THE STATE OF HUMAN RIGHTS IN SRI LANKA - 2008

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THE LOSS OF THE SUPREMACY OF THE LAW

1. A PARADIGM SHIFT

The most significant paradigm shift in the Sri Lankan political situation is the emergence of the military as the arbiter on all important issues in the country. The following warning made in the Final Report Of The Commission Of Inquiry Into The Involuntary Removal Or Disappearance Of Persons In The Northern And Eastern Provinces.

Lt. General Sarath Fonseka

Two problems are facing this country. One is the problem of the youth which took militant form under the J.V.P. The other is ethnic problems which takes militant form under the L.T.T.E. These two problems unless handled with vision and statesmanship will distort all organs of Society and make the Army arbiter in national issues.

These words, which were meant to be a warning with the expectation of preventive measures have now turned out to be a prophesy. The military is indeed, if not the arbiter, at least a very significant player in decision making in the most important national issues.

1.1 This paradigm shift is reflected in relation to the state obligations of respecting and fulfilling the protection and promotion of human rights:

a. In the legislative area – the most important laws for the protection of human rights cannot be passed, as such legislative measures will seriously come into conflict with the military influence in the country. One such example is the witness protection law. A draft of a witness protection law has been before parliament since June. In fact, the law had been discussed for years. Government spokesmen in international forums promised that this law will be passed by the 26th June. However, the talk about this law has subsided. Of course, even passing of the law will not be a guarantee that the law will be implemented. Providing the necessary resources for implementation is in the hands of the executive. Even when things are at that stage, the government shows no interest even in the passing of this law which is so basic for creating the legal framework for providing redress against human rights abuses. Perhaps the government's unwillingness to pass this law may be due to the fear that if the law is passed, the courts may insist on its implementation. For example the law provides the possibility for witnesses who have a genuine fear of threats to their lives, to give evidence through a video link. If this is possible many witnesses may come forward to give evidence in cases of alleged atrocities by the military and the police. It will significantly undermine the government's policy of allowing witness intimidation.

   There are many other laws which need to be passed rapidly for efficient functioning of an administration of justice system. There is the need for the development of substantive laws like for example making forced disappearances a recognised crime in the country. However, more important perhaps is the development of procedural laws both in terms of the criminal procedure code and evidence ordinance in order to improve the quality of justice within the country. Such legislative changes require political will to usher them in. However, such political will is no longer

possible when subservience to military interests is an unavoidable consideration for the government.

b. In the functioning of the investigation into crime in general and in particular investigations relating to human rights abuses, there is an extreme crisis. In fact, more than a crisis it is a matter of deliberate disruption. It can safely be said in all cases that are considered sensitive the investigations are simply not allowed. The stopping of investigations happens due to many factors. Some of these factors are the military strategy coming into conflict with any investigations into alleged abuses.

- The politicisation process which sees efficiently investigating police as a threat to political power.
- A policing system within which the command responsibility does not virtually exist.
- The increasingly independent character of police units operating in different areas and increasing linkages of the police with the criminal elements.
- Widespread corruption in the political system as well as the policing system; within the policing system as there is the widespread perception that many high ranking policemen themselves are corrupt they are unable to exercise supervisory power over their subordinates.
- The near collapse of the disciplinary processes within the police.
- The disruption of the most sophisticated section of the police, the Criminal Investigation Division by unjust transfers and political interference into investigations.
- The failures of the judiciary which are numerous, such as delays and even allegations of corruption which lead to a poor rate of success in prosecutions. Perhaps even more important as the compromise that has been developed between the law enforcement authorities that resist cooperation with the judiciary. Due to this compromise the judiciary fears or is unwilling to challenge the overwhelming arbitrariness of the police. Many individual judges who have tried to take some independent action have been taught hard lessons of the withdrawal of cooperation by the police. The breaking of this compromise could come only from a holistic approach coming down from the top of the judiciary with the full understanding of the entirety of the judiciary. Such an approach has not emerged as yet.
- Many decades of the degeneration of the policing system has reduced skill levels in the police, particularly at local and police station levels. This does not mean that persons with considerable training have ceased to exist. However, this only means that such officers have been displaced and it is no exaggeration to state that rank and file officers lack education, training and experience.
- The direct use of torture and extrajudicial forms of punishment have causal links to the overall collapse of the investigative systems which is a result of many of the factors mentioned above. Such abuse of police powers is often intended to give an impression of there still being some kind of policing. The public is made to believe that there is a visible presence of the police despite of the considerable lowering of efficiency levels by constant reminders of the use of violence on citizens. On the other hand the rank and file officers who have no understanding of functions or skills of investigation, are prone to use torture and extrajudicial punishment as the only way to known of as to how to carry out their functions.
- The overreaching consideration for the collapse of the investigating function is the severance with the constitutional form of governance. The deliberate abandonment of the provisions of the 17th Amendment to the Constitution is a political act that has been directed

towards crippling, among other things, the investigative function of the state into crimes in general and human rights abuses in particular.

c. In the body of the report we comment on the consequences of this situation on the prosecution and judicial systems. The executive system from the time it was introduced in 1971 has constantly undermined the independence of the judiciary and the independence of the prosecutor's function exercised through the Attorney General's Department.

1.2 Perception of the impossibility of achieving redress: The consequence of this situation is that there is something worse than impunity that has begun to prevail in Sri Lanka. It is the conviction that has been created that it is not possible to obtain redress against violations of state officers but that the very attempt to get redress will lead to extremely dangerous consequences such as death or very serious harm. Often the only way out for a serious complainant if he wishes to stay alive is not only to leave his locality for to leave the country itself. That is not possible for most people. For most people the option is to accept the pain and the humiliation of the violations of rights however serious such violations may be – murder, mass murder, forced disappearances, rape and the like – and to find some form of a compromise for the sake of survival of the person or their family members. We are reminded of an episode from the deep countryside where rich landlords and the police used to determine the fate of everyone. In that background if a police officer killed a bull belonging to a poor peasant and took it for his dinner, the wife of the farmer had to prepare chilly and ask her husband to take it to the police officer. By this ritual the farmer's family conveys to the police officer that his stealing of their cattle has not generated any animosity between the officer and the family. In this way the farmer's wife tries to protect the life of the farmer and his children from being dragged into fabricated litigation or other hardships that the police officer could impose on them. This condition of some of the farmers in the most rural areas in the 19th century has now become the condition of the ordinary folk in the country including those living in the south.

2. SOME SYMBOLIC EVENTS WHICH SIGNIFIES THE REALITY AT THE PRESENT TIME

2.1 CASE NO. 1 – THE GRENADE ATTACK

The lawyers march

The grenade attack on the house of Mr. J.C. Weliamuna, a senior lawyer who also specializes in human rights law and anti graft law. Two grenades was thrown on the 27th September around midnight. Only one grenade exploded and even caused the collapse of the wall of a neighboring house as well as damaging part of the upper of Mr. Weliamuna's house. had both grenades exploded it is quite likely that his whole family consisting of his and two young children would have suffered extremely serious consequences. Within three days while the event was receiving local and international attention an unknown person tried to enter the Transparency International office of which Mr. Weliamuna is the Executive Director. Despite of a huge protest including a resolution at a general meeting of the Sri Lankan Bar Association and international condemnation at the highest levels no one has yet been arrested as suspects of this incident. Mr. Weliamuna

and everyone else have excluded the possibility of personal motivation for this attack. Whoever designed this attack was hoping for an event of some magnitude to get across the message to the whole society or at least a part of it that would instill a mentality of fear.

Within weeks from this event came an announcement to all human rights lawyers making death threats if they engage in their legitimate duties of the legal representation for those alleged to be terrorists.

2.2 CASE NO. 2 – THE BATTALION OF THE GHOSTS OF DEATH

The notice from the Mahason Balakaya (Battalion): The following is the translation of the full text of this notice:

To those who represent the terrorists today

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

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

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

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

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

Traitors to the nation, mouthpieces of the terrorists,

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

THE ***Mahason Force*** THAT REPRESENTS THE INTERESTS OF THOSE WHO HAVE LOST THEIR LIVES AND THOSE WHO HAVE BEEN MAIMED AT THE HANDS OF TERROR.

This notice comes at a time when there are several well-known cases where suspects have challenged the charges filed against under anti-terrorism and emergency laws as being baseless. At the same time many cases also come before the Supreme Court by way of fundamental rights applications regarding the forced deportation of persons from Colombo and other Sinhala areas and arbitrary forms of registration imposed on Tamils arriving from conflict regions to safer areas. The Supreme Court has made several interventions in order to protect the rights of these persons.

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

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

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

The re-emergence of such death squads is a frightening reminder of the extreme loss of the rule of law in the country. Such death squads in the late 1980s were used against all political opponents of the regime as the reports of the Commissions on Enforced Disappearances clearly demonstrates.

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

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

2.3 CASE NO. 3 - THE CASE OF TISSSAINAYAGAM

J.S. Tisssainayagam is a well known journalist in Sri Lanka. He was the editor of www.outreachsl.com. One of his colleagues was arrested by the Terrorist Investigation Unit (TID). When Tisssainayagam went to visit his friend he was

also arrested on the 7th March, 2008 and later two other persons were also arrested. According to many reports published at the time Tisssainayagam was kept incommunicado. Tisssainayagam's arrest resulted in extensive protests by the Free Media Movement (FMM) and by all the media except the state media in the country. Internationally all the leading media associations and human rights organisations protested the arrest and called for his immediate release.

In the months before and after his arrest there was serious criticism against the journalists by the military commander, Sarath Fonseka and the state media which tried to portray independent reporting on matters relating to the 'war' directly or indirectly helped the LTTE. The attempt to create the image that journalists who write anything other than the promotion of the government's version of 'the war', were being portrayed as direct or indirect agents of the LTTE. The idea of the traitor also became an important tool in the state media which wanted to suppress independent journalism.

This period was also marked by direct physical assaults on journalists. The two most prominent event were the incident relating to the Minister, Mervyn Silva, who with a group of his supporters entered the SLBC and the huge confrontation inside the station which took place thereafter. That event was followed by a series of attacks such as stabbings, attempted kidnappings and other forms of harassments against journalists. All these harassments lead to serious media protests.

The second major event was the abduction of a deputy editor and defense analyst of the Nation, Mr. Keith Noyahr. He was abducted on the 23rd May and returned home the following day after suffering severe physical trauma.

All the reports indicate that this time was marked by an extensive attack on independent media in the country. Tisssainayagam's arrest and continuous detention lead to a continued local and international highlighting of the attacks on journalists and the free media in Sri Lanka. One of the demands of the local and international protest was to produce Tisssainayagam before a court.

Tisssainayagam was detained even after the 90 day period which was time allowed for detention by the TID. However, he was further remanded on the order of the magistrate. Once again the order was criticised by the media movements.

He was finally indicted in court on the following charges:

> That between June 01st 2006 and June 01st 2007, he wrote articles for the 'North Easter Monthly magazine in a manner that renders itself for punishment for committal of an offence in terms of Sections 102 (abetting) and 113 B(conspiracy) of the Penal Code read together with Section 2 of the PTA in that such writings amounted to causing or intending to cause acts of violence and/or communal disharmony and/or bringing the State into disrepute
>
> 2. That in between the same period, due to publications specifically listed in annexure X of the indictment, he committed the above stated offences
>
> 3. That by accepting money from non-governmental organisations for the publication of the said 'North Easter Monthly magazine' in a manner that amounted to a terrorist act in terms of Reg. 6 read together with Reg. 12 of ER No 7 of December 6, 2006, he committed a punishable offence under the said ER.

The Tisssainayagam case marks a disturbing beginning in the attempt to prosecute writers for their writings. Over a period of several decades the Supreme Court of Sri Lanka in a series of cases the right of

the freedom of expression including the right to criticise the government in power. Of particular importance from among these cases are: Ratnasara Thero vs Udugampola (1983 1 Sri LR 461), Mohittige and other vs Gunatilleke and others (1992 2 Sri LR 246), Armaratunga vs Sirimal and others (Jana Ghosha case) (1993 1 Sri LR 264), Deshapriya and another vs Municipal Council, Nuwara Eliya and others (1995 1 Sri LR 362), Gunawardena and another vs Pathirana, OIC, Police Station, Elpitya and others (1997 1 Sri LR 265), Channa Pieris and others vs Attorney General and others (Ratawesi Peramuna Case) (1994 1 Sri LR 01), Mrian and another vs Upasena (1998 3 Sri LR 177), Wanigasuriya vs. S.I. Peiris (SC(FR) 199/98), SCM 22.9.88, Wijeratne vs Perera (SC(FR) 379/93) SCM 2.3.94, Saranapala vs Solanga Arachchi and others (SC(FR) 470/96) SCM 17.7.1997.

Sri Lanka has also abolished criminal defamation. The attempt to prosecute writers for their writings under the emergency laws and the anti terrorism laws seems to be an attempt to circumvent the legal recognition of freedom of expression which is entrenched in Sri Lankan law. It is further, an attempt to prosecute purely for political reasons. On this basis the AHRC wrote the following comment as a warning of the possibility of the introduction of politically motivated trials in Sri Lanka.

> “Amongst the few great achievements of human kind, the establishment of the idea and the practice of fair trial is one of the best examples of civilisation’s struggle against barbarism. Centuries of the practice of the contempt that power has against justice was defeated by the developments relating to fair trial. Absolute rulers and ruthless religious organisations had earlier used the pretext of trials merely to suppress dissent. By the establishment of basic norms and standards of fair trial human kind has demonstrated that human wisdom can overcome some of the ugly aspects of humanity itself.
>
> Whatever might be said of colonial powers, one of the better aspects introduced during colonial times was the meting out of justice by means of fair trial. If there is anything that is modern in contemporary Sri Lanka, fair trial is certainly the most prominent aspect of it all. Devoid of this aspect Sri Lankan life would be most primitive and barbarous indeed.
>
> It must be admitted that even from the time of the introduction of fair trial in Sri Lanka, there were many factors that inhibited the full realisation of its principles and practices. It took a long time for the development of judges, lawyers, prosecutors, defenders and others to be created. The old feudal 'justice' was based on ruthless, absolute power concepts and ingrained habits of inequality entrenched in a caste based society where equality was an alien factor. Even after a long period of education the old habits of inequality and prejudice were not completely erased.
>
> Besides this there were also other limitations based, perhaps, on insufficient allocation of resources into the development of a justice tradition. As a result there were enormous delays in the administration of the justice process, there were huge deficits in the people's access to justice and there were severe limitations in the development of discipline in the policing service, which operates as the investigator into crimes within this system.
>
> Despite of these and other factors it can be said that a basic system of justice, which is ultimately founded on the cornerstone of fair trial, has been adequately introduced to Sri Lanka.
>
> The essential of fair trial is that the decisions are made by independent and impartial courts that evaluate evidence purely on the basis of norms and standards of justice and upholds the highest standards of rationality. In criminal trials this means that the guilt of any person is decided entirely

on the basis of crimes defined on the basis of law and on the evaluation of evidence based on the principles of law and justice only.

It is now acknowledged that in the recent decades Sri Lanka has ultimately entered into a period of tragedy known as the politicisation of all aspects of governance and social life. The national consensus on this age of tragedy was reflected when the 17th Amendment was almost unanimously passed in order to bring about some basic constitutional reforms in order to get over this national ailment called politicisation.

This attempt to cure the ailment has failed or at least has been abandoned and Sri Lankans today live in an age where all things are politicised. Everyone has acknowledged this aspect of the national tragedy.

The question now is will such politicisation also affect fair trial? Some may argue that fair trial has already been undermined for some time now. However, will there be a dramatic change from fair trial practices to naked political trials? This should be a serious enough question to be pondered upon.

It is possible to point out the major factor that distinguishes a political trial from a fair trial. There have been masters who have formulated the basic notions of political trial and among such masters, a prominent place is held by Andrei Vyshinky, Joseph Stalin's prosecutor. He defined the purpose of trials as a means to send messages to the people. The individuals charged were a matter of no importance at all. Whether a person had committed a crime for which he could be charged or whether the charge can be proved at all, was a matter of no consequence. The person charged was merely a symbol to send a message to others so that they will be discouraged from having any opinions or doing anything that might be considered in a negative light by the regime in power. In the course of a trial reducing the accused to despair by the use of blackmail, threats and physical intimidation was allowed. The accused were even encouraged to contribute to the good of the nation by cooperating with the prosecutors and judges in admitting their own guilt. The accused were brought to such pressure that several of Lenin’s closest collaborators, who fought for the Russian Revolution, confessed that they were traitors to the socialist nation. Such trials gave the impression as being all important, while in fact remaining insubstantial.

In such political trials the people could be tried for holding opinions. In fact, the 'trial' was more directed towards the outlawing and elimination of certain opinions and strongly re-imposing certain other opinions.

Will the next stage of the spread of the disease of politicisation in Sri Lanka be the introduction of political trials and the complete displacement of fair trial? To ignore this question is to remain blind and passive before one of the greatest threats to civilisation itself and one of the few great achievements of humankind introduced to Sri Lanka with whatever limitations.

An AHRC statement dated August 15, 2008.

2.4 CASE NO. 4 – THE CASE OF SUGATH NISHANTA FERNANDO

Sugath Nishanta Fernando who was a complainant in a fundamental rights case and a bribery case was threatened with death if he did not withdraw his cases in June 2008. On September 20th the threat was carried out and he was assassinated in broad daylight. The content of the affidavit he wrote seeking protection to the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission was as follows:

A translation of an affidavit that the deceased Nishanta Fernando made to the authorities seeking protection due to death threats.

I Siyaguna Kosgodage Anton Sugath Nishantha Fernando of 349/2A Jayamawatha Road, Dalupata, Negombo, being a Catholic make oath and declare as follows:

An Affidavit

01 I am the declarant in this case.
02 On 23.6.2008 at around 11 a.m. my wife, Surangee and myself were traveling in my three-wheeler bearing number 205/8052 for going to Negombo hospital to get treatment for my wife for asthma.
03 While going there near the Chilaw, Colombo Road at Dalupata Bridge a lorry belonging to the category Chana bearing number WPL(D or G)/5347. And there we saw Niroshan and Namal, who are known to us and two other persons who are not known to us.
04 As Niroshan and Namal extended their hands and signaled to stop we stopped the three-wheeler at that place. The drive of the three-wheeler in which we were traveling was Ajith. Niroshan and Namal put their heads into the three-wheeler and told us, threateningly, “If you fellows do not withdraw the petition for human rights you have filed against the Negombo police by tomorrow we will kill all of you. We have got the permission of the Negombo police to kill you.”
05 As we were frightened by this threat we turned the three-wheeler back and returned home.
06 Shortly after we came back home we heard a loud banging on the door of our gate and two people who were outside the gate shouting and telling, “Open the Gate. If you do not withdraw the petition we will kill you all by the evening of tomorrow. Police have given us the permission. Open it.”
07 Due to fear we did not open the gate and when we looked over the gate we saw Niroshan, Namal and the two other persons that we saw before. The two persons who were hitting our gate and shouting were Niroshan and Namal. After a short time this group got into a vehicle and went away. I have learned that Niroshan is a person who has fled from the armed forces.
08 It is very clear that the reason why these persons are making these threats to us is to make us withdraw the fundamental rights petition we have filed against several officers of the Negombo police station regarding violations of human rights.
09 Regarding this on the same day (23.6.2008) we went to the Crimes office of the Deputy Inspector General of Police and made a complaint which bears No. SHB345/265.
10 Due to these threats we have become very frightened to remain in our house and we are requesting respectfully to provide protection and create an environment in which we can continue to live our lives.

Signed
Siyaguna Kosgodage Anton Sugath Nishantha Fernando
24th June 2008 at Negombo

The affidavit was signed before Justice of the Peace, Rev. Ghanarathane

On this basis the AHRC also appealed to the HRC, the NPC, the IGP and also the Ministry for Disaster Management and Human Rights to take steps to provide protect to Mr. Fernando. Despite of all the appeals no protection was provided and the assassination was possible.

Following the assassination the wife and two children gave detailed evidence at the inquest inquiry stating that they suspected the police officers who are the accused and respondents in the cases where Mr. Fernando was the complainant as the suspects for the murder. To-date, no one has been arrested and the family and the observers do not believe than an impartial inquiry is being carried out into this murder.

Meanwhile Mr. Fernando's widow has to go into hiding with the two children as they have also received death threats. The family has made complaints but not received any protection.

Sugath Nishanta Fernando's murder and the death threats to his family reveal starkly the collapse of the investigation and protection mechanisms in Sri Lanka.

2.5 THE HIGH COURT JUDGEMENTS IN TORTURE CASES

Two judgements have been given recently in cases filed under the CAT Act that acquitted the accused. The legal reasoning in both cases all fall short of the developments of international law relating to torture and also the locally developed standards of jurisprudence on the evaluation of evidence. In one case, that of the Gerard Perera, the court held that while the evidence indicated that the accused had arrested and brought the victim to the police station, and that the torture had taken place within the next 24 hours when the victim was in custody at the same station, there was no evidence to prove that torture had been perpetrated by the accused officers. The victim has been killed and one of the accused in the murder case was also the main accused in the torture case. The court failed to consider the prosecution argument that the accused failed to provide an explanation of their innocence after a prima facie case had been established against them. In fact, the accused, in their dock statement stated that they had used minimum force to subdue the victim. The medical report clearly established that the victim suffered renal failure, among other injuries, as a result of assault.

In the judgement relating to the torture of Lalith Rajapakse the court misrepresented the medical report stating that it did not contain injuries to the soles of the feet. Whereas, the medical report clearly indicated two injuries to the soles of the feet which the judicial medical officer stated could have only happened due to assault by a blunt instrument. The judge seemed to be unaware of the medical report and the evidence of the doctor lead in court.

In another judgement, that of the torture of Palitha Tissa Kumara in October 2006, which also acquitted the accused, the judgement stated that the use of excessive force (which lead to serious injuries as indicated by the medical report) did not amount to torture within the CAT Act. All three cases have been appealed from.

2.6 THE CONDITION OF THE YOUNG IN THE NORTH

The following is an extract from Special No. 31 dated October 28, 2008 issued by the University Teachers for Human Rights, Jaffna, Sri Lanka. UTHR(J) is a highly respected human rights organisation which has been extremely critical of the LTTE, other Tamil militant groups taking to violence and the Sri Lankan government and the armed forces.

> A number of Christian churches in the Vanni are stridently pacifist. But as a group, they found themselves unable to resist conscription of their young. When one of their young dies in battle, the ministers of the churches and the Pentecostal Sisters have preached at funerals that God in his mercy took away these young persons to spare them the pain of killing others.
>
> Young conscripts, who resist the LTTE as conscientious objectors, are liable for heavy punishment. For this reason several of them have taken personal vows and informed their parents and guides not to worry on their account as in whatever situation they find themselves, they have sworn not to kill, but are ready to be killed instead.

The words are a poignant indicator of conditions of life in the north and symbolises the tragedy.

2.7 LIFE IN THE NORTH AND EAST

> The following passages from the same report - Special No. 31 dated October 28, 2008 issued by the University Teachers for Human Rights, Jaffna, Sri Lanka. UTHR(J) is symbolic of the life of a people who have lost the protection of the state as well as the community.
>
> As another indication, the Government's nominated Tamil leadership, the former LTTE Pillayan group, was meeting the public in Trincomalee. The question was asked why they were killing former LTTE cadres who are no longer combatants. A Pillayan man replied, "*If they had left the LTTE, they should have joined us. If they have not done so, we are bound to treat them as LTTE sympathisers.*" In fact, Karuna and Pillayan had conscripted many of them for the LTTE as children, when they were Prabhakaran's Eastern henchmen.
>
> In the face of this, what would be the fate of the people in a 'liberated' Vanni? For a cadre who manages to escape from the LTTE, family is the first and last line of defence. The foreign humanitarian staff quit well in advance of the deadline set by the Government without forcefully arguing the case of the people they are meant to protect. This places the families of LTTE conscripts in a difficult position. How can they run away without knowing the fate of their sons and 'daughters conscripted by the LTTE, leaving them at the mercy of two sets of predators? That they are running into the dubious protection of what are virtually government prisons, makes the decision that much more heartbreaking.

Having taken out expatriate aid staff, the Government suggested that the local staff of these organisations could work as government volunteers paid by their nominal employers. This has created a painful dilemma for agencies who instilled into them certain ethics appropriate to their calling. As government volunteers, they would report to the government machinery in their area, which has no choice but to take orders from the LTTE and perhaps later, the Government — something they have been trained to resist.

By pulling the expatriates out, the Government has created a situation that has strengthened the LTTE's control over people and resources. A number of articles in the press have raised questions about what this could mean in a conflict where military and political stakes are high, given the LTTE's record of unscrupulous use of the civilian population and 'the Government's proverbial callousness. A particular fear is the control of food rations to locate the people. The other is the distribution of food.

Presently over 80% of the population is displaced and their own resources of food are negligible. Of the three other sources of food, the first is the food rations distributed by the Commissioner General of Essential Services (COBS) to displaced families not resettled during the ceasefire amounting to Rs. 1000 a month. This is all the food supplied by the Government and it covers a very tiny fraction. It is also very slow and also inadequate. The second source is the World Food Programme in an agreement with the CGES, which covers most people, including now most of Mannar District. This aims at providing each person with 2100 calories per day. At the last reckoning the food going into the Vanni to feed an estimated 430 000 people was 750—800 tonnes, while the actual requirement was 1500 tonnes. If the Government believes that the estimated population is excessive, it must tell us with evidence what the real figure is. If not the Government and the agencies open themselves to the charge of starving the people.

The third source and the only one meaningful in an emergency are the INGOs, who immediately provide two weeks of rations to the newly displaced. This source is now in disarray. Although the Government claims to be able to look after the people, its machinery at best is very inadequate for that purpose as seen in the bureaucratic delays and lack of capacity — many government officers are absconding. With a view to blunt criticism, the Government hit upon the idea of allowing UN food monitors to go with WFP food convoys and hand over the food to the government administration. This accomplishes little in overseeing the distribution of food.

It is remarkable that while the Government carries on shelling and displacing people, nearly all the money to feed the displaced comes from foreign donors, who are in turn abused and flayed on the charge of supporting the LTTE, and finally the government gets is own way with them. What it wants them to do next is even more grotesque.

3. AN OVERVIEW OF THE MOST CRITICAL PROBLEMS RELATING TO HUMAN RIGHTS IN SRI LANKA

Any sensible discussion on human rights must address some of the basic problems to be found in the contemporary context of Sri Lanka affecting respect for human rights.

3.1 INCREASINGLY THE LAW IS LOSING ITS BINDING CHARACTER

A law which is not binding is not a law at all. Whether the law is binding or not cannot be judged purely from the text of the law. The text, such as the Penal Code, or many other laws that have created vast numbers of crimes may prescribe punishments. The Criminal Procedure Law may prescribe how complaints into such offences be investigated, prosecuted and adjudicated. There can also be constitutional provisions stating how the law may operate. However, the binding nature of the law becomes operative only in the process of the practical implementation of the law.

The law that people perceive as merely existing in the books but not in real life does not have the capacity to achieve the purposes law. In fact when the public perception of lawlessness, meaning the absence of belief in the practical implementation of the law spreads, such disaffection itself has the capacity to degenerate the situation even further. Politicians and the top bureaucrats who know that the law relating to corruption is not really binding become more corrupt. Criminals who know that the laws relating to murder robbery, theft, rape and other such crimes are really binding in a practical sense takes to such offenses without fear. The police and military officers who know that the laws relating to torture, arbitrary deprivation of life by various means such as forced disappearances, custodial killings and various forms of the killing of persons after arrest where even the arrest can be denied, engage in such things also without fear. Fraudsters may engage in crimes of very great magnitude without any fear of the consequences. Persons who manipulate the electoral process may take to electoral violence and various means by which the voting process itself can be manipulated with the same absence of the fear of any consequences.

The feeling of the non-binding nature of the law affects also civil matters such as contracts and tort. People who are aware that contractual obligations can be violated without expecting prompt and effective intervention of the law to protect the interests of the victimised party can easily engage in many practices that defeat the purpose of the contract. A housing contractor may create houses which may collapse at any time; a vendor who wants to cheat a retailer may give fraudulent cheques knowing that no consequence will follow. A manufacturer may produce products that may harm the consumer, an importer may import products such as medical items, milk powder and the like, knowing that the defects of these products will harm the consumer. Borrowers may intentionally cheat their creditors. Back street money lenders will charges exorbitant rates of interests. Garage owners may substitute valuable parts of a vehicle given for repairs with substandard equipment. Teachers may use their official hours of work to give tuition and to make money. Doctors may find it more lucrative to engage in practices which bring in a lot of money without really providing a service that is in keeping with professional standards and the lawyers may find a thousand ways to cheat their clients. The police will use their powers to arrest persons in order to make money and sometimes for that purpose will collude with lawyers and thus, the act of arresting itself can become a lucrative business. Judges may learn many ways to make personal profits from cases that come before them and the case decisions may become things that are prearranged through various forms of bribes and favours. Powerful politicians may talk to the police and judges and tell them what to do

irrespective of the laws that may be contravened thereby. Suppression of information or the complete falsification of information by responsible authorities with the deliberate view to deceive people can become a normal way of life. Making false documents such as title deeds may become a frequent habit thus depriving legitimate owners of their right to property and creating rival parties who may claim such title after having purchased them on the basis that the transferor had the legitimate title. Falsification of documents maintained by the police themselves may become a more frequent habit. As a result of such falsified documents the courts themselves may be lead to believe in the authenticity of false claimants. Disputes of the types mentioned above can lead people, more and more to take to the use of force directly or through gangsters to settle disputes. In this way murder and other forms of violence may increase a hundred fold.

Naturally the list that is mentioned above is a very incomplete one. It only demonstrates the type of nightmare that every aspect of life can become when the law is perceived to be non-binding. This stage has already been reached in Sri Lanka.

3.2 THE CONSTITUTION IS BEING DISREGARDED AND HAS LOST THE CHARACTER OF BEING THE PARAMOUNT LAW

Sri Lanka drifted away from the liberal democratic constitutional framework partially in 1972 when the then existing coalition government promulgated a constitution which it called autochthonous which under the pretext of asserting the sovereignty of the parliament in fact, undermined the judiciary. The 1978 constitution was a complete abandonment of the liberal democratic principles of constitutionalism though this constitution still retained some of the jargon of liberal democracy. The 1978 constitution created an all powerful executive in which the power was entirely concentrated on one person called the executive president. In fact, what the 1978 constitution created was a constitutional monstrosity although at the time it only appeared as a tailor-made constitution to suite the political ambitions of the first holder of the executive presidency, J.R. Jayewardene who was also the creator of this constitution. Thirty years of the experience of this constitution has had the effect of destroying all the public institution of the country from functioning on the basis of norms and standards by which such institutions are normally run. Instead direct control over all institutions has been established.

The irony is that all the political parties by the late 90s had come to a consensus that the 1978 constitution was a monstrosity and that it had the effect of destroying all the internal mechanisms of public life. However, it has not been possible for the political parties of the country to find a way out of the problem by discarding this constitution and adopting a constitution that would reinforce a liberal democratic system of governance.

A partial attempt for reform was made in 2001 by consensus of all parties to bring an amendment that would create obstacles for direct presidential control of the public institutions. The method suggested was to create a Constitutional Council, members of which are selected to represent all political parties and this body would consist of persons of proven integrity in the country. Their function was to select, on the basis of merit, a number of persons called commissioners in important public areas such as public service, police, the electoral system, public media and other commissions such as the Human Rights Commission of Sri Lanka. These other commissions would have the sole power over appointments, transfers, disciplinary control and dismissal of public servants coming under these commissions.

On the basis of the 17th amendment the Constitutional Council was created which in turn helped to create several of the other commissions. However, the election commission was never created as the successive presidents refused to allow the Constitutional Council to create the election commission. Within the short period of three years the commissioners that were elected contributed to some degree to be a buffer against the unlimited power of the president.

Naturally the all powerful presidency understood the conflict between himself and the limitations imposed by the Constitutional Council. The result was that under various pretext the government did not appoint the Constitutional Council and thereby the 17th Amendment to the Constitution was confined to the book and is no longer operative.

Mahinda Rajapakse

The statement from the executive president clearly indicated that he does not consider himself obliged to follow the Constitution if he feels that it is defective. The 17th Amendment is declared by the president to be defective and is in need of amendments. This task has been given to a Parliamentary Select Committee. Thus, the operation of this constitutional provision is suspended by the mere wish of the president.

The controversy on the 17th Amendment is perhaps the clearest evidence of the way constitutionalism has lost its relevance in Sri Lanka.

3.3 LOSS OF RESPECT FOR TREATY OBLIGATIONS

Sri Lanka clearly does not see the obligations arising from its membership of the United Nations and being party to UN conventions as creating serious responsibilities. The government spokesman openly refers to human rights as western and anti-nationalistic. It has been portrayed as the white man's burden. We have summarised below the government's failure to implement any of the recommendations made by the UN agencies relating to human rights.

While the government engages in such attacks on the very concept of human rights, extreme right wing organisations portray human rights as a conspiracy pursued by imperialism in order to subjugate the less developed countries. The subject of human rights is also referred to as a strategy of the former colonial powers in order to maintain their hold on their former colonies. Most of all human rights have been portrayed as aiding and abetting terrorism.

A major policy line of the government supported by these extreme right wing sections is to highlight that law, including the international law, has no relevance in times of war and that in the war against terrorism everything is fair. In this light local as well as international intervention on human rights is seen at best as the work of intruding fools. However, more often such work is seen as people who are traitors knowingly or unknowingly.

The portrayal of human rights as a sinister plot is a constant theme in the government media. There are attempts to brainwash the population to believe that all calls for the elimination of torture, extrajudicial killings, forced disappearances, for fair trial and judicial independence, and any concern shown for the

victims of human rights abuses including displaced persons as parts of a sinister scheme to undermine the military efforts to eliminate terrorism.

The government, thus, is caught in a severe contradiction in trying to create the impression that it respects the conventions it has ratified and wants to be a part of the global effort to protect and promote human rights on the one hand and on the other the need to keep up a strong media campaign to brainwash the population that human rights is a sinister plot against the nation. A study of the documentation from the executive as well as the spokesman for the government and the government media manifests this contradiction sharply.

3.4 MAKING THE INVESTIGATIVE MECHANISM UNDER THE CRIMINAL PROCEDURE LAW AND MILITARY INOPERATIVE RELATING TO INVESTIGATIONS INTO HUMAN RIGHTS ABUSES.

Sri Lanka has a sophisticated system of law relating to investigations into crime as laid down in the Criminal Procedure Code. The code has been amended on many occasions in order to incorporate new developments. In the past Sri Lanka was also able to develop the competence of the criminal investigators. Although there may be areas of training that can be improved such as the use of forensic science, the actual apparatus that existed was quite capable of absorbing these developments.

By deliberate interference into this system by the executive this system now lacks independence to operate. The punishment of investigators who do their jobs in terms of professional standards with integrity has become a common feature and this change has become part of the popular perception among the Sri Lankan people. Particularly the lawyers, prosecutors, judges who are more knowledgeable about the system know how much the system has succumbed to the manipulation of the politically powerful elements.

Non-investigation into serious human rights abuses by the military and the police have become an entrenched part of the state policy. This policy developed over several decades particularly due to approaches to counter-insurgencies beginning from 1971. As mentioned earlier the policy line that considers that dealing with such counter-insurgencies cannot be conducted while at the same time respecting the law is also the basis for interfering and suppressing the investigating machinery into human rights abuses.

Military Police: Before this counter-insurgency mentality became the dominant thinking mode relating to investigations the military had its own military police to investigate into any of the alleged abuses. Even at the movement while such a branch exists in name there is no evidence to suggest that the military police investigate against the military in a credible fashion. In such well-published allegations as the killing of the 17 aid workers of Action Contra La Faim, the killing of the five students in Trincomalee, allegations of abductions and forced disappearances, the military police, if they have investigated the matter would have more easily found how the incidents had, in fact, happened. Instead of speculating into the manner in which these things could have happened the government could have requested reports from the army authorities on the basis of the conduct of investigations by the investigation units of each of the branches of the Armed Forces. The clear absence of such reports is an indication of the breakdown of credible inquiries within the armed forces themselves into the allegations of abuses by the armed forces.

The lack of credible investigations by the investigating units of the armed forces themselves into allegations of abuses is also an indication of the change of approaches to the question of military discipline. When there is tolerance of abuses as an unavoidable aspect of military operations the consequence will be to downgrade the levels of discipline. This too, results in discouragement of credible inquiries into allegations of human rights abuse.

Police investigations: The same pressures to prevent abuses by the military has even more been incorporated into the mentality relating to investigations by the police. There is bulky documentation of the abuses of the police investigations. Particularly the reports of the commissions enquiring into forced disappearances and the transcribed documentation at these commissions which is also available, demonstrates the scale of denial of taking down of complaints by the police and the absence of any investigations into the complaints which recorded. The very appointment of the commissions many years after the incidents was for the purpose of providing an opportunity for the relatives of disappeared persons officially counted at around 30,000 to record what they knew about such disappearances. Even in these cases where the commissions thought that they had adequate information for further action, hardly any action was taken.

Inaction of the police into complaints which directly or indirectly relate to counter-insurgencies later spread to the normal criminal investigation processes. The complaints about abuses of the police during investigations relating to crimes under the Penal Code such as murder, robbery or fraud are generally ignored. Where some investigations take place victims and their witnesses come under severe threats including possible assassinations.

Usually when complaints are made by lawyers or human rights organisations some investigations are initiated but these are done usually by the high ranking officers of the same areas where the abuses have taken place. It is quite rare for any of such inquiries done by superior officers of the same police officers who are accused of abuses, produce any credible results. Usually, these investigations are dragged on for a long time. Such long delays provide the opportunity for the perpetrators of such abuses and their colleagues to harass the complainants.

The reports also show that they high ranking officers try to persuade the complainants to arrive at compromises and abandon their complaints. Though the Police Regulations also provide procedures for investigations these are not usually followed. In essence the criticism against inquiries by high ranking officers is that they are conducted in an atmosphere of intimidation towards the complainants and without credible attempts to win the confidence of the complainants about the legitimacy of such inquiries.

Due to constant criticism against such inquiries by the high ranking officers of the same areas from about 2003 to 2006 there developed an initiative to refer serious allegations of human rights abuse to Special Investigating Units (SIU) of the Criminal Investigation Division (CID). The reference was often done by the Attorney General's Department or the Inspector General of Police. In some instances the Human Rights Commission of Sri Lanka (HRCSL) and the National Police Commission (NPC) also requested such inquiries by an SIU. In a few instances even the Supreme Court has ordered such inquiries.

Such references to a competent group of investigators did bear some results. Over 60 cases relating to torture were filed under the CAT Act, Act No. 22 of 1994 by the Attorney General's Department on the basis of inquiries done by these SIUs.

However, since the time the 17th Amendment became inoperative and the NPC abandoned its strong policies pursued under the former commission, the reference of cases to SIUs has been abandoned except

in very rare instances. The most prominent reason is the resistance that developed from the officers who were affected by such inquiries and other officers who feared them. The agitation by these persons found support from the high ranking officers of the police. There is, thus, a very heavy organised resistance against inquiries into abuses by the police through independent and competent investigators.

Since 2006 the actions inquired into by the SIUs have diminished and the filing of indictments for human rights abuses in the High Courts by the Attorney General's Department has also diminished.

The communications with the Attorney General's Department indicates that there is a deliberate policy of discouragement of prosecutions into police abuses. One glaring example was the case of Gerard Perera. When the High Court of Negombo acquitted the police officers who were charged with the torture of Gerard many human rights organisations made representation to the Attorney General to point out the glaring errors of law and fact in the judgement and requested that the AG appeal. A lawyer for the widow of Gerard Perera also requested such intervention. No action was taken by the Attorney General's Department and not even replies were sent to the requests made. This is in contrast to a few earlier cases under the CAT Act when the AG officially filed appeals on a few of the judgements of the High Court where there was reason to believe that there were serious errors of law in these judgements.

Though the investigative function in Sri Lanka is exercised by the police and the prosecuting function is exercised by the Attorney General's Department there are underlying links between the two. The policy on prosecutions is developed and carried out at the Attorney General's Department. When there are clear messages of investigations into crimes from the Attorney General's Department the investigation agencies pay heed to messages. However, when the message emanating from the AG is a negative one naturally the investigators are discouraged from pursuing their investigations because the exercise at the end is a futile one.

What exists in terms of criminal investigations in general and investigations into human rights abuses in particular is a situation of chaos which had been deliberately generated. This chaos generates inaction. Once in a monolithic institution such as the police inaction begins to develop there are many who manipulate the situation for their own benefit. Thus, the criminal investigation process can turn into the very opposite. The harassment of complainants and the protection of the perpetrators can become the objectives of the "investigations". Once these changes take place people begin to notice the metamorphosis of the system and become discouraged to make complaints or to pressurise about having their complaints investigated.

The change that comes in the will of the population to distrust the investigating process can lead to many results. Some may resort to the criminal elements and the underground to have their problems sorted out. The direct use of violence against perceived enemies through the criminal elements can become a large enterprise. In this process the criminal elements who find many lucrative avenues for their existence can make their influence felt into the policing establishment itself. Thus, the police criminal link may become a visible factor in local life. This naturally will aggravate the investigating agency's metamorphosis into a perpetrator protecting agency.

Once the power of the criminal element and the linkage with the police becomes consolidated the political establishment itself begins to rely on this for their benefit. Thus, the electoral processes can come under considerable manipulation of this new combination of criminal and police elements, often for the benefit of the politicians representing the ruling regime. Several of the past elections have clearly demonstrated the tremendous developments in this aspect.

Unscrupulous business organisations also exploit the power of the criminal underground and the police that play a subservient role. Fraud can take place on a very large scale under such circumstances. Recent reports of the massive fraud by some "finance companies" have demonstrated the extent to which fraudulent elements can operation without fear of the legal consequences.

Serious undermining of the implementation of the Criminal Procedure Code is one of the most important factors that adversely affect the rule of law system in Sri Lanka.

3.5 THE UNDERMINING OF THE PROSECUTION SYSTEM OPERATED THROUGH THE ATTORNEY GENERAL'S DEPARTMENT

For many decades now the prosecutors of Sri Lanka have often been called upon to perform the contradictory role of being the defenders in many cases. These are usually cases in which police and military officers or those who work under their direction are the alleged perpetrators.

The evolution of the prosecutors playing the role also of defenders developed in a complex way. One of the most prominent ways by which the Attorney General's Department has been called upon to play this dual role is when it is called upon to assist inquiries into serious crimes involving state officers. The instances of which this has happened are many. Perhaps one of the outstanding examples is the case of the prison massacres in July 1983. In this case two officers from the Attorney General's Department both of whom were later to become Attorney General have been criticised for their role in subverting the course of justice during the investigations into these two massacres which took place in the Welikada Prison. This story as recorded by Ranjan Hoole in a recently published article is worth quoting here in full.

3.5.1 Impunity, a debilitating fixture in state culture - 25 years after Welikada massacre

Ranjan Hoole

Colombo's Welikada high security prison was the scene of two massacres of Tamil political prisoners during the communal violence of July 1983, first after lunch on July 25 claiming 35 prisoners and second, about 4.00 PM on the July 27 claiming a further 18. On both occasions Secretary of Justice Mervyn Wijesinghe asked Colombo Magistrate Keerthi Srilal Wijewardene to hold inquests with the assistance of Tilak Marapone and C.R. de Silva (the present AG) from the Attorney General's Department. No culprits were identified and the case was hushed up.

The massacres made life a living hell also for those on the spot, who driven by moral aversion tried unsuccessfully stop them, but were not even allowed to clear their names.

The inquest
One of them, Superintendent of Prisons (SP) Alexis Leo de Silva, upon hearing the alarm on the 25th, rushed into the mob in the Chapel Section with ASPs Amarasinghe and Munaweera, followed by Deputy Commissioner (DC) Cutty Jansz, but to little avail. Leo felt very angry that the army unit at the prison headed by Lt. Mahinda Hathurusinghe, 4th Artillery, did nothing to stop the murder, and later also blocked emergency hospitalization of injured survivors. A lieutenant would hardly have dared to override DC Jansz and doomed the survivors, without prompting from Army HQ. While some prison staff protected Tamils, others, including a jailor, attacked the survivors in the compound. At the inquest on the 26th, Leo wanted to place the truth on record.

Magistrate Wijewardene left out chunks of his testimony. Leo's son Lalanath de Silva recently told us, "An AG's department counsel called my father outside the room where the inquest was being held and attempted to persuade my father to go along - pleading that the truth would place Sri Lanka in a very adverse position internationally." At one point the Magistrate became so angry that he refused to take down Leo's testimony.

The Police under Detective Superintendent Hyde Silva questioned the survivors on the 26th following the Magistrate's order. To Suriya Wickremasinghe of the Civil Rights Movement belongs the credit for painstakingly seeking out survivors of the massacres, interviewing them and keeping the issue alive. She told us that survivor Manikkadasan in his statement to the Police, blamed two jailors of active complicity. A thin jailor warned him that mention of names might lead to similar jeopardy from inmates.

Eyewitnesses
Suriya believes that the second massacre owed to earlier survivors being also eyewitnesses. On the 27th Lt. Nuvolari Seneviratne of Army Engineers commanded the platoon outside the prison. Hearing a commotion where the survivors had been re-housed, Nuvolari radioed the Duty Officer (DO) at Army HQ. He told the Junior DO who answered that he wanted authority to go into prison and disperse the mob. The Junior DO gave him a telephone number and asked him to phone the DO (a colonel). Nuvolari used the coin phone at the entrance to ring the number at Army HQ. The DO told him to stick to standing orders and stay outside prison, or would face court-martial if he went in. Nuvolari asked for the Army Commander. He was refused, being told the Commander was with President Jayewardene, and relief was being sent to deal with the problem. (Cutty Jansz had also phoned Army HQ.)

The relief, commandos under Major Sunil Peiris, promptly went in and saved 19 of the 37 prisoners. Nuvolari felt the deaths to be sheer murder, which his platoon could have prevented if not constrained by HQ. At the second inquest, the AG's men, Marapone and de Silva, were keenly selective. Leo who was in prison the whole day, had at the first forebodings asked DC Jansz to expedite the removal of the survivors to safety. As if by design, the attack began when he went for a late snack in lieu of lunch, causing him to rush back. Neither he nor his ASPs were called upon to testify at the inquest.

The AG's men and Magistrate tried to frame a jailbreak attempt that supposedly left inadequate resources to prevent the massacre. The AG's men and Army's lawyers importuned Lt. Seneviratne to tell the inquest that he was outside the prison controlling a jailbreak. He refused. The world had crashed around the 22-year-old sportsman from Trinity College who joined the Army with high hopes. Major Sunil Peiris stepped in saying not to harass Nuvolari and if he won't, he won't, and if their object was having someone from the Army testify, he would.

To a leading question, Major Peiris answered with professional precision, "I did not notice any prisoners attempting to break out. Therefore I gathered that the attempted mass jail break had been contained before our arrival!" Undeterred by Peiris' refusal to perjure, the Magistrate summed up, "...prompt and efficient steps taken by the special unit of the Army under witness Major Peiris had effectively prevented the jail break ... and helped quell the mob which might otherwise have caused [even greater death]."

Taming scandals and condemning posterity

In July 2001, President Kumaratunge appointed the Presidential 'Truth' Commission on Ethnic Violence headed by former Chief Justice Suppiah Sharvananda, with S.S. Sahabandu and M.M. Zuhair. Suriya Wickremasinghe had repeatedly been thwarted in her efforts to obtain from the Police, testimony they received from the survivors of the first massacre. The Commission, which relied heavily on Suriya's work, could have followed this up to further its investigations, but did not.

Tamil survivors named to us Jailor Rogers Jayasekere, Jailor Samitha Rathgama and Location Officer Palitha as the protagonists on the ground. Senior prison officials have indirectly affirmed Jayasekere's culpability. His family were strong UNP supporter from President Jayewardene's old Kelaniya electorate, shared in 1983 by Ranil Wickremasinghe and Cyril Mathew. Rumours charged that gangsters under Gonawala Sunil of Kelaniya UNP fame were brought into prison to assist the second massacre.

Vehicle check

Nuvolari Seneviratne's testimony bears relevance here. His soldiers at the entrance checked the vehicles going into the prison to ensure they were the government's. Jail guards just inside the entrance did the identity checks. The soldiers at the entrance told Nuvolari that some of the official vehicles entering took underworld figures, but exited without them. Asked who the underworld figures were, Seneviratne replied, "I did not see them myself and there is no way my men would have known them. But the jail guards knew them as persons in and out of jail. They told my men."

During the second massacre, Journalist Aruna Kulatunga wrote recently, he saw airline hijacker Sepala Ekanayake coming out of the prison gates screaming "kohomada ape wede" (How is our job?), felled by a thundering blow from Major Sunil Peiris. Peiris had told me something more, that Sepala was carrying a severed human head.

Senior prison staff dismissed this as fantasy. I published it in my book Arrogance of Power, since I knew Peiris. I had checked back with Peiris, who, a little hurt, explained, 'You know your Bible? It was like John the Baptist's head on a charger'. It happened before Peiris saw the scene of crime. Peiris' action makes sense only if Sepala's utterance, reported also by Kulatunga, drew his attention to something revolting. Peiris' testimony at the inquest speaks for truthfulness and accuracy that are hallmarks of a good officer. Nuvolari's refusal to perjure again stands his testimony in good stead.

About when Peiris' party arrived, Nuvolari's men drew his attention to a fresh hole in the prison wall near the cricket ground. Upon inspection he saw an Air Force truck standing by. No words were exchanged. The Army's legal unit also removed Nuvolari's standing orders and the logbook with records of vehicles entering. On 27th, the Tamil detainees fought back, some attackers were mauled and soldiers shot some, but there is no account of casualties. SP Leo de Silva felt impelled by his honour to place the truth on record. His later investigations were stalled by an order from Commissioner Delgoda. Then Justice Minister Nissanka Wijeratne threw Leo out of service at the age of 56 by refusing a routine extension. The total cover up and a diversity of coherent testimony

pointing to the nefarious deployment of broader resources, gives surely the lie to representing the massacres as an outburst of subaltern patriotism. No perpetrators were named and Sepala walks free. Is it not because they have beans to spill?

Whether or not directly intended, what our commissions and AG's Dept. achieve is to protect the State's inbuilt abuses that have gone over tolerable limits. The blame for its repeated crimes is invariably shuffled off to subaltern sectors. The routine official prevarication also leads to Sinhalese seeing the ethnic problem as Tamils making mountains of molehills, and the solution as being to knock them about, pat them on the head and give them sweets to suck.

Regrettably, few Sinhalese would be shocked that Attorney General C.R. de Silva guides important commission proceedings such as the ACF investigation. He, or Marapone, tried to stop Leo de Silva 25 years ago, pleading that 'the truth would place Sri Lanka in an adverse position internationally'. Lanka would have redeemed itself had all such crimes been faced squarely long ago, rather than make fixers of truth a permanent feature of the State. On a further point, the prison murders of rising Tamil leaders Dr. Rajasundaram, Kuttimani and Thangathurai led to the fracture of the original Tamil youth leadership and the rise of Prabhakaran. That is another intricate story.

3.5.2 The conflicting roles of defender and prosecutor: The same issue of playing the role of defender at the initial stages of the inquiry in cases where evidence is available have come up in all inquiries in which the officers of the department had to play a role at the inquiry stage. This happened mostly in cases where there was a popular outcry for an inquiry following a certain incident. In order to satisfy the public sometimes commissions are appointed together evidence or to monitor the inquiries. Sometimes such inquiries take place at the inquest stage where decisions of a magistrate at the initial stage may decide as to whether there will be any further inquiries at all. At this stage if some vital evidence is suppressed or distorted that may lead to conclusions obstructing the due proves of law being pursued any further. For example if at the Magistrate's Court inquiry into a prison massacre leads to the conclusion that it was just a mob attack this can lead to the conclusion that trying to identify the perpetrators as well as those who were part of the conspiracy for the attack is no longer needed.

The suppression of evidence at the early stage can be done in many ways. When a witness is called before an inquiry at the initial stage questions may be asked in order to contradict the statements made to the police at the first instance by the same person. Sometime witnesses particularly state officers who come as witnesses can be instructed to make statements denying earlier statements or giving a different version of the events to the original statement. Lay witnesses can also be intimidated either not to attend the inquiries or to give false evidence so as to subvert further inquiries. When witnesses who have initially come forward to give evidence do not come to give evidence at these commission inquiries or inquests that may lead to the conclusion to the effect that no reliable evidence is available to proceed with the case. There are many other subtle devices by which the witnesses can be intimidated or mislead.

The result of all this would be to come to the conclusion that there is not case to prosecute. It is an absurd situation when the would-be prosecutor participates in a process with a view to arrive at the conclusion that there is no evidence to proceed.

3.5.3 Defender at UN forums - Once again the conflict between the Attorney General's role as a prosecutor comes into conflict with the role that it also plays in being the advisor for government delegations attending UN forums and other international and local forums related to human rights issues. The role of the government delegations in these matters is to deny all allegations and portray a picture of the absence of human rights abuses.

Playing this role of having to deny human rights abuses is done through many activities. One such is to prepare reports for various UN forums. In preparing reports for the purpose of denial often facts have to be distorted and manipulated. For example when the government delegation made a report to the CAT Committee xxxxx the government report tried to answer the allegation of routine torture practiced at police stations in Sri Lanka by trying to manipulate figures to the effect that, in fact, occurrences of torture were negligible. Where the argument was built was to select a limited number of cases that had been reported by one agency and compare it with the number of arrests that had taken place during the relevant period. In this manner falsely selected figures of torture cases when compared to all the arrests that had taken place in the country gave the impression of a thin percentage. To do this the writer of the report had to suppress the fact that is repeated by almost everyone including the Human Rights Commission of Sri Lanka that the number of reported incidents of torture is only a fraction of the actual extent of torture that is taking place in the country. Further the report had to be silent about the enormous fear psychosis prevalent in the country particularly in rural areas which constitute the largest areas of the country of people to complain about state officers in general and police in particular. Further even the figure of reported cases given was significantly minimised. This report was authored by an officer of the Attorney General's Department.

When the department has to deny human rights abuses such as torture, forced disappearances, extrajudicial killings and the like it cannot at the same time do the job of the prosecutor who has the duty to prosecute all cases of torture or human rights abuse which amounts to crimes under the Sri Lankan law. If the Attorney General prosecuted all the cases then the figure would be too big and would a cogent argument against the denials of the government. If fewer prosecutions are done to give the impression of fewer abuses then the role of the prosecutor fails.

3.5.4 What is even more disturbing is the fact that in the media campaign by the state and others who have an interest in obstructing the protection and promotion of human rights the activities of the department play a prominent role. In fact, in some instances the Attorney General and senior state officers have appeared on panels before the media in order to defend the position of the government as against serious allegations of human rights abuse in the country. One such highly published incident was the government media conference to attack the report of the IIGEP who were tasked with observing the proceedings of the Presidential Commission of Inquiry into some serious abuses of human rights. There are many other instances in which the Attorney General's Department officers are called upon to create the impression of the falsity of the allegation of human rights abuse for media purposes.

The acts of the Attorney General's Department as media spokesmen affects the prosecutor's role through the change of public perception about the department. When the public see in the media that the spokesmen from the department are engaging the denial of abuses of rights naturally the question arises in the public mind as to the sensibility of approaching the same department or relying on the same department to prosecute alleged offenders of human rights abuses. By repeated performances the deep impression that has been made in the public in Sri Lanka is that the Attorney General's Department is very much linked with the security apparatus and it is obligated to defend this apparatus at all costs. The political task of defending the public security apparatus overrides all other obligations including the tasks involved as a public prosecutor. The conflict of interests involved is a matter that is part of the perception of the people in the country.

3.5.5 IIGEP critique of the AG Department's role - These contradictions in the Attorney General's Department were highlighted in the final report of the IIGEP:

(a) The role of the Attorney General

The IIGEP expressed its concern about the role of the Attorney General from the very beginning of its work. Justice Bhagwati recommended to the Commission to remove members of the Attorney General's Department from the inner workings of the Commission as early as 27 February 2007 by reason of the apparent conflict of interest. The IIGEP's concerns were repeated in all subsequent public statements, and in many other communications, written and oral, with the Commission, Ministers of the Government of Sri Lanka, and with the President himself.

The fundamental conflict of interest, in the opinion of the IIGEP, arises out of the position of the Attorney General as the first law officer of Sri Lanka and chief legal adviser to the Government. The Attorney General is legal adviser to all levels of the national Government, including the armed and security forces, and the police. In a Commission whose tasks include an inquiry into the efficacy of the original investigations into certain cases, including investigations and inquiry into certain incidents involving the armed and security forces and the police, the Attorney General's staff is thus potentially in the position of being a subject of the inquiry, and is, in any event, not an independent authority.

The Attorney General rejected the charge of conflict of interest. He took the view that his officers had played no role in the investigations of any of the cases under review by the Commission, a view which is not supported by documentation provided to the IIGEP by the Commission. At a later time, the Attorney General offered to remove himself and his officers from the Commission, if any of the Commissioners so requested. No Commissioner did so.

One of the witnesses at the Presidential Inquiry who gave evidence through a video link

The Commission itself rejected the notion of a conflict of interest and stated that it is the tradition for the Attorney General to play a leading role in commissions of inquiry. A study made of previous commissions of inquiry commissioned by the IIGEP revealed that not all previous commissions of a similar nature have given a role to the Attorney General. In addition, the Commission stated that it did not have the funds to engage independent counsel to act as counsel assisting it. Nevertheless, it did appoint counsel from the Unofficial Bar to assist it in the Trinco 5 and the Pottuvil cases, and the Attorney General's Department did not play a leading role in these cases.

An astonishing event occurred in November 2007 at the joint plenary meeting held between the Commission and the IIGEP. A letter dated 5 November 2007 from the Presidential Secretariat and addressed to the Chairman of the Commission was revealed to the meeting. It stated that:

The President did not require the Commission to in any way consider, scrutinize, monitor, investigate or inquire into the conduct of the Attorney General or any of his officers with regard to or in relation to any investigation already conducted by the relevant authorities.

This letter, which also extended the term of office of the Commissioners, was stated to be by way of a "clarification" of the scope of paragraph 5 of the Presidential Warrant establishing the Commission. The IIGEP was deeply disturbed by this communication. Even some of the Commissioners appeared to be taken aback. The IIGEP considered that such a "clarification" from the President could only be viewed as a directive from the highest level, rather than as a suggestion to the Commission to be taken as an advice. It was the single most important event prompting the IIGEP to decide shortly thereafter that it should bring its presence in Sri Lanka to an end.

The IIGEP is of the opinion that this statement, on behalf of the President, constituted a direct interference in the independence of the Commission in two ways. Firstly, the "clarification" not only seeks to restrict, but also transforms, the mandate, thereby impinging on the independence of the Commission. The effect of this clarification is that members of the Attorney General's Department who might legitimately be called to give evidence, are granted immunity. Secondly, it undermines and reduces the Commission's own choices as to which influences and aspects of the original investigations in the various cases should be further investigated. This fundamentally undermines the ability of the Commission to discharge its mandated goal of ensuring that the original criminal investigation was carried out properly and effectively, and in case of its failure, clarifying what led to such failure, which was a central purpose of the establishment of the Commission. Any such interference or unwarranted influence, in the opinion of the IIGEP, erodes public confidence in the Commission's capacity to function in an independent and transparent manner, and could impede the search for the truth. Moreover, the erosion of public confidence further deters potential witnesses from coming forward.

The IIGEP was greatly strengthened in its opinion on this vital question by the opinion it solicited from two eminent Sri Lankan jurists with long practical experience in the law. This opinion concluded:

The CoI is required to examine and comment on the adequacy and propriety of investigations already conducted. Necessarily, therefore the Col must scrutinize the role of the Attorney General and officers of the Attorney General's Department who supervised, instructed and/or gave directions to the investigators. Using the Panel of Counsel, consisting of those very same officers and/or their colleagues, will undoubtedly give rise to a public perception of a conflict of interest and even of an appearance of bias. The public, and especially victims – to use the language of the Disappearances Commission – will be 'very much affected by the awareness that State Officers are investigating into complaints against Officers of the State.' Independent counsel are a sine qua non

An amendment[2] to the Commissions of Inquiry Act 1948 formalises the role of the Attorney General in all future commissions. The newly enacted Bill goes beyond the right of the Attorney General to be present in Commissions of Inquiry. It gives the Attorney General the right to provide counsel to assist the present Commission of Inquiry as well as all future inquiries under the Act. This confirms the IIGEP's apprehension regarding the absence of political will and the institutional inability of Sri Lanka to conduct human rights inquiries in accordance with international norms and standards.

3.6 FAIR TRIAL AND JUDICIARY

Fair trial has suffered severe setbacks for many reasons. Some of the more prominent reasons are:

Undermining of the judiciary by the Constitution – We have dealt the undermining of the judiciary by the separation of powers and the absolute powers of the executive president earlier. The direct result of this constitutional change and about 30 years of practices that develop under the Constitution has affected the judiciary in many ways. It has created an overwhelmingly popular feeling that the executive interferes with the judiciary both directly and indirectly. The politicisation of the selection process of the higher judiciary and the virtual loss of expectations within the judiciary to be promoted on the basis of merit and seniority has created great uncertainties within the judicial system. As security of tenure has been considered universally as one of the paramount considerations with regard to the independence of the judiciary such uncertainties about promotions appointments and dismissals is in violation of the norms and standards required for the maintenance of an independent judiciary.

This same process of uncertainty has spread in the worst way among the minor judiciary. The UN Human Rights Committee in the case of the dismissal of a former district court judge. Soratha Bandaranayake, expressed the view that the denial of a fair hearing to the former district judge by the judicial service commission was a violation of article 25 of the ICCPR, guaranteeing the right to access to the civil service and article 14 (1) which guarantees fair trial. There have been large numbers of similar complaints regarding dismissals although many of the complainants have not pursued their complaints up to the UN Human Rights Committee.

Impunity of the executive – The constitution itself provides that the chief executive should not be called before any court by any suit. There is blanket impunity. The courts so far, have also declared that there is such blanket impunity. This has gone on for 30 years. For the first time after the 1978 Constitution notice has been issued to the executive president only in August, 2008 regarding the non-implementation of the 17th Amendment. This has happened only within an atmosphere of a perceived rift between the Supreme Court and the executive in the months preceding such issue of notice.

Impunity to the police, military and other state officers through emergency and anti terrorism laws – For decades now Sri Lanka has been under emergency and anti terrorisms laws within which many of the laws of the country remain suspended. Under these special laws access to the judiciary which is normally available is restricted severely. As a result many events and incidents are not subjected to judicial scrutiny at all. The absence of judicial scrutiny particularly in the criminal justice process means severe restrictions in investigations and prosecutions. Thus, impunity of state officers is assured by the limitations created in the process of investigations and prosecutions. We have dealt with this issue at greater length earlier.

Perception of the deterioration of judicial competence – The factors mentioned in the above three paragraphs naturally have the influence of deteriorating the qualities to go to constitute the competence of the judiciary. The popular perception of such deterioration of quality is the subject matter of constant discussions among lawyers as well as the litigants. Many judgements from high courts and lower courts demonstrate remarkable limitations of understanding of basic principles of criminal law, civil law and laws relating to procedural fairness. In a climate where there are widespread fears of interference with the

judiciary by the executive or by powerful persons and also in a climate where settlements are encouraged without weighing the fairness of such settlements it is not surprising to see the degeneration of the quality of the judiciary.

The absence of witness protection - A well known principle of fair trial is that the outcome of the trial depends on witnesses. If witnesses do not come forward at the initial stage of the investigations the investigators have to work on very limited amounts of information about the things they are supposed to investigate. The situation becomes even worse when even the limited number of persons who have initially come forward do not come before courts to give evidence. The situation becomes even worse when many of the witnesses who come forward due ot fear or favour change their original versions and give false evidence in court. To this list it may also be added that when the willing and honest witnesses are being killed before giving evidence then the court is left with little option than to acquit the alleged culprits. The direct result of that is many persons become more reluctant to come forward to give evidence in court. Fear of the absence of protection makes courts and the trials a matter of irrelevance to the larger sections of the population.

Delays – delays in adjudication in Sri Lanka is not a new phenomena. However, in recent times the consequences of these delays have become worse due to the environment of insecurity in the country. The assassination and intimidation of witnesses is encouraged by delays. The opportunities to destroy documents, to buy adverse witnesses and also to engage in undue influences on the lawyers of the opposite side and even judges is provided by the process of long delays pending trials. Delays further strengthens the feeling of the irrelevance of the law and encourages people to look for alternatives, however, unseemly such alternatives might be.

Due to all these factors and the overall environment in the country which has been described in other parts of this chapter, the right of fair trial has suffered enormous setbacks. The figure of a 4% of convictions in criminal cases indicates the lowest depth to which the system has failed.

3.7 INTERNALLY DISPLACED PERSONS

Internally displaced persons – Please see below an article by Mr. D.B.S. Jeyaraj, which appeared and is reproduced by courtesy of the Daily Mirror on October 4, 2008.

CIVILIANS OF WANNI ARE WRETCHED OF LANKAN EARTH

Franz Fanon’s famous phrase “wretched of the earth” is quite applicable in the Sri Lanka of today to the civilian population inhabiting the northern mainland known as the “Wanni”.

More than 200,000 internally displaced persons trapped in territory that was/is controlled by the Liberation Tigers of Tamil Eelam (LTTE) are in existential terms the wretched of the Sri Lankan “Wanni” earth.

Legally, constitutionally and geographically they are people of the sovereign state of Sri Lanka entitled to full, inalienable rights. Yet these "De – Jure" citizens have for nearly two decades been denizens of a "De – Facto" administration of the "shadow" state of Tamil Eelam run by the LTTE.

What is happening now is that the Sri Lankan state is re-asserting its dominance and writ over all parts of its legitimate territory and people. The armed forces are engaged in a ferocious military campaign for the avowed objective of "liberating" the people from the clutches of the LTTE.

The tragic irony is that the people on whose behalf the current war is being waged are suffering tremendous agony and despair. Even as the military juggernaut continues to advance, civilian displacement also continues on a massive scale.

Sadly the plight of these pathetic people is ignored, overlooked or underplayed in a situation where militaristic gains and losses are given pride of place.

The "war" is not the sole narrative of what is going on in the Wanni. From a humanitarian perspective it is the sad situation of the people – most of them internally displaced – that is more important.

It is this plight faced by the wretched of the Wanni earth that this writer would be focusing on today in what is formally an inaugural column for the"Daily Mirror".

Fighting in the northern theatre of war began in earnest last year after the conquest of the Eastern province. It began intensifying after April this year.

The armed forces have been able to wrest back all areas of the Mannar district that were under Tiger control. They have also made significant gains in Vavuniya north and the Assistant Government Agent divisions of Thunukkai and Manthai East in Mullaitivu district. Inroads have also been made into certain regions of Kilinochchi district and the Manal Aaru/Weli – Oya regions of Mullaitivu district.

The re- acquisition of areas under LTTE control has seen the people moving away. There were two major reasons.

One is that people did not want to be caught up in the line of fire as the armed forces advanced. So they moved further and further away from the zones of active conflict.

The other reason is that the LTTE also began pulling and pushing the people towards the interior into areas remaining under their military control.

As Mao Ze Dong said guerillas are like fish in an ocean of people. The LTTE "fish" did not want their "ocean" of people to dry up.

Thus we have a situation where more than 200,000 internally displaced persons are located in LTTE controlled areas east of the A – 9 highway or Jaffna – Kandy Road. Some of these people have been displaced at least seven times during the past ten months.

It has been a scenario of getting into one area considered “safe” and then getting out as the fighting escalated. They move into another comparatively “safe” area only to move out again as the war moves in.

This was the tragic tale of the Eastern Tamils living in the Muttur east, Sampoor and Eechilampatru divisions of Trincomalee district who suffered immensely. Now the Northern Tamils undergo a similar predicament.

Compounding the issue further was the fact that areas regarded as “safe havens” for many years got drastically affected as the army advanced and Tigers retreated. Palampitty, Periyamadhu, Adampan,Iluppaikkadavai, Vellankulam,Vannerikulam, Akkarayankulam,Thunukkai , Mallavi, Vannivilaankulam and now Mankulam and Kilinochchi have all been drained of its civilian population.

In recent times there have been three general lines of movement by internally displaced civilians. The major “displaced” movement has been along the Paranthan – Mullaitheevu Road. The next was along the Mankulam – Mullaitivu Road and the third along the coastal roads of Mullaitivu district.

Currently almost all IDP’s in Tiger territory are in regions to the east of the A-9 highway. While the displaced are dispersed widely, the bulk are concentrated in places like Oddusuddan, Mulliyawalai, Puthukkudiyiruppu,Viswamadhu, Tharmapuram and Kandawalai. Even the district secretariat of Kilinochchi is being re-located to Kandawalai.

Realistic population estimates suggest that there are 250,000 – 300,000 civilians living in LTTE controlled areas of Wanni.

According to situation report No 145 released by the Inter – Agency Standing Committee (IASC) Country team the IDP figures for September 18 – 25 were 147,313 for Mullaitivu district and 74,347 for Kilinochchi district respectively. These include people displaced from Mannar district and Vavuniya north who sought refuge in K’nochchi and M’Tivu.

A new development occurring now is the large – scale displacement of people from Kilinochchi town and its environs in the Karaichchi AGA division. The number of people living in Kilinochchi/Karaichi prior to on going displacement was calculated at around 45,000 – 50,000.

Thus it could be said that 85% - 90 % of the Wanni civilians are currently displaced. This figure could be 100% if and when the armed forces begin moving into areas east of the A – 9 highway.

This then is the miserable backdrop against which a human catastrophe is unfolding. Slowly and steadily the so called Tiger territory of the Wanni is becoming a region populated entirely by displaced persons.

In such a sorrowful environment it becomes the fundamental duty of the democratically elected Government to provide for the displaced people of this land to the best of its ability.

Sadly such care and concern have been conspicuously inadequate notwithstanding official explanations and arguments aimed at scoring debating points. Indeed the meticulous planning that has gone into the war effort is lamentably lacking when it comes to hmanitarian imperatives.

The government at one level claims correctly that the Wanni people are an integral part and parcel of this country and have to be liberated from LTTE tyranny. It has even recalled internal agencies and non – governmental organizations rendering humanitarian service in the Wanni saying that the Government will look after its people.

But the harsh reality has been a glaring hiatus between precept and practice. Despite its professed intentions the Government has found itself wanting in addressing the immediate needs and requirements of a people being rapidly displaced .

These problems were remedied to a great extent by the humanitarian organizations. They augmented efforts of government employees in these spheres.

In the past government efforts were effectively supplemented and even complemented by the role of International agencies and humanitarian NGO's.

The recalling of such organizations has had a drastic effect threatening disruption of services provided to the people.

If we take the question of food the system in place was one where the Commissioner – General of Essential Services (CGES) catered to those displaced before August 2006 and the UN"s World Food Programme (WFP) looked after those displaced after August 2006.

The recent, rapid rise in numbers has increased the role and responsibility of the WFP. The relocation of UN officials away from Wanni has affected WFP functions.

Incidentally the Government peace secretariat claims on its website that the WFP and UNHCR were asked by the Government to remain in the Wanni and that the offer was rejected by the UN. There has been no official confirmation or rebuttal by the UN so far.

The food situation for Wanni IDP's was not satisfactory even earlier. The security restrictions and delays resulted in fewer food-laden vehicles going in as opposed to basic requirements.

All WFP food convoys to the Wanni were stopped after Sep 11. This was resumed in October when 51 trucks carrying 650 metric tons of essential items went into the Wanni.

Although the UN was out of the Wanni at least seven UN officials accompanied the Kilinochchi GA led convoy which flew the UN flag. The UN officials are expected to oversee the distribution of food at four locations and return today October 4.

The government decision to allow the food convoy in is a welcome decision. The important aspect however is that adequate supply must be ensured regularly. At least 100 trucks with food and essential items need to go in every week if the IDP needs are to be addressed reasonably.

LTTE supporters and other pro – Tiger elements are conducting an international campaign saying that Tamils are starving and a famine situation exists. This is highly exaggerated and factually incorrect.

The crisis though acute has not reached such magnitude. Nevertheless there is no room for complacency. If adequate supplies are not sent into the Wanni continuously there could be a serious shortage.

However it must be noted that the current food distribution is by no means satisfactory. Though it prevents starvation which is only the bottom line, three square meals a day is impossible. There is malnutrition and undernourishment.

Rapidly shifting frontlines have resulted in rapid displacement. On many occasions it takes nearly a month for displaced people to be registered within the WFP system and be entitled for dry rations.

In such a situation various other agencies and organizations filled in. They assisted the government administrative machinery to provide cooked meals and later food rations until the CGES and WFP got into the act. With these NGO"s out of the Wanni, their input will diminish thus affecting the IDP's.

The INGO's and NGO's also provided shelter materials, basic medicine and utensils etc to IDP's. The supply of clean and safe drinking water to IDP's was mainly provided by the INGO's and NGO's. They also contributed greatly in providing sanitary facilities.

Another area in which INGO's and NGO's help the displaced is the actual process of displacement itself. Most people do not have the money to hire vehicles and move out of an area. So humanitarian organizations step in.

With these organizations being recalled and all NGO activity ceasing the people feel the pinch. Currently in the Wanni diesel is 1000 Rupees and Petrol 2000 Rupees a litre. Kerosene is 300 Rs per litre . Transport costs are astronomical now.

In such an environment there is an urgent need for resumption of services by the INGO's and NGO's. Further delay coupled with the escalation in fighting can bring about a climate where the displaced civilians would be in greater jeopardy.

There is an imperative need for the non – governmental humanitarian organizations and international agencies to resume functioning from within the Wanni to ensure that IDP needs are serviced properly.

Besides, there is also another potential problem. The presence of foreign personnel in the Wanni helped to check and even contain LTTE pressures on NGO's and INGO's.

With their removal the Tigers could exert more pressure without restraint. A worst case scenario could be one where the food distribution itself is "influenced" at ground level by the LTTE.

The Tigers could use this to compel people to live in areas determined by the LTTE.

The Government's reason for recalling these humanitarian organizations was to prevent harm befalling foreign personnel when fighting escalated. Since the Government is firmly resolved to capture Kilinochchi the NGO's and their offices, buildings, personnel etc were in the line of fire.

The government also has the Muttur massacre "albatross" hanging around its neck. It did not want a situation where such an incident would recur in the Wanni also.

There is however a twist to this. The 17 ACF personnel killed in Muttur were local Tamils and Muslims. No foreigner was killed.

It can be argued therefore that local persons working in humanitarian organizations and not foreigners were "more" vulnerable.

What has happened is bizarre. The LTTE refused to allow local employees of NGO's and INGO's permission to leave the Wanni. Even those working for UN organizations were not allowed to take family members. This was the LTTE at its worst.

The result is that 21 Tamil UN employees remain in the Wanni as they could not abandon their families. Also more than 500 Tamil employees of INGO's and NGO's are in the Wanni with their families.

So in a nutshell the situation is one where the more vulnerable local humanitarian workers remain exposed to danger in the Wanni while the foreigners are all out safely. The rationale behind the Govt recall is rendered invalid.

This state of affairs is not one about which the NGO and INGO bosses can be proud of. Their vulnerable local employees have been left in the lurch.

The government too is in the dock. Their concern seems to be about foreigners rather than Sri Lankan nationals.

The need of the hour is for the humanitarian organizations and international agencies to work from within the Wanni. It is only then that the helpless civilian victims of the war in the Wanni could have their needs met with as efficiently as possible.

One possible compromise is one where these organizations are allowed to function from a particular location alone. That specific zone could be declared "safe" with both the armed services and LTTE honouring it.

Even if something could be worked out where INGO's NGO's and other International agencies are allowed to function from within the Wanni, that by itself would not guarantee the safety and security of the civilians.

All that the humanitarian organizations can do is to help reduce the problems to some extent. They cannot eradicate them.

What then is the best option available to alleviate the suffering and ensure safety of the civilians? Obviously it is an end to the war!

But realistically it is not possible at this point of time when both the Government and LTTE are embroiled in a “make or break” war.

Under such circumstances the second best option is for the beleaguered Wanni civilians to move out from the conflict – ridden areas to the relatively safer areas under Government control.

For this safe passage must be guaranteed through the setting up of a viable civilian corridor. Temporary ceasefires should also be declared and honoured.

The hitch (and one hell of a one at that) is the self – styled protectors and self – imposed sole representatives of the Tamil people. The LTTE will not allow the people to move out from areas under its control.

The draconian pass system will prevent people from moving out. Besides, decades of totalitarian control have conditioned the people into submission. Moreover the vast distance from Vavuniya to the areas where IDP’s are concentrated is also a deterrent.

Likewise there is some reluctance by the people in moving to Vavuniya. This is due to fear that they would be penalised as people with LTTE links. Also they would be kept in “camps” like in the cases of existing ones at Kalimoddai and Sirukkandal.

While acknowledging the fact that certain segments of the Wanni population would prefer to stay put in the Wanni rather than moving out to Government controlled areas it must also be emphasised that those desiring to leave LTTE areas should be permittedto do so.

It was this writer who first wrote in another newspaper during the first week of August about the growing IDP predicament in the Wanni and urged the LTTE publicly to allow the people to leave saying “Let my People Go”.

This column reiterates that position and appeals to the LTTE that it must grant those among the wretched of the Wanni earth who want to leave Tiger territory, an opportunity to do so.

The easiest way is for the LTTE to relax its controls and allow “exit” to those who want to move out to government areas.

The lack of care and concern displayed by this government to those civilians living in the arena of war deserves condemnation.

Likewise the callous conduct of the LTTE towards displaced Tamil civilians in the Wanni is reprehensible too.

IDP’s are entitled to the right of movement. They should be allowed to move to areas of safety if they want to do so.

While the government increases the burden on civilians in the name of security the LTTE adds to their woes in the name of liberation. The IDP's are caught in the middle.

The UNHCR drafted guiding principles regarding IDP's emphasise that the displaced be allowed freedom of movement. Principles 14 and 15 are particularly explicit on this aspect.

The LTTE is violating the spirit and letter of UNHCR principles by restricting movement of IDP's.

"Let my people go" was the poignant plea made by Moses to the Egyptian Despot of yore.

That was a demand made to an alien ruler by the representative of an oppressed people.

Today the same cry "Let my people go" can be articulated on behalf of the Wanni IDP's to the LTTE hierarchy.

Sadly the LTTE and the Wanni civilians are all of the same ethnicity. Ironically the LTTE claims to be fighting for the Tamil cause.

This then is the tragedy of the Tamils, particularly those wretched of the Wanni earth. (ENDS)

4. A REVIEW OF STATE ACTIONS TO IMPLEMENT THE RECOMMENDATIONS OF UN AGENCIES

THE RECOMMENDATIONS OF THE HUMAN RIGHTS COUNCIL AFTER THE UPR

The following is a review of the recommendations of the Human Rights Council dated xxxxx. We give below the recommendation in bold lettering and our comment on the implementation in normal text.

1. Continue to enhance the capacity building of its national human rights institutions with the support of the international community (China), including OHCHR, and seek the effective contribution of OHCHR to strengthen the NHRC (Cuba);

2. Strengthen and ensure the independence of its human rights institutions such as the National Human Rights Commission (Czech Republic, Ukraine), in accordance with the Paris Principles (United Kingdom of Great Britain and Northern Ireland, Germany, Ireland), including through implementation of the 17th Amendment at the earliest (Canada), and ensure its pluralist character (Ireland);

3. Encouraged Sri Lanka to further empower the various institutional and human rights infrastructures, including by strengthening the structural and operational independence of the NHRC (Republic of Korea);

The recommendations, 1-3 relate to the HRCSL referred to unfortunately as the NHRC. It is not an institution that respects the Paris Principles both from the manner of selection and the nature of the independence (the lack of it), it is an institution of the regime. The appointments to the HRCSL are made contrary to the Paris Principles. According to Sri Lanka's Constitution as amended by the 17th Amendment, the proper authority to make nominations for appointments for commissioners is the Constitutional Council. The 17th Amendment has been deliberate neglected and appointments are made by the president himself without any regard to any of the norms of appointment of an independent institution. In fact, the policy line of the state party is to discourage the functioning of the HRCSL because the increase of complaints that may result through the availability of a proper complaint mechanism and investigation mechanism is seen as an encouragement for persons to come forward to make their complaints. The policy line of the state party is to claim fewer violations of rights by stating that the HRCSL has received fewer complaints than before. The Paris Principles are not followed regarding the functioning of the HRCSL. It does not act promptly and often relies of the reports of the alleged perpetrators to decide on the violations. The urgent action mechanism which provide for the HRCSL officers to promptly react to complaints of illegal arrest, detention and torture are not utilised for the protection of the people. Even the limited progress made some years back has now been lost. Even after inquiries which often take a long time the sums awarded for compensation are puny and not in any consistent with the international norms and standards. In fact, the commissions and the staff lack the understanding of international norms and standards of human rights and demonstrate no commitment to these principles. It does not appear from any of the official statements or publications of the state party that it has any plan to implement this particular recommendation.

Even the OCHR cannot transform an institution that is based on the Paris Principles into a credible national institution.

As for the recommendations for implementation of the 17th Amendment this is incapable of realisation as it is the policy of the government to erase the institutions of the Constitutional Council and the other commissions in order to benefit from the politicisation of these institutions.

4. Cooperate actively with international mechanisms in order to implement human rights at all levels of society and consider participating in core human rights treaties, as well as special procedures of the Human Rights Council (Ukraine);

All the recommendations made by all the treaty bodies have been ignored. (Kindly see the attached charts). With regard to extrajudicial killings the ignoring of all the recommendations has been commented on by the United Nations Special Rapporteur on Extrajudicial Killings.

5. Try to respond in a timely manner to the questionnaires sent by the special procedures (Turkey);

Even if this recommendation is implemented it is of little use as the recommendations of special bodies are always ignored.

6. Continue close dialogue with the United Nations human rights mechanisms, and OHCHR (Republic of Korea);

Dialogues without implementation of recommendations does not make any contribution to the improvement of the protection and promotion of human rights.

7. Take into account the recommendation made by the Human Rights Committee that it incorporate all substantive provisions of ICCPR into its national legislation, unless already done (Mexico);

The views expressed and the recommendations made regarding all the communications by citizens of Sri Lanka to the UNHRC have been ignored. The government has taken cover under the Supreme Court judgement in the Singarasa case to state that it cannot implement these recommendations as it is bound by the judgements of the local courts. The government has made no attempt to incorporate its ratification of the Optional Protocol of the ICCPR by way of domestic legislation.

8. Ensure full incorporation and implementation of international human rights instruments at the national level, in particular ICCPR and CAT, unless already done (Czech Republic);

The UN HRC has already held that several provisions of the ICCPR have been violated by the Supreme Court itself. However, no attempt has been made to incorporate the implementation of the ICCPR by improving provisions for legislative, judicial and administrative measure for the implementation of the ICCPR as required by article 2 (3) of the same.

9. Ensure that its domestic legislation is in full compliance with the Convention on the Rights of the Child (Poland);

The failure to develop investigative, prosecution and judicial aspects of the implementation of rights as required under article 2 (3) of the ICCPR being ignored affects also the right of the child as much as all other rights.

10. Continue its efforts for the full implementation of international human rights instruments to which it is a party (Morocco);

As pointed out before all the recommendations of the UN agencies relating to human rights are ignored it can be said that there is no effort to implement international human rights instruments.

11. That civil society organizations, including those from multi-ethnic communities and conflict affected areas in Sri Lanka's north and east, be involved in the follow-up to the UPR process (United Kingdom of Great Britain and Northern Ireland);

There is a tremendous propaganda against the civil society organisations lead by the ruling regime utilising its media and political apparatus. Particularly civil society organisations dealing with human rights have been castigated as traitors and trouble makers. Besides as none of the recommendations from the UPR review are being implemented the question of seeking cooperation does not arise. What exists is not cooperation but the enormous repression of civil society organisations

12. Further support human rights machinery and capacity building in its national institutions to implement the human rights instruments, such as the introduction of a human rights charter as pledged in 2006 (Algeria);

The basic national institutions that have the capacity to protect human rights are criminal investigations mechanisms with the power to act independently and the independent prosecutor's branch. both these are not present in Sri Lanka as the policing system and the prosecution system exercised by the Attorney

General's Department is politicised. What is happening is not capacity building but the destruction of existing capacities by arbitrary transfers and pressure systems that discourage independence and integrity.

13. That the National Plan of Action provide specific benchmarks within a given timeframe (The Netherlands);

In fact, a national action plan to destroy human rights protection is working strongly. Therefore the establishment of a national plan for the genuine implantation of human rights protection is not being contemplated by the state. It may come out with the purported plan with a lot of verbiage but for a plan to improve legislative, judicial and administrative mechanisms as required under article 2 (3) of the ICCPR is not even being contemplated.

14. Take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers (Canada, Ireland);

As the war between the government and the LTTE intensified both parties have been blamed by international agencies for not taking adequate action for the protection of civilians. The human rights defenders have no access to the areas affected by the war as both the government and the LTTE do not wish their situations to be scrutinised. Humanitarian workers including UN agencies, except for the Red Cross staff have been asked to evacuate certain areas where heavy fighting is expected.

15. Ensure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry to use its legal investigative powers to their full extent (United States of America);

This inquiry has not been completed and there is no possibility that under the present circumstances an independent inquiry can be conducted in a credible manner into this massacre.

16. Implement the recommendations of the Special Rapporteur on the question of torture (Denmark, France);

All the recommendations of the special Rapporteur on the question of torture have been ignored. Kindly see the attached chart for details.

17. Ensure a safe environment for human rights defenders' activities and that perpetrators of the murders, attacks, threats and harassment of human rights defenders be brought to justice (Poland);

No case has been brought against any of the perpetrators of violence against journalists, human rights defenders and others who are engaged in assisting persons on human rights issues. The environment that has been created is one that is extremely hostile to the human rights activists and the NGOs. The official spokesman for the government tries to portray human rights activists as persons working for foreign donors and motivated by baser considerations. They are also portrayed as persons promoting the agenda's of aliens. These critics also insinuate that human rights activists and journalists directly or indirectly aid and abet the LTTE and promote terrorism. Under emergency regulations and through the Prevention of Terrorism legislation there is an attempt to suppress human rights activists. Particularly the reporting of human rights abuses to UN and international agencies is portrayed as unpatriotic acts.

18. Increase its efforts to further prevent cases of kidnapping, forced disappearances and extrajudicial killings; ensure that all perpetrators are brought to justice; and enhance its capacity in

the areas of crime investigations, the judiciary and the NHRC, with the assistance of the international community (Japan);

The agents of the state party carry on a heavy attack on those who document and lobby on kidnapping, forced disappearances and extrajudicial killings. The state party's political reaction to such allegations is that persons claiming to be abducted or forcibly disappeared are persons who are hiding themselves for reasons of their own and are trying to create favourable impressions for themselves to find refugee status in developed countries. The genuine actions and good faith of the complainants and those who support them are constantly doubted and such persons are publically scorned. The absence of political will to investigate these matters is evidence. Such events as kidnapping, forced disappearances and extrajudicial killings are generally assumed to be unavoidable and an inevitable consequence of the war against terrorism. It is also assumed that any attempt to seriously probe these matters may have an unfavorable reaction from the armed forces and the police.

19. Increase its efforts to strengthen its legal safeguards for eliminating all forms of ill treatment or torture in the prisons and detention centres (Islamic Republic of Iran);

There are no positive steps with regard to this recommendation. For details regarding this aspect kindly see the chart on the recommendations of the UN Rapporteur against torture.

20. Step up its efforts for the rehabilitation of former child soldiers – in particular through enhanced cooperation with the international community – and adopt measures necessary for their rehabilitation in an appropriate environment (Belgium);

There are no known measures for such rehabilitation. There was a massacre of persons undergoing such rehabilitation at Bindanuwewa prison camp. Since then there are no known efforts for dealing with this issue.

21. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as the recruitment of child soldiers, in accordance with international norms and in a transparent manner (Sweden);

22. Take judicial and other measures to put an end to the recruitment of child soldiers in all parts of its territory, and accordingly give further appropriate directions to the security forces and police to ensure their implementation (Belgium);

23. Investigate allegations of forced recruitment of children and hold to account any persons found in violation of CRC and its Optional Protocol (Slovenia);

24. Take further steps to improve the effectiveness of measures to combat the recruitment of child soldiers (New Zealand);

25. Take active measures in order to put an immediate end to forced recruitment and use of children in armed conflicts by all factions (Italy);

There have been no attempts to prosecute recruiters of child soldiers either in the LTTE or in other armed militant groups. While the state party uses the recruitment of child soldiers by the LTTE for propaganda purposes it does not make any effort to prosecute the offenders. It there were such prosecutions the country would have had an opportunity to learn more about such operations and there would have been community involvement to deal with the issue.

26. Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards (Canada);

27. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner (Sweden);

Non-investigation of persons who commit extrajudicial, summary and arbitrary killings has become the norm. The habit of killing those who are considered as undesirable elements or criminals is so common that almost every week cases are reported from various parts of the country. The usual story is that a person who has been arrested has tried to attack the police officers when being taken for discovery of some material used in crime and that the police officers by way of retaliation and self defence kill the prisoner. The investigations into these matters end quite early at the inquest stage itself where the magistrates make wording of justifiable homicide or suicides by the suspects basing themselves on the police versions of the cases. Where extrajudicial killings relate to journalists or persons belong to political opposition no effective investigations takes place at all.

28. Adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims (Austria);

Despite of promises to enact a Witness Protection Act by June 2008, this act has not yet been enacted. Also there is no witness protection authority. In fact, the policy line of the state party is to discourage witnesses from coming forward to make or pursue complaints. A heavy fear psychosis is maintained for this purpose. This policy line is consistent with ensuring impunity for the officers of the state accused of crimes and violations of rights. Therefore, it is most unlikely that any attempt would be made to implement this recommendation in an effective manner.

29. Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law (Greece);

The prosecution and punishment of violations of international human rights law and humanitarian law has been refused literally in tens of thousands of cases. The clearest examples are those responsible for forced disappearances, mostly in the south in the late 1980s. The estimated official figure is around 30,000. In less than ten cases were there attempts at prosecutions despite the recommendations from these commissions that over 500 cases were recommended for prosecution. Regarding disappearances in recent times no one has been prosecuted. The central problem is that such prosecutions as seen as having a demoralising effect on the armed forces and the police. Another policy reason against prosecution is that such prosecutions will encourage further complaints which again will be a major political embarrassment for the state party. Therefore, whatever be the public declaration the actual policy of the state party is to prevent prosecutions on human rights violations.

30. (a) Pursue the ongoing inquiries into allegations of violations of children's rights in armed conflict, such as conscriptions and abductions of children anywhere and to adopt vigorous measures to prevent such violations; and (b) take other urgent measures for the re-integration of children who have surrendered to the governmental forces asking for special protection or who are currently held in prisons (Luxembourg);

Please see the comments in 21 – 25.

31. Enter into further agreements with countries hosting its migrants workers (Palestine);

Regarding migrant workers there are no known agreements in order to implement the *Vienna Convention on Consular Relations.* As a matter of official policy the state party does not provide legal assistance to migrant workers who face criminal trials abroad. Furthermore, it does not make any attempts to develop agreements with the receiving countries to provide such legal assistance to Sri Lankan migrant workers. These matters came to be highlighted in the case of Rizana Nafeek, a 17 year-old-girl at the time of leaving the country who was convicted in Saudi Arabia for the murder of an infant. She has not received any services such translations or legal counsel at the trial. After the conviction when the case was highlighted by the media the Asian Human Rights Commission made inquiries from the Ministry of Foreign Affairs, Sri Lanka as to whether it would provide fees for the legal counsel in Saudi Arabia. It was found that the government has a policy not to provide such legal assistance. The AHRC took the initiative to raise the legal fees from the public and to ensure that the migrant worker received legal counsel for her appeal. The case is still pending.

32. Take the measures necessary to ensure the return and restitution of housing and lands in conformity with international standards for internally displaced persons (Belgium);

33. Take measures to protect the rights of IDPs, including long-term housing and property restitution policies that meet international standards, and protecting the rights to a voluntary, safe return and adequate restitution (Finland);

34. (a) Adopt necessary measures to safeguard the human rights of IDPs in accordance with applicable international standards and that particular emphasis be given *inter alia* to increased information sharing as well as consultation efforts to reduce any sense of insecurity of the IDPs; (b) facilitate reintegration of IDPs in areas of return and (c) take measures to ensure the provision of assistance to IDPs and the protection of human rights of those providing such assistance (Austria);

35. Ensure protection and security in IDP camps; and, while safeguarding the rights to return and to restitution, adopt a policy to provide IDPs with adequate interim housing solutions (Portugal);

Due to the continuing of the war and particularly due to the recent escalation of the fighting large numbers of IDPs have been created. Some are in IDP camps and others in various places from where they have fled seeking safety. The development of durable solutions to this problem has proved difficult and there are large numbers of persons who have been in places of IDP camps for decades. The hostile policy of the state party towards the INGOs also makes the difficulty of rehabilitation and finding solutions to property and other issues difficult. At policy level there needs to be more discussion and planning to deal with this issue. As for information on the situation of IDPs there is hardly any possibility for easy access to such information. This is mostly due to the general policy of the suppression of the media relating to reporting on the war situation. This affects the information on IDPs.

Creating access to information on IDPs in a manner that humanitarian action on their behalf becomes possible is a primary obligation of the state party.

By early September the situation of IDPs in the Kilinochchi area worsened due to the escalation in the fighting. INGOs and the UN agencies, except for the Red Cross have been asked to move from the LTTE held area and they mostly done so. The question of food, water, medicine and sanitation of the civilians caught up in the conflict has become a primary concern and religious and civilian organisations have expressed their concerns strongly. The request to open a corridor for IDPs from Kilinochchi to move to Wanni and other government held areas, providing facilities in these areas to the IDPs are among the major demands for the protection of these persons.

36. Give special attention to the rights of women and further promote education and development and their representation in politics and public life (Algeria);

The problems of women remain in all areas of life and the hardening of conditions of living by the escalation of prices for food, gas etc, are making lives of women of the middle and lower classes ever more difficult. Many women opt to leave for domestic employment in the middle east and other countries as they have to play the role of the breadwinner for their families. The protection afforded to these migrant women workers is limited. Younger girls of middle and lower income groups have hardship in pursuing education and improvement of their conditions. Harsh cultural attitudes extremely adverse to the women create conditions which are traumatic to women folk. Harsh sexual taboos also go into extremely repressive upbringings of women which create difficult psychological problems for them in the context of a changing society. Though there are some improvement on laws on domestic violence the implementing agencies such as the police are suffering gravely due to the crisis of public institutions experienced in the country. There seems to be no liberating trends relating to women that is being developed in order to assist the improvement of their rights. In a extremely totalitarian system where representation means little the issue of women's representation is neither encouraged nor makes much sense.

37. (a) Pursue its programmes to develop former conflict zones in order to bring afflicted communities at par with those living in other provinces of the country;

and (b) seek which tangible support the international community, particularly States in a position to do so, may extend to assist Sri Lanka in bridging these gaps in order to enhance the effective realization of the full range of human rights for all Sri Lankans. (Bhutan);

As the conflict is in progress and even escalating the issue of improving the former conflict zones in order to bring afflicting communities on a par with those living in other provinces remains illusionary. The total breakdown of the law enforcement mechanism throughout the county makes it impossible to make any improvement in areas which were formerly part of the conflict zone. The basic requirement for the improvement of these areas is to rebuild the basic legal infrastructure that has been lost almost completely during the period the conflict. However, the forces that grew during those periods of fighting were those who could manipulate a situation of lawlessness. The post conflict politics have turned out to depend on the manipulation of the situation of the absence of the legal infrastructure. It is most likely that all attempts to rebuild the legal infrastructure would be resisted severely by the powerful sectors in these areas. On the other hand throughout the country the basic legal institutions have collapsed. Under these circumstances, the police, prosecution and judicial bodies of the country are unable to give leadership to the recreation of a legal infrastructure in these areas. Due to the situation of instability the government does not welcome international agencies participating in any development work in the region if these agencies are to insist on the improvement of law and order and human rights. Sadly the former conflict zones are likely to remain starkly lawless zones where the powerful can carry their own arms and keep control of their areas as they wish.

38. Continue to strengthen its activities to ensure there is no discrimination against ethnic minorities in the enjoyment of the full range of human rights, in line with the comments of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women (Mexico);

The only machinery that can ensure the elimination of discrimination is a strong law enforcement machinery which can respect the equality of all persons before law. Whatever machinery of the state that

existed in the country prior to 1978 has now collapsed under these circumstances there is nothing to ensure the elimination of discrimination of any kind. Instead of the elimination of decimation what we are witnessing are strong ideological movements which rejects the very language of equality. To talk about discrimination is itself reduced to into a meaningless discourse. When the law is no longer binding on anyone impunity becomes a natural state of things.

39. Take measures to safeguard freedom of expression and protect human rights defenders, and effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible (Ireland);

40. Take measures to improve safeguards for freedom of the press (Denmark);

41. Adopt effective measures to ensure the full realization of the right to freedom of expression for all persons (Poland);

Freedom of expression is the right that has suffered most, particularly since the ending of the ceasefire agreement and the escalation of the conflict the government developed an extensive machinery to undermine and to denigrate journalists and media institutions. During the last two years journalists have been literally, physically assaulted and there have been attempted assassinations. Extremely violent reactions are being generated against journalist. Even when the attacks are glaring the government has refused to take any action regarding the violators. A well known journalists, Tissanayagham for the maintenance of website which the state earlier claimed was linked to the LTTE. However, this claim was not based on any evidence and was abandoned later. Now this journalist is being prosecuted under the Anti terrorism laws for publishing a magazine which the state claims attempted to create racial disharmony. However, there is no basis for even such a charge. This action is perceived as an attempt to intimidate journalists and publishers with the fear that they also may be prosecuted for what they write. The Sri Lankan government has come under criticism on the subject of denial of expression.

42. Continue to work with the international community on protection of human rights, environment, disaster risk management, HIV/AIDS and capacity building. (Algeria);

None of these things are considered priorities.

43. Actively draw upon the assistance of the international community in the antiterrorism process and in overcoming its negative consequences (Belarus);

Anti terrorism has become the philosophy behind which the suppression of all opposition and freedom are justified. The authoritarian rule introduced by the 1978 constitution has virtually destroyed all the basic possibilities of resistance to absolute power. Sri Lankan remains a good sample for study of the negative consequences of so-called anti terrorism

44. Work closely with OHCHR to build the capacity of its national institutions and seeks States' assistance on counter-terrorism strategies, especially by countering terrorist fund-raising efforts in their territories and in accordance with Security Council resolutions and international conventions (Pakistan);

The government has clearly indicated that it has no intention of allowing the strengthening of the working of the OCHR.

45. Share its experience with regards to fighting rebellion and terrorism and how to overcome them, as well as on the measures taken to improve its social and economic development (Sudan).

The experience that Sri Lanka has to share is the expansion of authoritarianism and the abandoning of democracy and rule of law under the guise of fighting rebellion and terrorism. In fighting the southern rebellion over 30,000 people disappeared and there have been no attempt to acknowledge this colossal crime against humanity in the name of the suppression of a rebellion. What has happened is that terrorism has provided a convenient excuse for the expansion of the powers of the state, dismantling of institutions of democracy and the displacement of basic systems of justice by way of investigations into crimes, prosecutions followed by fair trial. In all aspects the justice system is today at its lowest ebb. It is not possible to improve social and economic development under such circumstances.