrich & Obeyesekere 1988:39). Similarly, a *bhut* in Hindu mythology or restless ghost may be malignant if they have been denied funeral rites or died a violent death and will wander aimlessly until the allotted lifetime is complete. Violent deaths are also problematic in Buddhist society as it is impossible to have a good reincarnation if the mind of the individual is filled with evil thoughts at the time of their death (Blaauw & L  htenm  ki 2002:773).

The disappeared are condemned to roam endlessly and therefore unfulfilled in a no-man  s land between the spiritual and social worlds. Many families of the disappeared sought out soothsayers (*sastra karayas*) and horoscope readers (*sastra kari*) as well as sorcery shrines in the south and oracles in the north and east because they transcend both the political and social order. However, many relatives who sought information about the disappeared from such sources were

told that that their loved one was lost. Mrs N was told by a *sastra* reader that, *ōI canŉ see him. He is not thereō* (Mrs N, Gampaha District: Interview 6). Similarly, Mrs V was told that her two disappeared brothers had *ōfallen into a manhole in the night and had fallen in the same hole in the dayō* and consequently, *ōthere was no use in looking for themō* (Mrs V, Matara District: Interview 9). In this sense, therefore, political violence and disappearance as state practice is directed at destroying the cultural bonds between social and spiritual worlds, or the *ōpassage of life and deathō* (Robben 2000:70-71).

Given these circumstances, the process of merit-transfer has taken on a fundamental importance for surviving relatives. However, as the fate of the disappeared remains unknown, such rituals bring with them tremendous anxiety. While families will redirect their efforts inwards to focus narrowly on almsgiving to derive merit, the contraction that emerges is one in which offering alms signifies for many relatives an acknowledgement of death and amounts therefore to a form of betrayal. Mrs M noted that the first time she offered alms for her disappeared son, she felt that she was *ōcheating her own heartō* by performing the ritual (Mrs M, Gampaha District: Interview 4). In this way, disappearance transforms a ritual that would normally provide comfort and a sense of fulfilment into an additional source of anxiety, destroying *ōculturally constituted expectations and functionsō* (Suarez-Orozco & Robben 2000:10). As Hannah Arendt noted, while isolation of individuals in the public spheres is intended to destroy political opposition, the destruction of social bonds is intended to engender loneliness, to sever ties to a community and therefore *ōleave the individual utterly at the mercy of the stateō* (Arendt cited in Bourvard 2002:35-36). In this sense, the family unit is a perpetual victim of the policy of disappearance given that what is most

fundamental to the family unit—solidarity, trust and privacy—are deeply ruptured. However, rather than respond with remorse and recognition, the country's political leadership continued to exploit the permanent victimhood of affected families.

7.2 Experiences with the state

Efforts by relatives to re-establish the social and legal identity of the disappeared—denied by the state—by submitting a complaint at the police station or military camp, pursuing a *habeas corpus* petition, or providing information to the various international and local human rights bodies—were usually fruitless. Relatives found themselves in direct confrontation with the state's regime of terror and up against an entire apparatus determined to conceal the offence. The police, army, government administration and local politicians consistently politicised relatives of the disappeared as potential terrorists while depoliticising and personalising their claims—a characteristic of the majority of interviews conducted for this study. Moreover, as it was too dangerous for male householders to search for their missing loved one, the responsibility fell to women, many of whom had not previously ventured far outside their own village. Mistreatment and exploitation by state and local officials took on a gender dimension which affected the women's own communities. The political strategy of disappearance was to silence the individual, devalue and dismiss their family by way of denial, concealment and blame, and terrorise their community. No one was immune; everyone was a potential target. As previously discussed, victims were blamed for their own disappearance, leading the wider public to believe that the disappeared must have done something wrong which simultaneously cast a shadow of suspicion over the behaviour of their surviving relatives. Avoidance behaviour on the part of neighbours, friends and relations served as a

strategy of self-preservation but also lead to the social marginalisation and isolation of surviving relatives of disappeared persons. Mrs D recalled that following the disappearance of her husband in 1989, the rumour circulating in her community was that those who disappeared were all JVPers so people thought if they come over here, others will think they are also JVPö so no one ever came to her home (Mrs D, Kurunegala District: Interview 3). Corruption came to the fore during the violence and was given licence under the cover of political violence. This directly affected the relatives of the disappeared who became a focus of state terror, community-based corruption and often aggressive exploitative tactics by their in-laws intent on using the political context to avoid and distort inter-family and intra-family social obligations.

In both contexts of violence (JVP insurgency and LTTE conflict), the casual manner in which people were taken off the streets or from their homes for seemingly innocuous reasons, even, for example, providing road directions, plus the personal assurances given to their families of safety and return of the relative were integral to a wider political strategy to depoliticise disappearances and confuse communities to neutralise efforts to relocate the missing. Mrs R was assured by the local Brigadier as well as the Government Agent and police that her 19-year-old son was safe in army detention watching television and waiting for his interrogation (Mrs R, Jaffna District: Interview 4). The façade of false hope was often maintained over days of constant reassurance that loved ones were safe and would be returned imminently. However, at some point, relatives would be met by the official line of denial regarding arrest and detention. The 14-year-old son of Mrs P was taken to the local army camp in Batticaloa in December 1993 on the pretext of carrying out some work. Over four days, soldiers assured Mrs P that her son would be released when the

work was complete. However, on the fifth day, she was told that her son was never arrested and soldiers totally denied knowledge about his identity and whereabouts. At each camp she visited thereafter, including army headquarters in Batticaloa, Mrs P was assured that an inquiry would take place. However, she said, 'I never got any information about my son and after that I never went back to any army camp in search of him' (Mrs P, Batticaloa District: Interview 9). In other situations, after days of visiting a camp where they believed their loved one was held, relatives were abruptly informed that they had been transferred or even released but were never subsequently located. Many relatives believed that such circumstances were evidence of an administrative mistake that could be rectified. Similarly, cases of mistaken identity which led to removals were considered by relatives to be errors which could be corrected with the return of their loved one at an appropriate time. Many interviewees in the north and east took the view that their relative was detained and would be released following the signing of the 2001 peace accord. Having patiently waited in anticipation for nine years, Mrs K whose husband disappeared in army custody on 24 June 1990 shared her thoughts in this regard:

When the peace process was declared we thought they would have been released but since there is no information we are beginning to suspect with so many thoughts. I am thinking so many things - killed, detained somewhere, so many thoughts are coming into my mind.

- Mrs K, Amparai District: Interview 3.

Such tactics on the part of the state were calculated to cause confusion about the motive and fate of the disappeared, false hope and to generate prolonged anxiety among affected families and self-

censorship to ensure that they didn't jeopardise the safety of disappeared loved ones. They also demonstrated the impunity with which such officials acted.

While most families sought assistance from the legal apparatus and law enforcement authorities immediately following the abduction or arrest, a pattern emerged whereby their claims were totally dismissed or belittled as a personal drama of the families involved. The level of disregard let alone antagonism shown especially towards women in search of husbands, sons and brothers was almost as disturbing to them as the disappearance itself. Mrs P recalled that having begged for assistance from the officer-in-charge (OIC) at Thirukovil following the disappearance of her husband, he 'abused us, used filthy words and chased us [out]' (Mrs P, Amparai District: Interview 12). Police not only refused to document their complaints and acknowledge the total despair of those before them but dismissed their claims by arguing that their loved one must have joined the subversives/terrorists, run off with a lover, left the country or had gone missing of their own accord and didn't want to be found. The response of state officials was that disappearances were the result of personal family problems rather than political events and that the wives and mothers of the disappeared should feel ashamed for having publicly aired the matter. Further, by transgressing public/private boundaries in search of missing male relations without male protection, women were recognised as having implicated their own morality and decency already under question given the disappearance of their relative. State officials exploited the social vulnerabilities of women in a traditional patriarchal society by shaming them as improper wives and irresponsible mothers. As Coomaraswamy suggested, the primary instrument of honour is fear of shame (1999) or what Obeyesekere termed *lajja-bhaya* (1981). The common retort

to the mothers of disappeared men by police and security forces in both theatres of conflict was that they irresponsibly raised terrorists. In fact, Tamil mothers were frequently referred to as the mothers of tiger cubs.¹⁵ Mrs T recalled being abused and chased away by soldiers after she followed their jeep containing her son to an army camp in Akkaraipattu, Eastern Province, on 28 July 1990. The soldiers said to her, *ōgo away woman, you gave birth to a tigerō* (Mrs T, Amparai District: Interview 6). Women were subsequently humiliated, ridiculed and subjected to sexual harassment as part of a state policy directed at highlighting the illegitimacy of their claims. In this manner, any concept of state responsibility was totally evaded. Furthermore, all those with a vested interest in concealing the nature of the political violence discouraged and actively undermined families' efforts, as Mrs P experienced. Her husband disappeared along with 39 other men following arrest during an army roundup operation in the east. In response to her pleas for assistance, Mrs P's local MP told her that she should pray to god, as though his disappearance was somehow preternatural rather than the result of a deliberately planned and implemented policy (Mrs P, Amparai District: Interview 12).

Having exhausted all institutional avenues to register complaints or source information, many relatives became dependent upon rumour and alleged sightings which made them susceptible to exploitation. Surviving relations were deliberately misled on a wild goose chase across army camps and police stations, and often came into contact with people who, for whatever reason, exploited their suffering and prolonged their anxiety. After endlessly *ōpesteringō* the local brigadier

¹⁵ Such a term is a play on the word *-tigerō* which is the shortened and informal name given to members of the Liberation Tigers of Tamil Eelam (LTTE).

under whose supervision her son was arrested, Mrs R met a person at a bus stop who told her that they had seen her son at the Kalutara Prison some four years after his disappearance in 1997 (Mrs R, Jaffna District: Interview 4). A relative of Mrs S told her that she had seen her husband at the Penangoda army camp four years after his arrest by the STF (Amparai District: Interview 5). In every single case in which information was conveyed even years after the event, it reinvigorated hope and initiated a new search but which inevitably amounted to nothing.

In this context where the line between fact and fiction was broken, corruption thrived. Mrs G's husband, a 30-year-old cattle farmer disappeared in December 1993 in Batticaloa. At one of the camps where she searched for him, she was told that her husband was detained in an army camp in Colombo, which was almost impossible for her to reach given the security risks and restrictions on movement imposed at the time. His release, she was told, could be secured with a cash payment. While the political apparatus had created a system which made disappearances permissible, the concealment of such abuses by state institutions provided opportunities to further exploit the vulnerabilities of those with the least power to resist. Mrs G paid 30,000 rupees to the responsible OIC who instructed her to leave the money on the table and wait three months for her husband's return which, of course, never eventuated (Mrs G, Batticaloa District: Interview 5). Furthermore, as chapter 9 details, for those who pursued legal avenues, including prosecutions and *habeas corpus* petitions, such experiences exemplified the extent to which the legal process had been derailed for political advantage thereby enabling corruption to fester.

7.3 *The justice system didn't give us any hope so we went to the other side to look for them*

- Mrs V, Matara District: Interview 9.

While the search for missing relatives was the one consistent feature in the lives of their surviving relatives, its form changed over time. As appeals at police stations and army camps were exhausted and information was not forthcoming, focus inevitably shifted for many interviewees from that of seeking assistance from law enforcement officials and the state apparatus to that of spiritual forces. Use of spiritual mediums, astrology and soothsayers in the Sri Lankan context has historically been understood as a way of managing uncertainty and gaining insight into the future. During the height of the violence, such mediums provided a means through which families could question the every moral order of the state and its agentsö (Kapferer 1997:256).

As with the state, such recourse provided additional avenues for corruption and the exploitation of familiesöanguish. They resorted to soothsayers, *sastra* (deliverers of oracles), palm and light readers and other mediums to locate or establish the fate of the disappeared and to communicate with them, pledging vows to the gods in return for a re-appearance. *Sastra* and other such rituals took on a heightened importance not least because they provided information and validated what the state denied. However, for many interviewees, receiving information that could not be acted upon created further tension and turmoil rather than any genuine comfort. Mrs R was told by soothsayers that her son had been beaten up and was crouched down somewhere but was not given any information about his whereabouts (Batticaloa District: Interview 6). Mrs V was led to believe that her

son was kept in a corner somewhere so she prayed to god to reveal the location (Mrs V, Amparai District: Interview 8). Others were told to provide offerings at various temples which added to the financial and emotional toil of efforts to locate their loved ones.

By appealing to an authority above that of the state, some interviewees accepted the bad news provided to them through these mediums and went on to perform necessary almsgiving rituals for the dead. Others became regular clients as mediums profited from their despair by validating their false hopes and authenticating their intentions to pursue loved ones without end. However, the contradictory nature of the information provided, ineffectiveness of such avenues in producing the disappeared or lack of tangible information provided that could be acted upon, led many to realise that as with the state's response, they had been betrayed, exploited and lied to for the advantage of others. Although they may have provided short-term relief, such enterprises proved themselves to be totally unproductive, a diversion and waste of money for many interviewees.

As Mrs S recalled:

My mind wouldn't allow peace so I went to a soothsayer that said 'yes, he's there and you'll get information in four months' but it's been two years. Another person I went to read the horoscope and said 'yes, he's alive but I can only tell in six months the true situation'. They told this to fill their stomachs and I didn't believe it. I went for consolation of the mind. When I came home, I left it with god. Two years have passed and nothing has worked out. I realise it was a total lie.

- Mrs S, Vavuniya District: Interview 4.

Others argued that given the ambiguity about the fate of their loved one, only a reappearance would confirm for them if the word of the soothsayers had been correct or not (Mrs K, Batticaloa District: Interview 11). By diverting families away from identifying the source of the violence and those responsible for it towards the world of private emotion and spiritualism to find answers, such enterprises could only ever provide temporary relief from daily despair. Vow-making as discussed in the following chapter, however, took relatives in a different direction by serving as a form of collective suffering and providing a basis for public protest.

7.4 Mistrust, suspicion and social dysfunction

As disappearances were politically justified as a means of eradicating terrorism, the disappeared by definition were suspected terrorists in the eyes of the state. Surviving relatives in turn faced the stigma of terrorist connections (Southern Commission 1997b:40). As potential terrorists and therefore a legitimate target for disappearance and other forms of political violence, relatives became a source of potential danger for their communities. As noted in previous chapters, the immediacy of this threat to families of the disappeared was demonstrated in both theatres of violence (JVP and LTTE) when parents, siblings and even children were taken by security force officials. In other circumstances, relatives were repeatedly threatened and made aware that they could disappear at any moment. In the aftermath of the disappearance of a brother in February 1990 which followed the earlier disappearance of another brother in November 1989, Mrs V explained that army personnel ransacked her home and tortured her father while searching for those who were left. Her mother commented at the time that they had finished half the family and would not let the other half stay (Mrs V, Matara District: Interview

2). Disappearances usually led to the total ostracism of the remaining family as extended family, neighbours and friends sought to avoid them for fear of guilt by association. The torture and hanging of a 26-year-old brother, a JVPer, in November 1988 led to a lifetime of harassment and discrimination for Mrs Vø family which lasted long after the violence had ended. Mrs V recalled the impact the event and its aftermath had on her family:

Everything for normal day-to-day life stopped from that day. My mother was making sweets and stopped. My father gave up farming. The householders were called brothers of JVPers. My parents thought it was no use. People looked on us as thieves.

- Mrs V, Matara District: Interview 2.

Shanthi Arulmapalam of Survivors Associated, a non-government organisation (NGO) that focused on psychosocial development activities in conflict areas of the north and east, recalled the situation of a woman and her two daughters forced to live in a shack with a makeshift plastic roof on the edge of her village. The woman's husband had disappeared and all those around her assumed that he was an LTTEer so no one in the village including her own brother wanted to be seen talking to her in public for fear that unwanted attention might lead to their own disappearance (Shanthi Arulmapalam Executive Director, Survivors Associated, *personal communication*). In other circumstances, surviving relatives were deliberately chased out of their community. Mrs S recalled that her brother-in-law disappeared in April 1989 at the height of the *beeshanaya* in the south leaving her sister to raise four children on her own. In a context in which 'everyone was scared of each other', the rest of the family was labelled subversive and fled the village when locals threatened to burn down her sister's house. Upon their return

months later, the house had been destroyed and everything that could be taken was taken" she said (Mrs S, Kandy District: Interview 7).

The political order alienated and isolated its citizens from one another through a regime of violence and fear (Habermas 1986:80), and disappearances signified the fragmentation of this trust at every level between the state and community, state and individual, within communities and families, and between individuals. Mrs S recalled that in her village in the central Kandy District, "[p]eople were scared to come out of their houses thinking they would also get the label -JVP" (Mrs S, Kandy District: Interview 5). The impact of repressive measures imposed on entire communities was intensely personal because they denied individuals the power to act and conduct their lives with any sense of familiarity, security and comfort. People endeavoured to maintain a routine of survival, of sameness, in the hope that repetition of action would render them invisible from authorities and ensure security and safety (Manz 1995:157). Such behaviour was exemplified by avoidance practices within communities. Mr S from Gampaha District noted that people "didn't cooperate with each other because of fear and they'd try to find out from the outside what happened" when locals disappeared "thinking that the same thing would happen to them" (Mr S, Gampaha District: Interview 13). Witnesses to the abduction or arrest of neighbours, friends and relatives refused to come forward and provide information for fear of their own safety. The arrest and beating of Mrs K's son was witnessed by a number of locals within her village but they refused to speak for fear of harassment by the army. With all possible legal avenues eliminated, Mrs K was left having to watch soldiers riding around on her son's bike which they confiscated at the time of his arrest (Mrs K, Batticaloa District: Interview 8).

Mistrust and suspicion fuelled by the concealment of perpetrators of violence generated new antagonisms within village communities while also bringing inter-community conflicts and tension to the fore and manipulating commonly-shared beliefs about omnipresent malevolent forces that prey on the weak. The politicisation and polarisation of the entire population as a means of immobilising collective solidarity enabled the exploitation of social divisions which deepened and widened. Forcing individuals to act as informants or to implicate others in order to save their own lives further intensified such divisions and the mistrust on which they thrived. Individuals not openly supportive of one political party or another disappeared—everyone was (politically) labelled and no one was (politically) neutral. The ubiquity of the informant encouraged social disintegration as every person one came into contact with could be an informant (Arendt 1969:71). Ms S observed that SLFP supporters were targeted in her community in Kandy District and even though the victims were ‘people who never did politics openly’, it was possible to identify them because ‘in the village, everyone knows each other’ (Ms S, Kandy District: Interview 5). Mrs C noted that as people were arrested or abducted on suspicion rather than evidence, it was easy to give the name of a neighbour to the perpetrators (Mirigama Primary School, Gampaha District). Given that many families of the disappeared were aware that their relative had not been involved in politics, their suspicions fell on personal and local tensions as the motive for their relative’s abduction or arrest. Similarly, while the ruling elite and state agents perpetuated the falsehood that the disappeared were subversives, they also encouraged the view that the motive behind the disappearances was personal and local rather than part of a national political project. As a result, the public gaze was directed inwards, transfixed on existing and emerging social divisions. Social relations not only contracted but were skewed as inter-personal relationships

were no longer a source of solidarity, support and cohesion but rather a potential source of threat and danger. Avoidance behaviour and self-imposed isolation became the main survival tactics as Mr S explained:

People were afraid to talk to each other. If someone disappeared from a family, others didn't want to talk to them when they met on the road because of the terror. Some schools were closed permanently or if the school was far away, they stopped their children from going to school.

- Mr S, Gampaha District: Interview 14.

Just as neighbours and friends were suspicious of families of the disappeared, the families themselves were suspicious that information leading to or the motive for the disappearance of their loved one was provided locally. In this way, disappearances were perceived as the actions of state and non-state actors directed by local informants for their own advancement. For others, the onus of responsibility was transferred from the political leadership and state agencies to locals and private actors. Security officials responsible for the physical act of disappearance were seen as pawns manipulated by others for their own personal advantage. Mrs V's brother was captured by the police because of a tipoff given by a neighbour lured by the 50,000 rupees reward. He was subsequently tortured and hanged from a lamppost near the local hospital where he worked, as an open threat to the rest of the community (Mrs V, Matara District: Interview 2). Unable, therefore, to distinguish sources of danger from security, many families focused increasingly inwards at local and personal justifications for their plight which were more tangible than the political causes. Localising the offence in order to establish meaning and assert control over one's own destiny proved, however, totally ineffectual. By not identifying the very sources of violence and

political mistrust that had provided for the disappearance in the first instance, such efforts further isolated families into silos of personal pain rendering the possibility of collective recognition and action among them remote. Mrs B in Vavuniya believed that her husband disappeared because of jealousy regarding his successful business. Mr K in Matara thought that his son's disappearance was the culmination of a personal vendetta and Ms S in Kandy argued that her brother disappeared because the family were living at a higher standard than their neighbours (Mrs B, Vavuniya District: Interview 1; Mr K, Matara District: Interview 6; Ms S, Kandy District: Interview 5). Sustaining such views not only deepened mistrust in personal relationships but encouraged families themselves to subscribe to the political strategy of the regime. Mrs G said that because no one talked to her or came to visit following the disappearance of her husband, an SLFP member, the community's response was either the result of fear or fact that 'they must have liked what happened to us' (Mrs G, Kurunegala District: Interview 2). Therefore, efforts on the part of neighbours and friends to secure their own safety by keeping a distance were perceived by affected families as jealousy, discrimination or implied involvement in the disappearance (Mrs C, Mirigama Primary School, Gampaha District). The possibility of solidarity and collective recognition was made even more remote by the actions of some families who became complicit in the violence. Some passed on information to the security forces to exact revenge on neighbours they blamed for the disappearance of their loved one. Others served as informants to secure protection or money. Consistent with the dynamics of election violence and political violence more generally, revenge was filtered through a lens of political hierarchies and directed at fellow civilians to affirm the socio-political divide between the political elite and the rest. Mrs W was waiting to take revenge on the *goni billa* whom she held responsible for her

husband's disappearance. 'I see him and met him face to face and because I'm a woman I can't do anything but someday he will pay the penalty' she said (Mrs W, Kurunegala District: Interview 1). Political violence had not only shattered social trust but by manipulating local tensions, victims implicated themselves in the violence. Families were left isolated and affected by the events in such a profound way that they had 'no feelings for others because we ... are not in a position to think of others' (Mrs P, Amparai District: Interview 10).

The manner in which disappearances were superficially depoliticised as locally derived rivalries demonstrates the extent to which the regime succeeded in immobilising solidarity. At the same time, resistance or dissent was a life-threatening option. As violence became an institutionalised way of life, the sense prevailed that its perpetuation was inevitable. As in the Argentine experience, a sense of 'utter defencelessness in the face of multifaceted power' prevailed through arbitrary acts of violence carried out with impunity which were impossible to redress. This helplessness was accentuated by the constant reminders that the traditional methods of personal protection, both social and legal, were entirely inefficacious (National Commission on Disappeared People 1986:236). It was largely accepted in the north and east that the security forces perceived the entire Tamil population as terrorists and were intent on eradicating the threat. In the south, families spoke of the regime as though it was an inevitable response to a perceived political threat. Others saw it as a war against the poor that had no end.

During the violence, private and secure locations as well as places of refuge were deliberately transformed into locations of fear. In both contexts of violence, individuals were violently removed from their homes at any time of day or night in full view of their relatives

(Committee on Disappearances 2003 Chapter 3:35; North & East Commission 1997:50; Southern Commission 1997b:21). The knowledge that armed groups could enter the sanctity of one's home at any time and carry out any violation against its residents without punishment made parents in particular feel powerless as the inviolability of the home and separation between the private and public worlds was deliberately destroyed. As Robben argued, disappearances that take place from the home are particularly frightening because they are intensely private and personal rather than public events. The manner in which the state and other agents of violence violated the home amounted to an invasion of the inner by the outer reality, shattered ego and superego boundaries. Thus, political violence was deliberately directed at the cultural and psychological divisions between public and private, family and community (Robben 2000: 70-71). As the traditional patriarch responsible for protecting and providing for the family, many fathers, who watched helplessly as their sons were violently dragged from the family home into the night, committed suicide or became physically and/or mentally ill following the disappearance. Mrs C's husband set himself alight following the disappearance of their 18-year-old son. Mrs W's father committed suicide because he was unable to prevent and cope with the verbal assault and threat of physical harm faced by his two daughters following their husbands' disappearances (Mrs C, Gampaha District: Interview 9; Mrs W, Kurunegala District: Interview 4). Faced with an overwhelming sense of failure that they were unable to protect their children or search for them given the immediate danger to their own and their families' wellbeing, and had been proven ineffectual in securing their release, many fathers simply disintegrated into ill-health or died (Mrs R, Batticaloa District:

Interview 6).¹⁶ Mrs A recalled that her husband ðbecame paralysed and lost his sight and was bed-riddenö following their 21-year-old son's disappearance (Mrs A, Amparai District: Interview 9).

Mr P provided some insight into this horror following the disappearance of his 18-year-old son who was forced into an army jeep outside their home in January 1990:

I have only one son. My wife also died after this sad incident. My one and only son. I'm now left alone. I earn and live alone. When the Muslims came and told me, I just couldn't bear it. You can imagine how much I hurt. I brought him up to eighteen years. Just imagine I gave my son simply to die! He [the involved army officer] stamped his feet on my son's body and pointed his gun at me and that's what I thought.

- Mr P, Amparai District: Interview 7.

In other instances, mothers of the disappeared ðdied of sorrowö or became sick. Mrs M's 30-year-old son disappeared in July 1996 in Jaffna leading to her husband's death and the deterioration of her own eyesight as she explained:

My husband in 2002 crying over his son died. I have five children and all five girls have married ... Thinking about him, crying over him, I lost sight in one eye and the other one was operated on ... One day my son will come. Tomorrow he'll

¹⁶ Marecek established that three times more men die of suicide in Sri Lanka than women and suicides are (two-and-a-half times) more common in rural areas than in urban (de Silva & Jayasinghe cited in Marecek 2006:66). In 1995 Sri Lanka recorded nearly 48 deaths per 100,000, the highest rate of suicide in the world (Levi *et al.*, 2003 cited in Marecek 2006:65).

come. My husband didn't live to see him. May god help me to see my son.

- Mrs M, Jaffna District: Interview 10.

The decline of Mrs M's eyesight as a consequence of crying for a son taken from home by the army never to return is akin to psychosomatic blindness. Muecke argued that Cambodian women who, in response to having witnessed and experienced extraordinary brutality under the Khmer Rouge, appeared to have 'closed out the possibility of continued witness through the loss of the capacity to see it' (1995:43). It could be argued that Mrs M lost her capacity to see, unwilling to bear witness to a world full of horrors which had swallowed up her son. It could also be argued that the endless fruitless search and crying for her son whom she was unable to see but who remained blindingly ever-present by his absence, wore out her eyesight.

Interviewees often recounted how men had taken their own lives following a disappearance of a child, whereas women were seen to have passively let life drain away from them. This response reflected a deep internalisation of the traumatising disappearance event rather than an externalisation and politicisation of it. Mr S, a school principal, and his wife, an English teacher, were forced to retire early as they were unable to cope with seeing young students at the school where they taught because it reminded them of their own disappeared son (Mr S, Gampaha District, Interview 14). In this sense, parents internalised the trauma of a political event to a point where it destroyed them or totally distorted their world view and any inter-familiar relations. Psychological distress was often transmuted into physical ailments or else manifested as a continued preoccupation with the disappeared above that of the surviving siblings let alone their own personal health and wellbeing. As Mrs K revealed:

My disappeared son used to say he would do the O-Level examination and then look after the family. To get small work done, I have to ask so many people. But if he were alive, he wouldn't let me stretch a hand. He's always coming back into my mind. He was such a bold character. Things he said always come into my mind, haunting me ... My husband was arrested twice. The disappearance of my son made him sick and he can't do any job continuously ... Because of the other children I am living life, otherwise I am always thinking about my disappeared son ... I don't know where and what condition he is in ... I thought it would be ok when I built this house but my heart is burning. We are thinking of our beloved ones and neglected ourselves ... When there are two or three other children, to keep them alive and bring them up, we stay alive.

- Mrs K, Jaffna District: Interview 8.

The following narrative of Mrs R highlights the horrific manner in which many people were abducted, the agony of looking for a lost relative, the search to give meaning to the event and understand the motive behind it, and a family's inability to digest the probability of death. Mrs R's then 16-year-old brother, K, disappeared in 1989 at a time when 60 boys were taken within a one kilometre radius of their home. Due to fears for their safety, K and his friends had been sleeping in shelters away from their homes or had stayed with relatives. On the night of his abduction, approximately seven people came to the family home at 2 a.m. Two were dressed in police uniform and kept watch on the road. The rest were dressed in civilian clothing and some had their faces covered. K was dragged out from under his bed after his father was ordered at gunpoint to open the front door. The entire family including K's two younger sisters witnessed the event. The persons warned us to stay inside the house and fired several shots when they opened the door. They called out 'don't come

and look for him and don't go to the police station', Mrs R said. At first light, the family began their search for K. Despite the threats, which caused a dispute within the family about whether to enter the local police station, they did. At the same time, however, the family was also anxious to keep silent in the hope that such action would keep K alive. Every day, Mrs R's parents would check the dead bodies dumped on the side of the roads for K and they started going *sastra* (that is, to soothsayers). According to Mrs R, when they were informed that K was alive they were happy but when *sastra* led them to believe that he was dead, her mother wanted to commit suicide there and then. They stopped *sastra* when the money ran out but were kept in a heightened state of anxiety by rumours. Some said that K was taken by a paramilitary group and killed in a nearby cemetery while others said he was targeted because he was a JVP'er, an accusation which infuriated the family. Mrs R's father, a farmer, abandoned his fields and vowed he would only return to them when K reappeared to join him. Instead, he turned to alcohol. One day when drunk, he had a heavy fall sustaining a head injury which led, according to Mrs R, to mental illness and ultimately his death. Her mother neglected the remaining three children as well as herself and along with Mrs R's father, died of sadness thinking of K. Her two younger sisters stopped their schooling when K disappeared and the youngest developed mental health problems. Mrs R decided never to vote again at any election for any party because no party assisted her family so she didn't trust any of them. She continued to hold onto the remotest possibility that her brother was alive highlighting that only two of the *sastra* they visited stated that K was dead. The possibility of his death had remained only that despite the fact that his disappearance and her family's inability to find some way to deal with it has caused the total disintegration of any semblance of family life and physically destroyed her parents. Between presence and absence,

the memory of K could not be fully reconstructed or erased (Gladhart 2005:95) and while his disappearance shattered her family, it continued to haunt her own (Mrs R, Gampaha District: Interview 3).

State repression reached deep into private and community spaces. Places of refuge such as the family home, hospitals, schools, refugee camps and temples were taken over by the security forces and used as military camps and centres of interrogation and torture. Medical personnel trained to save lives became passive bystanders to abductions which took place in front of them at local hospitals (Southern Commission 1997b:28). The pervading feeling was that violence was imminent and inevitable and that everyone was vulnerable. Individuals were increasingly shut off from each other and any remaining solidarity between them disintegrated as cooperation gave way to individualism and suspicion, agitation and discomfort. Within this context, the entire population was terrorised into a òreluctant acquiescenceö (Hosking 1990:10) which became normalised. As Primo Levi's experience in the Auschwitz concentration camp revealed, a hope for solidarity among prisoners and for human warmth, was replaced by the stark reality of òa thousand sealed off monads, and between them a desperate covert and continuous struggleö (1989:38). Mass graves of which there were at least 12 in the southern province alone came into existence òcontemporaneouslyö but were not spoken about. Some were located near army camps, others were located within schools or in the middle of main roads (Southern Commission 1997b:117-188). Some people tried to report the existence of such graves to the police who refused to document the complaint, but most remained silent. The knowledge of mass graves remains localised and without official acknowledgment or remedy, and the knowledge and evidence that it could uncover remain local secrets. Similarly, bodies dumped on the

sides of roads, a practice of both insurgents and counter-insurgents in both contexts of violence, were buried in shallow graves, the sites of which remain local knowledge. Locals will die with that knowledge even though it is an integral part of the nation's collective memory of political violence and decisions about exhumations and proper burial are for the nation to make as part of a process of reconciliation, recognition and healing.

7.5 The wives/widows of Sri Lanka's disappeared

The manner in which disappearance was used as a mechanism of social control to exploit existing social divisions in communities already politically polarised is exemplified by the experience of the wives of disappeared people. In communities already afflicted by poverty and scarce resources, such social divisions came to the fore following the disappearance of a male relative, provoking inter-family disputes and rivalries over resources including land and compensation. Layers of dispute merged in this context as Mr S explained:

Politically the government made the terror but at the end, the local villages took this opportunity. The old tension was there but new problems were arising between families because of land disputes.

- Mr S, Gampaha District: Interview 14.

Although many relatives of the disappeared experienced social isolation resulting from the avoidance of others immobilised by a fear of guilt by association, wives of disappeared people faced particular gender-based discrimination from within their own community and families. This discrimination reflected both old and new disputes and

was of such a deliberate, persistent and aggressive nature that it severely restricted their rights and opportunities.

In the Buddhist and Hindu cosmos, the uncertain, unnatural and ambiguous status of the disappeared carries with it potential chaos, disorder and disunity. To the extent that the ambiguity threatens the established social order, it is polluting and must be brought under control. Danger is a dimension of the ambiguous and is the 'property' of those who transgress categories or defy classification (Kapferer 1997:262). Polluting behaviour is therefore a 'reaction' which condemns any object or idea likely to confuse or contradict the normal scheme of classification (Douglas 2002:45). As Kapferer noted, in the Sinhalese Buddhist hierarchy, pollution is conceived of as equivalent to 'a fragmented, decomposed, encompassed reduction' while purity is equivalent to encompassing unity (1988:12). The nature of the discrimination faced by the wives of the disappeared suggests that the ambiguity in relation to their disappeared husbands extended to them. To some extent, their status is akin to the liminal phase in which a widow in mourning is still considered married but is recognised within an ambiguous, transitional state which involves pollution (Ramphela 1997:100). By rupturing the social order, however, disappearances propel the wives of the disappeared into a state of permanent contradiction or prolongation of the liminal phase. Spouses of disappeared husbands who were neither dead nor alive, were both but neither wives nor widows and as their status transgressed social and cultural boundaries, they came to personify potential chaos and disorder.

Political violence not only shattered cultural traditions including social rituals of mourning but exploited cultural boundaries to disempower women and question their personal morality in order to

delegitimise their claims. The state, local communities and family relations exploited the ambiguity of their status and embodiment of both community honour and disorder for their own political and personal advantage. As wives/widows were locally recognised as the embodiment of social disorder rather than the state itself, community sanctions placed upon them through the voice of the village^ø were directed at controlling their morality and sexuality in an effort to affirm moral, social and communal boundaries. However, the imposition of such sanctions provided scope for exploitation and restriction. Without their husbands, wives/widows became the responsibility of their extended family and under the pretext of shunning or controlling immoral women, opportunities were taken by in-laws to skew and exploit social obligations towards them. At the same time, the wives/widows faced discrimination on two fronts. They were viewed through the gaze of their disappeared husband with all the questions and fears that the disappearance invoked and of the ambiguity and disorder that it presented on the one hand. And on the other hand, they were subjected to the restraints and restrictions imposed on widows particularly as they applied in Tamil society. Mr Ilanko of the Jiva Joti Children^ø home in Batticaloa explained that widows generally are looked upon in a òsexual and exploitative wayö. While the socio-economic boundaries continued to be opened up, greater access by widows to the wider community generally brought with it additional opportunities for the exploitation of them and their children (*personal communication*).

As detailed in this study, in-laws drew on the political context to avoid their relations for fear of guilt by association. However, many also exploited the powerlessness of the survivors of disappearance to avoid their own social obligations. In some instances, this amounted to isolation behaviour. Mrs E noted that her in-laws òdidn^ø want to get

too close because they thought support [to her] meant moneyö (Mrs E, Jaffna District: Interview 9). Similarly, Mrs L argued that her in-laws avoided her because they were poor and didn't want to feel obliged to assist her, a dynamic which eventuated in her children having a öbitter feelingö against them because they showed no interest or concern (Mrs L, Batticaloa District: Interview 4). Others such as the relatives of Mrs K refused to assist her. öMy husband and son were missing. I didn't have a male escort or relative to search for them. But my relations had many males who could search. When I asked them to help me, they refused. My own sister refusedö, she said (Mrs K, Amparai District: Interview 4). Although many in-laws may have felt threatened by associating with the wives of the disappeared and fearful of assisting them, their inability to provide any support destroyed inter-family solidarity at the very time that surviving relatives needed to draw on it. There were many instances where in-laws even actively engaged in undermining and exploiting surviving female relations. Mrs W recalled that not only were women simply abandoned by their in-laws but any property they had was taken from them or their land and home were simply taken over (Mrs W, Kurunegala District: Interview 4). Mrs P was forced by her brother-in-law to sell land, jewellery and to mortgage her house to support a number of his failed schemes causing her family considerable financial hardship (Mrs P, Amparai District: Interview 10). Mrs K's brother-in-law refused to return her family's valuables on the pretext of waiting to hand them over to his disappeared brother (Mrs K, Batticaloa District: Interview 11). Mrs P's in-laws complained to the LTTE that she was too friendly with a Criminal Investigation Department (CID) officer despite the fact that one of her sons had joined the LTTE at 16 years of age and died three years later in battle (Mrs P, Amparai District: Interview 10). Such treatment had little to do with fear in the context of political violence and more with using

the context of violence and disorder to act upon existing family tensions and to exploit vulnerabilities. Such treatment was worst for those whose marriage had not been supported by in-laws as Mrs C's experience revealed. She married her cousin despite the protests of his family and following his disappearance in August 1996, her in-laws set about to deliberately prevent any assistance reaching her. They told her priest that she was a 'bad woman' and as Mrs C observed:

Their one and only aim was to bring shame and to black-paint my name. They said that I was a bad character woman. Since my husband is not at home anyone visiting here as to come as a couple or they will talk. They always said that because of my behaviour a thing like that happened to my husband. They also want to separate my children from me. My in-laws are very cruel to me after my husband's disappearance.

- Mrs C, Jaffna District: Interview 3.

Exploitation and ill-treatment by in-laws had a generational impact. Mrs A recalled that following the abduction of her father by the LTTE in January 1990, the rest of the family were chased out of the house by her paternal grandparents who refused to hand over the deeds for the land that Mrs A's mother had paid for. Unable to find work locally, Mrs A's mother felt compelled to go to Saudi Arabia leaving her children with neighbours. Mrs A continued: 'When I saw the problems of my family, my mind didn't permit me to go to school. I looked after my brothers and did the housework. I was between thirteen and fourteen-years-old when I stopped [school]' (Mrs A, Amparai District: Interview 1). Other children of the disappeared gave up schooling for financial reasons but also because of psychological distress and discrimination. Mrs D noted that at the local school, families of the disappeared were labelled and shunned as JVP families

while Mrs G had to withdraw her children from school and send them to cultivate rice to support the family (Mrs D, Kurunegala District: Interview 3; Mrs G, Batticaloa District: Interview 5). Some entertained thoughts of revenge against the disappearance of fathers with others joining the LTTE to take revenge on the army (Mrs P, Amparai District: Interview 10). Relatives of the disappeared have also joined the military to be trained so that they can desert with a weapon and seek revenge (Shantha Pathirana, OPFMD, *personal communication*). Many were neglected by mothers in the desperate search for their husbands and caught up in their own private pain (Survivors Associated, Vavuniya District: *personal communication*).¹⁷ It was in direct response to such discrimination and the desire to raise children out of reach of the ðvoice of the villageð that led, in many instances, to the formation of local womenð support groups as discussed in chapter 8.

Other social pressures were put on women through the ðvoice of the villageð or community sanctions particularly in relation to life celebrations and community-engaging events such as weddings and coming of age parties to which they were denied access. Many excluded themselves from such events for fear of losing self-respect, but others were directly pressured to stay away especially on the first and most auspicious day of the celebration (Mrs K, Amparai District: Interview 3). Also, the concept of inauspiciousness and bad luck otherwise associated with widows in Tamil society was drawn on and expanded to justify wide-ranging exclusion from the community. Mrs K insisted that it was custom rather than the Hindu religion that held

¹⁷ This evidence was given by a group of representatives from Survivors Associated in Vavuniya District including counselors who work with families of the disappeared across the District. The evidence was confirmed in interviews.

women back as if people have on their own made these laws (not the gods) (Mrs K, Amparai District: Interview 3). Although Sinhalese widows are not subject to the same rules and conventions regarding seclusion and cultural marginalisation as Tamil women (Thiruchandran 2003:138), many were told not to attend weddings. Mrs P, a Sinhalese Buddhist was told by her own aunty and sister-in-law not to attend a family wedding on account of her attendance being inauspicious and a bad sign (Mrs P, Gampaha District: Interview 11).

Many Tamil interviewees spoke of the continued pressure to stay away from life celebrations which was particularly acute on the first day. Mrs K and other wives/widows didn't attend such events for fear of what people might say if they were nicely dressed and enjoying, and our relations are missing ... Some are telling, 'why is she wearing that when her husband died?' (Mrs K, Jaffna District: Interview 8). In contrast, after years of suffering imposed isolation, Mrs G noted that there was a gradual reversal in the nature of such sanctions in her Sinhalese community whereby others would talk ill of her if she didn't attend these functions (Mrs G, Kurunegala District: Interview 2). Community sanctions and other forms of pressure to attend or stay away from public gatherings demonstrated the extent to which such women remained under the public scrutiny and control. At the same time, regardless of which community they lived in, they were sexually objectified. Mrs M noted that during the search for her husband, people knew that her husband wasn't there so they were looking at me on an angle to get some benefits out of me (Mrs M, Kandy District: Interview 2). Ms W said that she tried to look older when she went out searching for her husband for these reasons (Ms W, Kurunegala District: Interview 4). Mrs P noted that men thought women like me were playful toys and Mrs S said that if she asked for help from a man then he will expect something illegal back (Mrs

P, Gampaha District: Interview 11; Mrs S, Gampaha District: Interview 10). Twenty-three-year-old, Mrs J whose husband disappeared in 2002 during the LTTE conflict leaving her with two small children, was so frustrated with the imputation that any dealings she had with men must have been of a sexual nature that she planned to leave the country. 'If I talk to one my male relatives, they say I am coupling with them and that sometimes he [her husband] might come ... I can't go anywhere I like ... My community and culture is such that if you go out a lot people will talk. I am going to Qatar to earn so people can't say anything' she said (Mrs J, Vavuniya District: Interview 6). Mrs B had four children under four years of age and made the hard decision to work in Saudi Arabia because as she said: 'If I'd have stayed here, I'd be a mad woman' (Mrs B, Vavuniya District: Interview 1). The contradiction that emerges is one between the traditional image of widowhood as a status without social standing and wives/widows in an ambiguous, potentially polluting 'status' which is confirmed by their sexual objectification that must be forever supervised and controlled. Indeed, according to Alison, when such women manage to overcome discrimination and find a means to earn an income, it is often assumed within their community that their income must be derived from prostitution (2004:17).

As many women whose male relations disappeared were left to manage the household, a substantial number had to find paid employment without any formal experience or qualifications which made them additionally susceptible to exploitation. As noted, some took up work in the Middle East where further exploitation and long-term separation from children placed additional burdens on traumatised individuals. With the help of an uncle, Mrs V's sister-in-law moved to Lebanon to work after the disappearance of her husband and once there was allegedly sold into prostitution. Two weeks after

departure, Mrs V received the news that her sister-in-law had died from yellow fever, only then to receive a letter stating that she had committed suicide. However, despite their best efforts, Mrs V and her family were never able to ascertain the manner in which their relative died or secure the return of her body (Mrs V, Matara District: Interview 9).

In recognition of the often dire financial situation faced by families of the disappeared, the UNP and PA governments paid compensation to them. From 1995 to 2003 compensation was provided to the families of 17,740 disappeared persons, including government employees (USDOS 2005). However, the manner in which compensation was initially awarded allowed for discrimination on the part of the administration – the financial payment was generally only given to those who suffered at the hands of alleged subversives rather than the state (Southern Commission 1997b:31). Despite reform to the compensation scheme to counter this discrimination by the PA, compensation remained contentious because of the discrepancies in payments based on the professional standing of the victim. This meant relatives of public servants received three times the amount awarded to non-public servant families. Compensation became a source of grievance and discrimination between affected families as well as between families and their communities, rather than serving as reparations. The scheme came to an abrupt end in 2006 when the National Human Rights Commission stated that it required special government direction to continue investigations (Wijedasa 2006).

Although the PA-appointed Presidential Commissions had recommended compensation be paid to provide respite to affected households and to serve as state recognition of wrongdoing and of the suffering caused, in reality it became another source of contention and

community antagonism directed at the survivors rather than the state machinery which was responsible for the violence. The prerequisites of a police report and death certificate exposed families to widespread corruption, malpractice and abuse of power by local administrators. Despite the fact that the *beeshanaya* had ended years before the compensation scheme was established, the view that continued to prevail was that terrorists got what they deserved and their families were unworthy of state assistance on the grounds of their association with terrorism. Mrs V was told by the police that they would not provide a police report because her husband had been a suspected JVPer (Mrs V, Kurunegala District: Interview 5). In other instances, the harassment by corrupt officials who deliberately prolonged the process was so bad that wives abandoned their efforts and rights to compensation. For others, the struggle to obtain compensation was often followed by demands of in-laws to share it. Although some in-laws were angry that their daughters-in-law had *ōsold outō* by seeking a death certificate even though the compensation was intended for the education of children, they nevertheless staked a claim for the funds. Without a death certificate, moreover, meeting daily practicalities became impossible. Mrs L recalled that her daughter-in-law was refused a death certificate by the police five years after the disappearance of her son because the *Grama Sevaka* argued that it couldn't be taken for granted that he was dead. This made school enrolments for Mrs L's grandchildren extremely difficult (Mrs L, Vavuniya District: Interview 7). Some families in the north and east abandoned efforts to secure a death certificate upon hearing rumours of the release of detainees from various camps. Mrs P was encouraged by her local *Grama Sevaka* to obtain a death certificate for her disappeared 12-year-old son but stopped the process when she heard rumours of detainees who had been recently freed (Mrs P, Batticaloa District: Interview 1). Mrs L also spoke about a detainee who had

escaped detention in the south and returned to the east after 16 years and charged 200 rupees for information to families because he òknew all the disappeared peopleö (Mrs L, Batticaloa District: Interview 4). Whether the returned detainee was a total fake or had indeed escaped from detention and was prepared to risk the high profile that came with revealing information about other detainees, either way he was prepared to exploit the disappeared and the hope of their surviving relatives. Moreover, even though this individual's information of a positive sighting fuelled hope in the families, many were reluctant to act on his information for fear of inadvertently causing the death of a loved one to cover up their prolonged detention (Mr Sasiharan, Consortium of Humanitarian Agencies, Batticaloa District, *personal communication*).

7.6 Keeping them alive in our minds

Rumour and information about sightings kept the disappeared òaliveö and centre in the lives of many interviewees. For many, time had stood still since the disappearance. Despite the years that had past, many interviewees recalled with considerable detail and raw emotion the disappearance of their loved one and life thereafter. As expressed by Mrs K, òFor me this incident is like what happened yesterdayö (Mrs K, Jaffna District: Interview 8). The disappeared remained in a state of òabsent presence/present absenceö and were therefore òeverywhere, alwaysö (de Alwis 2009:381). Often they had been given an important role in the daily life of the family which in many circumstances amounted to a form of dysfunction. Children were encouraged to worship a photo of a disappeared father before going to school, the threat of disciplinary action from a disappeared sibling or father was used to keep other relatives in check, birthday parties for children were postponed and children were told that they could not

wear the garments of their absent fathers until they returned. While feeling compelled to live in the past where the disappeared remain, women who imposed such restrictions on their children were unable to escape the cocoon of remembering that traps them in a corrosive pastö (Langer 1997:58) but which creates with it a corrosive present. Mr D had a habit of watching crowd scenes on the television to see if he could locate his disappeared brother (Mr D, Gampaha District: Interview 1). Others had preserved the room of the disappeared and many clung onto their possessions no matter how mundane, as though they signified to a suspicious world the existence of a person officially non-existent. Hopes were perpetually raised and extinguished. Mrs N was told that there was a person who came to her local teashop two weeks before our interview with the same name as her own son fuelling hope of a reappearance 15 years after his arrest (Mrs N, Gampaha District: Interview 6).

Rather than providing the comfort hoped for by the surviving relatives, the ever-presence of the disappeared often led to the physical and mental breakdown of parents and considerable dysfunction in interpersonal relations. Surviving wives and mothers in particular were reluctant to enjoy life or celebrate the lives of their children for fear of betraying the memory of the disappeared. Mrs S stopped her daughter from teaching dance and promptly got her married off after the disappearance of her youngest child (Mrs S, Jaffna District: Interview 2). Mrs K's son was preparing to marry and had started building a house at the time of his disappearance. Her family were thereafter unable to complete construction and the crumbling shell of the house serves as an empty, lifeless and meaningless memorial to his absence (Mrs K, Gampaha District: Interview 7).

Recent studies have demonstrated that the process of working through grief is particularly challenging when the circumstances of the death represent a threat to one's world view or when little social support is offered (Bevcar cited in Blaauw & Lhteemki 2002:770). Indeed, arrested grief or atypical reactions are more common among those who are deprived of the right to conduct a proper mourning for a loved one. Continued belief in the life of a disappeared loved one suspends the grieving process indefinitely, making the risk of complicated grief more likely. A higher rate of post-traumatic stress disorder (PTSD) has been found among families of the disappeared compared to families who have suffered a death (Blaauw & Lhteemki 2002:771). PTSD is presented as, among other things, preoccupation with thoughts of the disappeared, withdrawal from other people, periods of anxiety and survivor guilt (Blaauw & Lhteemki 2002:771). The fact that the many perpetrators remained within local communities or in positions of power and that the terror could re-emerge at any time served as yet another source of anxiety. Indeed, as previously noted, interviewees faced the UNP's return to power in 2001 with tremendous anxiety. Mrs W from the southern Kurunegala District thought that the 'left over boys and girls will be assassinated' (Mrs W, Kurunegala District: Interview 1). Many perpetrators are well known around the country and have enjoyed long political careers despite being named in the Presidential Commission reports or exposed to the public by other means – their involvement remains an 'open secret'. Former High Commissioner to Australia Janaka Perera, for example, was propelled into such high office that he was seen as untouchable. Ironically, the LTTE's ability to target people in high office earned it some prestige in the south where a common retort to corrupt police officers or harassing officials was the expression of hope that they be deployed to the north and east to face the wrath of the LTTE (author's field notes). In the case of the Janaka

Perera, he returned to Sri Lanka and ran for candidacy on behalf of the UNP. At the opening ceremony of his electoral office in October 2008, Perera was killed by a suicide bomber believed to be the work of the LTTE. Many families may have believed that it was the LTTE that brought justice to them in this instance. A number of families in the south expressed the hope or expectation that those responsible for disappearances and who were later transferred to the north and east had justice meted out to them by the LTTE. In other instances, perpetrators were known to the individual family or they thought they knew who was responsible and such information served as a source of constant agitation because they were rendered powerless to confirm it or act upon it. Furthermore, the widespread uncertainty surrounding sources of violence and those responsible for disappearances coupled with their often total withdrawal from society prevented many families from acknowledging each other's suffering let alone acting collectively.

Disappearance as a project of the Sri Lankan elite totally isolated individuals while creating, exploiting and politicising social divisions in rural communities. Its impact on the families of the disappeared is everlasting. It continues to pervade every aspect of their lives from social isolation, trauma to social marginalisation and stigmatisation. Exploitation, ostracism and discrimination experienced in relation to the state, political parties, relatives and neighbours confirmed the socio-political standing of relatives of the disappeared as politically and morally suspect and both socially polluted and polluting. The ambiguous status conferred on the wives/widows of the disappeared provided considerable scope for culture-specific exploitation for years after the violence had ended. Unable to officially establish the motive behind the disappearance or act against the perpetrators responsible,

such families turned inwards for personal explanation for the event leading many into a state of physical and psychological decline.

CHAPTER 8

We can't open our mouths and tell you in words all that we have gone through.

- Mrs V, Batticaloa District: Interview 3.

Political engagement with and the appropriation of suffering

The prevailing political culture which denied an alternative polity forced families of the disappeared into political camps represented by various disappearance organisations which emerged during the 1980s and 1990s. Without neutral political space from which to appeal for human rights and the rule of law, the membership of such groups reflected that of the patron political party. To this extent, the political culture that had provided for disappearance and other forms of state terror impacted on disappearance groups to limit their effect and prevent any possibility of solidarity between them to challenge the political apparatus. The Mothers of Plaza de Mayo in Argentina, which the Sri Lankan movements modelled themselves on, were able to transform the disappeared into a currency of power to highlight the transformative potential of society. They used *never again* as the aspiration of a new society based on rights and the rule of law. However, in the Sri Lankan experience, aspirations on the part of the families of the disappeared to end the practice of disappearance and encourage truth and justice were curtailed, postponed or undermined to ensure that the power structure on which the political system operated remained unchallenged.

A number of disappearance movements emerged during the decades of violence in Sri Lanka, of which the most prominent tried to replicate the mothers' movements of Latin America (de Mel 2001:244; Samuel 2000:5). However, unlike the Mothers of Plaza de Mayo of Argentina (Bourvard 2002:65), neither the Jaffna Mothers' Front in the north nor the Southern Mothers' Front (SMF) established in the south were able to transform resistance to state-sponsored terrorism into a demand for a complete transformation of political life. Indeed, the safe concept of motherhood drawn from the Latin American experience was merely a pretext used by opposition SLFP MPs rather than political reform and social transformation. They did this in a context of orchestrating the SMF for their own political advantage to affect a change in regime from that of the UNP to an SLFP alliance. Indeed, within the prevailing political culture of violence and impunity, patronage and self-censorship, an alternative polity was not tolerated. As with many other aspects of Sri Lanka's highly politicised environment, political parties commanded centre stage in the disappearance movements and organisations, and contesting and winning elections was their sole intention. On the one hand the disappearance issue was exploited to secure votes from affected families while on the other their suffering was repeatedly exploited to attract public sympathy and condemn political opponents. In this sense, the only legitimate role for families of the disappeared was as politicised victims. Jayanthi Dandeniya, founder of the Families of the Disappeared, explained:

Many politicians think that when they talk about the disappeared and what happened, they will be able to drag the votes of those families and it did work. It was even the main demand that toppled the government and with that they [the PA]

came into power. But after that they just forgot those things. Even the parents ... think only the politicians can do something and they use their only chance by voting for them and thinking they will do the punishment or bring the justice for what happened. But that won't happen.

- Jayanthi Dandeniya, Families of the Disappeared.

8.1 Movements and organisations established in the north and east

The first recognised disappearance movement was formed by women in Jaffna in 1984 protesting the mass arrest of Tamil youth (de Alwis 2002:683; Hoole *et al.*, 1990:324). The Jaffna Mothers' Front conducted rallies, picketed public offices demanding an end to military occupation and protested the arrests. Current President, Mrs Kanakaambikai, explained the motives of the movement:

We wanted to tell that we have organised ourselves not only to protect the families of the disappeared but in the future there should not be a repetition in this country among the younger generation.

- Mrs Kanakaambikai, Jaffna Mothers Front.

Drawing women of all classes across Jaffna, the movement prevented a massacre of TELO members by rival LTTE cadres in 1986 and inspired women in the east to establish their own branch (de Alwis 2002:684). However, in 1987, when the LTTE began to consolidate power in the north, it closed in on the Jaffna Mothers' Front and took command of its work and agenda (Samuel 2003:169). The LTTE's systematic repression of Tamil society and interference in the movement forced its political conformism. The project of the Jaffna

Mothersø Front as a grassroots movement was limited and ultimately controlled by the LTTE as part of its efforts to coerce civil society and suppress the Tamil community. The regression of the movement from a militant, radical organisation with widespread appeal to the puppet of a political party ōunderscored the reality that a progressive consciousness would not be allowed to develop at the community levelö (Hoole *et al.*,1990:324). Thereafter, the movement was silent on atrocities perpetrated by the IPKF and LTTE and confined its activities to charity work (de Alwis 2002:684; Hoole *et al.*,1990:324-5). For the LTTE, the mothers' movement in the north had initially served as a useful public relations tool and was tolerated for this reason. However, once the movement openly aired grievances about LTTE abuses including abductions, it became a liability and had to be controlled (Pinto-Jayawardena 2008).

The Missing Personsø Guardians Association of Jaffna (MPGA) was formed by the Eelam People's Democratic Party (EPDP) in 1997 following the military takeover of the Jaffna peninsula (Mr Satkunam, MPGA Secretary, Jaffna District *personal communication*; All Island Commission 2001:45). They conducted protests and processions to demand an inquiry into complaints of disappearances reported in the region from 1996. They employed the strategy of *satyagraha* (peaceful protest) and often gathered outside Buddhist temples (patronised solely by security force personnel deployed in Jaffna) with placards demanding government action. Over the years, the LTTE and rival Tamil parties including the Tamil National Alliance (TNA) have involved themselves in MPGA activities. According to Father Bernard, a human rights advocate in Jaffna, the LTTE and rival Tamil groups used the MPGA for their own political ends leading ultimately to withdrawal of community support and public sympathy for its cause (*personal communication*). Other disappearance organisations in

Jaffna included the Jaffna Guardians Association for the Families of the Disappeared, the Association for the Welfare of the Disappeared (Robinson 2003) and Organisation for the Arrested and Missing in Jaffna (TamilNet 9 October 1997) whose activities surface in the media from time to time. Initially, political entities including the LTTE saw in such bodies, opportunities to pursue and advance their own cause for a ðpolitical momentö. During a protest in December 2001 at the Jaffna *Kachcheri* (District Secretariat), held with the support of the Tamil National Alliance (TNA), the MPGA spokesperson argued that the EPDP had tried to oppose their protests and sabotage their struggle when it was a coalition partner of the PA (TamilNet, 24 December 2001). When the political moment passed, the LTTE, EPDP, TNA and others lost interest in the disappearance groups (Ruwan Chandrasekara, Human Rights Commission of Sri Lankaö Jaffna District, *personal communication*). Yet, despite the political appropriation of their cause and the aging of its members, the MPGA remained active. MPGAö President, Mr Selvarajah, reflected in interview that since the organisationö inception in 1997, its membership had been deceived by many political parties including the then incumbent PA government (*personal communication*). While continuing its protests and demands for answers in relation to the disappearance of their children, spouses and siblings, the challenges before the MPGA and Jaffna Mothersö Front are similar to those of disappearance organisations in the south. Although such organisations continue to remain active, their membership is growing old and without replenishment, they are diminishing in numbers and strength. Having been used as a forum for various political parties to secure votes in return for promises unfulfilled, such groups were unable to widen their appeal. They were not seen as part of the countryö human rights movement because of political appropriation and divisions within the human rights community generally over how to approach

the 'Tamil question'. Without a clear human rights mandate based on legal claims, these groups have not been able to transform the suffering of their members into political demands. Their claims remained focused on establishing the truth about individual cases, prosecuting those responsible and providing adequate compensation for affected families. Focus on individual cases rather than generalised patterns of disappearances and political undercurrents of violence limited the reach and influence of these organisations. However, such tactics have remained unchanged for more than a decade. For its part, the 1994-2001 PA government and other political parties repeatedly broke commitments made to such groups, including that of prosecutions and payment of adequate compensation. Unable to widen their ambit and forge linkages with other organisations let alone the community outside their immediate experience, over the past years the MPGA and Jaffna Mothers' Front have increasingly focused on supporting and sustaining their thinning membership. In this sense, they operate as a sub-culture within but isolated from Jaffna society. In this context, therefore, they have stagnated in their thinking and demands, with their figureheads caught in a time warp surrounding the disappearance of their own loved ones. This was reflected in interviews in which some interviewees who attended the Jaffna Mothers' Front meetings voiced frustration with the movement's inability to advance both strategically and practically. Despite participating in numerous protests, the question at the heart of their problems, the fate of the disappeared, remained unresolved while the movements were never able to transform their activism either into a wider national movement or into other avenues of protest and meaningful engagement.

8.2 Movements and organisations established in the south

In July 1990 the Southern Mothersø Front (SMF) was formed in the south in response to disappearances that took place in the context of the JVP insurgency. Two male members of Parliament from Tangalle, the SLFPø Mahinda Rajapaksa and Vasudeva Nanayakkara from the leftist Nava Sama Samaja Party (NSSP), committed themselves to establishing a mothersø movement in Sri Lanka based on the Latin American experience after attending a UN Human Rights Commission session together in early 1990 (de Mel 2001:280; Sunila Abeysekera, INFORM, *personal communication*). However, upon their return to Sri Lanka, the two MPs had a falling out which led to each establishing a disappearance organisation rather than one politically partisan movement. The SLFP established the SMF and the NSSP initiated the Organisation of Parents and Family Members of the Disappeared (OPFMD) (de Mel 2001:280). Thereafter the rivalries between the two political parties was reflected in their respective disappearance organisationsø and political tensions found expression in questions about the legitimacy of each otherø cause. Vasudeva Nanayakkara, who established the OPFMD in April 1990, noted that the two groups became ønearly rivals of one anotherö. He recognised that the outcome of such tensions øweakened the cause of the disappeared and the cause of the families of the disappeared naturally by the divisive nature in which they workedö (Vasudeva Nanayakkara MP, *personal communication*). For its part, the SLFP led by Mahinda Rajapaksa, was intent on capturing power from the incumbent UNP and sought to employ a strategy of direct opposition to President Premadasa, recognising in women, a politically safe yet symbolically powerful means to drive the campaign to oust him.

As Sunila Abeysekera from the Sri Lankan Information Monitor (INFORM) noted:

The imagery was wonderful. Women in white saris with their large photos of disappeared relativesô thus they couldn't be attackedô the appropriation of huge emotional and psychological power of women for political purposesô in tears with their photos. There were no ethical boundaries. Their photos were taken and used by the international and national media for any purpose. It was hugely criminal to make people cry but not then be there to support them. There were no ethics. Women were the subject of exhibitionism. As a political strategy it was powerful but it exploited women. But it did bring the UN Working Group on Enforced or Involuntary Disappearance twice to Sri Lanka and Amnesty International and international attention to the issue.

- Sunila Abeysekera, INFORM.

The human rights agenda came to the fore at the end of 1991 when two prominent ruling party MPs, Lalith Athulathmudali and Gamini Dissanayake, broke away from the government to form the Democratic United National Front (DUNF) which campaigned directly against President Premadasa and promoted human rights and democracy. Athulathmudali was shot dead during an election rally in the lead up to the 1993 election allegedly at the behest of President Premadasa. Premadasa, who blamed the LTTE for the killing, died a month later in a roadside bomb attack.¹⁸ While an impeachment

¹⁸ The Special Commission of Inquiry into the assassination of Lalith Athulathmudali established by the PA government conducted a two-year inquiry and presented its report to the President in 1997. The report found that President Premadasa, the then Minister for Housing and Construction

motion brought against Premadasa in 1991 (for which Athulathmudali paid the ultimate price) had failed, it undermined Premadasa within the party and his place as head of state. During its short life under Athulathmudali, DUNF managed to provide some democratic opposition and by placing human rights at its forefront, gave a considerable boost to the human rights cause.¹⁹ While human rights campaigns primarily led by the SLFP built in momentum from 1992 to 1993, Premadasa's assassination marked a change in Sri Lankan politics with successor DB Wijetunga distancing himself from authoritarian politics (Fernando 2000:91).

Despite the SMF's political origins, its independent figurehead, Dr Manorani Saravanamuttu, tried to transform it into a genuine movement for human rights, peace and justice. However, her aspirations were inconsistent with those of the SLFP which was primarily interested in winning power (Samuel 2003:171). Furthermore, although the SLFP's pre-election commitments included a peaceful settlement to the conflict and social reform, its political interests largely reflected those of the urban political elite which had a vested interest in preserving the centralised political structure. The SLFP was willing to campaign on a platform of anti-corruption and human rights to shame the incumbent government while

under Premadasa and security personnel close to the President as well as underworld gunmen were responsible for the killing. The commission noted that Premadasa 'preferred deception to debate' (Rajasingham 2002).

¹⁹ President DB Wijetunga who took control after Premadasa's assassination chose not to run in the 1994 presidential elections providing for Gamini Disanayake to run as the UNP's presidential candidate. Disanayake was, however, killed by an LTTE suicide bomber in October 1994, a month before the elections which saw the PA candidate, Chandrika Kumaratunga sweep into power.

simultaneously resisting efforts by Dr Saravanamuttu and others to transform the SMF into a rights-based movement. Although Dr Saravanamuttu sought to convert the SMF into a genuine national movement for change, its leadership became intensely political in parallel with the movement's growing popularity to the point where it became untenable for her to continue. In 1992 she left in frustration and formed her own organisation, the Centre for Family Services (de Silva 1997:67). Thereafter, the SMF, like that of the other disappearance organisations, effectively served as a tool for their political patrons to be used for the narrow ends of contesting and winning elections.

By limiting the political scope of the SMF, the SLFP was able to assert its own political position and demand regime change as a means of ending state violence and impunity but without any commitment or even acknowledgement of the need to dismantle the political system on which such violence had thrived. Mr D participated in the activities of the SMF with his wife who was a member in Matara District. He noted that when the SLFP secured power at the 1994 election, it was political collusion rather than justice that prevailed (Mr D, Matara District: Interview 1). Ironically, the women and men who made up the membership of the SMF, OPFMD and other disappearance organisations were those for whom a change of government and continuation of rule by political elite would not necessarily bring any benefit. For many interviewees, engagement in the various disappearance movements and groups ultimately served as merely another opportunity to seek patronage from which the return of a loved one and tangible resources such as land and employment might follow.

The mass protests and *deva kannalawwas* (beseeching of the gods) carried out by the SMF that attracted thousands of participants took on the form of collective suffering and provided a basis for public protest (de Alwis 2002:37). Kapferer noted that the appeal to the gods of sorcery was an appeal to the power of the state and the logic of ritual action, as òin their pleas, offerings, and violent sentiment, they become active in the restoration of the idea of the state as also integral to their own restorationö (1988:111). As the state sought to censor the collective memory of society using disappearance and torture and the impunity on which such crimes were grounded, the mothers sought to challenge the status quo by challenging the existence of the disappeared. De Mel argued that the strategy of appealing to spiritual forces over and above the state to undermine it were tactics to equalise power in a situation where protesters were effectively powerless. Conversely, however, women were organised in this way because President Premadasa, to whom the protests were directed, revered such spiritual forces. According to de Mel, the women involved used *deva kannalawwas* as politicised religious rituals to heap curses on President Premadasa in revenge for the loss of their loved ones and to exploit his superstitiousness (2001:25). Thereafter, many women who had partaken in such activities saw Premadasa's violent death as a òdirect answer to their supplicationsö (de Mel 2001:25). While curses provided a means of protest which transcended the legislative restrictions on demonstrations imposed under emergency regulations (de Alwis 1998:192), such tactics limited the political influence of those involved to that of seeking refuge in the irrational (Samuel 2000:6-7). At the same time, the state's campaign against the movement exploited such tactics with ruling party MPs implying that the involved women were bad mothers, immoral or irresponsible wives and pawns of the opposition party. In 1991 Deputy Defence Minister Ranjan Wijeratne warned that a planned rally of the SMF

would turn violent and emphasised that democracy should be achieved through ògood behaviourö (Economist 1991:34). Tactics such as *deva kannalawwas* emphasised the illegitimacy of the women's project as an outward expression of personal and private irrationality and undermined any political aspirations for justice and rights. The same stereotypes that marginalised women were inadvertently perpetuated and confirmed (Samuel 2003:167). Although *deva kannalawwas* became synonymous with the mothers of the disappeared, their protest was oriented around a religious activity and its symbolism which confined them to a ritual of suffering directed at the gods rather than an expression of citizens' rights and legal claims against the state. Such rituals became the focal point not only of SMF activity, but also of the OPFMD and became synonymous, therefore, with the issue of disappearance. At the same time, however, the use of *deva kannalawwas* generated tremendous public sympathy for the women of the disappeared which, according to Vasudeva Nanayakkara, translated into votes for the SLFP (*personal communication*). The SLFP was able to exploit the suffering of women for political advantage at the same time as promoting the view within the SMF that regime change from which peace, human rights and justice would flow could only be achieved with the support of the movement's membership.

As removal of the UNP regime was the sole focus of the SLFP's efforts, over time, political defeat of the UNP in favour of the opposition SLFP and punishment of a few rogue security officials became the accepted demand of the SMF in response to years of state violence, abuse of political power and repression (Samuel 2003:171). As Nesiah and Keenan noted, a deeper political critique was short-circuited (2004:15). The moral basis of demands for justice expressed by the families of the disappeared were exploited and redirected to

that of punishing specific parties, serving the cause of political expediency rather than challenging impunity and the power on which it rested. Thus, regime change became the primary intent over and above that of political, institutional and legislative redress. Indeed, because the SMF had been prevented from transforming the status of motherhood and the disappeared as a currency of power into a successful demand for institutional reform, the SMF had served its purpose for the SLFP after it came to power in 1994 as part of the PA coalition with the LSSP, CP and SLMP. Despite its human rights and social justice mandate, the PA's victory effectively replaced one group of the urban political elite with another who soon became dependent upon violence and repression, albeit on a smaller scale, to exert power as detailed in chapter 6. The sense that the state served the purposes of the political elite was strengthened when the PA recruited a former UNP minister who was allegedly involved in the Embilipitiya disappearances to serve as part of the new government (Kumarange 2005:117). As Vasudeva Nanayakkara noted, the SMF had achieved for the SLFP victory at the election, but afterwards the movement was abandoned:

And I suppose it had given them the expected results in getting the sympathy of the voters who denounced the disappearances voting against the then government in support of those who raised a hue and cry on the question of the disappeared. But those who came to power in 1994 under Chandrika [Kumaratunga] and those particular leaders and parliamentarians who raised this matter as the main issue of their election campaign, with songs composed in eulogy for those who sacrificed and became martyrs, etc. didn't do anything to take the matter further and they used it for their purpose and just left it.

- Vasudeva Nanayakkara MP.

When the PA came to power, SMF members and other relatives of the disappeared expected that a new era of rights and democracy had begun. This belief was bolstered by the fact that many human rights groups and disappearance organisations, minor political parties and civil society activists publicly advocated for the PA as the only alternative to UNP rule and state violence. For the families of the disappeared, the moment had come for the PA to make good on its pre-election promises, including establishing commissions of inquiry into disappearances that took place in the late 1980s, to secure a political solution to the conflict with the LTTE and end the culture of impunity by dismantling the Executive Presidency. The very fact that in the lead-up to the election, PA leader, Chandrika Kumaratunga, a daughter of an assassinated father and widow of an assassinated husband, associated herself with the mothers of the disappeared, articulating their suffering as both a personal and national experience, suggested that a new age of human rights and end to impunity was about to begin (de Alwis 1998 cited in de Mel 2001:252). With the PA victory, many members of the SMF subsequently left the movement and others enjoyed the spoils of victory and the patronage that flowed from it. As women's rights campaigner, Dulsie de Silva, explained:

Women of the Mothers Front were compromised by compensation and jobs given by the new PA government when it came to power.

- Dulsie de Silva.

Others felt obliged to work for the PA as a means of preventing return to UNP rule. Mrs W also recognised her activism for the PA as a means through which additional resources could be secured for her family:

Only after Chandrika Kumaratunga came to power I got everything, the death certificate, the pension. The UNP did this to us and we knew this [new] government will never do something like that and we have a bond with this government and responsibility to work for the government ... I think about my daughters and their future jobs í I expect the government í to do something for us. My youngest sat the A levels and the oldest is studying nursing and I expect from the government even a minor job. I want that.

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Mrs W, Kurunegala District: Interview 1.

After the 1994 election, the SMF effectively dissolved as it had served its political purpose. However, as Jayanthi Dandeniya acknowledged, it was a serious error on the part of SMF members and others to give the responsibility for solving the issue of disappearance to the country's leadership. She noted that the PA used the issue of disappearance for its own political advantage to rise to power but that once in a position to effect change, actually achieved very little (Families of the Disappeared, *personal communication*). Concerns were also raised that many within the human rights community had compromised their independence by publicly lending their support to the PA and even securing government positions. They found themselves in a weakened position at the very moment the PA should have been called to account to realise its election promises. The few organisations and individuals that pursued the government risked being accused of undermining national efforts to achieve peace and reconciliation for their own short-term narrow political ends. Ironically, OPFMD was not one of these organisations. OPFMD had publicly supported the PA at the 1994 election because, according to its current Secretary-General, Shantha Pathirana, the organisation was committed to a change of government. In fact, OPFMD's founder,

Vasudeva Nanayakkara, had left the NSSP shortly before the election and joined the LSSP, a constituent party of the PA, becoming the PA's MP for Ratnapura District at the 1994 election (TamilNet 8 November 1997). Mr Pathirana argued that the OPFMD gave support because the PA agreed to its four demands which were establishing a fact-finding commission into the disappearances, pursuing legal action against all perpetrators of disappearances without discrimination, compensating all families of the disappeared and releasing all political prisoners (Shantha Pathirana, *personal communication*). However, having undermined the possibility of an inclusive disappearance movement by establishing a politically based organisation, and to then support the incoming government, OPFMD was politically compromised on two levels.

Thereafter, any attempt by OPFMD to call the PA to account in relation to its pre-election commitments, let alone its human rights record, was dismissed as a political act. OPFMD like the SMF could never have served as an independent voice for institutional reform because its leadership benefitted from and therefore had a vested interest in the political structure that prevailed. However, in 1999, when Vasudeva Nanayakkara spoke out against the PA's policies on its handling of the conflict with the LTTE, he was suspended from the LSSP (TamilNet, 8 November 1997 & 17 April 1999). He went on to form the Democratic Left Front only to find that the overt politicisation of the country had created social conditions which made establishing an alternative polity impossible:

When the government was elected there was jubilation and euphoria. Expectations and all that were shattered within a matter of months. And there was a disorientation among the people of an unbelievable right-about-turn of the government

which left them aghast, paralysed, couldn't move because it had been such a total betrayal. There was that. Secondly, there was the fear of not wanting to let the defeated villains to re-take power therefore not upset the government too much. Three, there was no leadership even to this new emerging mood of the people who were being frustrated by the 1994 government, except the very small group we belong, known as the Democratic People's Movement out of which we evolved into the Democratic Left Front, which was able to mobilise a few thousands here and there but could not be sustained because it needed a political outlook and political expression which could not be ultimately brought into being. A political alternative without which there was no mobilisation or enthusiasm generated at all.

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Vasudeva Nanayakkara, MP.

Some families accused the PA of having sold out on its pre-election promises. Disappearances began to be reported in the Jaffna peninsula, which were interpreted as evidence that nothing had actually changed under the new regime. Indeed, many affected families in the north and east saw the PA-led peace process of the mid-1990s itself as a political stunt designed to provide the military with an opportunity to identify its enemies. Mrs P said:

At that time [of peace], people were able to move freely. So the army stationed in these areas saw people moving freely and came to know everybody, who is the LTTE and who are civilians. This may have been one of the strategies of the PA government.

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Mrs P, Amparai District: Interview 10.

The presidential commissions of inquiry into disappearances became the yardstick by which many affected families across the country judged the new PA regime. For many of them, the government's inability or unwillingness to institute institutional reform and the sheer lack of prosecutorial action and failure over time to implement most of the commissions' recommendations was totally disillusioning.

Mrs M said:

I thought Chandrika [Kumaratunga] would help us. We got the death certificate and she said when she came to power she would look into the disappearances. I went to the Presidential Commission and to Mr Iqbal but we don't have an end result, an answer. They didn't even tell if they were killed. I think they did not look for the answer to the end, not fully. I am not clear why. We're asking why. We thought they'd do something to those responsible and tell us what happened or where they're being held.

- Mrs M, Kandy District: Interview 2.

This view is commonly shared by those who took the time to appear before the commissions. While some had extremely high and unrealistic expectations, namely the return of their loved ones, the majority had what they thought were more realistic expectations: that the truth be revealed and prosecutions made. Mrs G, for example, said she expected that those responsible would be produced before the families and that despite having given all the information to the commissioners, nothing came of it (Kurunegala District: Interview 2). Reflecting on the fact that so little had changed, Mrs W said:

We were expecting freedom from fear to walk the streets ...
We were expecting them to bring these people to the law but we didn't see it happening.

Mrs W, Kurunegala District: Interview 4.

8.3 The struggle to remain relevant

The work of the disappearance commissions which began in 1995 sustained activism in some disappearance organisations to a point, but inevitably numbers began to drop. Indeed, Shantha Pathirana noted that the highest level of activism within OPFMD was from when it was set up in 1990 to 1996—a period in which the presidential commissions operated, compensation was provided and the plight of the families of the disappeared was acknowledged with visits by the UN Working Group on Enforced or Involuntary Disappearance (UNWGIED). However, he explained that for OPFMD, it became apparent that the numbers fell considerably in parallel with the level of disappointment with the commissions. A shrinking membership forced the organisation to extend its work from that of advocacy and international campaigning into areas such as legal aid and practical assistance to families to secure compensation, loans, scholarships and state allowances (Shantha Pathirana, OPFMD, *personal communication*). The SMF experienced the same challenges—but the two organisations were politically polarised in relation to each other and siloed into political camps based on party membership. Rather than forging ties of solidarity and common experiences, they continued to view each other as a threat to the legitimacy of their own cause and as a rival for resources. Uncertainty about which parties had been responsible for which disappearances fuelled suspicion and mistrust between the groups. One of the legacies of political violence is that of mistrust, isolation and an inability to forge linkages and networks to establish solidarity and trust to act in concert. As the violence came from such a wide range of sources for such a variety of reasons, the kind of trust needed for collective political efforts was

almost totally lacking (Keenan 2002:7). Failure by disappearance movements to position themselves as active members of a larger human rights movement in Sri Lanka and their strategic inability to broaden their conceptualisation of human rights ensured that they attracted fewer members despite growth in the number of disappearances around the country. At the same time, unlike other disappearance movements such as the *Asociacion Madres* in Argentina (Bosco 2004:388), the disappeared did not transform from being victims of political violence to revolutionaries or political activists who died in a common struggle against the established order. Without collective recognition of the suffering caused by disappearances or recovery of the disappeared in the name of human rights and a new political order, any possibility of unity and common cause was remote. Not only did these challenges make establishment of a national movement for the disappeared all but impossible, any such effort would be faced with the fact that the politicians would get into it and divide it. It would be red, green or blue (Jayanthi Dandeniya, *personal communication*).²⁰ Sadly, even though disappearances continued to be reported throughout the country, the organisations that represent the disappeared struggle to remain relevant in a changing socio-political landscape.

Disappearance organisations have been unwilling or unable to demonstrate strategic leadership and change their tactics and modus operandi in line with community sentiment and political developments. Herein lies one of the key challenges before them. In Jaffna, Father Bernard noted that the MPGA was led by emotion and lacked a rational approach, reflected in the fact that its membership sought

²⁰ Red denotes the JVP, green the UNP and blue is the official colour of the PA.

political patronage from any party or political group. They are emotional – this is personal. Also internal disputes continue to arise due to the irrational, emotional nature of the families – he said (Father Bernard, *personal communication*). Their leaders reflect the membership which can be both a strength and weakness. Its strength is that it provides authenticity for such organisations. Its weakness is that such authenticity comes at the price of objectivity, vision and strategic thinking. As the leaders and figureheads of these organisations are themselves relatives of disappeared people, many remain traumatised and consumed by the particularities of their own tragic circumstances. They, like their organisations, are locked in the past, unable to position the cause of the disappeared within the contemporary political setting and incapable of forging effective linkages with other organisation which would otherwise strategically benefit their own organisation and provide developmental opportunities.

For many such leaders, the disappearance of their own loved one remains central at the expense of both their personal lives and the strategic leadership of the group. Decisions about group activities and functions often represent, therefore, an inward focus on personal circumstances which often leads to internal disputes rather than an externalised public focus on socio-political transformation. The comments of Mrs Kanakaambikai, President of the Jaffna Mothers' Front, are illuminating:

Once in three months we meet. If meetings are not functioning, they run to us and ask 'why no meetings?' They come with a lot of anxiety. Coming to the meeting is like coming to see the disappeared children.

- Mrs Kanakaambikai, Jaffna Mothers' Front.

As Father Bernard observed, such organisations appear dysfunctional even from the outside (*personal communication*). OPFMD has been criticised for its political motives and inability to transform itself into an organisation with greater social currency. The impression is that the only time it gathers its members together is before an election (Sunila Abeysekera, *personal communication*). Indeed, its local and national leadership clearly use the organisation and its linkages for their own political purposes. Local representatives seize the opportunity of organising at the local level on behalf of OPFMD to conduct their own political campaign as candidates of the Democratic Left Front. In a highly politicised society where disappearances served largely a political function, it would be illogical to expect that motives of those involved in supporting affected families would be removed from the political landscape. Indeed, the key feature of a highly politicised society is that no one is outside the political context. This is not to say that the motives of such individuals are disingenuous towards families of the disappeared. Indeed, this is a complex set of circumstances as the author's field notes about one such coordinator indicate:

The position of coordinator is voluntary so there must be some additional motive to that of being a -good personø given that persons were disappeared over 20 years ago. Mr X has utilised his position for political purposes and his human rights campaigning during the period of terror has given him the moral high-ground with which to campaign and stake his claim over the district. Yet, with the money he earns tutoring students, he spends much of it on the families of the disappeared and appears active in seeking and securing employment for families and their children.

- Authorø field notes.

In a society which operates on the basis of political patronage directed towards a narrow focus of winning elections for politicians and securing resources for their supporters, the operations of the OPFMD are not unique. Jayanthi Dandeniya acknowledged that although social services are a state responsibility, disappearance organisations spend considerable resources to assist affected families who will then go and vote for a candidate on the basis of their promises of support regardless of the political platform or history of the party they represent (Families of the Disappeared, *personal communication*). This preoccupation with securing tangible resources from political parties at the expense of any examination of their role in disappearances and state violence surfaced in interviews. Casting their gaze increasingly inwards, such interviewees were transfixed on what they could get out of the system and what they perceived it owed them rather than demanding the state recognise its responsibility to affected families, award adequate compensation and dismantle the apparatus that enabled the disappearance of tens of thousands of Sri Lankans around the country. The nexus between political patronage and state resources has politicised Sri Lankan life to the point where elections are its main determinant. The central motive behind disappearances carried out from the 1970s in Sri Lanka was to win elections and assert political power rendering the relationship between state and citizenry totally distorted. Ms S recognised her brother's activism in the JVP as the motive for his disappearance. She was disgusted that the contemporary JVP leadership which had joined the democratic mainstream and made promises to her of resources or employment before the 2004 election (and evidently secured her vote) had later shifted its position: 'They told us that my brother didn't disappear because of JVP activities and that it is difficult to give assistance to us because he didn't work for the JVP' she said, noting that as a

consequence ðweære not getting anything from either sideö (Ms S, Kandy District: Interview 5).

The ongoing attention given to securing resources is further evidence of both the extent to which the prevailing political culture is entrenched and the failure of Sri Lankan civil society to transform the consciousness of those who have survived the violence to demand radical political change. Jayanthi Dandeniya's observations reflect this concern:

Everyone supports peace, the international community, donors, governments but no-one supports against disappearance. Now with the money spent, pigeons thrown and leaflets given, we've nearly run out of pigeons but there's no peace because we have to change the mentality of the people.

- Jayanthi Dandeniya, Families of the Disappeared.

Indeed, Mrs S from Amparai established an organisation on behalf of the families of the disappeared in her village and its first initiative was to appeal to the local MP for jobs for their children (Mrs S, Amparai District: Interview 14). Mrs M in Gampaha District stated that she would vote for the PA at the 2004 election if they agreed to give her roofing sheets (Mrs M, Gampaha District: Interview 4). For Mrs M and many others, especially those in similarly dire economic circumstances, politics is a matter of personal opportunism. At the same time, participation at elections provided the only opportunity for many Sri Lankans to have their citizenship recognised in order to secure resources. Without the equitable distribution of state resources, good governance and the re-establishment of state-citizenry relations, which would require the total reconstruction of the political system, the destructive nexus between patronage, state resources, elections and

state violence and the impunity on which it is based is set to continue. Disappearance as a mechanism of terror both exploited and strengthened this nexus by affirming a relationship of patron-client that was personal and private rather than citizen-state with the formal demarcations and responsibilities implied. However, as Jananayagam reminds us:

[T]here is a purpose to disappearances and extra-judicial killings: terror. These acts are not just about the individual, but the rest of society. They constitute a specific form of violence aiming to define the relationship between the state and the community concerned, between fear and submission.

- Jananayagam 2010.

8.4 Strategic interests and practical needs

Without acknowledgement and national debate concerning the motive and institutional framework that provided for political violence, those who benefited from it and the socioeconomic policies that justified and normalised it, such violence will persist and create additional layers of grievance and tension. Efforts directed at restoring the socioeconomic status of families of the disappeared, such as training and vocational programs, inadvertently affirm their victimisation and position of powerlessness within a wider sociopolitical context based on political competition. Such initiatives are a diversion because they ignore the root causes of grievance which emanate from a political structure that has been used to uphold the vested interests of the elite at the expense of the majority through the use of political violence (Community Development Foundation, Batticaloa District). Civil society groups including organisations that represent the families of the disappeared subscribe to the view that because surviving relatives

focus on the education of their children and immediate living issues and are not thinking of their disappeared relative anymore, the onus for assistance rests on socioeconomic support (OPFMD Matara Coordinator, *personal communication*). Yet at the same time, efforts to assist such families to make ends meet simultaneously condemn them to subscribe to a social order based on inequality, patronage and violence which created conditions that permitted disappearances in the first place. Such efforts can inadvertently confirm personal and private pain rather than build shared political aspirations to demand answers from the state and realise the aspiration of 'never again'

Although the politicisation of Sri Lankan society was reflected in the country's main disappearance organisations, local women's groups established informally among survivors of political violence themselves or with the sponsorship of larger umbrella organisations have proven far more resistant to political influence. Such groups have brought about meaningful change to the lives of their members and children through education and other forms of practical support and solidarity. However, rather than attracting public support and sympathy to their cause, many have faced years of ostracism and antagonism from within their own communities. The Janashakti Women's Development Foundation in Gampaha District is one such body. Mrs P, who established the group in 1991 following the abduction and disappearance of her husband from the family home, recalled first attending meetings of the SMF. She travelled to Colombo to meet Dr Manorani, the then figurehead of the SMF, and human rights activist, Sunila Abeyesekera, who suggested that she herself establish a group for survivors in her local area. Mrs P explained the impact the meeting had on her life:

From that moment, the tradition of women in the village and barriers were broken off and I started to climb ... Even though the terror was going on we were going to form the organisation. We got afraid because if the widows are getting together and the government thinks that is also a threat, what are we going to do? ... I informed the minister that I am going to form a widows association and he said yes it would be nice if it is without political interference and whatever you need I will try and help you all ... We had eleven members and they were UNP, JVP and SLFP, they were all there. The first meeting was in Sunila's office in Colombo in 1991, December 6.

- Mrs P, Gampaha District: Interview 11.

Mrs P recalled that the initial objective was simply to get the wives and mothers of the disappeared in her area together so that rather than cry alone, they could cry together. However, the idea grew that they could do something for their children's future:

Once a month we'd have meetings to discuss the problems we face day to day as widows ... For the moment there are 22 members and we can increase the number but we would find difficulties regarding the finances so we are going like this ... At that time everyone was scared to have an association or even to have a meeting but at that time I had a feeling I don't know for revenge or something I was willing to do anything, that's why it started in my house. The first thing we did in our association was put up a library so that if a child doesn't have a book for school, they can borrow one ... In our library we now have over Rs 150,000 worth of books.

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Mrs P, Gampaha District: Interview 11.

Despite the obvious risks involved, the group recognised that education would be a means of liberation for their children and themselves, given that the expectation was that they would fall from life (Mrs P, Gampaha District: Interview 11). Mrs S was a member of the same group and stated:

I thought I was crying and nothing was done so I got strength inside me and I thought I would get my children on a good path. I was self-determined ... We gave loans now Rs 5,000 to people to improve their standard of life and from that sum we carry on like this ... From that moment we had eleven members and now we have about 30 and all are widows ... We all got together with Sunila and we went on a trip to the zoo and to Galle Face to break the psychology of our children. They had ice-cream ... It was like moving from one country to another.

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Mrs S, Gampaha District: Interview 12.

Mrs W, along with 21 other women whose husbands had disappeared in her village formed their own support group which went on to establish a preschool and children's public library in the face of tremendous hostility from within their own village. When the group began meeting in 1993, locals including their own relatives turned out with machetes to challenge them. Their local Buddhist monk said the group was going to cause disaster for the village and turn its children and women into Christians. Following a series of public confrontations, the group appealed to the local authorities and were granted the right to use the village hall for their meetings. Even though the harassment and intimidation continued, the group met regularly and eventually decided to broaden its membership:

Though people were looking with the corners of their eyes because we were a widow's organisation, we decided that all women of the village could join and get loans so now we have 67 members. Some are those women who came to protest against us.

- Mrs W, Kurunegala District: Interview 4.

One of the key elements of activism which underlies the ability of these women to maintain an active membership relates to the extent to which practical support is provided. The practicalities of everyday life and the challenges in making ends meet, particularly in conflict-affected areas, the need to raise children and the ever-changing nature of their needs, ensured that many women who had initially engaged in the mothers' movements, eventually moved on while the movements themselves stagnated. These movements were unable to respond to the changing priorities of its members or draw on the common experience of its membership to build solidarity largely because they were directed towards the purpose of securing votes. For women, particularly in the north and east, such challenges were further compounded by the need to flee their homes during the conflict, often for long periods, only to return to houses destroyed or ransacked. Mrs K recalled that following the disappearance of her son, her family was forced to flee the fighting in the Jaffna District only to return 10 months later to a house that had been destroyed by the army and without any government compensation to rebuild (Mrs K, Jaffna District: Interview 8). Such movements were unable to build upon a sense of shared experience and the transformative potential of unity in action. Demanding the return of loved ones alone is not enough to keep people engaged and motivated, no matter how much they hope for a reappearance. As more immediate needs become the priority, it is the development of a culture of shared responsibility and common

purpose amongst women for the education of children which serves as the transformative element. As previously noted, it was the local women's groups which arose out of a personal rather than political imperative that thrived in direct contrast to the respective disappearance movements which were directed by wider political considerations.

While the SMF was influential in placing disappearance at the forefront of the PA's political agenda, it was politically neutralised by the party that created it. At the same time, the Jaffna Mothers' Front and SMF have been largely unable to serve any practical purpose for the women involved, many of whom grew tired or simply no longer had the time or inclination to engage in political action which could not sustain its original promise. This frustration is reflected in the comments of Mrs M who detailed the impact that the disappearance of her 25-year-old son-in-law had on her daughter:

One day to courts, next to kachcheri, next to another organisation. Nine years of protesting and picketing has not given a solution, not even an answer ... My daughter's life and future are a big question mark. If we know something concrete, she is young, we can find a proposal and get her married. We are also ageing so it is a great uncertainty.

- Mrs M, Jaffna District: Interview 11.

Indeed, many interviewees who participated in the mothers' movement or other disappearance groups noted that they were active participants in the early days and ran to every meeting in their local area but that without any tangible progress in their own cases or alternative activities to redirect their anxiety, interest and attendance

began to decline. Others became disillusioned, recognising the political obstacles before them as overwhelming.

Ms S reflected on the meetings she attended of the Families of the Disappeared following her brother's disappearance:

It's no use pressuring our government anyhow. If we go individually it will never happen but even if we go as a group, even the President doesn't listen because in the court cases they say there is not enough evidence and stop the case. In the meeting one person told that 'without sending individual letters, let's write a united letter and demand'. Jayanthi said, 'if the President is not caring about her husband and the JVP is not caring about Wijeweera, will they care anything for us?'

- Ms S, Kandy District: Interview 5.

Similarly, many interviewees spoke of their efforts to meet their local MPs on the understanding that political connections rather than legal action were most likely to result in the reappearance of a loved one in the early days after the event and the provision of resources and support thereafter. Many interviewees were dismissed or deceived, but when such appeals coincided with an election, promises were made in an effort to secure votes. Mrs S recalled having received a letter from a local candidate in Jaffna claiming that she had been involved in the alleged release of Mrs S's son from Kalutara prison in 2002. When Mrs S approached the candidate to clarify that her son, whose whereabouts remain unknown, had not been released, the candidate begged her to keep the letter confidential but still persisted in lobbying her for her vote. Following the election at which the candidate was successful, she assured Mrs S that something would be done to secure the release of her son and a friend he had been allegedly taken into

custody with. Two years later, Mrs S who was clearly worn out by the experience said to the now local representative 'never mind, don't release them, but at least show them to us' but she never got an answer (Mrs S, Jaffna District: Interview 5).

8.5 Political currency of the disappeared

Over the past decade since the peace process of 2002 and following the military defeat of the LTTE, the issue of disappearance has remained on the national agenda for two reasons. First, because disappearances continue to be reported around the country with civil society activists including journalists, social activists, community leaders and persons who have spoken out against the Rajapakse regime increasingly targeted (ICG 2011:20). Second, disappearance remains a political issue because it is used to expose political opponents during elections for their role in political violence and secure votes through fear. Both dynamics highlight the manner in which disappearance has remained the institutionalised means of dealing with political enemies. They demonstrate the fact that the alternative political apparatus which provided for state terror during the 1990s has remained largely untouched despite repeated changes of government. Until both major political parties and the political elite they represent no longer benefit from this status quo or are forced to make changes, the possibilities for democracy let alone law reform, constitutional change and address of impunity are remote.

Although the mothers' movements may have largely disintegrated and disappearance organisations continue to struggle for political relevance in a context of ongoing violence, poverty and patronage, the image of the overcome mother dressed in a white sari clutching the

framed photo of a disappeared son continues to haunt the political landscape. Taken from the Latin American context and adapted, the image is synonymous with disappearance organisations. However, while the organisations themselves in the north and the south have long encouraged women to protest in this fashion, their images have long been appropriated for political gain. At election time, the central strategy of the major parties is to remind the voting public of the violence perpetrated by their political rivals particularly during the time of terror. As Abeyesekera observed, the images of women cracking coconuts, cursing and wailing for their loved ones served as a strategy to challenge President Premadasa and provided the women involved with an outlet for built-up frustrations. However, the movement's leadership demonstrated no ethical responsibility towards the women involved. As the whole 'show was done for political purposes', there was no caretaking of the women involved and their frustrations and anxieties were never directed into positive action (Sunila Abeyesekera, *personal communication*). At every election, such images continue to be appropriated and exploited for political advantage.

Such images are drawn on to remind the voting public, not of the need for redress or to demand the truth and justice for the survivors, but rather of the violence perpetrated by respective political rival during the time of terror. To this extent, disappearance has been kept on the political agenda, not as a means of building consensus to demand institutional reform or to encourage identification with the 'other' but rather to merely shame political rivals and confirm polarised political positions. The sole focus of such propaganda is to point the finger at particular individuals and their culpability in disappearance and political violence rather than focus on the apparatus of terror and the need for serious institutional reform. In this manner, the aspirations

and agonies of the relatives of the disappeared have been politically appropriated. Vasudeva Nanayakkara noted that such tactics undermine the fact that address of disappearance is a genuine concern about people [rather] than a question about who is willing and who is to be accusedö (*personal communication*).

Misreporting and omission have also been effective tools in pre-election propaganda. In March 2000, with the UNP in opposition, the Mothersø Front was reported to have appealed to the PA President Kumaratunga to punish the perpetrators of the 1988ö89 reign of terror while expressing their gratitude to her for öending the fear psychosis and restoring democracy and human rightsö, and thanking the government for compensation received. De Mel noted that the real newsworthy event of the day, which did not receive coverage by any of the government-controlled press and only one opposition paper, was that of a petition signed by 100,000 women asking the government and UNP to enter into dialogue with each other to pursue a peaceful settlement to the ethnic conflict (2001:253).

In the lead-up to the parliamentary elections of 2004, advertisements under the name of the SMF but clearly written by the PA, began appearing in the national dailies alongside political advertisements for the parties. One advertisement appeared in the Sinhala *Divaina* newspaper along with a photo of a distressed mother carrying the framed photo of her son (immediately recognisable as a form of protest against disappearance). The question, *is their politics about killing?* was written across the advertisement which went on to describe a number of atrocities including the disappearance of 32 students in Embilipitiya, noting that in total, such atrocities along with all the floating bodies in the rivers amounted to the deaths of 60,000 people for which theyö (inferring the UNP) were responsible

(*Divaina* 28 March 2004:18). Such advertisements, which appear regularly during election periods, are designed to scare the voting public into silence and submission while undermining or embarrassing opposing parties. The objective of using the image of a traumatised mother could not be more disingenuous and herein is the concern. For as long as such images are politically appropriated for short-term political advantage, opportunities encouraging dialogue to realise the aspiration of *never again* and to move beyond political violence and trauma as a nation seem very remote indeed.

CHAPTER 9

The only voice here is that of a gunshot.

- Mrs P, Amparai District: Interview 10.

Politicisation of due process and other official mechanisms of inquiry

Efforts by families of the disappeared to achieve justice through the legal machinery demonstrates a series of failings at every stage of the legal process brought about by the politicisation of the investigation and prosecutorial functions on the one hand and the prolonged imposition of emergency legislation which effectively replaced criminal procedure and evidence laws on the other. This chapter reveals that the justice system not only failed survivors of political violence during the period of review, including the families of the disappeared, for reasons of political interference and the politicisation of the police and judiciary but actively conspired against them to deny state terror and protect those responsible for it. The underlying premise of this chapter and wider thesis is that the subordination of the rule of law and politicisation of those responsible to uphold it are both cause and effect of a culture of impunity that prevailed. In considering the failings to prosecute perpetrators of disappearances and provide a remedy in *habeas corpus* cases, this chapter identifies the characteristics of impunity evident in the investigation and prosecution of offences which have a direct bearing on why disappearances became prevalent in the first place. The state's reliance on an alternative political apparatus outside the formal legal framework and grounded on arbitrary violence undermined the integrity of the formal process. It also brought about a collapse of the

rule of law leading to a total loss of community cooperation with and confidence in due process and the rapid growth of the country's underworld. By focusing on abuses of the previous regime and compensation, the ruling party manipulated the work of the presidential commissions on disappearance as part of a ritual of conspiracy against the victims to deny state terror and protect those responsible for it.

In the late 1970s, normal criminal procedure was replaced by extraordinary legislation while the institutions responsible for upholding it were systematically weakened, politicised and corrupted by an alternative political framework⁶ all of which was brought about by the centralisation of power made permissible under the 1978 constitution. Under this framework, the Executive Presidency was able to impose a state of emergency under *Public Security Ordinance No. 25, 1947* (PSO) and issue (and re-issue amended) emergency regulations with a parliamentary rubber stamp unconstrained by any form of judicial review. At the same time the ERs granted legal immunity to the president for such declarations made in good faith (Coomaraswamy & de los Reyes 2004:276-277). Under the PSO, fundamental rights set out in the 1978 constitution were subject to restriction in the interests of national security including equal treatment before the law; freedom of association, assembly, movement, and procedural requirements in arrest and detention (Coomaraswamy & de los Reyes 2004:277). As the ERs and PTA, which facilitated the state's policy of disappearance, were presented as necessary to ensure national security and stability, the legal and political basis of the policy could not be challenged by the courts, parliament or the public. Therefore, any attempt by the courts to enforce the rule on producing a body or ascribing responsibility for the failure to do so on state agents would pose a direct challenge to a

policy of the state that allowed and encouraged disappearances to take place. At the same time, as the administration of justice was largely captured by political authorities intent on ensuring that perpetrators of disappearances avoided legal responsibility, the legal process became one characterised by a systemic pattern of delays in proceedings, blanket denials of arrest and detention, a consistent reluctance to investigate and prosecute perpetrators and total disregard for the families of the disappeared and other survivors of political violence. The combined effect was a continuation of impunity for those responsible, victimisation of petitioners and the perpetuation of uncertainty about the fate of the disappeared and suffering for their families.

Successive governments justified the continuation of a counter-insurgency campaign, of which disappearance was a central pillar, on the grounds of curtailing violence perpetrated by non-state actors and thereby maintaining national security. Indeed, prolonged recourse to emergency powers and to abuses was justified on the basis of doing what was necessary to preserve the nation. In reality, they had the opposite effect. As noted in the previous chapter, moreover, any efforts to curtail the extraordinary powers granted to the police and security forces, such as the introduction of safeguards in relation to arrest and detention procedures, were carried out to appease the international community and were not implemented or enforced and sanctions for non-compliance were not imposed.

9.1 Emergency legalisation: a policy of the state against its own people

Since 1971, successive Sri Lankan governments have almost continuously proclaimed or extended a state of emergency. From the first declaration of a state of emergency in 1958 to 2001, Sri Lanka had experienced more years of 'authoritarian power, under the guise of emergency powers, than that of democratic governance' with the longest period of emergency rule lasting from 1983 to 2001 with the exception of a five-month suspension in 1989 (Coomaraswamy & de los Reyes 2004:272-273).

The apparatus responsible for carrying out disappearances reported directly to politicians and operated under the ERs promulgated under Section 5 of the PSO and PTA, which could not be challenged by the courts and provided state officials with impunity from prosecution (Southern Commission 1997b:41). The ruling party initially justified establishing this framework and the legislation that underpinned it to provide the security forces with greater powers of arrest and detention in key geographical areas in the face of what it called a genuine threat to national security. In reality, however and as Chapter 3 detailed, the UNP did so before the LTTE and JVP had taken up arms against the state. Furthermore, its prolonged nationwide utilisation facilitated widespread and arbitrary rights abuses which had no political origin.

The system that operated under the ERs and PTA had a number of characteristics. The most common features of the PTA, which was amended to become a permanent measure in 1983, included the authority given to police and security forces to arrest without a warrant and detain a person for 72 hours without being brought before the courts (section 7) and thereafter for up to 18 months on the basis

of an administrative order issued by the Minister for Defence (section 9). Under the draconian legislation, the state was not obliged to inform the detainee the reason for their arrest, and the lawfulness of the detention order issued by the Defence Minister could not be challenged in court. Judges were not empowered to order bail or impose a suspended sentence under the PTA and the burden of proof was placed on the accused to demonstrate that a confession was obtained under duress. Under the Emergency (Miscellaneous provisions and Powers) Regulations enacted under a declaration of emergency, Regulation 17 authorised the defence secretary to make a detention order and under an amendment which remained in effect from May 2000 to June 2001, the requirement to produce evidentiary material was removed leaving it to the defence secretary's opinion that the detention was necessary.

Regulation 18 permitted any member of the security forces or police to make an arrest without a warrant on suspicion and up until May 2000, detainees in the north and east could be detained for up to 60 days compared to seven days for detainees elsewhere. After May, all detainees around the country could be detained for an initial 90 days, extendable to a maximum of 270 days and the requirement that the Inspector General of Police (IGP) publish a list of authorised places of detention was removed. Arresting authorities were under no obligation to document or record the arrest and although many people were arrested on the pretext of having a statement recorded, there was generally no such record of the arrest, statement or detention.

The extraordinary provisions contained in the ERs and PTA not only infringed upon rights enshrined in the Constitution (Coomaraswamy & de los Reyes 2004:272) but were also totally incompatible with international human rights standards as laid out in the International

Covenant on Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (CCPR/CO/79/LKA:2003). Moreover, while many people who disappeared were detained under provisions of the ERs and PTA, others were simply abducted without reference to any legal provision. The existence of this alternative framework was exemplified by the *Indemnity Act No. 20 of 1982* and *Indemnity Act No. 60 of 1988* which provided immunity from prosecution to the security forces, members of government and public servants involved in enforcing law and order from 1 August 1977 to 16 December 1988 proved that their actions were carried out in õgood faithö. Similarly, Section 26 of the PTA provides for immunity from prosecution for õany officer or person for any act or thing in good faithö and sections 9 and 23 of the PSO confer similar immunity (Pinto-Jayawardena 2010: 25 and 2009:107). As noted in Chapter 3, such legislation not only provided scope for the ruling party to subvert the rule of law for its own purposes but also served to facilitate and justify rights abuses.

Available evidence including the various commissions of inquiry suggests that if disappearance did not amount to state policy, it was at the very least a practice sanctioned by the political leadership. However, to give the impression of a functional and legitimate democracy founded on the rule of law, the state both simultaneously facilitated and denied disappearances and other abuses carried out under the guise of counter-insurgency operations and national security. Behind a smokescreen of emergency legislation, the authorities disavowed any knowledge of the disappeared claiming that they had been killed during an armed altercation with the security forces or had simply run away. In this manner, emergency legislation was used by successive ruling parties to sanction violence against their own people which was both politically justified on the basis of fighting terrorism

and legally concealed. Ironically, however, the extraordinary became the norm as the state became reliant upon the very conditions and forces that provided for the establishment and maintenance of this alternative political framework, including the politicisation of the police force, to maintain law and order. Without legal capacity other state institutions such as the Attorney-General's Department were compromised and institutional breakdowns brought about by patronage, politicisation and the effective abandonment of due process, perpetuated a vicious cycle whereby the state totally relied on extralegal solutions (Dr Deepika Udagama, Head of Department of the Faculty of Law, Colombo University, *personal communication*). Such solutions facilitated by extraordinary legislation became an entrenched part of the political culture, bringing about decades of violence perpetrated by non-state actors and a loss of faith in the rule of law among the citizenry. The prevailing view that came into being was that the system was corrupt and worked only for the politically connected and wealthy. Such a view justified people's determination to get what they could out of the system regardless of the consequences. In such a context, their aspirations for justice found expression outside of the legal context, resorting to spiritual forces and a growing reliance upon Sri Lanka's powerful and well-connected underworld.

9.2 Investigation and prosecution of disappearances

The history of the Sri Lankan police force is one of political interference. Such interference was an integral part of the manner in which due process was dismantled and discarded in favour of an alternative political process which provided for extralegal action. The Southern Commission observed that during the late 1980s, police recruitment was conducted to control political opponents rather than

eliminate crime with substantial rewards paid in contravention of the Police Ordinance (Southern Commission 1997:31). Examples include the rapid promotion of junior officers to the rank of Chief Inspector and above on grounds other than merit, promotion of officers against whom court cases or departmental charges were pending, and the ridiculing of diligent officers overlooked for promotion by senior figures newly appointed on the basis of influence rather than merit (Police Committee 1995 Part VI:1). Premadasa Udugampola, for example, was rapidly promoted through the ranks of the police force over the heads of at least 180 officers, from Inspector in 1977 to Deputy Inspector of Police in 1988, despite having been convicted of human rights abuses by the Supreme Court in 1987 (Southern Commission 1997b:35-40). The politicisation of the police force enabled politicians to take a commanding role in relation to police functions through interference at every stage and at every level. In this way, police operations were totally subverted to serve the interests of local MPs and their influential constituents.

The investigation and prosecution of disappearances during the period of review can be defined by two features. First, formal procedures such as inquest and investigations, which are an otherwise integral part of the normal operation of the rule of law, were suspended under the ERs enabling the security forces to dispose of bodies without any report to the courts or inquest. Second, the very authorities that carried out disappearances and other abuses were also charged with investigating them, without the constraints of any impartial or independent review. As the majority of prosecutions were initiated against the police and security force personnel, the combined effect of these two features resulted in few prosecutions. There were, however, other substantial constraints in relation to prosecuting disappearances. As enforced disappearance is not recognised as a discrete crime under

the Sri Lankan Penal Code, prosecutions are limited to charges of abduction with intent to murder, unlawful confinement, torture and cruel, inhuman or degrading treatment or punishment, and murder. However, the very fact that bodies were never recovered made the charge of murder almost impossible to sustain. Furthermore, there is no provision in the Penal Code enforcing command responsibility which would otherwise facilitate charges against not only officers who carried out abuses but also their commanding officers who sanctioned them. Therefore, only those against whom direct or explicit criminal liability was established could be prosecuted. By treating criminal involvement narrowly, those responsible for commissioning disappearances or failing to prevent them from being carried out were placed beyond the reach of the courts (AHRC 1999). This meant UNP politicians at all levels of government and high ranking officers who conspired to cause disappearances, or who encouraged or supervised officers carrying out disappearances or who failed to divulge information about disappearances remained above the law. Given these legal limitations and deficiencies, penal provisions proved to be largely ineffective in combating disappearance.

Deficiencies in the investigation and prosecution of crimes relating to disappearances are evident at every stage of the process. As described in previous chapters, the lodgement of a formal complaint at a police station, which is the first step in the legal process, was usually made impossible by police refusing to acknowledge an offence and document a complaint. Even when a complaint was documented, however, the police resisted carrying out investigations due to the complicity of colleagues, other government officials and politicians in abuses such as that of joint police-military death squads (AHRC 1999; Mr D, Matara District: Interview 1). Moreover, anyone appointed by a local MP to serve as an officer-in-charge of a police station, a key

position in the police structure, were behold[en] to, and sometimes virtually became a hostage of, the MPö (Police Commission 1995 Part VI:5). Similarly, when investigations were conducted, direct political influence was brought to bear where those responsible enjoyed the patronage of their local MP (Police Commission 1995). During the investigations into the Embilipitiya disappearances of 25 school children following arrest by the army in 1989, it became evident that the Criminal Investigation Division (CID) had conducted investigations with the object of safeguarding certain peopleö (Dias 2003:30). Witnesses in this case testified that their statements had not been accurately recorded or were not read back to the complainants for their confirmation. In other instances, police and military personnel believed responsible for disappearances were not transferred out of the area once named as suspects and could influence proceedings by pressuring their fellow investigators or intimidating witnesses and complainants. Reports of threats, harassment and intimidation of complainants and witnesses were commonplace.

Once an investigation was taken over by the Disappearance Investigation Unit (DIU) or CID within the Police Department, a case could be aborted and the accused discharged if a complainant failed to appear, even if their non-appearance meant that they were in hiding. The DIU failed or refused to return files, particularly those relating to senior officers, and the endless delays by the police testified to the existence of a brotherhoodö where investigators sought to protect fellow officers, especially senior officers at the expense of the junior colleagues (Iqbal 2000:102-103). Furthermore, as the Asian Legal Resource Centre (ALRC) noted, the prosecution system which functioned within the Missing Persons Unit (MPU) of the Attorney General's Department (AGD) was defective because it depends entirely on the criminal investigation files to be made available by the

police for the department to begin action on any crimeö (ALRC E/CN.4/2004/NGO/63:39). This enabled the AGD to use the excuse that it had not prosecuted crimes because the police had not provided the necessary files (ALRC E/CN.4/2004/NGO/63:39). The close connection and collusion between the AGD and police (Francis 1994:143) was apparent in the way the AGD frustrated *habeas corpus* petitions in the High Court (ICJ 2011:14), failed to act impartially, misled Parliament and covered up an inquiry into deaths in state custody (Pinto-Jayawardena 2009:163).

The MPU had been established within the AGD in July 1988, on the recommendation of the presidential commissions, to study the *prima facie* (on the first appearance) evidence of responsibility in relation to an estimated 3,000 cases (Iqbal 2000:101). It initiated criminal proceedings against 500 police and armed force personnel in relation to 270 cases of disappearances (WGEID 1999: E/CN.4/2000/64/Add.1). However, as the AHRC observed some 12 years later, given the demonstrated lack of political will to see the prosecutions succeed, the most likely outcome was that few if any criminal investigations would be carried out and therefore few prosecutions would be instituted (AHRC 2000). Similarly, Iqbal concluded the same year that as they had moved at a snail's pace and are not pursued in all earnestö, it is highly unlikely that these cases will end in convictionsö (Iqbal 2000:109). Furthermore, at least 200 police and security force personnel identified by the presidential commissions for their involvement in disappearance were not interdicted from service by either the head of the police or the army (Iqbal 2000:102; WGEID 1999: E/CN.4/2000/64/Add.1). Demonstrating the extent to which the security forces enjoyed impunity, the Minister of Defence failed to take action against its own in contravention of a directive issued by the President (UNWGEID,

E/CN.4/1997/34: 13 December 1996). Even individual officers charged by the courts were reinstated by the Inspector General of Police (IGP) (Dias 2003:32). Repeated calls by the UNWGEID to appoint an independent body with the power to investigate and prosecute such crimes were never going to be realised as long as disappearance remained state practice and the security forces carried it out.

The power of the judiciary to deal with matters concerning individual freedom had been severely limited by emergency and national security laws. The framework imposed by emergency legislation deprived the judiciary of its normal powers to intervene in matters relating to arrest and detention while the existence of undisclosed places of detention effectively put entire areas of the country outside the jurisdiction of the courts (Fernando 2010). Therefore, abduction without recourse to any legal procedure, interrogation without records or supervision (and often conducted in secret detention centres, paving the way for torture), and the killing and disposal of the individual all took place within a policy framework approved by the Executive President – a framework underpinned by security laws and emergency powers designed and approved by the Executive President. As Fernando observed, the courts of Sri Lanka had no jurisdiction to challenge any of these policies, whatever may be the consequences for individual liberties. Although the courts have a legal obligation to uphold the rights of the individual including against the abuse of authority by the state, Fernando (2010) and others have argued that had the courts taken such an approach, they would have found themselves at loggerheads with the state because disappearance was covert state policy. Rather than affront the state, the judiciary was forced into a position of what Pinto-Jayawardena and Guneratne refer to as ‘judicial conservatism’ and ‘manifest reluctance by the courts to

challenge the executiveö evident from pre-independence to the modern era (2011:xv, 225).

Under article 35 of the 1978 constitution, the head of the executive, who is also the head of the government, is not answerable to the courtsö and therein lay the challenge for the judiciary. Indeed, because the Executive Presidency had the power to make all policy decisions relating to national security without having to answer to the court, all decisions on the governance of the country were attributable to the President and placed beyond the reach of the judiciary. As Fernando observed, the judicial role to protect individual liberties was thereby removed because the President could initiate security and other national initiatives such as anti-terrorism without any impediment, check or control by the courts. While the scope for executive encroachment on rights increased by way of constitutional intervention, the judiciary were marginalised and left to operate only within a limited area for the protection of rights with substantial limitations (Fernando 2010). At the same time, however, political pressure was brought to bear on the judiciary with death threats issued against individual magistrates and the integrity of due process was systematically undermined by a refusal on the part of the government to acknowledge and act upon orders and notices issued by the courts. In November 1991 INFORM noted that the government had deliberately blocked the implementation of over 100 decisions about fundamental human rights matters handed down by the Supreme Court (INFORM 1991b:1). At the same time, the police and security forces exercised their impunity by deliberately ignoring orders to pay compensation and failing to release people held in detention without charge. When the decisions of the Supreme Court were ignored, it being the highest court in the country and the only institution to which

a person whose fundamental rights have been violated could appeal, people had no other available legal recourse (INFORM 1991b:1).

Exercise by the judiciary of its remaining independence was seen as a direct threat to the government's authority. Any effort by the judiciary to exert authority over state agents was undermined by its having to operate within the confines of a 'constitutional document that does not include the right to life, permit public interest litigation, allow challenges of legislative acts' or permit judicial review of enacted legislation (even if unconstitutional) under article 80 of the 1978 constitution (Pinto-Jayawardena 2007d; Coomaraswamy & de los Reyes 1994:286). When the PA came to power in 1994, there was no radical shift towards greater judicial independence as anticipated and in 1999 a close confidante of President Kumaratunga was appointed Chief Justice. The fact that the benches were packed ensured that decisions were consistent with the views of the political establishment. Thereafter, judges and magistrates on lower courts were controlled by transfers, disciplinary control and dismissal often 'at the single nod from the chief justice'. As Pinto-Jayewardene noted, the negative impact of such action on the 'credibility and internal discipline of the judicial service is incalculable' (Pinto-Jayewardene 2007d). The judiciary was further marred by 'deficient record maintenance, nepotism, corruption and lack of competence' (Joseph 2007:7).

Given the dysfunctions within the legal system and delays in court proceedings, bribery became a common means to expedite proceedings including 'illegitimate processes' or to influence a decision (Marga Institute 2002:7). Delays in court proceedings merely extended opportunities for bribery and further undermined the integrity of the judicial system. Bribery was reported at every stage of the judicial process and tainted those before the courts, magistrates

and lawyers which confirmed in the mind of the public that justice was not served and that the system existed to serve the interests of the rich. This perception is captured by the widely held view that only the poor end up in prison. In 2005 the Solicitor General stated that in 85 per cent of cases before the courts, the accused escaped liability because they were able to frighten witnesses into staying away from court to testify (AHRC 2005). Given the lengthy delay in criminal cases, perpetrators of disappearances before the courts, who are usually police and security force personnel, have literally years to harass witnesses before being brought to trial (AHRC 2005).

Only a handful of prosecutions for crimes related to disappearance were made because of the cumulative effect of the procedural challenges at every stage of investigation and prosecution of offences, as well as long delays in the judicial process, often brought about deliberately by police and security force personnel, political interference, patronage, corruption and lack of political. Statistics on accountability of the security forces released by the government are inconclusive, confusing and ðhardly convincingö (HRW 2008:98). Over 10 years from 1998 to 2007, and despite the fact that the various inquiry bodies including the presidential commissions themselves provided names to the government of suspected offenders against whom there was *prima facie* evidence, only 27 police, military and civil administrative officials, all of whom were of low rank, were convicted of abductions and wrongful confinement (HRW 2008:100; AI 2009:61; Nesiah & Keenan 2004:18). Although torture became an institutionalised part of police and military operations, there were no convictions for torture from the time of the enactment of the Convention against Torture Act in 1994 to 2004 (Pinto-Jayawardena 2007). It should be emphasised that no senior officer or politician has been indicted much less convicted for human rights abuses (Pinto-

Jayawardena 2007). The view among Sri Lanka's human rights community was that the prosecution of individual low-ranked officers gave the impression that their behaviour was 'aberrant' thereby enabling the state to deny the phenomenon of disappearance and extrajudicial killing (INFORM 1992b:12). Indeed, UTHR-J noted that during the trial of the accused in the Krishanthi Kumaraswamy case, the process failed to acknowledge the fact that the disappearance of Ms Kumaraswamy and her relatives took place in a context in which hundreds disappeared in Jaffna during that period and raised suspicions that those involved were engaged in a 'damage control exercise' (UTHR-J 1999). By framing the offences as the actions of an undisciplined few, the opportunity to construct a 'social map of violence that grapples with how the very fabric of our social divisions produced the 'willing executioners' who sustained the violence of the last decade' was totally lost (Nesiah & Keenan 2004:11). The importance of constructing a social memory has taken on a heightened importance given the fact that both the JVP and LTTE leadership were effectively wiped out and important aspects of the violence and the various perspectives of those engaged in it cannot be investigated (Kloos 1997).

Of the successful prosecutions in relation to disappearance, two have been extremely well documented and reported upon: the Krishanthi Kumaraswamy case in which six soldiers were convicted of rape and murder following a record two-year trial and the Embilipitiya case resulting in the conviction of four army officers for abduction with the intent to commit murder and wrongful confinement (Pinto-Jayawardena 2007; Coomaraswamy & de los Reyes 2004:285). In a climate in which there was almost no political will to investigate complaints of disappearance, it was only intense pressure from the domestic and international human rights community that generated

sufficient will to prosecute these cases (Iqbal 2000:109). The prosecution of 27 individuals encompasses, therefore, the totality of justice for the tens of thousands of disappearances (Punyasena 2003:150) and exposes the response by law enforcement agencies as completely inadequate (HRW 2008:101). Notwithstanding the thousands of sworn affidavits submitted by various local and international human rights organisations on behalf of families of the disappeared over decades which have not been acted upon, many other inquiry bodies have unearthed evidence which was never taken up for inquiry. The presidential commissions identified perpetrators in 3,861 cases of disappearance with investigations initiated in relation to 1,560 security force personnel of whom 597 were indicted (Pinto-Jayawardena 2007e). The Human Rights Task Force (HRTF) established in August 1991 with a mandate to monitor places of detention commented on the failure to initiate inquiries into incidents such as the Eastern University disappearances of September 1990 when 158 persons were arrested and disappeared in state custody, despite the existence of credible evidence and provision of the names of suspected perpetrators in its first report (Soza 1994). Similarly, from its establishment in 1980 to 2001, the UNWGEID received 12,297 well-documented cases of disappearance from Sri Lanka (UNWGEID E/CN.4/2002/79:53).

9.2.1 Embilipitiya

Approximately 50 high school students were believed to have been detained, tortured and murdered in the Sevanagala army camp between September 1989 and January 1990. It was only after years of constant agitation by their families and supportersô not to mention a special report by the Southern Commission presented to the president about the disappearance of 52 Embilipitiya students in 1994ô that the

state charged nine suspects in the Ratnapura High Court in 1994 with the disappearance of 25 people. In February 1999 six soldiers, including the Brigadier Liyanage, and the principal of the high school were convicted in the High Court of conspiring to abduct, actual abduction and kidnapping of the students in order to murder and/or with intent to secretly and wrongfully confine them (Pinto-Jayawardena 2010b:55). They were sentenced to 10 years in prison. After a long appeals process, the convictions of the principal and the lower ranked soldiers were upheld in early 2002. Brigadier Liyanage, the highest ranking officer, was acquitted on the grounds that no evidence could be found linking him to the charges of abduction with intent to kill despite the zonal commission's findings that the children had been detailed for long periods at the army camp where Liyanage was in charge of (ICG 2007:5; Pinto-Jayawardena 2010b:55).

Following his acquittal, Brigadier Liyanage won a fundamental rights case against his non-promotion to the rank of Major General. The Supreme Court took the position that in the absence of direct involvement in the disappearances, Liyanage merely occupied a place of authority in the chain of command (Pinto-Jayawardena 2007). As the ICG noted, the concept of command responsibility was not incorporated into domestic criminal law, the code of military justice and the police disciplinary code enabling criminal liability on the part of a military commander, high-ranking police officer and even a political leader for actions of his/her subordinates even without having directly ordered those actions (ICG 2007:28). This omission along with the immunity enjoyed by high ranking officials and politicians both under the law as well as emanating from a politicised system are the primary reasons why they have yet to be indicted, let alone convicted, of disappearance-related offences.

The case is important not only because it led to convictions but also because it disclosed the practices of the army following abduction and provides insight, therefore, into the fate of the country's disappeared. Furthermore, it revealed the manner in which a school principal, embroiled in a private dispute, used his connections with the army to affect the disappearance of the school children. It also exposed as a total fabrication allegations made by the army that the actions of its soldiers related to operations against the JVP (UNWGEID 1999:8) implying that they were somehow acting in self-defence. The idea that causing the disappearance of children was a necessary component of a counter-insurgency campaign and carried out, therefore, in self-defence is remarkable. This case cannot be dismissed as an isolated event, moreover, as more than 14 per cent of the disappeared across three provinces involved children below 15 years of age (Fernando 1998). In light of the fact that the official line was that 'excesses' on the part of the security forces (implying disappearances among other forms of state violence) were a consequence of the need to preserve national security and social stability at all costs through defeat of insurgency and terrorism, the Embilipitiya case totally undermined both the rationale for recourse to disappearances as well as the counter-insurgency strategies devised to justify recourse to such abuses.

9.2.2 Krishanthi Kumaraswamy

Eighteen-year-old Tamil school student, Krishanthi Kumaraswamy, was abducted at an army checkpoint in the Jaffna peninsula in September 1996. Her mother, brother and a friend later disappeared after making inquiries about her whereabouts the same day. The bodies of all four were found in shallow graves the following month. Eight soldiers and three police officers were arrested for abduction

with intent to force illicit sexual intercourse, rape and murder of which six soldiers were ultimately convicted and sentenced to death in July 1998 (ICG 2007:5; Pinto-Jayawardena 2010b:52). On the basis of the available evidence, the remaining suspects were charged in the Magistrate's Court of Jaffna under section 357 of the Penal Code for the abduction of Krishanthi Kumaraswamy, and under section 296 for committing the murder of Krishanthi and the three others.

Upon their convictions, Lance Corporal Rajapakse and his four co-prisoners revealed knowledge of mass graves in the northern town of Chemmani which were said to contain the bodies of hundreds of other Tamils killed by the army. Fifteen bodies were eventually exhumed from the site during a process initiated in June 1999, a year after the revelations. The process was hampered by unfinished exhumations, inconclusive DNA tests and political interference. The exposure of the graves led to a series of investigations and legal cases involving disappearances and killings that took place in Jaffna in 1996 and despite the arrest of a number of soldiers and police, no indictments were filed. One of the key problems with the Chemmani graves case was that the case was not heard in the Magistrate's Court in Jaffna but rather transferred to the Magistrate's Court in Colombo in response to concerns raised by the army officers involved that their lives were at risk in Jaffna. The petitioners had grave fears of travelling to Colombo because they had to reveal to the military that they were travelling to give evidence against the army in court in order to secure clearance to travel (Mr Remadious, Centre for Human Rights and Development, *personal communication*). In January 2006 the case came to an end when police told the Colombo magistrate that they were unable to proceed in the absence of instructions from the Attorney-General, despite having handed over the findings of their investigations (ICG 2007: 5).

The Krishanthi Kumaraswamy case is important not only because it led to successful prosecutions which despite great hopes became an exception to the rule of impunity. The case also revealed the manner in which state terror operated and the licence which existed within the army at the time to detain, torture and kill, as evidenced by the mass graves at Chemmeni. Notwithstanding these important findings, the judiciary and the defence sought to confine themselves to the specifics of the case and by doing so, failed to consider both the wider context in which people had disappeared and killed let alone the culture of impunity in which the army operated at the time. Those who engaged in these abuses believed that the army hierarchy and Defence Ministry would cover up for them because they were carrying out orders of superiors (UTHR-J 1999). As with the Embilipitiya cases, the prosecution of these cases was as much about what was not said in evidence regarding the details of who gave the orders, the number of other people who disappeared in this manner and the wider context of state terror in which such abuses took place.

9.3 *Habeas corpus*

Habeas corpus (literally, the right to claim and present one's body in front of a court) curtails the exercise of arbitrary state violence by defining the body of the citizen as an integral part of the sovereign body of the people and thus entitled to due process and is recognised as one of the elements on which the notion of citizenship began (Marshall cited in Hansen & Stepputat 2005:10). It was in 1679 that the Parliament of England passed the *Habeas Corpus Act* which enacted the right to be protected against arbitrary detention or imprisonment and codified the procedures for issuing the writ years before the 1689 English Bill of Rights otherwise recognised as the landmark in the history of civil and political rights (Lauren 1998:14).

Habeas corpus is an important safeguard against disappearance as petitioners can use the remedy to find or locate an individual who has disappeared while in state custody. A person can petition a court to issue a writ of *habeas corpus* commanding the authorities to produce the corpus (that is, the person) before the court so that it can then determine the legality of the detention (AI 1994:124). Under Article 141 of the Sri Lankan Constitution, all persons are guaranteed the right to challenge the lawfulness of their detention through the writ of *habeas corpus* and this right is non-derogable even in times of emergency. Apart from criminal prosecution, *habeas corpus* provided the only legal recourse available to establish the whereabouts of disappeared people. Mr Remadiou, a lawyer for the Centre for Human Rights and Development (CHRD), explained the application process:

If the location where the corpus was arrested or disappeared from is known, the case can be filed in the Provincial High Court (under the 13th Amendment to the Constitution) otherwise it has to be filed in the Court of Appeal in Colombo. The petitioner must provide evidence of this location of arrest whether through the first respondent who admits arrest in the province or documented evidence. If the Provincial Council accepts the case, it notifies the respondents and if the respondents deny involvement in the arrest or disappearance, the case must go to the lower court, the Magistrate's Court. At the Magistrate's Court, a fact-finding inquiry is conducted. If the Magistrate is satisfied that there is sufficient evidence of the arrest or if there is any doubt created of security force involvement (that is, involvement of a government body) it is taken up.

- Mr Remadiou, Centre for Human Rights and Development.

Thereafter the Court of Appeal will direct the respondents and the IGP to produce the corpus before the Magistrates Court or to disclose any material about its whereabouts. Although the Court of Appeal might find the respondent responsible for the arrest and custody of the corpus, such a finding does not automatically lead to criminal investigation and it is for the Attorney General to make such a decision (Dias 2003:36). However, when criminal investigations are taken up, they are carried out by the police who, as previously detailed, were far from impartial. If the court establishes the allegation of the petitioner that the respondent is responsible for the corpus, payment of õexemplary costsö can be awarded to the petitioner.

There were 2,925 *habeas corpus* petitions filed between 1988 and 1997 including over 600 in 1989 alone for people whose whereabouts were unknown and who were alleged to have been kept in unlawful detention. Of them, 272 had not been concluded by the beginning of 2000. Most of these cases took over five years to conclude and only a few of them were proven to have been of adequate merit to require court intervention (Iqbal 2002:112; Human Rights Committee 1990: CCPR/C/42/Add.9). The reasons for this relate to a number of procedural, political and economic challenges before petitioners. They found themselves up against a system focused on securing the impunity of the perpetrator and concealing the nature and extent of state terror rather than on justice and adherence to due process. Indeed, consideration of the *habeas corpus* process is an examination of the characteristics of impunity which combined to ensure that those who carried out state-sponsored abuses would not be held to account and the facts of disappearances never revealed.

In the case of *habeas corpus*, the burden of proof to establish beyond a reasonable doubt that a victim has been arrested and taken into state

custody is placed on the petitioner (ICJ 2011:12). *Habeas corpus* petitions that fail to identify the specific authorities responsible for an arrest or abduction leading to disappearance have, of course, little chance of success (Dias 2003:37). Given that most of those disappearances were believed to have been carried out by agents of the state, the state's denials of involvement made this burden 'impossible to discharge' (ICJ 2011:12). As many interviewees from both contexts of violence asserted, it was extremely difficult to distinguish police personnel from army officials and in other instances, the perpetrators deliberately concealed their identity. Even when officers wore their uniform in the course of an arrest, it was almost impossible to distinguish members of the Special Task Force, deployed in the east, from army personnel. The northern commission concluded that 'most of the officers and soldiers who participated in the arrests could not be identified' (North & East Commission 1997b:3). Moreover, even when the petitioner was able to establish the identity of the perpetrator, evidence before the various disappearance commissions revealed that the security forces transferred people from police stations to army camps to detention facilities, ensuring that it was near impossible to establish exactly where their relative was initially taken let alone their whereabouts over time. Secrecy was maintained because if the detainee was killed in custody either during or following torture, as was likely, it would obstruct efforts by relatives and others from locating their loved one and from seeking corrective measures. According to lawyer, Mr Thayaparan from Home for Human Rights (HHR) in the northern Vavuniya District, to further frustrate efforts of families and organisations such as the ICRC, security force personnel in the north would often swap the names of detainees to claim that 'such-and-such a detainee is this person and is detained under different legislation etc.' (Mr Thayaparan, HHR, *personal communication*). Such

strategies require complicit people, institutional support and political will. A substantial number of security force personnel and public servants were, therefore, involved at various stages in the arrest or abduction, detention and torture, disappearance and extrajudicial execution of detainees or had specific knowledge about such operations. The All-Island Commission report noted that in one incident alone, 270 state officials were implicated (2001:10). All those involved at every level of government and within the security forces and police had a vested interest in ensuring that such crimes were not uncovered through the *habeas corpus* procedure.

Many families declined to submit a *habeas corpus* petition for fear that such action would result in retaliatory action against their disappeared relative. As Mr Kandasamy noted in relation to families in Trincomalee, Jaffna, and Amparai among other places, many families believed that their children were detained at various army camps and that if they filed a case, their child would be killed (CHRD, *personal communication*). Others felt too intimidated or were subject to threats which discouraged them from seeking an effective remedy (Human Rights Committee 2003: CCPR/CO/79/LKA). The substantial costs and lack of legal literacy were other major impediments. Of those that chose to take legal action, some were unable to find a lawyer willing to represent them given the likelihood that they would also be subjected to death threats and intimidation for taking up the petition. Such challenges remained throughout the process as prolonged delays imposed a heavy financial and emotional burden on petitioners forcing many to withdraw their applications (Iqbal 2000:112).

A total lack of political will to bring those responsible for the arrest and detention of disappeared people to account affected every stage of

the legal process in *habeas corpus* cases, rendering it totally dysfunctional. From 1994 to 2002 *habeas corpus* cases were primarily taken up by relatives of people who had disappeared during the southern insurrection with a few during the conflict in the north and east. After 1998 most cases were from the north and east (Fernando 2010). However, a study of 884 Appeal Court decisions between 1994 and 2002 undertaken by Pinto-Jayawardena and Guneratne revealed a pattern of impunity on the part of army and security force personnel who comprised the majority of respondents. In 390 of the 884 cases, applications were dismissed on the word of counsel for the respondent that the detainee had been indicted without supporting evidence. Twenty-one petitions were dismissed upon withdrawal by counsel on the grounds that the corpus had been produced before a Magistrate or located in custody-again, decisions made on the basis of the word of counsel without supporting evidence were common (Pinto-Jayawardena & Guneratne 2011:xxiii). In 411 instances the court relied exclusively on the word of the state counsel about the facts of the case without resort to any other corroborating documentation or supporting evidence. Such tactics were evident during the 1980s, as Mr G, recalled when the courts relied totally on the word of the respondent. In 1986 he went to the courts in Colombo to pursue the January 1985 disappearance of his son who vanished in STF custody in Karaitivu, Amparai District. 'They didn't take any action. They postponed the date. The second time I was called they informed me to come but I sent a letter. The court said that they didn't arrest any boy at Karaitivu. The government said it had not arrested. Thereafter no answer!' he said (Mr G, Amparai District: Interview 13).

Respondents demonstrated the extent of political influence they could exercise in various ways: by eliciting the postponement of *habeas corpus* hearings because they alleged that their absence was due to

official duties (Southern Commission 1997b:105), or by delaying proceedings with requests to transfer cases to Colombo, further disadvantaging petitioners who mostly resided elsewhere and had to face the costs and risks of travelling to Colombo and through various military checkpoints along the way.

Cases were often delayed for up to three years before even the preliminary inquiry was held (ICJ 2011:13), and as previously noted, *habeas corpus* cases commonly take five years to conclude while some have taken 10 years or more. Delays can threaten to undermine the purpose of the remedy. Article 9(4) of the ICCPR provides that an arrested or detained person should be brought before a judge or authorised officer promptly. Delays also gave respondents and their peers more opportunities to threaten and coerce petitioners, witnesses and magistrates to dissuade petitioners from pursuing cases (Mr Thayaparan, HHR, *personal communication*). It became usual practice for petitioners to remain on duty pending the determination of the petition and because Sri Lanka had no witness protection program, the risk to witnesses, petitioners and their families only increased. Delays in concluding *habeas corpus* applications also affected any criminal investigations that followed including the evidence gathering required. Delays could also diminish the interest of lawyers or the sponsoring organisation, usually an NGO, which could then change its policy and stop pursuing *habeas corpus* cases. This would result in the withdrawal of funding for legal representation provided to petitioners (Shantha Pathirana, OPFMD, *personal communication*).

In almost every case, the petitioner took up a *habeas corpus* case with the expectation that during the course of their testimony, the perpetrators would reveal their involvement in the crime and provide information about the fate or whereabouts of the disappeared.

Lawyers on the other hand have focused on pursuing compensation or exemplary costs and the issue of a death certificate on behalf of their clients. However, in the end, when the perpetrator was not forced to reveal what happened and safe in the knowledge of their own impunity, persistently denied any involvement, petitioners and their families lost faith in the system. As Mr Remadious explained:

At the end of the cases, the families have no faith in the judicial system as the perpetrators even in torture or murder cases get off free, the families receive little compensation if any and in the case of habeas corpus they don't get to establish whether their family member is alive or dead.

- Mr Remadious, Centre for Human Rights and Development.

For the petitioners, therefore, *habeas corpus* in the Sri Lankan experience provided neither a safeguard to protect the liberty of the corpus by forcing its production or a clear and unambiguous answer about their fate. Ironically, it was the very absence of a body that sparked hope for the families. Furthermore, petitioners often have had to endure not only intimidation from respondents or their peers but also their repeated denials of responsibility before the court. This not only undermined any faith a petitioner may have had in the process but by rubbing salt into the wounds, compounded rather than provided remedy for their anguish. Despite the dysfunction of the process and the lack of political will shown by the law enforcement authorities to investigate the petitioner's claims, petitioners also have had to deal with the disregard for witness protection and a manifest lack of sensitivity or concern for victims by the police and the judiciary (ICJ 2011:10). The fact that the courts dismissed cases on the word of the respondent demonstrates, moreover, the degree of impunity with which respondents acted as well as the impotence of a politicised

judiciary which was subordinate to rule by politics rather than rule of law (Pinto-Jayawardena 2007d:41).

While acknowledging these fundamental flaws in the process, many human rights NGOs encourage families of the disappeared to pursue *habeas corpus* cases. OPFMD asserts to its clients that compensation awarded to them serves as a form of state acknowledgement for wrongdoing and the writ of *habeas corpus* serves to hold the government to account (Shantha Pathirana, OPFMD, *personal communication*). Similarly, Mr Kandasamy of the CHRD explained the three basic aims of the organisation in filing *habeas corpus* applications on behalf of the relatives of the disappeared:

Number one: to bring the perpetrators to court in order to expose them as responsible and the complicity of the state in such abuses and to publicise internationally such responsibility.

Number two: to secure a death certificate from the District Court.

Number three: to secure compensation from the District Court.

Thus, there are two main overall directives in taking such an approach: one-human rights campaigning and two-ensuring that victims are compensated.

- Mr Kandasamy, Centre for Human Rights and Development.

Although such efforts are fundamentally important in seeking to bring the state to account, the process is extremely difficult for the families involved. Given, moreover, that the process does not provide what it should, petitioners are left at the end with no answers and little by way of compensation while perpetrators remain untouched. Ultimately, the process upholds the impunity of the perpetrators and victimises the victims.

9.4 Disappearance commissions

The most prolific and long-running of all the commissions were those established by a newly-installed PA government in 1994. Fulfilling its pre-election promise to establish commissions into disappearances, the PA sought to distance itself from the former UNP regime by ending state-sponsored terror and impunity and ushering in a new era of accountability, democracy, demilitarisation and peace (Nesiah & Keenan 2004:1). President Kumaratunga appointed three geographically focused commissions in November 1994 to consider the causes and remedies of involuntary removals and disappearances including the possibility of prosecution where credible evidence implicating specific perpetrators was uncovered. The three commissions presented their final reports to the President in July and September 1997 and an All-Island Commission was then appointed in April 1998 to consider only outstanding cases of the three previous commissions. That commission submitted its report to the president in May 2000. The commission's findings were then made public in June 2002 despite the official date of publication listed as March 2001.

The mandates of the commissions have been criticised for deliberately avoiding the period 1984 to 1988⁶ this period has never been inquired into. The methodology of the commissions was to investigate individual cases, identify specific laws and human rights norms that were violated and identify perpetrators of the violations. They were then to determine the specific state action required to punish perpetrators, provide reparations to the victims and put in place security sector reform to prevent a recurrence of specific crimes. The commissions were not expected to address the structural inequalities, underlying grievances, ideological structures or material conditions that gave rise to the violence. This meant the opportunity to connect

the struggle over resources with that of disappearances was lost (Nesiah & Keenan 2004:8). The commissions certainly acknowledged the role of the political elite in directing and orchestrating the violence, but without consideration of the wider political project of the ruling party and its ideological underpinnings, they were unable to demonstrate that the roots of the violence lay in a clash between those who defended the established order and those who were against it or had no stake in it. By defining their terms of reference, the government could strenuously avoid exposing the root causes, vested interests and political framework which gave rise to disappearances. This meant the government was able to avoid implicating the political elite given that '[m]any in powerful positions politically and militarily were directly involved in or profited from the disappearances in some way and the government was unwilling to take on the elite' (Mrs V, Matara District: Interview 2). Although the commissions recommended that impunity be addressed, there was no discussion of the ideological basis of political violence which otherwise prescribed, directly led to or attempted to legitimise such acts. As the commissions' reports were unable to expose the illegitimacy of the ideology underpinning the use of state violence against its own citizenry, the PA was not forced to defend why it perpetuated a regime of political violence. The All Island Commission report focused on the failures of state security force practices. Its recommendations detailed reforms to state institutions and legislation to address 'indiscipline' within the security forces. While the commissions were mandated to focus on legal rules in relation to arrest and detention procedures, the All Island Commission's approach in detailing legal process failed to recognise the dimensions of state power and the manner in which violence was orchestrated against various groups in the exercise of that power (Nesiah & Keenan 2004:10).

Having received written and oral evidence from thousands of complainants across the country, the commissions described the pattern of arrest, detention, disappearance and execution by primarily state officials and provided some insight into the manner in which political impunity operated from the lowest to highest levels of government. Despite the constraints before them including the lack of cooperation by the police force and armed services who were not compelled to appear, threats to complainants and efforts to interfere with the process, the commissions' reports provide an account of the manner in which arbitrary power was systematically wielded by both state and non-state actors with the sanction of the ruling party at the highest level. The thousands of petitioners who came before the commissions revealed how disappearances were the culmination of a series of events which had their origins in threats from ruling party politicians or their supporters. Ultimately, therefore, the reports provide an official record of the state's abuses against its own citizenry. However, in relation to the Embilipitiya and Krishanthi Kumaraswamy cases, as well as in other cases, evidence before the respective presidential commissions was not relevant to the prosecution and did not appear to have been noted by the High Court or Court of Appeal as a way of, at the very least, providing context to such cases (Pinto-Jayawardena 2007c; Pinto-Jayawardena & Guneratne 2011:179). It is logical that the courts were not able to draw on specific cases documented by the commissions because the Evidence Ordinance applies to criminal cases while the commissions were able to come to a finding based on a balance of probability (Iqbal 2002). However, what is not clear is why the courts chose not to draw on the work of the commissions to establish an understanding of the *modus operandi* used by state officials to carry out disappearances. The omission rendered the findings largely useless in a criminal justice sense. Furthermore, within such a legal framework where

commission evidence was non-admissible in judicial proceedings, all that can result is the prosecution of junior officers who physically carried out the abuses while those behind them who gave the orders and indeed the system that encouraged such actions were left untouched (Pinto-Jayawardena 2007b). As previously noted, the evidence unearthed by the commissions about perpetrators against whom there was *prima facie* evidence was handed over to the President under confidential cover for further investigation and prosecution but was not acted upon. Many of those named in the confidential annexes to the Central Commission's report included ministers of Cabinet rank and 27 other senior MPs, 14 provincial council members, 12 *Grama Niladhari*, 27 police superintendents, 51 OICs, 12 army captains and four majors (Vitatchi 1998). Many of these politicians remain active in the political arena including as ministers in the 2002 United Front government (Pinto-Jayawardena 2010b:80; Keenan 2002:5). The families of the disappeared are clear about their chances of seeing involved politicians in court as evidenced by the following statement by Mrs V:

All are guilty parties. MP Piyasiri was in the government party when the terror took place and now is under Mangala Samaraweera in the alliance. No minister wants to take a fellow minister to the courts. They just change the sides.

- Mrs V, Matara District: Interview 2.

A number of named security force personnel went on to hold high rank including that of major general or deputy inspect-general and others continued to serve in their posts (UNWGEID 1999:9; Hoole 1999). The families of the disappeared have witnessed a direct correlation between the involvement of such officials in disappearance and their promotion to higher office. Even though many recognise that

prosecutions in such a context are highly unlikely, they hope for some form of recognition or acknowledgement:

I think if we can arrange some sort of open discussion amongst the responsible government officers and personnel and the parents and share and let open the real happenings during that period and let the parents know this is how your child was killed and we are sorry, then we can forget it on one condition that we both promise that it will never take place in the future.

- Jayanthi Dandeniya, Families of the Disappeared.

Unfortunately, some sort of acknowledgement of wrongdoing or apology are extremely remote given that such officials went on to enjoy prestigious posts rather than legal or political sanction by way of prosecution, loss of position or public shame. The message to the families of the disappeared from those in power was that their actions were at the very least justifiable.

The commissions all emphasised the need to enforce accountability at every level of government and public service in their recommendations. They recognised the need for legal action to address impunity and political action to safeguard against the excesses of state power and thereby prevent a repeat of history. Recommendations focused on establishing mechanisms to facilitate expeditious and impartial prosecutorial action and reform of the security forces. Particular attention was given to ensuring that officials with chain-of-command responsibility were criminally liable, that private armies sponsored by politicians were eliminated, and that the ERs were reformed including that which permitted the disposal of bodies without inquiry or inquest. They also recommended enforced compliance with existing requirements about record keeping in

relation to detainees and arrest receipts as well as the immediate closure of secret and unauthorised places of detention and public access to information on all places of detention. Both the Southern Commission and All-Island Commission recommended that a special committee be established under the auspices of the National Human Rights Commission (NHRC) to record evidence of perpetrators and recommend amnesty for those who confessed their participation in violations and provided full evidence of accompanying circumstances. They also recommended establishing an Independent Human Rights Prosecutor to conduct prosecutions of human rights violations generally and specifically in regard to disappearance. The All Island Commission's recommendations that enforced disappearance constitute a crime and that the concept of command responsibility be legally recognised echoed those of the UNWGEID following visits to the country in 1991, 1992 and 1999 (UNWGEID E/CN.4/2002/79:53). However, none of these recommendations from the Southern or All-Island commissions have ever been realised. Similarly, the All-Island Commission recommendation that those state officials against whom criminal and or disciplinary proceedings were initiated be interdicted from service has been ignored. The commissions, like the UNWGEID, emphasised that the PTA and ERs should be either abolished or harmonised with internationally accepted human rights standards. For its part, the UNWGEID has also repeatedly called for the prohibition of enforced disappearance to be included as a fundamental right in the constitution. However, the government has never issued instructions to carry out the UNWGEID recommendations leaving Sri Lanka without a procedure for dealing with UN human rights recommendations despite such obligations under the ICCPR. Further, the Sri Lankan government has at no stage explained why it has not promulgated a law making enforced disappearance a crime or taken any action to draft such a law (ALRC E/CN.4/2004/NGO/63:39).

Although the commission reports make comprehensive recommendations in the area of criminal justice reform, most remain unimplemented. The PA's commitment to human rights had disintegrated in parallel with its dependence upon the security forces to fight the LTTE and its reliance on the ERs to assert power and uphold patronage. That is why much of the evidence uncovered by the commission was ignored or politically manipulated. Emergency and anti-terrorist laws remained in place, the media and those advocating an alternative polity were censored or repressed, and institutionalised violence remained the primary means of governance— all of which prevented progress towards any form of national dialogue let alone reconciliation triggered by the commissions. The PA may never have had genuine political will to implement the commissions' recommendations, but it used them to placate the international and local human rights community and embarrass its political opponents while simultaneously engaging in disappearances. The PA's concept of restorative justice focused largely on the political responsibility of the previous regime rather than a victim-centred accountability and truth telling process. Transitional justice policy was directed at upholding the moral and political legitimacy of the ruling party rather than any attempt at social reconstruction. Rather than 'anchor its legitimacy in the recognition of victims and its response to perpetrators' (Humphrey 2012:49), and 'create a consensus concerning events about which the community was deeply divided' (Grandin 2005:55), the PA legitimised and maintained existing divisions. Within this context, the trauma of the families of the disappeared remained unresolved as efforts were directed to the bigger concern of ongoing political competition, exclusion and one-upmanship at the expense of a new ethos of political inclusion, human rights and social reconciliation.

Because disappearances still continue, such recommendations remain as relevant today, some 15 years after they were originally presented to President Kumaratunga. The reality is that the legal framework in which disappearances and other abuses were committed have not undergone any fundamental change and nor has the 'basic constitutional structure' that made these acts and supporting extraordinary legislation possible (Fernando 2004:xix). The PA may have demonstrated some initial intent to investigate disappearances and bring those responsible to book, but it was unwilling to challenge the armed forces engaged in a war with the LTTE and dismantle the institutions of state violence upon which it, like its predecessor, relied (Thomson 2013). For those who provided evidence to the commissions, compensation was the only tangible benefit as there was no effort made by the government to dismantle the structures of power and impunity that sanctioned disappearances and resolve the ongoing trauma associated with them, as Mrs K explained:

The Presidential Commissions didn't inform us very much. It is meaningless. I got Rs 15,000 compensation. When I got it my two sons were in the camps so the money was spent on going to see them. I had to go for a few days to get the compensation to the *Grama Sevaka* for the death certificate to the courts and other places and for some trouble to get the money.

- Mrs K, Matara District: Interview 4.

Interviews with families of the disappeared demonstrated the extent to which they came to recognise the commissions as a mechanism of state welfare rather than transitional justice and human rights. As state-sponsored welfare had become interwoven with election victories, compensation came to be seen as state benefits distributed

within the context of national politics and as a reward for a PA victory rather than as part of a reconciliation process (de Silva 2006:193). State benefits as the levers of political patronage reflected and contributed to divisiveness within the community (Gunasekera 1992 cited in de Silva 2006:200). Distribution of the compensation became a political affair as elaborate election-style ceremonies were conducted at which local MPs rallied support for the government by condemning the former regime. Many interviewees recognised that this politicised use of compensation was a way of rewarding them to keep quiet. Mrs W recalled that when her expectations that the commissions would eventuate in prosecutions went unrealised, the politicians used compensation to pacify the families in the same way as money is distributed when they come to power. Compensation was an attempt to encourage people to just forget about it and just like giving a toffee to a child, to take your memories away (Mrs W, Kurunegala District: Interview 4). Mr D felt compromised for accepting compensation. He argued that: 'We were the people beaten by the terror. They gave us Rs. 15,000 but I wish they never gave it at all so I like to stay independent. It was shut-up money because after receiving the money, we can't question about him [disappeared son] anymore' (Mr D, Matara District: Interview 1). As one of the few commissions' recommendations that were acted upon, compensation became another tool for the ruling party to affirm politicised social divisions and undermine any prospect for collective recognition and action. Such divisions were driven further by the discriminatory manner in which compensation was awarded leading to additional grievances within and between families and communities as previously detailed. Rather than challenging the concept that victimhood emanated from the other, the politicisation of compensation and the opportunistic approach taken by the PA to the commission reports confirmed polarised positions which were

exploited yet again for political advantage. While the commission reports themselves provide a narrative about the entire nation's trauma (Minow 1998:57), they came to be seen as a political mechanism through which the victims were silenced, isolated and politicised. Furthermore, by drawing selectively on the commission's findings, the PA used both the inquiry and compensation distribution processes to remind the nation of the UNP's regime of terror while simultaneously retaining many of its elements in the pursuit of remaining in power.

The commission reports are an historical memory of political violence, conflict and state terror. However, the All Island Commission report was published in virtual secrecy and its public release was delayed by the president for more than two years. As Keenan noted, the report had in effect 'fallen into the void' (2002:5). The other reports have not been widely disseminated and have not, therefore, provided clarity about the different sources of violence and who was responsible for particular disappearances and their motives. Not a single person of the 87 interviewed for this study, for example, had seen a copy of the reports. Without establishing the facts, informed public debate let alone the ability to challenge impunity is made all but impossible. It is important for all Sri Lankans to understand how state institutions were politicised and manipulated by those in power and the characteristics of impunity and patterns of terror instituted by the state to abuse and silence its own citizenry. Without such public recognition and clarity, secrets and rumour about those involved and their motives will continue, given that much of the knowledge within the community is personal. Moreover, as other chapters have detailed, because all political sides appropriated terror, they have a tendency to recreate history, rewrite their involvement in the violence and shift blame to the other side and all the while the official records remain

deliberately ambiguous. As Keenan argued, 'people know and they don't know' (2002:8). Wide dissemination and public discussion of the commissions' reports would provide the facts necessary for Sri Lankans to build a social memory and a history of state terror which would serve as a powerful means to demand answers and challenge impunity.

9.5 Rise of the underworld

As this chapter has demonstrated, Sri Lanka's investigative and prosecutorial system is seriously flawed and politically compromised. When entering the judicial system, the fundamental question for a court user is whether or not they are going to receive justice. The Marga Institute survey found, however, that 76 per cent of respondents saw the justice system as serving to some extent only the rich and powerful and 84 per cent believed that political pressures influenced the judicial system completely or partially (Marga Institute 2002:59). The lack of independent investigation and a hostile prosecutorial and overarching legal system have led to victims being penalized at all stages of the process, from that of attempts to lodge information at a police station to legal proceedings, resulting in many victims and witnesses being coerced and compelled to change their testimony, again reinforcing the cycle of impunity that prevails (Pinto-Jayawardena 2010:6). The various national institutions and mechanisms that should safeguard human rights have failed to deliver adequate protection and there remains to be adequate investigation and credible public accounting for the vast majority of cases of disappearance.

Without legal accountability for human rights violations, public confidence in the rule of law has declined to the point where little

public will remains. A total loss of confidence in the police, as evident in Sri Lanka, is recognised as one of the greatest obstacles in crime prevention. Not only have the courts failed to provide any guarantee of personal security or redress against state violence but they have been more likely to destabilise political compromises that could help mitigate Sri Lanka's enduring social fissures (ICG 2009:1). The ICG held that in the context of the conflict with the LTTE, the Supreme Court had reached out to invalidate arrangements fashioned to achieve difficult political compromise while entrenching a vision of Sinhalese nationalism, political centrality and the unitary state (ICG 2009:1). Any move towards transitional justice would require the courts to uphold civil and political rights a remote prospect so long as successive governments recognise the potential of the judiciary to serve as an alternative apparatus of political power and bastion against executive action.

This thesis has demonstrated the manner in which state terror operated with impunity and the politicisation of public institutions including law enforcement and the judiciary, as well as public protests and movements such as the Mothers' Front, left Sri Lankans trapped in a political system that conspired against them. Political neutrality in Sri Lanka is non-existent as everything and everyone is politicised. Although there are many political movements in the country, there is no unifying rights or peace movement which would otherwise serve as a neutral space for citizens to gather and debate free of the constraints brought about by political manipulation in the service of powerful vested interests. This is a political system where those responsible for grave human rights violations remain in power including not only the major parties but also the pro-state Tamil paramilitary groups including EPDP which entered the democratic process in 1994 without any recognition of wrongdoing or the imposition of legal

sanctions. The accumulative effect of such actions coupled with the processes that brought about disappearances has produced deep cynicism within Sri Lankan society about politics and the institutions of governance:

Politics means, the main idea of politicians is to oppress the people. In those days, politicians really wanted to lead the community but now days they want to hold onto the chair ... Never looking into the wellbeing of the community.

- Mrs K, Jaffna District: Interview 9.

With little remaining faith in the rule of law and those responsible to uphold it and protect the citizenry, people lose interest or incentive to uphold the law themselves. For those who recognise such institutions as not only corrupt but also actively involved in abusing its own citizenry and concealing its actions, regard for any semblance of the rule of law has been shattered. Having a stake in the system and a sense of public good and community benefit has been replaced by a narrow focus on personal and private interests with violence providing opportunities that people would not otherwise entertain. The most common means of alternative justice are bribery and violence (AHRC 2006) which provide short-cuts to settling criminal, political or civil disputes. Bribery, as previously noted, is rampant in the justice system and summary justice by murder or assault is usually carried out with the assistance of the underworld which the AHRC noted in 2006 has increasingly replaced the courts as a means of adjudication.

Collapse of faith in the due process and political system has led to community reliance on underworld gangsters whose ranks are fuelled by army deserters with the necessary training and weapons to perform contract killings. At the same time, however, the political patronage

enjoyed by the underworld has its origins in the 1970s when rampant corruption provided a space for the underworld to grow to the point where everyone vying for a social position had to obtain the patronage of these criminal elements and politicians and the underworld became mutually dependent (Fernando 2004:x). According to Fernando, the underworld has effectively taken over the function of law enforcement agencies because it is far speedier, effective and efficient than the legal process. It has also taken over the election process which has become a contest between criminals supporting one party or another (Fernando 2010b:21). At the same time, the underworld has provided the ruling elite with another pretext to abduct or intimidate political competition and outspoken opponents while the police, under pressure to control crime, resort to torturing detainees regardless of the offence of which they are suspected. This dynamic is reflected in comments by Gotabaya Rajapaksa in relation to more recent disappearances. Mr Rajapaksa dismissed the number of recent disappearances as inflated while upholding the view that those alleged to have disappeared were criminals and implying a connection with the underworld or the victims of kidnapping for ransom. By suggesting that any allegation of government involvement in disappearances was part of a lie to give the wrong image of Sri Lanka by the rump of the LTTE who is remaining outside and trying to damage the image of Sri Lanka, Mr Rajapaksa sought to create suspicion about the motives of the victims and surviving relatives of the disappeared (Haviland 2012).

Violence has become an institutionalised way of life in Sri Lanka as evidenced by the systematic torture of detainees in police custody on which the police relies to extract confessions, election violence, the dramatic rise in violent (and unsolved) crime, and constant reports of the brutal treatment of school children by teachers and principals.

Without proper mechanisms to resolve dispute and grievances, disappearances and other serious violations have continued to take place. Given, moreover, that thousands of disappearances, political violence and terror were perpetrated by a range of different actors at different timesô including civilians on the basis of personal rivalries and disputesô address of such abuses and the underlying structural inequalities that gave rise to violence requires much more than basic reform of the administration. Total reconstruction of the political structure directed at greater decentralisation of power would serve as a start.

CHAPTER 10

Political imagination

In Sri Lanka, ongoing large-scale disappearance did not produce a strong human rights movement to challenge impunity nor did it result in the effective mobilisation of global human rights to hold the Sri Lankan government to account. Elections, commissions of inquiry and criminal investigations were mechanisms utilised by the Sri Lankan state to maintain a façade of democracy, rule of law and accountability in order to avoid scrutiny and uphold impunity. Within this context, disappearance groups and their individual members have not provided a starting point for any social reconstruction of Sri Lankan society but continue to serve a politicised agenda. Their ongoing trauma is exploited to shame political opponents and validate polarised political viewpoints while demands for justice and rights expressed by them are politicised to delegitimise their claims and affirm their 'otherness'. The extent to which the ambiguous status of the wives/widows of the disappeared was exploited by their families, communities and political leaders to undermine their moral integrity and social standing for economic and political advantage reveals the gendered nature of violence which served as a mechanism of social control to exploit existing social divisions. The fact that these survivors of political violence, rather than the institutions and leaders responsible for it, came to personify the turmoil and disorder within local communities ensured their continued exploitation, justified their exclusion from within their own communities and further delegitimised their claims. By perpetuating untruths and rumours about the sources of violence including the view that the survivors were the source of disorder rather than its outcome, the state

politicised their claims as dangerous and divisive to avoid accountability and justify the continued imposition of emergency rule and widespread repression of particular groups with impunity.

Over the past three decades of political violence in Sri Lanka, disappearance was used to eliminate political competition, immobilise an alternative political imagination and deny the possibility of collective action. Democratic institutions, judicial independence and public administration were eroded and politicised by an executive intent on manipulating fears about the threat of non-state violence to justify the centralisation of power and impunity. By impeding the verification of reality, disappearance provided the means by which the political elite could manipulate power and exploit state resources to advance its own cause while encouraging the convergence of myth and rumour about political violence to create a society deeply polarised along political lines and unable to distinguish common ground on which to rebuild.

While disappearance emerged as a counter-insurgency tactic with the purpose of securitising those classified as 'dangerous' and producing political consent through fear, the phenomenon has its origins in early contemporary Sri Lankan history. Following Sri Lanka's independence, the national political agenda became a sphere of competition for resources, power and autonomy based on patronage, class and ethnic lines which excluded the vast majority. At the same time, political engagement brought to the fore existing grievances while political violence and patronage politics created new grievances and divisions as politics became a condition of collective moral disorder. This study considered the various forces and factors which led to the systematic erosion of integrity systems and the politicisation of Sri Lankan society, providing scope for an alternative political

apparatus or shadow state to flourish. Under the auspices of nation building and national security, the executive compromised the independence of democratic institutions, the courts and public administration by manipulating public fears and exploiting dependence on state welfare. The longstanding state of emergency which characterised every administration since 1947 was used to justify the centralisation of power and create a culture of impunity enabling those in power to enforce their arbitrary will on the Sri Lankan citizenry. The imposition of a state of emergency and the extraordinary powers bestowed on the police and security forces provided the perfect cover for dealing with the ruling party's political and personal rivalries from the highest to lowest levels of power. Within this context, the practice of disappearance came to signify the exercise of absolute power by those who were able to utilise the state apparatus for their own interests. Political manipulation carried out through disappearances, extrajudicial killings and the secret disposal of bodies by state agents acting unofficially on behalf of the state led to a wider transformation of the political system itself. While maintaining a façade of legality, the legal process was totally misdirected through prolonged imposition of emergency regulations and anti-terrorist legislation which provided scope for political interference and strengthened the shadow state. A democratic system based on the rule of law was transformed by efforts to eliminate all political rivals and replaced with a system of patronage and repression. The practice of disappearance within the Sri Lankan context represented the exercise of power by the state as well as its meaning and purpose. More than a human rights violation, a disappearance implicates the entire function of the state which serves those in power and their interests of which impunity is the most significant. Within the system that prevailed, all efforts on the part of the relatives of the victims of disappearance to re-establish their socio-political identity

were expropriated, justice was totally denied and transitional justice mechanisms were manipulated and exploited for political advantage.

10.1 Stifling political imagination

At independence the conservative leaders comprising wealthy landlords and entrepreneurs who dominated the political life of the country recognised the post-colonial state as the means through which their wealth and privileged status could be protected (Jayawardena 2000:346; Rupesinghe 2000:19). Decolonisation effectively amounted to the transfer of government to them. Political competition between the old high-caste *Goyigama* Sinhalese families and the new rich *Karāva* colonial bourgeoisie over resources and political capital took the form of a struggle over nationalism and national identity. As the ideology of governance, Sinhala-Buddhist nationalism increasingly assumed an ethnic outlook which allowed the ruling elite to pursue their own class interests (Jayawardena 2000:299; Jayasundara-Smits 2011:83).

The ruling elite set out to govern by reward and punishment. It created a state welfare system as a way to reward supporters and cultivate clients. It distributed some 30 per cent of national income on welfare which created dependence on state resources, services and employment which became increasingly centralised in the hands of ruling party MPs (Hennayake 2006:12). The entrenchment of patronage politics and growing intolerance towards political opposition and popular protest including repression of peacefully expressed aspirations of the Tamil community led to the political exclusion and economic marginalisation of the rural majority. The centralisation of the economy brought about by nationalisation and state monopoly affirmed the economic and political domination of the

urban ruling class at the expense of large sections of the rural economy. This fuelled historical class tensions over resources and power which found expression in the 1971 JVP insurgency. The insurgency brought to the fore two important dynamics which prompted decades of political violence. First, the level of disaffection among rural youth and particularly educated rural youth alienated from their own communities and the wider political system which intensified in parallel with efforts by the ruling elite to centralise political power through repression and the curtailment of democratic norms and judicial independence. Second, the extent to which rural youth across Sinhalese and Tamil communities, marginalised by the political system, personified an alternative political ethos and embodied for the ruling elite an ideological and physical threat to its power and monopoly on the use of violence. The interplay between the two dynamics informed a policy of disproportionate repression while the successful use of disappearance to conceal the elimination of JVP activists in 1971 led to its entrenchment as a weapon of repression by the shadow state.

Disappearance was used to eliminate political opponents, prevent collective mobilisation and demobilise any alternative political imagination. The vast majority of those who disappeared in Sri Lanka comprised male rural youth denied social mobility for reasons of political patronage in employment and the use of English by the urban elite. While only relatively few of them took up arms against the state as JVPers and Tamil separatists, the level of their discontent with the aloof elite leadership over disparities in wealth and privilege, social inequalities and injustices represented a wider and more substantive threat to the continuity of patronage politics. Violent repression of peaceful demonstrations and Tamil aspirations, rampant corruption and growing reliance upon extralegal methods undermined the moral

authority of the state in the eyes of the country's youth and justified the politics of violence and revolt. As the embodiment of dissent, rural youth posed a threat to the ruling elite, its vested interests and self-interested liberalisation agenda from which they were excluded. Under the pretext of nation building, the 1978 constitution created a virtual dictatorship by curtailing the independence of the judiciary, parliament and administrative apparatus in favour of executive interference. Thereafter the threat of anti-state action including opposition to the UNP's economic liberalisation agenda emanating from sections of the rural population provided justification for prolonged emergency legislation and abandonment of safeguards on the use of force accompanied by the proliferation of a shadow state. Conversely, a prolonged state of emergency enabled the ruling elite to avoid any legal consequence for its actions including that of disappearances. Under this alternative state apparatus, death squads and paramilitary groups were empowered to carry out disappearances on behalf of their political masters. The entire state apparatus became complicit in the practice and its concealment.

Counter-insurgency provided the guise under which the shadow state caused the disappearance of rural youth across the country and the pretext of national security and preservation of economic prosperity enabled the suppression of their communities. The establishment of a one party state, free of all democratic and legal constraints and with a self-imposed mandate to build a righteous Sinhala-Buddhist nation and recapture lost grandeur, provided the underlying ideology of political violence. However, *swabhasha*-educated unemployed rural youth who were recognised as an embodiment of an alternative ethos exposed the façade of 'righteous society's policies which failed to provide for a free and just community. Rural youth were seen to be standing in the way of the country's future which they were not a part

of. They refused to follow in their parents' footsteps and take up farming or menial employment and were not part of the urban English-speaking elite set which enjoyed privilege through patronage. To this extent, disappearances carried out by state-sponsored groups under the pretext of countering insurgencies and upholding national security were an imperative to nation building. Language difference and geographic segregation of Sri Lankan youth and the fact that such youth were forced into competition with each other and encouraged to consider each other as the source of their own grievances and fears prevented the possibility of a generational struggle rather than class and ethnic-based struggles represented by the JVP and LTTE.

During the early 1980s, the use of paramilitary groups and the militarisation of civilians in response to armed Tamil youth separatists widened the scope for violence and paved the way for reliance upon death squads and private armies which featured during the *beeshanaya* (1987-1990) and led to the disappearance of an estimated 60,000 people. Military reliance upon extralegal methods, including disappearance and the outsourcing of extralegal violence to an array of private and political groups which took place in the north and east under the PA government from the mid-1990s, provided for the emergence of a political-criminal nexus between the ruling elite, paramilitary and private groups and elements of the security forces. Perpetuation of the conflict served their respective vested interests. Military encroachment over civil and administrative matters in the north and east and the PA government's reliance upon the military, which depended on extralegal methods, provided scope for the military to emerge as the strongest factor in Sri Lankan politics and the central element of governance. Transitional justice initiatives including the presidential commissions on disappearance and the few

prosecutions that were pursued during this period exemplified the power of the military to dictate on national issues, and its complicity with the ruling elite and wider state apparatus to conceal the perpetrators of violence and victimise the victims.

Institutions fundamental to a strong democracy including the media, NGOs and civil institutions were politically appropriated or suppressed. With power centred on the President and the military, the role of Parliament diminished while civil rights activists, trade union leaders and journalists were threatened into silence. Democratic space to challenge the government became extremely narrow. The human rights community was also politically divided. Thus human rights criticism of the counter-insurgency tactics deployed by the military was undermined by the widespread support for the state's efforts to eradicate the JVP insurgency and LTTE separatism. The 'ethnic' conflict provided the basis on which the ruling elite further divided civil society by propagating the argument that those who rallied for a political solution to the conflict sought to compromise the nation's unity. By politicising and neutralising Sri Lankan civil society in this way, it became impossible to build the necessary trust for collective political efforts. Gotabhaya Rajapakse, Defence Secretary and brother of the current president, highlighted the polarised construction of Sri Lankan society into two groups: 'the people who fight terrorism and terrorists' (cited in Gunasekara 2011:22).

Through the political appropriation and censorship of the media the ruling party was able to manipulate public opinion and manufacture chaos. They used the media to create the belief that security required the suspension of legal norms and processes and that excesses on the part of the security forces were not only to be expected but justified in their fight for the nation. The ruling elite encouraged a 'collective

deception which it facilitated by obstructing the investigation of disappearance (Cohen 2001:156). Holding regular elections gave the appearance of a democratic and inclusive process. However, dependence on politicians for state resources particularly among rural and poor constituents brought with it complicity with the use of violence employed by politicians to secure power. Violence associated with elections became an integral part of the wider political system to counter all forms of public expression from peaceful public protest to insurgency and internal conflict. While violence gave the political regime a means to impose its will on the population, the militarisation of society which it encouraged reinforced the rationale for more extreme violence and reliance upon the military which effectively became the arbiter in national issues.

10.2 Culpability and complicity

As long as the institutional actors and patronage networks that directly benefit from political violence remain silent, disappearances will continue to be carried out in Sri Lanka and the institutions of political violence and underpinning culture of impunity will remain unchallenged. The state project of disappearance sought to isolate individuals and dismantle rural communities through arbitrary violence and mistrust thereby immobilising any form of solidarity or collective action. The family unit became a perpetual victim of the practice of disappearance given the fact that any sense of solidarity and trust were totally destroyed while the ongoing and therefore unresolved trauma of affected relations remains inextricably linked to the unresolved and therefore ongoing crime of disappearance. However the role and motive of vested interests in ignoring, challenging or colluding with disappearances and other abuses must be understood as part of a process to re-establish the demarcations

between cause and effect (Nesiah & Keenan 2004:8; Keenan 2002:7). The interplay must also be recognised between the conduct of civil, legal and private institutions and public administration as well as international involvement in providing arms and training death squads and the military, along with transnational criminal networks which have contributed to and benefited from the violence (Argenti-Pillen 2003:13). Father Nandana, Kandy representative of the Families of the Disappeared, held that as with the rest of the population, religious leaders were divided by politics and unable to provide a united position on key issues of national importance including disappearance. Furthermore:

All the victims are from the poor. The general public is not interested in these issues and they have no confidence in the police and the rule of law and there are no leaders in the country with vision. We have leaders who want to divide the people. When there is a major discussion going on organised by a civil society group about serious issues regarding this country, the politicians organise a cricket match and you know how cricket mad people are here!

- Father Nandana, Families of the Disappeared.

The acquiescence of the urban middle class and divisions within the human rights movement (which itself was subject to persistent attack and denunciation) in its interpretation of the state's cause against the JVP and LTTE and the methods applied to realise it must also be reconciled. Hoole observed that for many middle-class urbanites, the presidential commission disappearance reports aroused 'mixed feelings of guilt and embarrassment' as they come 'from a past we wish to have buried' (1999:2). Nesiah and Keenan recognised that the middle class largely endorsed the violence committed partly in their

defence if not officially in their name (2004:12). The conspiracy of silence about disappearance will be maintained so long as the socio-economic and political inequalities that support class hierarchies are upheld by state power, and vested interests in the undemocratic political structure outweighs the possibility of and opportunities emanating from a new political paradigm.

Rural communities were drawn into and became complicit in the violence for reasons of survival as well as personal gain. Concealment of political and private motives which blurred the boundaries between victim and perpetrator, myth and reality, sources of fear and security, enabled the deliberate exploitation of social divisions and mistrust. The widespread use of masked informants typified the manner in which rural communities were compromised. The families of the disappeared also became complicit in the violence and its supporting framework to avoid their own disappearance or, by seeking state resources, inadvertently adhered to the very system which brought about the disappearance of their relative. Many interviewees spoke of their unwillingness to reveal the identity of the perpetrators responsible for the disappearance of their relatives for fear of disappearing themselves. Mrs S and Mrs L both had relatives abducted by the LTTE but supported the LTTE's efforts because as Mrs L said, 'they are fighting for our freedom'. They felt torn between the two and fearful of LTTE reprisals, and so were compelled into silence (Mrs S, Vavuniya District: Interview 4 and Mrs L, Vavuniya District: Interview 7). Others appealed directly to MPs or gave their support to political parties to obtain a death certificate, compensation or state resources. Recognising patronage politics as the primary means through which employment and state resources were secured such families were bound and limited to the exclusion-dependence paradigm. Ultimately, the largest disappearance

movement, the Southern Mothers' Front demonstrated its complicity in the violence to the extent that the movement was directed to serve the narrow political interests of regime change rather than bring to light the vested interests in whose name the violence was perpetrated.

Today, after the end of the fourth Eelam War, the population continues to be constantly alert to the continuing threats to national unity including the potential re-emergence of the LTTE, the threat represented by the JVP as a mainstream political party, the threat of cultural separatism of the Muslim community in the east and prevalence of the underworld. These threats are used to justify continued state violence and prolonged emergency legislation in the name of peace and national security which in turn perpetuates impunity for past political crimes by preventing any serious human rights investigations. Rumours and myth pervade the socio-political landscape preventing the re-establishment of boundaries and demarcations between crime and punishment, perpetrator and victim, fundamental to challenging impunity (Keenan 2002:7). Argenti-Pillen discovered that years after the violence had ended in the south it continued to pervade community relations in the form of rumours that the JVP insurgents were reorganising and in the fear of locals who had been JVP insurgents or given information to the army and still remained in hiding in the neighbourhood (2003:73). The strategy of continued vigilance is designed to cut off the 'public exchange of opinion' by denying through fear 'the power of initiative' (Habermas on Arendt 1986:80). The prevailing political culture and the nexus between dependence and patronage on which it is based continue to deny space for, and legitimacy to, genuine autonomous mobilisation of civil society (Bastian 1999:41). Moreover the juxtaposition of democracy and liberal legal practices with patronage politics and political violence further entrenches the dependence-exclusion

paradigm of limiting any active democratic mobilization against state abuses of power (Keenan 2002:6). Mr V, a community leader in Amparai, recognised the political system as being the central problem in this regard:

The political situation is stopping people from coming together because the government likes to retain its power. All parties try to topple one another and they have brought this ethnic division amongst the people. There should be a lot of change in their thinking.

- Mr V, community leader, Amparai District.

The political culture in Sri Lanka during the 1970s and 1980s which witnessed the greatest number of disappearances has changed little over the decades and the expectation of many interviewees is that disappearances on a mass scale can take place again at any time. Indeed, disappearances continued to be reported even after the war ended in 2009. At the same time, surviving relatives remain in a time warp with the disappearance at the forefront of their lives despite the years and even decades that have passed since the event. While they are condemned by a traumatic memory to relive the event on a daily basis, ongoing politicisation of the issue exemplified by the controls imposed on the disappearance commissions and efforts to bury their findings and ignore their recommendations is evidenced in the political divisions amongst disappearance groups. These divisions and the different interpretations of their members' suffering and the root causes of it enhance existing social cleavages and ethnic antagonisms rather than provide the basis for a unifying national narrative (Humphrey 2013:1).

If methods to rebuild a democratic and inclusive framework are to be worked out, these factors must be understood: the ideology of national security, the legal mechanisms and political implements used to pervert the democratic system and allow for the propagation of political violence, the vested interests that supported and benefited from such action and the complicity of survivors. Without recognising the social, political and economic factors and forces that brought about such violations and turned a democracy into a dictatorship, it would be impossible to imagine a viable framework for peace and justice. Only a national effort directed at peace and reconciliation will create the necessary climate of trust and confidence for the fundamental structural changes required.

10.3 Exclusion and dependence

The exclusionódependence paradigm is central to the phenomenon of disappearance in Sri Lanka. The disappeared themselves not only emanated from families for whom patronage and privilege were inaccessible but represented to the regime a rejection of the political structure that provided for this paradigm and a threat to its existence. Surviving families themselves represent the poor rural majority who are denied equal access to state resources, employment and education, political power, patronage networks and connections made possible through an English education. The aspirations of the rural majority for middle class status and the younger generations who reject the limited opportunities available to them are undermined by their dependence on the politicised state. The long historical roots of state-based welfare, state involvement in disputes and interference in almost all aspects of life created a form of dependence which has social, economic and political dimensions. The dependenceóexclusion paradigm makes the rural majority complicit in a political system which conspires against

them to safeguard its own vested interests. Such complicity starts at the lowest level of governance where local officials use their position as an opportunity to promote their own interests rather than develop their region and people (Mr Chandrasekara, Jaffna Regional Coordinator, Human Rights Commission, *personal communication*). It feeds corruption and deceit at every level of engagement with fraudulent practices recognised as an acceptable means of getting elected practices that have been normalised as a daily part of life (Wimal Fernando, *personal communication*). Thus, the use of force, power and corruption to achieve political outcomes has been normalised and extended to achieve other results. Any serious effort to address poverty or political violence cannot take place while political power is achieved through force and provides seductive rewards for the victors, the means of getting rich.

The conflict with the LTTE has ultimately made the dependence and exclusion paradigm more acute, especially in conflict-affected communities and among youths. The detention and relocation of thousands of Tamils, many of whom lost everything and have little prospect of returning to their destroyed villages, has further entrenched their dependence on a politicised welfare system. At the same time, efforts to counter dependence, including self-employment initiatives made available to families of the disappeared, provide an opportunity to earn a living and educate children. However, such practical initiatives cannot address the primary source of their grievances and social ostracism nor protect them from political groups that are intent on securing power through the exploitation of their trauma to uphold claims about their own legitimacy. Efforts to divert these families away from the pain and trauma of the disappearance inadvertently affirm their socio-political status and can compound their suffering. The disappearance movements, including the Southern

Mothers' Front which sought to represent such families, were forced to operate under a dependence/exclusion paradigm within the wider political context thereby enabling the appropriation of their broader goals to the narrow vision of regime change.

10.4 State-centric and politicised truth and justice initiatives

The families of the disappeared have not emerged at the heart of a human rights movement in Sri Lanka as they did in Argentina. Serial disappearance directed at different stigmatised groups has allowed the state to justify and perpetuate emergency rule. Truth and justice processes introduced by both the UNP and PA after it came to power in 1994 were limited to state-oriented remedies which could be politically directed to serve political interests. All claims in relation to disappearance, which is not a crime under Sri Lankan law, had to be channelled into claims against the state and thereby mediated through individual rights claims which had the effect of domesticating 'more complex (and potentially more radical) demands on the social structure' (Nesiah & Keenan 2004:11). The manner in which the political elite exercised what Galbraith termed 'conditional power' over the disappearance movement in the 1990s to affect regime change and focus on individual prosecutions denied the opportunity to recognise and debate how the shadow state flourished and how the population became complicit in the violence (1986:214). As the fight for justice narrowed around specific violations and perpetrators, the context in which such violations took place, the motives underlying them, the framework that enabled them and the vested interests involved became abstracted and removed thereby limiting or restraining the country's political imagination (Nesiah & Keenan

2004:9). Efforts on the part of the human rights community to focus on minority rights in the context of the ethnic conflict were politicised as divisive while also diverting attention away from bigger picture of the structural inequalities which were the main cause of grievance across all communities. As Fernando has noted, the basic constitutional structure that provided for disappearance has remained in place while the fundamental premise of national security on which political violence has been carried out by successive regimes remains unchallenged (2004:xix). While efforts to achieve a democratic solution to the conflict with the LTTE were contained within an "undemocratic construct" (Fernando 2002b:13), the same could be said in relation to transitional justice mechanisms which served political interests at the expense of the victims.

The reports of the presidential commissions of inquiry into disappearances serve not only as a historical memory of political violence but also initiated a first important step by questioning the fundamental premise of national security on which state violence was based. However, distribution of compensation to the families of the disappeared as recommended by the commissions was used by the ruling PA as a tool to blame the UNP regime for the disappearances and thereby to strengthen its own legitimacy. By focusing on abuses of the previous regime and compensation, the ruling party manipulated the work of the presidential commissions as part of a ritual of conspiracy against the victims to deny state terror and protect those responsible for it. Almost all the other findings and recommendations of the commissions were ignored. The perception was perpetrated that state welfare compensation was the only tangible outcome of the commissions' work and, when placed within the wider context of national politics, came to represent for the families both a reward for a PA victory and a shut-up money (Mr D, Matara District:

Interview 1). Such dynamics enabled the ruling elite to divert and curtail transitional justice efforts and limit the scope for redress to a handful of prosecutions while using the disappearance commissions as an opportunity to reaffirm the political divide. Within this context, families of the disappeared already recognised as politically suspect and morally polluting were caught between these two dynamics, on the one hand unable to transform their trauma into a movement for social change while, on the other, complicit in a corrupt political system that provided them state resources on which they depended for survival. By stymieing individual and collective efforts to restore the socioólegal identity of the disappeared, the dependenceóexclusion paradigm restrains political imagination, as Sunila Abeyesekera observed:

In Sri Lanka we are so caught up in the formal and legal justice processes that we canø think of any alternative. But people donø know what to do now.

- Sunila Abeyesekera, INFORM.

This frustration is expressed by the families of the disappeared in a variety of ways. Mrs B whose husband disappeared in 1984 while travelling from Vavuniya to Colombo by bus noted that on International Womenø Day, øWe didnø do anything. We only drank tea and ate *wadai*. I want to speak out for peace but we havenø done anything yetö (Mrs B, Vavuniya District: Interview 1). This is not to suggest that there are not important initiatives which have taken place or are underway. Political solidarities have been built which have succeeded in forcing accountability where there is no political will. Protest and a weekly vigil for legal action against those responsible for the disappearance of Krishanthi Kumaraswamy and her relatives led to charges being laid (LST 1997:185). The Batticaloa Peace

Committee which intervenes on behalf of individuals taken into custody to ensure that no harm will come to them in detention was established by a group of concerned citizens in 1985. It has remained active despite the murder of two of its members in the late 1980s and years of intimidation which led to the detention of another member whose house was ransacked by the army in search of information (Batticaloa Peace Committee, *personal communication*). Similarly, protests carried out by disappearance organisations which come together to mark auspicious occasions and inclusive local women's groups formed by the wives of the disappeared are vital steps towards the creation of neutral public space. This space is essential to encourage dialogue and revelation about political violence so that all Sri Lankans can consider and debate how to address the past, prevent repetition and consider the future. Ultimately, addressing the phenomenon of disappearance is an imperative to nation building.

Generations of potential future leaders disappeared in Sri Lanka – a systematic attempt by the state to destroy any possibility of anti-state activism or the emergence of an alternative political ethos. The price of the state's ruthless leadership is an enduring legacy of violence which remains a central obstacle to political activism and an alternative leadership required to instigate transitional justice and reconciliation initiatives. Meanwhile, the political structure which provided for such violence is yet to be exposed and dismantled – and disappearances continue to serve the interests of the ruling elite intent on suppressing political opposition or the germination of a new political imagination on which a democratic and inclusive Sri Lanka might be based. While the *beeshana samaya* (era of terror) officially ended in 1990, the ideology which underpinned it continued to serve the interests of the political elite during the conflict with the LTTE, and underpins the legitimacy of the ruling establishment today.

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Appendix

Overview of interviews

Amparai District, Eastern Province

Interviewee	No.	Disappeared	Disappeared	Disappearance
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		in relation to interviewee	occupation & age at time of disappearance	date
Ms A	1	Father	Farmer – 38 yrs	January 1990
Mrs R	2	Father	Farmer	February 2001
Mrs K	3	Husband	Labourer – 28 yrs	24 June 1990
Mrs K	4	Husband Son	Farmer – 30 yrs Farmer – 17 yrs	15 February 1984 1992
Mrs S	5	Husband	Goldsmith - 27 yrs	24 September 1990
Mrs T	6	Son	Farmer – 19 yrs	28 July 1990
Mr P	7	Son	Labourer – 18 yrs	8 January 1990
Mrs V	8	Son Brother	Farmer – 21 yrs Farmer – 26 yrs	9 September 1990 1985
Mrs A	9	Son	Student – 21 yrs	30 July 1990
Mrs P	10	Husband	OIC Milk Board-42 y	23 June 1990
Ms R	11	Father	Post Master – 59 yr	30 August 1990
Mrs P	12	Husband	Post Master – 40 yr	24 June 1990
Mr G	13	Son	Student – 21 yrs	8 January 1985
Mrs S	14	Son	Student – 18 yrs	29 May 1990

Batticaloa District, Eastern Province

Interviewee	No.	Disappeared in relation to interviewee	Disappeared occupation & age at time of disappearance	Disappearance date

Mrs P	1	Son	Labourer – 12 yrs	10 August 1990
Mrs N	2	Husband	Farmer	1990
Mrs V	3	Son	Farmer – 22 yrs	1991
Mrs L	4	Husband	Labourer – 24 yrs	10 Sept 1990
Mrs G	5	Husband	Farmer – 30 yrs	2 Dec 1993
Mrs R	6	Son	Labourer – 24 yrs	10 October 1992
Mrs J	7	Brother	Supervisor – 26 yrs	17 Nov 1995
Mrs K	8	Son	Labourer – 23 yrs	6 May 1998
Mrs P	9	Son	Labourer – 14 yrs	24 Dec 1993
Mrs C	10	Brother	OIC Milk Board – 33 y	13 Nov 1993
Mrs K	11	Husband	Farmer – 37 yrs	21 August 1990
Mrs R	12	Husband	Mason – 23 yrs	7 June 1990
Mrs N	13	Husband	Fisher – 35 yrs	27 June 2002
Mrs A	14	Husband	Fisher – 40 yrs	27 June 2002
Mrs S	15	Husband	Fisher – 38 yrs	27 June 2002
Mrs P	16	Husband	Mason – 21 yrs	27 June 2002

Gampaha District, Western Province

Interviewee	No.	Disappeared in relation to interviewee	Disappeared occupation & age at time of disappearance	Disappearance date
Mr D	1	Brother	Painter - 28 yrs	21 July 1988
Mrs P	2	Husband	Unemployed - 31 yrs	1 May 1990
Mrs R	3	Brother	Unemployed - 16 yrs	1989
Mrs M	4	Son	Local market stallholder - 16 yrs	16 November 1988
Mr S	5	Wife	Housewife - 44 yrs	12 April 1989
Mrs N	6	Son	Factory worker -18 yr	After 1988 President elections
Mrs K	7	Son	Kiosk manager/owner - 27 yrs	Unknown

Mr G	8	Son	Farmer - 34 yrs	Unknown
Mrs C	9	Son	Labourer - 18 yrs	Unknown
Mrs S	10	Husband	Tailor - 37 yrs	19 March 1997
Mrs P	11	Husband	SLFP secretary	20 November 1989
Mrs S	12	Husband	Textile worker	4 November 1989
Mr S	13	Son	Student - 26 yrs	12 October 1989
Mr S	14	Son	Student - 19 yrs	16 December 1989
Ms D	15	Fiancé Brother	Garment factory worker - 30 yrs	27 October 1989

Jaffna District, Northern Province

Interviewee	No.	Disappeared in relation to interviewee	Disappeared occupation & age at time of disappearance	Disappearance date
Mrs K	1	Son	Labourer - 23 yrs	20 June 1996
Mrs S	2	Son	Electrical shop staff	28 August 1996
Mrs C	3	Husband	Labourer/Fisher - 30	10 August 1996
Mrs R	4	Son	Vegetable Stall Manager - 19 yrs	26 March 1997
Mrs S	5	Son	Unemployed	26 March 1997
Mrs O	6	Husband	Post Office Officer -31	20 July 1996
Mrs N	7	Sons	Fisher -19 yrs Council Labourer – 16	14 July 1996 June 1996
Mrs K	8	Son	Electrical Technician	21 August 1996
Mrs E	9	Husband	Fisher - 35 yrs	4 August 1996
Mrs M	10	Son	Mason - 30 yrs	20 July 1996
Mrs M	11	Son-in-law	Farmer - 25 yrs	19 July 1996

Kandy District, Central Province

Interviewee	No.	Disappeared	Disappeared	Disappearance
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		in relation to interviewee	occupation & age at time of disappearance	date
Mr W	1	Son	Mechanic/Welder - 29	30 January 1990
Mrs M	2	Husband	Electrician	4 December 1989
Mrs G	3	Brother	Shopkeeper	6 December 1990
Mrs K	4	Son	Labourer - 15 yrs	9 November 1990
Ms S	5	Brother	Teacher - 25 yrs	9 November 1989
Mrs P	6	Sons	Lands Department Officer - 25 yrs Army - 24 yrs	September 1989 5 March 1992
Mrs S	7	Brother-in-law	Builder - 42 yrs	12 April 1989

Kurunegala District, North Western Province

Interviewee	No.	Disappeared in relation to interviewee	Disappeared occupation & age at time of disappearance	Disappearance date
Mrs W	1	Husband	Primary School Teacher - 39 yrs	19 October 1989
Mrs G	2	Husband	Shopkeeper - 44 yrs	19 October 1989
Mrs D	3	Husband	Coconut business - 29 yrs	8 December 1989
Mrs W	4	Husband	Farmer/Small Business - 22 yrs	19 November 1989
Mrs V	5	Husband	Coordinator - Insurance Corp. - 35	17 October 1989
Mrs J	6	Son	Student - 17 yrs	28 September 1989

Matara District, Southern Province

Interviewee	No.	Disappeared	Disappeared	Disappearance
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		in relation to interviewee	occupation & age at time of disappearance	date
Mr D	1	Son	School student	16 December 1990
Mrs V	2	Brothers	Monk - 23 yrs Engineer - 33 yrs	21 November 1989 20 February 1990
Mrs K	3	Husband	Tractor Driver - 28 yrs	17 September 1990
Mrs K	4	Son	Driver for DIG Colombo - 21 yrs	30 October 1988
Mr S	5	Daughter	Housewife - 19 yrs	1988
Mr K	6	Son	Student - 17 yrs	14 October 1989
Mr D	7	Brother	Worked for Kacheri - 48 yrs	Killed day after 1989 Presidential election
Mr R	8	Mother	Housewife - 59 yrs	21 December 1989
Mrs V	9	Brothers	Timber merchant - 36 Unemployed - 20 yrs Tractor Driver - 33 yrs	5 March 1990 5 March 1990 5 September 1990

Vavuniya District, Northern Province

Interviewee	No.	Disappeared in relation to interviewee	Disappeared occupation & age at time of disappearance	Disappearance date

Mrs B	1	Husband	Manager of overseas employment agency	April 1984
Mrs K	2	Brother	Electrician - 40 yrs	Unknown
Mrs N	3	Husband	Unemployed	3 August 1990
Mrs S	4	Sister	Shop Assistant	Approx. 1993
Mrs B	5	Husband	Farmer	2003
Mrs J	6	Husband	LTTE cadre - 20 yrs	2002
Mrs L	7	Husband	Labourer - 27 yrs	Before 1990
Mrs P	8	Husband Nephew	– 17 yrs	March 1999
Mrs P	9	Daughter	Student - 10 yrs	13 March 2002

END.