

Mohamed Abubacker 3. Mohamed Aliyar Mohamed Abubacker and 4. Samsudeen Mohamed Ibrahim. Two others Adam Lebbe Mohamed Abubacker and Adambawa Athamlebbe, died on 21/11/2005 and 26/12/2005 in Badulla and Kandy hospitals respectively. About 30 to 40 persons who were praying in the Mosque at that time had been injured.

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

Two days prior to this incident two Tamils had been abducted by Muslims and later their bodies had been found in the beach near the mosque. This attack on the mosque is said to be a sequel to this incident. Following these incidents, there had been tension between the Muslims and the Tamils living in the East. Subsequently, a few other killings had also taken place in the East. On 2nd December 2005 the Divisional Seretary of Kattankudy was shot dead. On 5th December 2005 two other Muslims had been killed in the Kalmunai Division and their bodies were found on the beach. On 27/12/2006 a Muslim Reserve Police Conatable (RPC) and a Tamil RPC had been shot at and the Muslim RPC had died while the other had been injured. Similar incidents had occurred in January 2006 in other parts of the Batticaloa district. All these incidents indicate that the feelings between the Muslims and the Tamils in that region had been inflamed following the killing at the mosque in the Akkaraipattu area. The police had intervned and had called for a meeting of the religious leaders of the area in an effort to ease the tension.

There is evidence of armed groups moving about frequently in the Batticaloa district. One cannot fix responsibility for these incidents on one group or the other. The

only conclusion that could be drawn is that some unknown group or groups interested in straining the relations between the two communities had been responsible for the conflict related human rights violations that took place in the Batticaloa district during that period. The throwing of the bomb into the mosque in Akkaraipattu is one in the series.

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

IV. *Observations*

The Emergency Regulations have been widely condemned by concerned human rights organizations in general and the Presidential Commissions on Disappearances in particular, which have unequivocally stated that these Regulations had facilitated human rights violations by the police and the security forces and have recommended that these Regulations should never be promulgated again as a step to prevent disappearances of persons taking place in the future. Many of the powers conferred by these Regulations and have been grossly abused in the past. Yet, following the killing of Foreign Minister Lakshman Kadirgamar on 15th August 2005 the then government thought it necessary to activate the Emergency Regulations on the pretext that there had arisen a need to strengthen the hands of the Police and the security forces to contain the escalation of violence in the country. However subsequent events proved that it did not help in stemming the increase of violence, instead, it led to an increase in the incidence of human rights violations in the country in general and in the North and East, in particular. Towards the end of 2005 such violations reached alarming proportions.¹

None of the established human rights mechanisms have been able to effectively check or investigate such human rights abuses which occurred at the hands of both the state and non-state actors. None of these institutions have been able to facilitate justice or provide redress to these victims of human rights abuses. Though international agencies

¹ Vide Annex VI - Figures 1, 2, 3 & 4 , for a graphical presentation of a sample of the incidents that took place in January, 2006.

such as the SLMM, the UNICEF, the UNHCR and the ICRC had been receiving complaints of abuses relating to their areas of competence, they could only sound the alarm. The Human Rights Commission which has been mandated to investigate such violations can only deal with violations by state actors.¹ With the limited resources at its disposal even that, could not be done adequately. So the HRC set up the Special Rapporteur on conflict related human rights violations, in the hope that this unit could provide specialized attention to such incidents.

The spate of politically motivated killings and incidents of human right violations continued even after the Presidential Election in November, 2006. Perhaps some of the appointments made to the defence structure soon after the new President assumed office could possibly have prompted these incidents. The appointment of General Sarath Fonseka as the Army Commander and Mr. Ratnasiri Wickramanayake as the Prime Minister, both of whom are known for their chauvinistic views, and the appointment of Mr. Kotakadeniya a former Deputy Inspector General of Police, who was later the Secretary of the Jathika Hela Urumaya, as the Adviser on Police matters at the Defence Ministry, sent signals that the State was getting ready to confront the militants and move away from seeking a peaceful settlement of the conflict.

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

¹ Though section 14(b) of Human Rights Commission Act No: 21 of 1996 says that the Commission may investigate an offence committed by any person, it will not be able to investigate a complaint against a non-state actor.

Though the IGP and the Army Commander have issued statements to the contrary, the fact that at the meeting in Geneva in February 2006, the Government delegation had agreed to disarm the para military groups operating in the country is ample proof of their existence. Even the SLMM had confirmed this fact. In view of this factor it is hard to fix responsibility for some of the killings to one group or the other.

Deliberate killings of civilians are violations of international humanitarian law, while the LTTE has often claimed that those they kill are spies or persons who engage in activities against the interests of the Tamils whom the LTTE says they represent. . This was confirmed by a statement made by Mr. Anton Balasingham in Geneva during the talks last February. Evidence to justify such allegations is not always found. Such incidents (killings) were frequent in the Batticaloa district initially, Later they spread to Amparai, Kalmunai, Trincomalee and even to Jaffna and other parts of the country. No action seems to have been taken to provide compensation or reparation to the families of those killed during the period. Many of them are afraid even to report such killings and are reluctant to give evidence at inquest proceedings. Some of those who were bold enough to do so, had been victims of threats and other forms of harassment. Such threats are done openly. In the case of Dr. Manoharan, the father of one of the students killed and a witness who gave evidence at the inquest into the killings of the students on the Dockyard Road, Trincomalee, the threats reached alarming proportions. No attempts appear to have been made to protect these witnesses and some of them are living in fear of their lives. Though it is very difficult for the police to provide protection to all witnesses, they do not seem to have taken any efforts to protect such witnesses.

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

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

V. *Recommendations*

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

- The government must take effective steps to protect the civilian population from falling victim to such abuses.
- A meaningful witness protection mechanism should be put in place.
- Any abuse by the security forces must be dealt with promptly and effectively.
- An effective international human rights monitoring presence could reduce violations to a great extent. Both the parties to the conflict are sensitive to adverse publicity in the international arena and their presence will have a moderating effect.
- Every incident should be investigated thoroughly and swiftly by an independent agency such as the Human Rights Commission which needs to be provided with the necessary resources to do so.
- It would be desirable for the Human Rights Commission to strengthen its Regional Offices with adequate competent personnel and provide them with the necessary resources to enable the Commission to play a pro-active role in protecting human rights in their respective regions. At present the Regional Offices commence taking action only on receipt of complaints. Instead they

should be able to promptly go to places where incidents take place and ensure that peoples rights are not violated. They must be able to make inquiries to see if any of the victims rights have been violated and take steps to prevent further violations.

Listed below are some of the areas of concern in the provisions of the Emergency Regulations currently in force, which we believe have in one way or the other facilitated human rights violations by the security forces in the recent past¹ -

- *Arrests may also be by any person authorized by the President, and several safeguards regarding arrests by the police or armed forces do not apply to such arrests.*
- *The ER enables preventive detention at the instance of the Secretary, Ministry of Defence for up to one year.*
- *The IGP is authorized to decide on places of detention.*
- *The police can detain a person for ninety days and have him remanded for an indefinite period.*
- *The condition under which a person could be kept under detention is at the discretion of the authorities . There are no minimal rights to which such a person could be entitled.*
- *There is no requirement that the places where persons are kept under detention to be made public.*
- *Safeguards provided in the Evidence Ordinance with regard to the admissibility of confessions have been removed.*
- *In certain instances confessions obtained 'in whatever circumstances' have been made admissible.*
- *The ER provides for death penalty for certain offences.*
- *Property could be forfeited for certain offences. Such forfeiture could be retroactive and provides no protection to subsequent bona fide owner .*
- *The normal laws relating to inquests and the disposal of dead bodies have been by-passed.*

¹ Source - a working paper on the Emergency Regulations of August, 2005 prepared on 12th September, 2005 by Ms. Suriya Wickremasinghe, Secretary, Civil Rights Movement, 4, Charles Circus, Colombo 3.

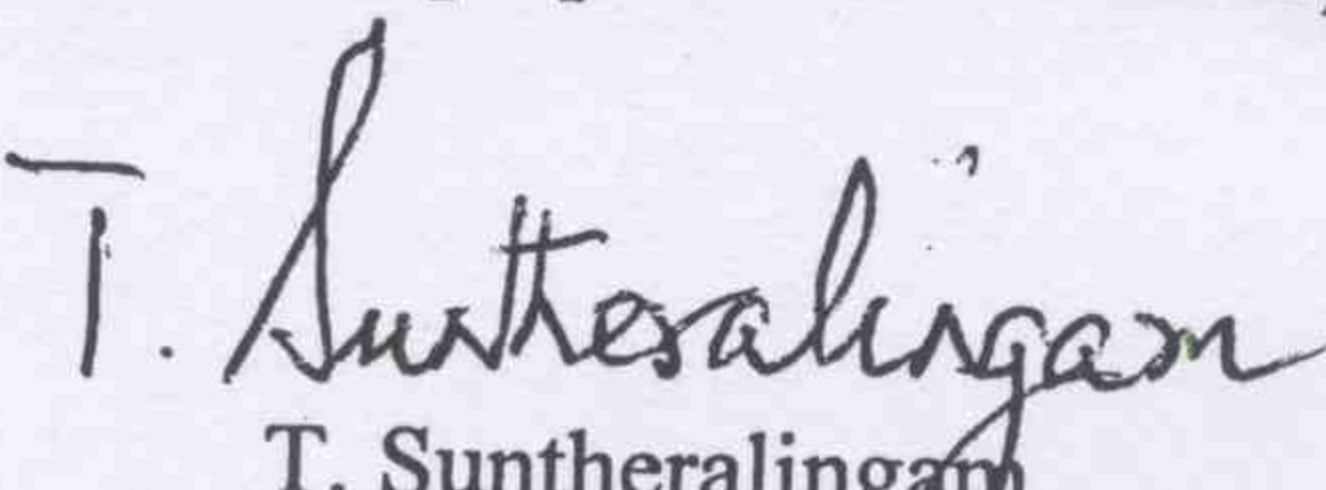
It is widely believed that these provisions enable indiscrete arrests and detentions which could possibly lead to disappearances of persons. Perhaps the 100 odd persons who are reported to have disappeared during the last few months in the North were probably those taken into custody under the provisions mentioned above.

The worst amongst these areas of concern is the one which makes confessions or incriminatory statements to anyone, in whatever circumstances, admissible at a trial. This has brought back one of the most obnoxious provisions in the Prevention of Terrorism Act, in a different garb.

It is recommended that the government should give careful consideration to these provisions and remove those provisions which likely to be used to violate the rights of individuals.

Though these Regulations were promulgated to facilitate the investigation into Foreign Minister Lakshman Kadiragamar's assassination, they appear to continue to be re-enacted month after month even though the alleged assassins are said to have already been apprehended and have been remanded. There is therefore an imperative need to review of the Emergency Regulations without delay, to minimize human rights violations at the hands of the police and the security forces, especially during conflict situations.

I thank Ms. Visaka Dharmadasa and Mr. M.C.M. Iqbal who were members of my Team for the valuable services they rendered in the preparation of this Report.


T. Suntheralingam
Special Rapporteur on Conflict Related
Human Rights Violations

31st March, 2006.

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HUMAN RIGHTS COMMISSION OF SRI LANKA
PRESS RELEASE

The HRC Appoints a Special Rapporteur on The Protection of Human Rights during the Emergency and in the context of Ceasefire Violations

Whereas there has been an escalation of violence relating to armed conflict with its attendant allegations of human rights violations such as arbitrary killings, rape, cordon and search operations, arrests and detention of persons in the country in general and in the North and East in particular;

Whereas it has become difficult for the Human Rights Commission to effectively monitor, conduct inquiries and report on the human rights issues arising out of this situation, availing itself only of the services of the current staff at the Head Office and in the regional offices;

It has become necessary to appoint a team of persons headed by a Special Rapporteur to, inter alia,

- To advise the Human Rights Commission on the measures that need to be taken to protect the human rights of civilians in the context of the use of emergency powers and the alleged violations of the ceasefire agreement.
- To liaise with and gather evidence from the police and the security forces to monitor their compliance with human rights norms during the performance of their duties
- To conduct inquiries if and when the necessity arises and report to the Commission.
- To compile a fortnightly situation report on human rights in the context of the use of emergency powers and alleged violations of the ceasefire agreement

Mr. T. Suntheralingam, former Member of the Constitutional Council and retired High Court Judge has been appointed the Special Rapporteur on the protection of human rights in the context of the use of the emergency powers and alleged violations of the ceasefire agreement. The other members of the Team are: Mr. M.C.M. Iqbal, retired officer of the Sri Lanka Administrative Service and Ms. Visaka Dharmadasa, President of the Association of War Widows

The Human Rights Commission expects the police and the security forces personnel to extend their co-operation to the Special Rapporteur and his Team in the performance of their duties.

Members of the public can communicate with the Secretariat of the Team at No: 36/7, Kynsey Road, Borella, Colombo 8.

Radhika Coomaraswamy
Dr. Radhika Coomaraswamy,
Chairperson,
Human Rights Commission.

5th January, 2006.

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