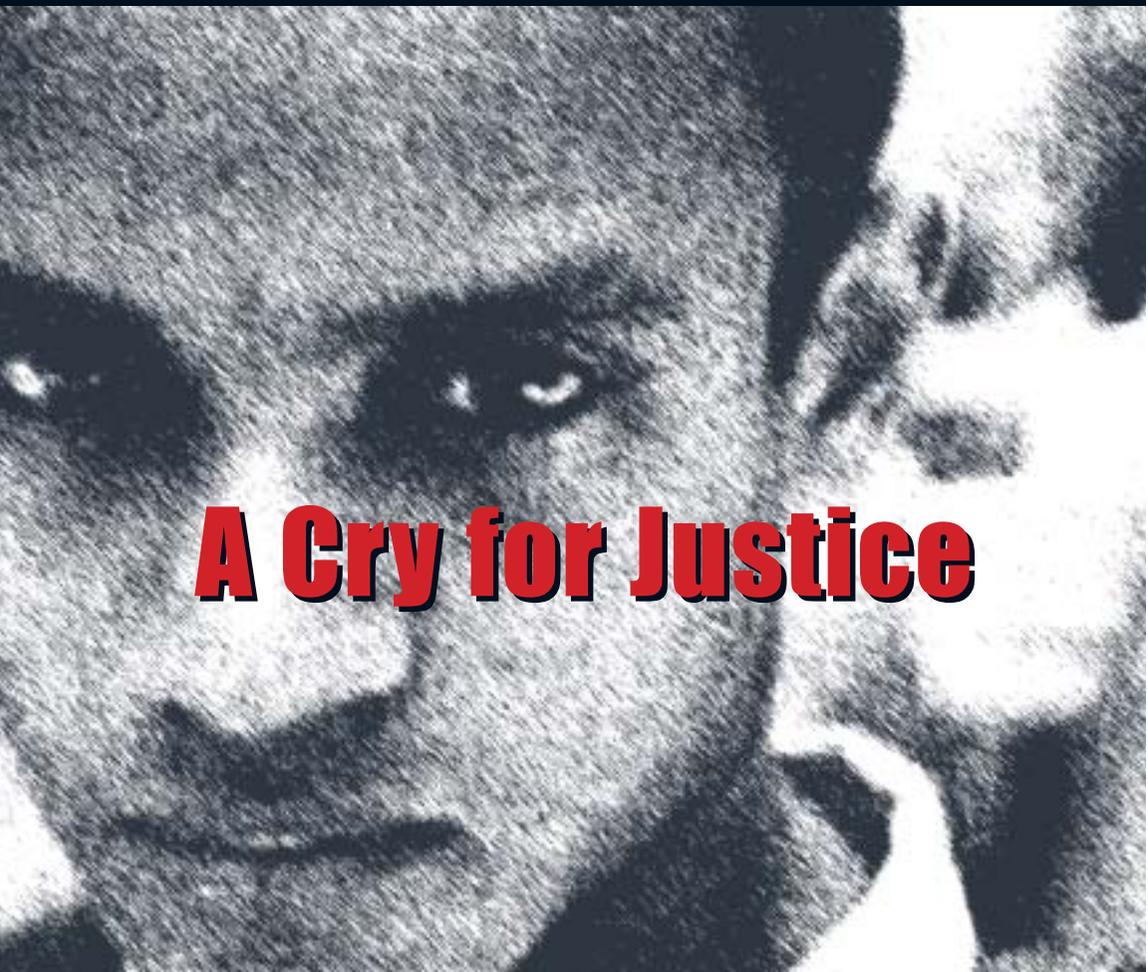


THE BINDUNUWEWA MASSACRE IN SRI LANKA



A Cry for Justice



ASIAN CENTRE FOR HUMAN RIGHTS

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The Bindunuwewa Massacre in Sri Lanka : A Cry for Justice

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ISBN : 81-88987-11-5

Price : Rs.500/- (US\$ 12)

Asian Centre for Human Rights

C-3/441-C (Near C-3 DESU Compliant Office)

Janakpuri, New Delhi-110058, India

Phone/Fax: +91-11-25620583, 25503624

Email : suhaschakma@achrweb.org; Website : www.achrweb.org

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Introduction

The Bindunuwewa massacre of 25 October 2000 is the only massacre of the Tamil minorities in Sri Lanka which exhausted all the judicial processes available in Sri Lanka. It went up to the level of the Supreme Court. The fact that the Supreme Court failed to prosecute a single person for the custodial massacre of 28 inmates and serious injury of 14 others is a shame on any civilized society. The judgement of the Supreme Court of 21 May 2005 acquitting four accused of the Bindunewa massacre - civilians M.A. Sammy, D.M.S. Dissanayake, R.M. Premananda and policeman, S.J. Karunasena, who were earlier convicted by the High Court is most likely to be remembered as the best example of judicial and administrative biases against the Tamil minorities.

How did the Bindunuwewa massacre exhaust all domestic procedures so quickly? The trial of Kumarapuram massacre of 11 February 1996 in which 25 ethnic Tamils including women and small children were massacred by the Sri Lankan army personnel has been continuing at snail pace. The last hearing at the Trincomalee High Court took place on 4 June 2005 and the next hearing is slated for 8 November 2005. One of the eight accused soldiers already died and the rest have been released on bail. All material evidence, including weapons allegedly used in the killing of Tamil civilians in the Kumarapuram massacre, were destroyed when the office of the Government Analyst in Colombo was gutted by fire in 2004.

The Sri Lankan government had no intention to ensure justice for the Bindunuwewa massacre and ensured the acquittal of the accused. The Attorney General filed wrong indictment by clubbing the civilians and the police together and charged them for unlawful assembly. It was a case of mixing oranges with apples as the police were responsible for taking appropriate action against unlawful assembly. It was necessary for the prosecution to establish the organised nature of the massacre to establish the fact that the police shared the common objective of the "unlawful assembly" of the civilians. But the organised nature of the massacre was never investigated. President Kumaratunga blamed it on the "external forces" before the start of any inquiry into the massacre.

The evidence has been destroyed systematically. During the hearing, the Supreme Court judges gave more importance to the testimonies of the Assistant Superintendent of Police Dayaratna than the testimonies of the victims who were ethnic Tamils. The Supreme Court went to the extent of putting the blame of the massacre on the detainees inciting violence from the

peaceful *Satyagrahis* who were ethnic Sinhalese. Yet surprisingly, not a single so-called peaceful *Satyagrahi* could be arrested despite the presence of 60 fully armed police personnel. In effect, there was not a single witness to the massacre of the detainees. The Supreme Court even justified the removal of the dead bodies of the detainees - an important piece of evidence - by the police.

None of the senior police officers has been indicted. Then Headquarters Inspector Jayantha Seneviratne is now the Senior Superintendent of Police of Traffic at Fort Police Station, a significant promotion by all accounts considering that he was indicted both by inquiry of National Human Rights Commission of Sri Lanka and President Commission of Inquiry headed by Justice PHK Kulatilaka.

The Presidential Commission of Inquiry was mandated to investigate extraneous issues, not prosecute the culprits. Therefore, it was clear that President Kumaratunga herself was not interested to provide justice. Not surprisingly, the Sri Lankan government has failed to make the report of the Presidential Commission of Inquiry public. Asian Centre for Human Rights which obtained a copy of the report of the Presidential Commission of Inquiry decided to make it public with this report. The release of the report of the Presidential Commission of Inquiry by the NGOs in Sri Lanka may attract the provisions of the Official Secrets Act in that country.

The Supreme Court having acquitted the four accused sentenced by the Trial-at-Bar of the High Court, there is no other domestic mechanisms to challenge the validity or procedural fairness of the acquittal. It is a fit case to be taken up with the United Nations Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights to which the Sri Lankan is a ratifying State party.

The Sri Lankan government repeatedly sought to brush aside the gross human rights violations by the security forces by focusing on the brutalities of the Liberation Tigers of Tamil Eelam (LTTE). The resolution of the conflict in Sri Lanka goes beyond the LTTE. It is about ensuring justice and accountability and restoring the faith of the Tamil minorities in the mechanisms or the pillars of the Sri Lankan state. Unfortunately, Sri Lanka has repeatedly failed at that. It is a collective failure of the institutions and organisations run by majority Sinhalese. The forthcoming elections is unlikely to change the existing pattern.

Lest the world forgets, this report is more likely to serve as documentation of the historical records of the Bindunuwewa massacre.

Suhas Chakma
Director

I. The Bindunuwewa Massacre: A Cry for Justice

On 25 October 2000, 28 inmates were murdered and 14 others were seriously injured at the Bindunuwewa Rehabilitation Centre by a Sinhalese mob and the Sri Lankan police personnel. The victims were ethnic Tamil minorities.

The Bindunuwewa Rehabilitation Centre was jointly run by the Presidential Secretariat, the Child Protection Authority, the Ministry of Defence, the Ministry of Rehabilitation and Reconstruction, the National Youth Services Council, and the Don Bosco Technical Centre. Nestled in the mountains of central Sri Lanka, the Bindunuwewa Rehabilitation Centre was intended as a showpiece for the outside world where former rebels of the Liberation Tigers of Tamil Eelam (LTTE) were rehabilitated rather than punished. A large number of the detainees were child soldiers.

According to the nine survivors who gave their account of the events of the 24 and 25 October 2000 to the Sri Lankan Human Rights Commission (SLHRC), the detainees had raised the following issues with the Officer-In-Charge (OC) Capt. Y.K. Abheyaratna of the detainees rehabilitation centre on 24 October 2000: letters received for the detainees were not delivered to them; telephone calls/messages received for them were not transmitted to them; they were being detained for unduly long periods such as one year or more when they should be held for shorter periods of three to nine months.¹

When the OC explained that it was not within his power to release them early, as orders have to come from the authorities that dealt with such matters, the detainees became agitated and surrounded the OC. They demanded that he should take immediate action to expedite their release. Observing this melee, one of the police officers fired his gun in the air. This had caused further agitation among the detainees who caused damage to fluorescent-lights, the police post etc. The accounts given by the survivors also mentioned that they objected to the police party entering the Centre. However, after some time, the detainees allowed the Headquarters Inspector of Bandarawela to come in without any arms. The survivors stated that the detainees had told the Headquarters Inspector that they would not follow the vocational training classes till the OC expedited the release of the detainees who were in the Centre for long periods.

Thereafter conditions returned to normal. The detainees retired to their halls

and went to sleep. According to them, the police personnel and the others who came to the center had left the place by about 11.30 pm.³

On the morning of 25 October 2000, when the detainees got up they saw a large number of civilians surrounding the centre and a number of police officers standing by. The crowd started to pelt stones and came into the centre and attacked the inmates with knives, machetes, clubs, iron rods etc. According to the survivors, they were attacked in the halls of residence which were then set on fire by the mob. Two or three inmates were thrown into the fire. Many were clubbed to death. They said that the police officers did nothing to stop the crowd. When some of the detainees tried to run for safety, one of them was shot down by the police officers. One of the survivors had lost two fingers in one of his hands as a result of gunshot injuries. According to statements made by some of the survivors, when they had tried to hide in the police truck, the mob came in and attacked them. Two police officers were watching while they were being assaulted and did nothing to stop the assault.⁴

The Presidential Commission of Inquiry headed by Appeals Court Justice P. H. K. Kulatilaka reported that "The Judicial Medical Officers who had conducted the post-mortem examination on the deceased persons had observed that most of the deceased persons had injuries in the head area causing damage to the skull and the brain and cause of death was due to cardio respiratory failure resulting from shock and haemorrhage. Most of the injuries had been caused by heavy cutting weapons and blunt weapons. The medical experts also have expressed the view that most of the deceased persons had been burnt while they were unconscious after receiving injuries in the head and brain regions".

In total, 28 Tamil youth between the ages of 14-23 years were massacred while approximately 14 other Tamil youth were seriously injured.

Following are the names of the 19 victims of the Bindunuwewa massacre released by the police on two occasions. While the 13 victims⁵ (No.1 to 13) were identified on 25 October 2000, other 6 victims⁶ (No.14 to 19) were identified on 31 October 2000. Nine victims remained unidentified as the bodies were charred beyond recognition.

Names of the victims killed:

1. Gunapalan Jeyavarthanam, Mannar
2. Antony John, Kallady, Batticaloa
3. Karunakaran Ramasamy, Santhacholai, Vavuniya
4. Rubeshkumar Visvaparan, Vepankulam, Vavuniya

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5. Senthuran Vinayakamoorthy, Vanthrumoolai, Batticaloa
6. Mohan Sinnathurai, Aanathapuram, Trincomalee
7. Ravitharan Kanapathipillai, Lingapuram, Manalaaru
8. Vijeyenthiran Visvalingam, Navatkadhu, Batticaloa
9. Balakumar Marimuththu, Pullaveli, Batticaloa
10. Mathiyalakan Puniyamoorthy, Mutur, Trincomalee
11. Selvarajah Thurairajah, Thampanai, Jaffna
12. Mukunthan Sivayokarajan, Karaveddi East, Jaffna
13. Vipulanantharajah Sivayokarajan; Thirukovil, Amparai
14. Kokulamani Sajeewan, Kallady, Batticaloa
15. Perinpanayagam Nimlaraj, Batticaloa
16. Somasuntharam Sellarasa
17. Sivan Kubendran, Arayampathi
18. Vaisvaparam Rubeshkumar alias Siinathamby, Urmila Kottam, Vavuniya and
19. Ramasamy Karunakaran, Santhasolai, Vavuniya

I. The pattern of impunity against the Tamil minorities

In its judgement on 21 May 2005, the Supreme Court of Sri Lanka acquitted the remaining four accused of the Bindunewa massacre - civilians M.A. Sammy, D.M.S. Dissanayake, R.M. Premananda and policeman, S.J. Karunasena.

The Bindunuwewa massacre is the only massacre which went upto the Supreme Court of Sri Lanka. The fact that not a single person could be held guilty for the mass murder of 28 Tamils in the protective custody of the State at Bindunuwewa confirms the ethnic biases which have plagued the administration of justice in Sri Lanka. It has been almost impossible for the ethnic minority Tamils to obtain justice against organized violence since the infamous massacre of 48 Tamil prisoners at the maximum-security prison of Welikeda in the capital Colombo in July 1983.

After 19 years, in July 2002, President Chandrika Kumaratunga announced the formation of a three-member "truth commission" to investigate incidents

of ethnic violence between 1981 and 1984, including anti-Tamil riots in July 1983 that killed nearly six hundred people.⁷ The report is yet to see light of the day.

In the Kokkuvil massacre, about 184 Tamil civilians including pregnant and elderly women, infants and children from Sathurukkondan, Kokkuvil, Panichchayadi and Pillaiyarady were butchered at Saththurukkondan Army camp on 9 and 10 September 1990. The Sri Lankan government even denied the occurrence of the massacre. However, later the Human Rights Task Force that was appointed by President Ranasinghe Premadasa recorded evidence and mentioned the Sathurukkondan-Kokkuvil massacre in its report published in April 1994. In early 1997, the Special Presidential Commission to Inquire into Disappearances in the East under Justice K. Palakidnar also recorded evidence about the Sathurukkondan -Kokkuvil massacre.⁸

According to the report of Justice K. Palakidnar of the Special Presidential Commission of Inquiry, 5 infants, 42 children under ten, 85 women and 28 old persons were among the 184 villagers murdered by the Sri Lankan Army on 9 September 1990 in the Sathurukkondan army camp. The judge in his report to the Sri Lankan President stated that there was strong evidence that the massacre had taken place and recommended legal action against the perpetrators. But so far neither has a police investigation been conducted nor legal proceedings instituted against those responsible for the massacre.⁹

Captain Warnakulasuriya, the Sri Lanka army officer who was in charge of the Saththurukkondan Boys' Town camp where the 184 villagers were hacked to death told the commission in his very brief evidence that no one was arrested by his men from the area on 9 September 1990. The Sri Lankan government did not investigate the massacre further.¹⁰

Soon after the Kokkadicholai massacre of January 1991 where military personnel went on a rampage killing innocent civilians, President R. Premadasa immediately appointed a commission of inquiry but the commission was empowered only to inquire into the incident and recommend compensation wherever suitable. The commission did just that.¹¹ No one was prosecuted.

In the Kumarapuram massacre on 11 February 1996, Sri Lankan Army from the 58th Mile Post army camp arrived in army trucks at the Tamil village of Kumarapuram in the Kiliveddi area of the Trincomalee district and shot dead 24 Tamils because of their ethnic origin.¹² The security forces retaliated against the dead of two SLA soldiers at the 58th Mile Post junction on the Kiliveddy-Muttur road, which leads to the Kumarapuram village, located half a mile from the scene. The soldiers ordered all civilians to come out of their dwellings and lined them up for questioning. Then soldiers started

mercilessly beating them irrespective of their gender and age. Two Tamil girls were gang-raped by several security personnel and later killed. On the spot, 12 males, 13 females and 13 small children were reportedly killed at night.¹³ About twenty soldiers were arrested by the police immediately after the massacre¹⁴ but only seven of them had been indicted by the Attorney General on several charges including the murder of 25 Tamil villagers including men, women and children and causing grievous hurt to another 24 Tamil villagers on 11 February 1996. All the accused have been released on bail. Meanwhile one of the accused soldiers died.¹⁴ During the hearing on 14 June 2005, State Counsel Mr. S.Halimdeen told the Trincomalee High Court Judge that all material evidence, including weapons allegedly used in the killing of Tamil civilians in the Kumarapuram massacre, were destroyed when the office of the Government Analyst in Colombo was gutted by fire in 2004.¹⁵

Impunity remains a serious obstacle to peace and reconciliation in Sri Lanka.

II. The conspiracy of the acquittal

“At no time there were any incidents among the detainees and the management. There were no incidents with the neighbours either.... It is clear from the information now received by the authorities that provocation from external forces had led to this situation,” - thus spoke President Chandrika Kumaratunga immediately following the Bindunuwewa massacre.¹⁷

The acquittal of the accused in the Bindunuwewa massacre was foretold.

All efforts of the Sri Lankan government on the massacre have been half-hearted and aimed at addressing international outrage rather than establishing justice.

a. Inquiry by the Sri Lankan Human Rights Commission

Immediately following the massacre, a team of the Sri Lankan Human Rights Commission consisting of Chairman Faiz Musthapha and members Godfrey Gunatilleke, Manouri Muttetuwegama and Sarath Cooray visited the massacre site on 27 October 2000.

The Sri Lankan Human Rights Commission interviewed nine of the ten survivors who had been hospitalised in the army Hospital. One of the survivors could not speak as he was very badly wounded. Of the ten survivors, one was aged 11 and other 12 years. There were three others who were below the age of 18 years.¹⁸

According to the accounts of the nine survivors whom the SLHRC examined in detail, when some of the detainees tried to run for safety, one of them was

shot down by the police officers. One of the survivors who testified before the SLHRC had lost two fingers in one of his hands as a result of gunshot injuries.¹⁹

In its interim report of 1 November 2000, the Sri Lankan Human Rights Commission, amongst others, stated that it was clear that the police officers, approximately 60 in number, have been guilty of a grave dereliction of duty in not taking any effective action to prevent the acts of violence that resulted in the deaths of 28 inmates and injury to several other inmates of the Bindunuwewa centre. In any event the crowd that collected had not possessed any firearms and were armed only with knives, poles and implements. The police, on the other hand, were fully armed and could have easily brought the crowd under control and dispersed it. At least some of the persons who were leading the crowd could have been arrested. The Commission also found that the action taken by the local police to arrest the persons from nearby villages was totally ineffective to identify the culprits.²⁰

The Interim Report of 1 November 2000 implied that there would be a final report. But the SLHRC never released such a report.

Rather than ensuring justice, the investigation by the SLHRC only helped to scuttle international criticisms.

b. The Presidential Commission of Inquiry

In order to counter mounting international criticisms, on 8 March 2001 President Chandrika Kumaratunga established a Commission of Inquiry by Appeals Court Justice P. H. K. Kulatilaka.

The Commissioner was mandated to inquire and report on the following matters:-

- (a) The circumstances that led to the incidents that took place at Bindunuwewa Rehabilitation Camp on 25.10.2000 in the course of which 27 inmates died and 14 persons were injured.
- (b) The administration of the Rehabilitation Camp at Bindunuwewa and the conduct of public officers in so far as it is relevant to the said incident;
- (c) The person or persons, if any, directly or indirectly responsible, by act or omission for:-
 - (1) bringing about the said incidents;
 - (2) causing injuries to persons, or the death of the inmates.
- (d) Criteria applicable to the admission of persons to rehabilitation centres and the location of such centres.

- (e) Methods adopted in the rehabilitation of persons admitted to such centres.
- (f) The measures necessary to prevent the recurrence of such incidents and the remedial measures if any, to be taken in this regard, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant”.

It is clear that Justice Kulatilaka Commission of Inquiry was mandated to investigate and recommend on extraneous issues but not for the prosecution of the culprits. By the time Justice Kulatilaka Commission of Inquiry was formed, the Criminal Investigations Division (CID) of the police and the Attorney General’s Department had already initiated independent action. In effect, Justice Kulatilaka Commission of Inquiry had no use for the prosecution of the culprits. President Chandrika Kumaratunga had no interest to ensure justice.

Yet, Justice Kulatilaka Commission of Inquiry, which had completed its inquiry in November 2001. The government has not yet made the report public.²¹

III. Orchestrated Trials

Before the establishment of Presidential Commission headed by Justice Kulatilaka, investigations by the Criminal Investigations Division (CID) of the police and criminal proceedings by the Attorney General’s Department had started. The Kulatilaka Commission of Inquiry was a mere eyewash. Not surprisingly, the most important findings of the Commission were ignored while filing the indictments.

The story of the massacre proposed by the prosecution in its indictments and in the trial followed the general outlines of what the government sought to tell: it told the story of a massive crowd spurred into action by fear and rumours of marauding Tigers, and of police who failed miserably in their job of protecting the camp and its inmates, becoming a part of the mob they were supposed to control. Yet, crucially, there were no indictments of Assistant Superintendent of Police Dayaratne and Headquarters Inspector Seneviratne, despite all the evidence uncovered by the Commission. Nor was anyone prosecuted for any planning or foreknowledge of the attack. It was, instead, a story of rage and hatred and fear getting out of control and police getting caught up in violent forces they should have kept in check.²²

On 25 March 2002, the Attorney General’s Office indicted the following 41 suspects²³, among whom 10 were policemen:

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1. Kangana Mudiyansele Dhammika,
2. Prabath Mangala Wickremasinghe,
3. Vidiyagedara Sumith Kumara,
4. Munasinghe Arachchige Sami,
5. Attnayaka Mudiyansele Sudubanda,
6. Rajapaksa Arachchilage Sisira Saman Rajapaksa,
7. Rajapaksa Mudiyansele Nimal Rajapaksa alias Namal,
8. Jayweera Mudiyansele Priyantha Jayaweera,
9. Ratnayaka Mudiyansele Sugath Chaminda,
10. Ratnayaka Mudiyansele Nawaratne,
11. Mutukuda Wijesinghe Archchige Namal Yasakirithi Wijesinghe,
12. Herath Mudiyansele Gunapala alias Daya,
13. Dissanayaka Mudiyansele Sepala Dissanayaka,
14. Aparakka Jayasundara Mudiyansele Chandana Wasantha Bandara Jayasundara,
15. Herat Mudiyansele Jayantha,
16. Rajapaksa Mudiyansele Gamunu Rajapaksa,
17. Heenkenda Mudiyansele Jayatunga alias Podi Mahatun,
18. Rajapaksa Mudiyansele Ajantha Rajapaksa,
19. Samarawickrama Don Samarasekara,
20. Attanayaka Mudiyansele Bandula Attanayaka,
21. Rajapaksa Mudiyansele Premananda,
22. Rajapaksa Mudiyansele Nuwan Nanda Kumara,
23. Hennayaka Mudiyansele Nilantha Wijayarathne Bandara,
24. Adikari Jayasundara Mudiyansele Nishantha Indika Bandara,
25. Palitha Warnasuriya,
26. Sathira Warnasuriya,
27. Ranjith Rupasinghe,

28. Don Anil Samarawickrama,
29. Keerthi Batuwatte,
30. Asela Gunawardana,
31. Harsha Gunarathna Bandara,
32. Senaka Jayampathy Karunasena,
33. Raigala Dasili Lekamlage Jayaratne,
34. Malapatirannehalage Samudu Sudesh Wijesinghe,
35. Kalamulla Waduge Chintaka Nuwan Abyenarayana,
36. Hettiarachchi Mudiyansele Thilina Damsith Hettiarachchi,
37. Ranamuka Arachchilage Sudath Senarath Bandara,
38. Nakathi Gedara Sujeewa Walpola,
39. Ranasinghe Arachchilage Premalal Wijesiri,
40. Narissa Mudiyansele Amarasiri Upali Milton and
41. Tyrone Roger Ratnayaka.

Trial-at-Bar of the High Court:

In the indictments filed by the Attorney General's Office in March 2002, the accused were charged with 83 counts including unlawful assembly, committing the murders of 28 persons and attempted murder of 14 others at the Bindunuwewa Rehabilitation Centre. The 83 counts were composed of five categories: 1) one count of belonging to an unlawful assembly with the common object of causing hurt to the detainees (section 140 of the Penal Code); 2) twenty-seven counts of murder in prosecution of the common object of the unlawful assembly (section 296 read with section 146 of the Penal Code); 3) fourteen counts of attempted murder of the surviving inmates in prosecution of the unlawful assembly's common object (section 300 read with section 146 of the Penal Code); 4) twenty-seven counts of murder "on the basis of the Common Intention shared among the doers of the acts of offence" (section 296 read with section 32 of the Penal Code); and 5) fourteen counts of attempted murder on the basis of Common Intention (section 300 read with section 32 of the Penal Code).²⁴

The trial of the 41 suspects²⁵ began in July 2002 in the form of a trial-at-bar comprising of High Court Judges Sarath Ambepitiya (President), Eric Basnayaka and Upali Abeyratne.²⁶ The prosecution had given a list of 31 productions and 228 witnesses for the trial.²⁷ Testimony ended in January

2003, and all hearings had concluded by early May 2003.

Of the eighteen who remained accused when the trial concluded and the judges began their deliberations, nine were residents from the local area. Of these, the court convicted three - Sepala Dissanayake, M.A.Sammy and R.M.Premananda. Each was convicted of being a member of an unlawful assembly through their sharing in the crowd's common motive of death and destruction. Each was held responsible for multiple counts of murder, one count of attempted murder, and multiple counts of assault. Each was sentenced to death. The three convicted local residents were those whom the court was able to find some convincing evidence of having actually been involved in the attack within the camp, rather than simply being part of the larger crowd surrounding the camp, which the Court held was not sufficient to make one a part of the unlawful assembly. Instead, they held, some more active manifestation of one's criminal intention was required: in all three cases it was that of being seen within the camp premises while the attack was ongoing; in two cases, the accused was seen with a weapon.²⁸

Of the nine police officers still charged when the case went to the bench for judgment, only two were convicted. They were Inspector S.J. Karunasena (the 32nd accused) and Sub-Inspector T.R. Ratnayake (the 41st accused). Both officers were convicted in large part because the Court was convinced that they were stationed at the main gate throughout the attack and therefore were at the center of the action: their failure was manifest.²⁹

The High Court convictions were held under "unlawful assembly". According to this law, any member of an "unlawful assembly" with "common object" is liable for prosecution for any crime committed by that assembly.³⁰

Supreme Court:

After the High Court awarded death sentences, which was not implemented in Sri Lanka since 1976, the confirmation of the death sentence automatically went to the Supreme Court.

The convicts in their appeals requested the Supreme Court to set aside their convictions as ordered by the High Court Trial-at-Bar and to acquit them. The petitioners stated in their appeals that there was no evidence to prove that they had committed the offences. They contended that the judgment was contrary to the evidence and the Trial-at-Bar judges had erred in law in dealing with the charge of being a member of an unlawful assembly. They maintained that the court had not paid sufficient attention to their statements.³¹

In June 2004, Chief Justice of Sri Lankan Supreme Court, Sarath Nanda Silva appointed a bench of five Supreme Court justices comprising of Justices T.B.

Weerasuriya, Nihal Jayasinghe, N.K. Udalgama, N.E. Dissanayake and Raja Fernando to hear the appeals of the five accused.³²

Out of the five accused, the Supreme Court acquitted Tyrone Roger Ratnayake in June 2004 after the Solicitor General C.R. De Silva PC informed that he would not support the conviction because of the lack of evidence against him.³³

The High Court convicted civilian M.A. Sammy on the basis of two eyewitnesses - Piyasena and Ariyasena. Piyasena told the court she had seen him with a club in his hand about 100 metres from the camp around 9 a.m. on 25 October 2000. Ariyasena, who had been helping two injured detainees, testified that he had seen Sammy with a club in the playground of the camp premises. Sammy claimed he had not attacked anyone, but had only gone to see what was happening. The defence did not challenge Ariyasena's evidence. The High Court convicted Sammy declaring that he "assisted others who were carrying out that crime, through his actions by staying at that place with a club in his hand".³⁴

The Supreme Court, however, declared that the High Court decision had been "erroneous for the reason that there was no evidence to that effect". The Supreme Court gave its decision primarily on the assertion that the prosecution had failed to prove Sammy was present prior to the attack.³⁵ The pertinent question is what was Sammy doing in the camp after the event with a club in his hand? The Supreme Court maintained silence.

D.M.S. Dissanayake was convicted by the High Court based on the testimony of Wickramasinghe Bandara, a technical officer at the teachers' training college adjoining the camp. Bandara testified that he had seen Dissanayake leaving the camp via the main entrance with a club in his hand. Dissanayake admitted being at the scene but like Sammy denied attacking anyone. The High Court found him guilty, beyond reasonable doubt, of being "a member of an armed unlawful assembly operating at that time".³⁶

The Supreme Court, however, noted that Bandara had "admitted that he gave false evidence in Court for fear of reprisal by the villagers" although "at a subsequent stage of his evidence he stated that he actually witnessed the incident and that his evidence was not false or hearsay". The Supreme Court ruled that it was "not prudent" to rely Bandara's evidence and threw the conviction out.³⁷

The High Court convicted R.M. Premananda on the basis of the testimonies of Sugath Jayantha and two doctors. Jayantha testified that he, Premananda and another man Padmananda had driven to the camp after hearing that the detainees were attacking the nearby village. Premananda went into the camp and emerged about 15 minutes later with a bleeding wrist. He claimed that

he had cut his hand on an aluminium sheet and sought treatment from Dr Rick Anderson under a false name -"Siripala". He received further treatment from Dr. Wijeratne.³⁸

The High Court decision pointed out that, although he denied harming anyone, Premananda did not challenge Jayantha's evidence or provide any explanation as to how he was injured. It concluded that he "had a clear want to cover up the fact related to how he got injured" and that his evasion established that he was involved in the attack on the camp. The Supreme Court, on the other hand, dismissed Premananda's evasions and concluded that his suspicious behaviour was not sufficient to establish a strong *prima facie* case.³⁹

The overt police support for the attackers was so obvious that the High Court convicted S.J. Karunasena and T.R. Ratnayake for their failure to take action against the mob, for shooting at the fleeing inmates and for the removal of bodies from the crime scene. But the Supreme Court exonerated the police of all wrongdoing. The Supreme Court held that "In the circumstances it is highly probable that the detainee who succumbed to gun shot injuries was accidentally shot when the Police were firing in the air." In dismissing charges that the police had destroyed vital evidence, the Supreme Court declared: "ASP Dayaratna conceded that he was instructed by the D.I.G. [Deputy Inspector General] to remove the bodies to preserve the peace in the area as there was a large concentration of Tamil estate workers in the surrounding area." The judgement affirmed that the police and armed forces had the "right" to remove the bodies.⁴⁰

IV. Facts that were ignored to ensure acquittal

From day one, the prosecutors had little intention to prosecute the culprits and systematically destroyed the evidences to ensure acquittal of the accused.

a. The charge of unlawful assembly

The pertinent question is whether the charge of being members of "unlawful assembly" with a "common object" and therefore, being responsible for the crimes committed by members of the "unlawful assembly" was appropriate?

How could the police whose responsibility is to deal with "unlawful assembly" be themselves part of unlawful assembly? The police could have been charged with dereliction of duty.

If indeed, police and the villagers were to be charged together, the conspiracy angle for organizing the massacre was required to be investigated. But this was never done despite the fact that the police could not arrest a single

person!

Consequently, defense taken by Karunasena, Ratnayake, and their police colleagues was to challenge the fairness of prosecuting them for illegal omission that rendered them part of the unlawful assembly. To convict someone of murder and attempted murder should require direct evidence of specific actions by specific individuals. Instead, they argued, first, that they were merely following orders and, second, that they were unable to control the crowd - in large part because the HQI and the ASP hadn't given them the necessary resources: anti-riot equipment, rubber bullets, tear gas, or enough men.⁴¹ The first question is connected with the second one concerning the failure to examine the degree of involvement of the HQI and the Assistant Superintendent of Police. But ASP Dayaratne and HQI Seneviratne were never charged.

b. "Feed Tiger flesh to our dogs": Posters that were ignored

The prosecution and judiciary completely ignored the posters such as "Feed Tiger flesh to our dogs" that were pasted in and around Bindunuwewa on 24 October 2000. Therefore, the conspiracy angle was never investigated.

The Sri Lankan Human Rights Commission reported that "a large number of posters had appeared in Bandarawela town, allegedly on the night of the 24th inciting people to violence against the inmates and the rehabilitation camp". It further stated, "a statement made by one of the suspects who has been arrested had identified and named some of the persons who were responsible for the posters. He has further identified those who instigated the violence and led the attack on the camp".⁴²

The Sri Lankan Human Rights Commission strongly recommended that this line of investigation be pursued. ... "as all the information we (SLHRC) have been able to gather so far does not suggest that what occurred on the 25th was an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack".⁴³

Justice Peduru Hewa Kankanange Kulatilaka's Presidential Commission of Inquiry also revealed some details which indicated the organised nature of the massacre. It reported:

- (1) The fact that Lt. Abeyratne was attacked by the inmates of the Rehabilitation Centre had been conveyed to the villagers by Lt. Abeyratne himself.
- (2) The evidence led before the Commission also revealed that soon after Lt. P. Abeyratne told the inmates of the two houses what was happening at the Rehabilitation Centre rumours began to spread in the

village.In fact rumours that spread in the village was one factor which prompted the people to gather in large numbers at the Vidyapeetaya playground, cemetery and also the main gate. Evidence of Samurrdhi Niyamaka Kumarasinghe, a villager from Kandegedera, revealed that he was drawn towards the Rehabilitation Centre on 25 October 2000 morning around 8.30 on an information given to him by his sisters that inmates of the Rehabilitation Centre were about to "come out".

- (3) Evidence elicited from Mr. Wijepala, Divisional Secretary, Bandarawela that when he went to his office on 25.10.2000 around 9.15 a.m. he found a telegram, addressed to him by "Sapugasulpatha villagers" which read as follows: "We inform that a demonstration will be held on 25.10.2000 agitating for the removal of Bindunuwewa Rehabilitation Camp". The time of dispatch was 8 a.m. This telegram is marked P84. On his way to the Rehabilitation Centre he saw some posters. He could remember some headings. e.g. "Remove the camp"; "Chase the Captain".

Nandakumara in his evidence told the Commission that when he left home around 5.40 a.m. on 25.10.2000 on reaching Maduwelapatana junction, 3 kilo meters from the Rehabilitation Centre he observed a poster titled "Remove Bindunuwewa Rehabilitation camp immediately". He saw two more similar posters on his way to the Centre. Nandakumara also spoke of seeing about 25-30 posters hung at the Bindunuwewa junction the contents of some read as follows: "Why is the big man feeding the tigers with milk"; "Good water for tigers and muddy water for us"; "Tigers flesh to our dogs".

Lt. Balasuriya in his evidence told the Commission that on 24.10.2000 night when he did his rounds on the perimeter of the Centre to disperse the crowds he met a group of people who were making preparations to stage a demonstration. The above evidence would suggest that a section of the villagers would have been drawn to the Centre on 25.10.2000 morning to stage a demonstration agitating for the removal of the Rehabilitation Centre from Bindunuwewa. Inspector Karunasena mentioned to the Commission how people had stopped Kirioruwa bus and induced the school children and other passengers to agitate for the removal of the Rehabilitation Centre. In fact Nandakumara's testimony reveals that about 15 among the people who gathered near the main gate were holding posters.

In fact, it was elicited from Sisira Saman, a young villager from Aluthgama that on 25.10.2000 early morning he had joined some villagers who were in the process of making posters agitating for the

removal of the Rehabilitation Centre from Bindunuwewa. He admitted that he himself wrote the slogans contained in two posters. The evidence to the effect that his handwriting has been identified by the EQD too was led in evidence. According to Sisira Saman they had made 15 posters.

- (4) The fear, hatred and anger that had been instilled into the hearts of the villagers owing to the gruesome crimes committed by the LTTE appeared to be one factor which aroused villagers to converge on the Vidyapeetaya playground. I recount here an utterance made by the villagers who had gathered at the Vidyapeetaya playground on 24 October 2000 night to Lt. Balasuriya. "They are tigers, they have come here after murdering Sinhala soldiers. Why are they being treated in this way?"
- (5) There is also evidence that crowds were transported from outside to the Vidyapeetaya playground in buses, private vans and also three wheelers. That evidence was elicited mainly from Sunil Wickramasinghe Bandara. He had seen 10 to 15 vehicles parked along the road at the entrance to Vidyapeetaya. Ravindralal too had seen people being transported to the main gate side as well. This may well be the work of extremist elements to exploit the situation to achieve their own objectives.
- (6) Withdrawal of the police post from the Rehabilitation Centre at the behest of the inmates by the Head Quarters Inspector on 24.10.2000 was an act of betrayal in the eyes of the villagers. When Lt. Balasuriya ordered the villagers to disperse they said: "Police are scared, the police are running away". On the other hand the utterance made by the ASP to the effect that "People have surrounded the camp, they do not listen to us, they are armed with katties and clubs disperse them" looks like a "cry in despair". This attitude of the police made the villagers come prepared to defend their villages."

Despite existence of evidence of prior organization of the massacre, Justice Peduru Hewa Kankanange Kulatilaka concludes that "Factual position that the inmates had staged a revolt in the Centre, fact of Capt. Y.K. Abeyratne and his deputy Lt. P. Abeyratne being kept as hostages in the centre appear to be the proximate factor which had aroused the wrath of the people".

This is false considering that the revolt by the inmates on 24 October 2000 was brought under control. Under the Chapter "Revolt in the Rehabilitation Centre", in fact, Justice Kulatilaka concluded "It is appropriate at this stage to reiterate the dogmatic and arrogant attitude of Capt. Y.K. Abeyratne which prevented Lt. Balasuriya from "settling matters" inside the Rehabilitation

Centre. When Lt. Balasuriya returned to the gate around 11.30 p.m. after dispersing the crowd Lt. Balasuriya had spoken to Capt. Y.K. Abeyratne. He said, "I have sent the villagers back to their houses. Can I come to the Rehabilitation Centre to speak to the inmates". Capt. Y.K. Abeyratne's reply was "there is no problem inside. The problems came from the villagers. If villagers went away there is no need for you to come in".

Regrettably, the High Court accepted the interpretation of the events that it were the inmates who were responsible for the riots. It stated, "there was displeasure within the villages about maintaining the Bindunuwewa Rehabilitation camp. The evidence presented has proven that this displeasure was due to the fact that the inmates of the camp were known to be members of an organization called the L.T.T.E, better known as Tigers. The evidence shows that the villagers had a significant fear of the inmates who were kept at the camp for rehabilitation. Also disclosed was the fact that the villagers were angry at the inmates for cracking unnecessary jokes at young women who pass by the camp. Evidence has also disclosed that the day before the incident, on the night of 24.10.2000, a false rumour had been spreading that the Tigers in the camp had entered the village and taken weapons belong to police Officers, and that a crowd of people had attacked the camp due to this reason."⁴⁴

The Supreme Court of Sri Lanka went a step further. It urged that the crowd was made up only of "villagers" who had gathered to stage "a peaceful Sathyagraha" calling for the removal of the camp. The Supreme Court held that on the morning of the 25th, only the inmates held weapons and that the actions of the crowd posed no threat to the inmates, despite the 41 young men being completely surrounded by large, hostile, armed, and entirely Sinhala crowds and Sinhala police armed with guns. The Court ignored the displaying a banner that announced that the detainees had no quarrel with the villagers, only with the camp authorities.⁴⁵

The Supreme Court held that "it was evident that the immediate cause for the attack by a section of the crowd was the provocative act of the detainees, in charging into the crowd with clubs, rods, and stones in their hands. There is in fact no evidence that the inmates charged "into" the crowd, only that some of them rushed toward the crowd, evidently in a counterproductive attempt to show they shouldn't be bothered. The crowd having retreated for a moment, which reflected a moment of having got frightened, nevertheless broke into the camp with all their fury... It is from this point one could assert with justification the commencement of the unlawful assembly with the common object of causing hurt to the detainees."⁴⁶

It is nothing but figment of imagination. The evidence clearly indicated the involvement of the hierarchy of the Bandarawela police, their foreknowledge

of the attack, and falsification of evidence afterwards. It was not a case of mere dereliction of duty.

c. Criminal complicity of the police

“If not for the complicity of police officers, this would have been avoided....When the victims went running to policemen seeking protection, they were fired at by the police.” - stated Chairman of the three-judge bench of the Trial-At-Bar, Sarath Ambepitiya, in a 94-page judgement.⁴⁷

Of the more than 60 police personnel stationed at the detention centre at the time of the attack, only those of medium rank officers - Sub-Inspector and Inspector - were charged. The senior officers ASP Dayaratne and HQI Seneviratne were not charged despite the fact that they were the senior most officers present. Even those police officers who ordered shooting at the fleeing inmates were not charged.

Justice PHK Kulatilaka's Presidential Commission of Inquiry stated the following about the conduct of the police:

“Conduct of the Police

The evidence placed before the Commission in no uncertain terms establish the following factual position relating to the police involvement, namely,

(l) That on 25.10.2000 around 8.30 a.m. there was a large gathering of people armed with clubs, axes, swords, knives and iron rods at the Vidyapeetaya playground. With the numbers increasing they became aggressive and started throwing stones at the Rehabilitation Centre. They were making utterances of provocative nature. They were getting prepared to launch an attack on the Rehabilitation Centre. That was the scenario at the Vidyapeetaya playground. On the other hand even though there is hardly any evidence to ascertain how people in the cemetery side conducted themselves there is evidence that soon after the Vidyapeetaya mob broke into the Rehabilitation Centre, there was a flow of people coming from the direction of the cemetery as well. Therefore, undoubtedly the assembly of people both on the Vidyapeetaya side and the cemetery side was an unlawful assembly, assembled with the intention of launching an attack on the Rehabilitation Centre. That is a lapse on the part of the ASP and HQI by their failure to send sufficient reinforcement to guard the perimeter. The police Officers detailed on the Vidyapeetaya playground and the main gate had miserably failed to take any meaningful steps to disperse the unlawful assembly by using such means provided by law.

(2) That no meaningful steps had been taken by the police to prevent the mob from the Vidyapeetaya side breaking into the Rehabilitation Centre and also to stop people from the cemetery side coming into the Rehabilitation Centre from that side.

(3) That once the mob invaded the Centre, acts of setting fire to the buildings, attack on the inmates and the massacre of inmates continued unabated while the police were just looking on.

(4) That the police had opened fire on the unarmed inmates who were running for protection towards the police trucks parked outside the main gate, thereby causing death of one inmate and injuring two others.

(5) That the police had failed to arrest any offender even though the assailants were seen moving about freely carrying weapons while the policemen were standing nearby.

Police shooting

It is manifestly clear from the testimony of Perumal Gnaneshwaran that whilst the inmates who escaped from the Kovil hall (Hall No.4) were in the process of running towards the police truck that the police had opened fire. He stated that the person who ran ahead of him was shot and fell. Another person received a gun shot on his leg and Gnaneshwaran himself had received gun shot injuries on his fingers. He described that it was while they jumped through the barbed wire fence towards the police truck that they opened fire at them. None of the inmates carried any weapons at that time. He said they ran towards the police for protection. According to the evidence of Inspector Karunasena and Perumal Gnaneshwaran the shots were fired by the police from a downward position in an upward direction. The medical evidence relating to the post-mortem on the body of the deceased who had died of gun shot injuries is consistent with the description given by this witness. Inspector Karunasena admitted that he ordered the three policemen who were near him to shoot and that they complied. That was the maximum he could do in that situation he said. As I stated earlier the evidence of Perumal Gnaneshwaran is very clear on this point. The inmates were running towards a police truck. They were unarmed. They were being chased after by the assailants. While they were jumping out from the barbed wire they were shot at. There is no evidence to the effect that any of the assailants or civilians received any gun shot injuries. Police shooting was not an act done to prevent the mob running into the Centre or while they were running in the direction of the billets. These circumstances did not exclude Inspector Karunasena's duty to warn the crowd by first firing in such

manner as to avoid striking any of the persons. Hence I have to report that the order to shoot by Inspector Karunasena and the act of shooting by three policemen consequent to that order were more than what was warranted in the circumstances.

Having considered the totality of evidence led before me, I have come to the conclusion that the conduct of the following officers on 25.10.2000, should be the subject of a disciplinary inquiry, for the reason that their inaction, and attitude at the time of the incident is indefensible. There is ample evidence that they were present at the time of the incident and made no effort either to avert the attack or to disperse the mob and arrest the offenders.

1. A.W. Dayaratne (Assistant Superintendent of Police)
2. R.M.T.K. Jayantha Seneviratne (Chief Inspector)
3. S.J. Karunasena (Inspector of Police)
4. N.G.S. Walpola (Sub Inspector)
5. P. Ratnayake (Sub Inspector)
6. K.W.C.N. Abeynarayana (Sub Inspector)

Ample evidence has been elicited at the inquiry to the effect that the administration was partly responsible for the creation of the situation and as such it is desirable that the conduct of the following officers also is enquired into at such inquiry.

1. Capt. Y.K. Abeyratne former Officer-in-Charge, Bindunuwewa Rehabilitation Centre.
2. Lt. P. Abeyratne Second Officer, Bindunuwewa Rehabilitation Centre."

During his examination by the state counsel before the Trial-at-Bar, one of the survivors, Thambirajah Nawarajah stated that he was hacked by an axe inside the police canter by a group of about 7 persons. Two or three police personnel were only a few yards away from where he was standing.

"I was in the rehabilitation camp on this particular day. At about 8.30 in the morning, stones were hurled at us. We could no longer stay inside the camp so we came out of it and ran towards the iron fence by the main road. I saw a blue police vehicle (we call it a canter) parked on the road and there were about 200 people holding axes and polesI then jumped over the fence to the road and got into the canter parked behind the camp," Nawarajah said.

"I was hiding inside the camp for about half an hour. Then a group of about 7 armed persons came and hit me on my head. There was one inmate being killed inside the canter. The police were just a few yards away from us. I didn't know what happened after that. I was taken to the Bandarawela Hospital and then to the Diyathalawa Army Hospital. And I was finally taken to the Colombo General Hospital,"- he testified before the trial court.⁴⁸

According to a witness who gave evidence in the case, a boy, who was attacked with machetes by policemen and the mob, extricated himself from his attackers and fell at the feet of a senior police officer who had come to the scene, begging that his life be spared. Nevertheless, the boy, according to the witness, was hacked to death while he was pleading with the Police officer to save his life. The police officer had looked on while the boy was done to death.⁴⁹

Another witness said that he saw a policeman standing by the body of a victim that had been set on fire at the camp's main entrance when he went there on the day of the massacre.⁵⁰

The police claimed that they had fired to stop the rioters.⁵¹ However, the fact remained that not a single Sinhalese was found injured, let alone be injured or killed in police firing. The report of Justice Kulatilaka clearly indicated that the police only shot the unarmed inmates and not at those who were attacking them with arms, clubs etc.

That the police were part of the organized massacre has been established beyond reasonable doubt.

d. Identification of the culprits

During the identification parade that was held in the last week of November 2000 before the Bandarawela magistrate, survivors identified three teacher trainees from the Bindunuwewa teacher training college who had been allegedly involved in the massacre.⁵² This was ignored by the judges.

e. Destruction of evidence and bias against the Tamil witnesses

There have been systematic efforts to destroy evidence. Immediately following the massacre, the police arrested about 250 villagers.⁵³ These villagers were released after sit-down protests at the front of the police station.

Mr. Premaratne, the Senior Superintendent of Police of Bandarawela commenting on the arrest of the villagers admitted before the Sri Lankan Human Rights Commission that "the manner in which large numbers of villagers resident in the neighbourhood of the camp had been arrested had

only had the effect of thwarting any purposeful process of investigation".⁵⁴

From day one, there were efforts to erase all evidence. The prosecution ignored the shooting of the fleeing inmates. One of the inmates who was shot to death had six bullet wounds on his body from three separate bullets - yet none of the bullets could be entered into evidence. According to testimony given to the Presidential Commission by Mrs. K.K. Joowzir, who was the Assistant Judicial Medical Officer who performed the autopsy, she gave the three bullets to "an investigation officer" whom she later failed to identify.⁵⁵ It goes without saying that the shooting hardly seems a typical case of accidental shooting.⁵⁶

The Trial-at-Bar of the High Court held the police responsible for removing the dead bodies of the detainees from the scene to destroy the evidence.

While dismissing the High Court's charge that the police decision to remove the bodies of the murdered detainees was an attempt to conceal evidence, the Supreme Court simply referred to the testimony of ASP Dayaratne that "it was so done as instructed by the DIG to preserve peace in the area as there was a large concentration of Tamil estate workers in the surrounding area".⁵⁷

The eyewitness testimony of the surviving detainees, on the other hand, doesn't seem to have quite the same status as to the testimony of ASP Dayaratne. The Supreme Court rejected the testimony of two survivors - accepted as true by the Presidential Commission of Inquiry - that they were each attacked by the mob while they were inside a police vehicle within sight of numerous police officers. Instead, the Supreme Court argued that their stories are contradicted by a sole Sinhala witness who "claimed that when a detainee who came running towards the Police truck near the turn off to the camp was attacked, there were no police officers at that point." Even if the Sinhala witness is to be believed, his testimony doesn't necessarily contradict the survivors' claims, as it is not clear that they were all speaking of events that took place at the same time. Finally, the Supreme Court also dismissed the claims of the survivor Perumal Easwaran that his two fingers were blown off by a gunshot wound when the police shot towards a group of inmates fleeing attackers. While they cite the evidence of a Judicial Medical Officer that "clearly showed" his wounds were caused by sharp weapons, they make no mention that an earlier JMO report, submitted as part of the prosecution's case, referred to Easwaran being sent to Badulla hospital after the attack for treatment of "gunshot wounds." The Presidential Commission of Inquiry held that at least three inmates were shot by the police.⁵⁸

The prosecution used photographic evidence reportedly taken after the attack had taken place to show no specific crimes being committed. While considering the question of the police failure to arrest any of the attackers, the

Supreme Court made no mention of the photographs, taken by a police photographer who arrive at the camp around 9:30-9:45 am, that clearly show senior police officers including Karunasena and Ratnayake milling around the camp alongside armed attackers, as a dead or injured detainee lies at their feet.⁵⁹

The Court also failed to take into consideration an important piece of evidence that the High Court made much of: the fact that the attackers were able to burn the bodies of many inmates beyond recognition suggests that the attack was not over and done with quickly. For the bodies to be burnt so completely, the High Court argued, would have required the acquiescence of the police. This was an apparently minor, but nonetheless devastating and detail, especially when considered in the context of the shocking ferocity of the attack as a whole and the particularly gruesome ways in which the inmates were killed - all of which was a far cry from the Court's initial presentation of the attack as a spontaneous response to the provocative actions of the inmates.⁶⁰

f. Identifying the real culprits: The chain of command

"The main reason why the police was not able to save the lives of the innocent inmates of the Bindunuwewa Rehabilitation camp was because the senior officers like the ASP and the HQI did not send baton charge and tear gas teams to prevent the rioters from harming the inmates. They did not give any order to prevent this tragedy and now they are trying to dump the whole blame on innocent officers like us. I did my best to prevent them and even shot at some of them, but the investigators did not find any wounded among the civilians we shot at, simply because they did not search for them in the neighbourhood." - stated Inspector Jayampathi Karunasena, who was in charge of Bandarawela police crime branch during his examination before the High Court.⁶¹

There were about 60 fully armed policemen present at the site of the massacre who did nothing to stop the rioters. Not a single arrest was attempted or made. As the Justice Kulatilaka Commission argued the police could, as a last resort, have shot at the relatively small number in the crowd who did have weapons - what the report calls "the criminal elements." Instead the only shots fired seem to have been at the inmates - and the death of the one inmate who died from gunshots seems hard to read as accidental, as he had seven bullet wounds on his body.⁶²

Inspector Karunasena in fact ordered the police to shoot at the fleeing inmates: "the order to shoot by Inspector Karunasena and the act of shooting by three policeman consequent to that order were more than what was

warranted in the circumstances.” Karunasena admitted before the Presidential Commission of Inquiry that he had ordered his men to fire in the direction of a number of inmates as they were running towards his officers in an attempt to escape their pursuers. But what he intended by this order is not clear. He was not charged.⁶³

Kurunasena also testified that both ASP Dayaratne and HQI Seneviratne were there at the camp from 7:30 am onwards on 25 October 2000. Another police officer, Sub-Inspector N.S. Walpola (who along with Karunasena, was later indicted and put on trial), identified the ASP as being near the barracks before the attack. Of course, the interests of both Karunasena and Walpola would be served if it was accepted that their superior officers had been on the scene. But other, less interested parties also identified the ASP and the HQI as being there at least by the time the attack was in full swing. Captain Abeyratne stated in his testimony before the commission that he had seen ASP Dayaratne there at the very early stages of the attack, before the crowd had had a chance yet to set fire to the camp (many of the inmates were either burnt to death or had their bodies burned afterwards). And according to an even more reliable witness, the Bandarawela Divisional Secretary, W.N.R. Wijeyapala, the ASP and the HQI were both well inside the camp when Wijeyapala arrived, soon after 8:30 am, as the attack was actively underway.⁶⁴

Thus, if Captain Abeyratne’s and the Divisional Secretary’s testimony were correct, the ASP and the HQI were there early enough to be as responsible for the shootings and killings of the inmates as any of the other police officers. And indeed, the Presidential Commission of Inquiry accepted that the ASP and the HQI were at the scene while the attack was going on: “I have no doubt that ... both the ASP and HQI were present in the Rehabilitation Centre while the crimes were still taking place and assailants were freely moving about carrying weapons inside the Rehabilitation Centre.” According to the testimony of SI Chintaka Abeynarayana, the ASP allowed an inmate to be attacked and beaten at his feet, even as the inmate was pleading for his life. The ASP did nothing to help the inmate other than to eventually order the police to drag the inmate away. The exact fate of the inmate is left unclear in Abeynarayana’s testimony.⁶⁵

The acquittal was set.

II. Report of the Presidential Commission of Inquiry into Incidents That Took Place at Bindunuwewa Rehabilitation Centre, Bandarawela on 25 October 2000

1. General

1. By warrant under the Public Seal of the Republic of Sri Lanka dated the eighth day of March two thousand and one Your Excellency was pleased to appoint me as a Commissioner of Inquiry under the Commissions of Inquiry Act (Chapter 393) to inquire and report on the following matters:
 - (a) The circumstances that led to the incidents that took place at Bindunuwewa Rehabilitation Centre on 25.10.2000 in the course of which 27 inmates died and 14 persons were injured.
 - (b) The administration of the Rehabilitation Centre at Bindunuwewa and the conduct of the Public Officers in so far as it is relevant to the said incident.
 - (c) The person or persons, if any, directly or indirectly responsible, by act or omission for
 - (1) Bringing about the said incidents.
 - (2) Causing injuries to persons or the death of inmates.
 - (d) The criteria applicable to the admission of persons to relevant centres and the location of such centres.
 - (e) Methods adopted in rehabilitation of persons admitted to such centers.
 - (f) The measures necessary to prevent the recurrence of such incidents and the remedial measures if any, to be taken in this regard, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.
2. A copy of the Warrant by which I was appointed Your Excellency's Commissioner is at Appendix 'A' to the Report.

Report of the Presidential Commission of Inquiry

3. Your Excellency was pleased to declare in the Warrant itself that the provisions of Section 14 of the Commissions of Inquiry Act shall apply to the Commission, the effect of which is that, except in cases of false evidence and offences against the Public Justice (Penal Code Chapter IX):
 - (a) No person shall in respect of any evidence written or oral given by the persons to or before the Commission of Inquiry, be liable to any action, prosecution or other proceedings in any Civil or Criminal Court.
 - (b) No evidence of any statement may or given by any person to or before the Commission for the purpose of the Commission shall be admissible against that person in any action, prosecution, or other proceedings in any Civil or Criminal Court.
4. This is a welcome declaration for the reason it would serve as an encouragement to everybody concerned to act with utmost confidence and place before the Commission all information in their possession which would assist the Commission to get at the truth in respect of all the events and incidents this Commission had been called upon to examine.
5. Your Excellency was pleased to appoint Mr. Edmund Jayasuriya, a retired officer of the SLAS as the Secretary of the Commission in terms of Section 19 of the Commission of Inquiry Act.
6. Messrs. S.P. Fernando, Deputy Solicitor General, S.K. Gamalath, Senior State Counsel, S. Tissera, State Counsel representing the Attorney General assisted the Commission.
7. I caused to be published a press notice in all three languages inviting representations/information from the public and/or organisations on matters referred to therein. This notice was carried in the respective editions by the newspapers as follows: Dinamina of 29.03.2001, Lankadeepa of 28.03.2001, Divaina of 29.03.2001, Daily News of 29.03.2001, Island of 29.03.2001, and Tamil papers Virakesari of 28.03.2001, and Thinakaran of 29.03.2001. Copies of these press notices are at appendix B.
8. Even though the notices indicated that replies in response to the invitation or relevant information would be accepted until 20 April 2001 responses received even after that date were accepted.
9. The Commission is well possessed of the fact that the massacre of 27 inmates of the Bindunuwewa Rehabilitation Centre on 25.10.2000 has served only to deepen the ethnic hostilities and suspicion between two major ethnic communities in Sri Lanka and created bitter memories of

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inter ethnic hatred. The appointment of this Commission clearly manifests Your Excellency's commitment to uphold the principles of impartiality and ethnic equality with a view to bringing back much needed peace for the people of Sri Lanka.

10. Prior to the commencement of the sittings a series of discussions, and interviews were held with experts, professionals, retired senior public servants, senior public servants, a senior Deputy Inspector-General of Police, representatives of the UNICEF and some organisations as well. A list of the persons with whom such interviews and discussions were held is at Appendix C to the report. I commenced the examination of witnesses on 29.04.2001 at the District Courts, Bandarawela, when I visited the Rehabilitation Centre, Bindunuwewa on inspection. I have examined in all 62 witnesses. All these witnesses were examined on oath or affirmation as empowered by Section 7 of the Commissions of Inquiry Act. A list of witnesses so examined, is at Appendix D to the report. A number of documents were marked in evidence during the course of the inquiry. A list of these documents is at Appendix E to the report.
11. The record of the proceedings conducted by the Magistrate, Bandarawela in respect of the deaths of 27 inmates of the Bindunuwewa Rehabilitation Centre on October 25, 2000, statements recorded by the Criminal Investigations Department and the statements recorded by the police team attached to the Commission and the discussions and interviews I had (referred to in paragraph 11) formed the basis upon which I determined the names of persons who were required to be examined by me under the powers vested in the Commission under the Commissions of inquiry Act.
12. Sittings of the Commission were held both at the BMICH in Colombo and in the District Courts of Bandarawela. The sittings in Bandarawela were arranged for the recording of evidence of the villagers and local public officials.
13. In view of the implied requirement of natural justice embodied in Section 16 of the Commissions of Inquiry Act, I caused notices to be served on all the police officers who were, in my opinion, in some way implicated or concerned in the matters under inquiry. All persons so noticed were informed that they could be represented by their Attorneys-at-Law. A list of persons who were so served with notices is at Appendix F to the report. 14. Under the discretion given to me by Your Excellency to admit or exclude the public or the press from the whole or any part of the inquiry, I decided to record the evidence of two surviving inmates Sinnatamby Rajendran and Perumal

Gnaneshwaran, two lay witnesses and also ASP Nimal Fernando, SI Kurukulasuriya of the Intelligence Unit in camera . I decided to permit a full public hearing during the examination of all the other witnesses. 15. By leave of the Commission Mr. R.K.W. Gunasekera, Mrs. Manouri Muttetuwegama, Miss Priyadarshani Dias and Mr. Mohan Wijesinghe appeared on behalf of the Human Rights Commission. Also by leave of the Commission Mr. D. W. Abeykoon, P. C., with Mr. K. D. C. Kumarage, Mr. A.Rajakeshari, Mr. M. Remadius, Mr. C. Mouleeswaran, Mr. C.V. Vivekanandan, Mr. K.S. Ratnavele and Ms.T.M. Vasantha Abeykoon represented the aggrieved parties on behalf of the Centre for Human Rights. Mr. Upul Kumaraperuma appeared for ASP Mr. Dayaratne and Mr. Arjuna Weerasinghe appeared for SI M.P.S.S. Wijesinghe. The other police officers were not represented by Attorneys-at-Law.

2. Visit to Bindunuwewa Rehabilitation Centre

I have heard the testimonies of different categories of witnesses giving evidence before the Commission, namely, persons who had lovingly looked after the inmates of the Centre, persons who were interested in the welfare of the inmates, visitors to the Centre as well as the villagers. During my two visits to the Centre, I saw the destruction caused to it owing to an uncontrolled expression of rage by a thoughtless cascading mob. I saw the residue of buildings gutted and devastated by fire. I saw chunks of charred machinery and bunk beds. When writing the report my thoughts returned to Bindunuwewa. I started wondering. Can it be the place which UNICEF representative Mr. Colin Glennie described thus: "the environment was ideal for such a Centre in terms of the location in Bindunuwewa". Can it be the abode of such "obedient and disciplined set of youngsters" spoken to by Prof. Harendra de Silva and Mr. Vas Gunawardana, District Secretary, Badulla. What took away the lives of "loved ones" about whom the Officer-in-Charge Capt. Abeyratne shed tears while giving evidence before the Commission. This earth has seen blood. What really went wrong? I am reminded of Edgar Allen Poe's "The Valley of Unrest" which I memorised during my school days.

Now each visitor shall confide

The sad valley's restlessness

Nothing there is motionless

Nothing save the airs that brood

Over the magic solitude,

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Ah, by the wind steered those trees,

That palpitate like the chill seas

Around the misty Hebrides

Ah, by the winds those clouds are driven

That rustle through the unquite Heaven

In order to get a clear view and an understanding of the Doomsday happenings at Bindunuwewa Rehabilitation Centre, the Commission thought it fit to visit the Centre. Prior to the commencement of the proceedings, on 29.04.2001 accompanied by Deputy Solicitor General Mr. S.P. Fernando, State Counsel Mr. S. Tissera, Secretary to the Commission Mr. Edmund Jayasuriya and Senior Superintendent of Police Mr. Mahinda Hettiarachchi and his team of police officers after journeying 250km from the capital city of Colombo, the Commission visited the site for the first time. At the site, Mr. Vikum Kaluarachchi, Magistrate, who had conducted the inquest proceedings also joined us. Thereafter, after recording the evidence of the Officer-in-Charge Capt. Abeyratne, in order to ascertain the relevant places spoken to by him in his testimony we made a second visit. Then the commission was armed with a sketch of Bindunuwewa Centre prepared soon after the incident by government surveyors Mr.J.T.S.Perera, Mr.J.M.M. Bandara, Mr.D.I.N. Jayasundara and Mr.D.G.R.K. Balagalla attached to the Institute of Surveyors at Diyatalawa Camp. This map is marked as P56.

From the Bindunuwewa junction on the Bandarawela-Badulla Road, there is a road to the left going into the interior to the villages of Maduwelpathana and Alutgama. After some distance, the road bifurcates, one to the left going to Maduwelpathana and one to the right going towards Vidyapeetaya and village Alutgama. The road going towards Maduwelpathana takes a sharp bend and at the end of the bend bifurcates again, one going straight to the Rehabilitation Centre and the other proceeding to Maduwelpathana village. The distance from Bandarawela Police Station to the Rehabilitation Centre is about 5 km. The distance from the Centre to the Diyatalawa Army Camp is about 13 km. Capt. Abeyratna assisted me in my endeavour to grasp the layout of the Camp, the existing structures and also buildings which had been totally destroyed as a result of the attack. When entering the camp from the south, I saw some buildings gutted by fire. They were hostels (marked and referred to as P1 by the surveyor). Of these buildings the southernmost building had been used by inmates for religious activities, social events and seminars. It is marked Hall No.4. The northernmost building had been used for vocational training activities. This building is marked Building No. 1. These buildings are made of zinc sheets and partly damaged. In between these two buildings we saw two cemented floors which run parallel to the

other two buildings. These two cemented floors are the remnants of two buildings where the inmates had lived. These two cemented floors are marked in the sketch as Hall Nos.2 and 3. All four buildings had stood parallel to each other and they were of the same length and breadth. All these buildings were made of zinc sheets. Hall Nos.2 and 3 which were the dormitories where the inmates lived had been furnished with bunk beds. What is left of those bunk beds are only the residue in the form of burnt up iron frames piled up at some corner. According to Capt. Abeyratne, all the mattresses had been completely burnt by the mob. Walls of two remaining partly damaged buildings made of zinc sheets are broken and cracked at several places. Looking at the cracks and dents on the zinc walls I got the impression that the intruders had attacked the walls on all sides from outside before they had entered the halls to cause mayhem and bloodshed. I also observed stones lying on the cemented floors of all the buildings. They were of different sizes. Some of the photographs taken by the NIB were produced at the inquiry and are marked as P66B, P66C, P66F and P66J. On to the left of these buildings, I saw Capt. Abeyratne's house. I noticed that some of the windows had been broken and there were cut marks on the main door which gave me the impression that there had been an attempt to break open that door. This building is marked B. Cap. Abeyratne explained to me that the damage to his quarters was done by the inmates on the 24 th night. The building where the other staff members lived is marked I. Main gate to the Centre is marked A. The office is marked C. The Office telephone was kept in this building. The Police post and the store room are marked E and D respectively. Cap. Abeyratne showed me the damage that was caused to the police post by the inmates on 24.10.2000. All these buildings are separated from the rest of the Centre by a barbed-wire fence. The Art room is marked J. When the relatives of the inmates visited their loved ones they were given accommodation in this building. Part of it had been used as a library.

Building marked X1 was used for vocational training in tailoring. There is a building marked X7 which was used as a store room to keep bicycles meant to be presented to the inmates when they leave after completing their period of rehabilitation. The place where the routine evening assembly was held is marked X. Vidyapeetaya playground where 1500 to 2000 had gathered on 25.10.2000 in the morning is marked G. This is the place from which the mob broke into the Rehabilitation Centre. A portion of the fence through which the mob had invaded the Centre is marked X2. The edge of the playground runs to about 112m. From the edge there is a steep slope of about 24 meters merging into the land owned by the Rehabilitation Centre. From the edge of the playground, everything happening inside the Centre except what is happening inside the halls can be very clearly seen. The playground covers a large flat area. Thousands of people could easily be accommodated there. I recount the testimony of Divisional Secretary, Bandarawela Mr. Wijepala who

told the Commission that people from the adjoining villages can easily enter the playground from three directions. The road leading to the main gate of the Vidyapeetaya is a tarred road where even heavy vehicles could easily come. It was in evidence that a section of the large crowd gathered there came in buses, vans and three wheelers.

3. Location of the Rehabilitation Centre with emphasis on Locational Factors

Surrounded by lush green vegetation lies the Bindunuwewa Rehabilitation Centre in the hill country of Sri Lanka, 4000 feet above sea level. The area enjoys a salubrious climate. Popular tourist resort town Bandarawela is only 5 kilometres away from the Rehabilitation Centre. A brochure of Bandarawela Hotel refers to the climatic environment of Bandarawela as being "ideal atmospheric pressure and climatic conditions for the human body and mind". In fact a former Deputy Commissioner General of Rehabilitation Mr. Lukshman de Silva giving evidence before the Commission testified that at the time he assumed duties there were 21 rehabilitation camps around the island and of these camps location-wise Bindunuwewa was the best. Even the representatives of the UNICEF in the discussions they had with the Commission expressed the view that they have no complaints pertaining to the location of the Centre.

The Bindunuwewa Rehabilitation Centre occupies three acres of land. As one enters the Bindunuwewa Centre from the south, it is bounded on the south by a public road going to the villages of Maduwalapathana and Sapugasulpatha and to the west by the public cemetery. To the north the land becomes undulating and precipitous. To the east lies a playground 15 belonging to the Vidyapeetaya Training School. There is a marked slope which physically separates Vidyapeetaya playground from the land belonging to the rehabilitation centre and the boundary is marked by a barbed-wire fence. About 90% of the perimeter is covered by a barbed wire fence. On the whole, the centre is located on a higher ground. There had been a police post inside the centre which had been manned by four policemen deployed by the Bandarawela Police Station (marked as E in the sketch marked P56).

The Diyatalawa Army camp and the Bandarawela Police Station are situated within a distance of 13 kilometres and 5 kilometers respectively away from the Bindunuwewa Rehabilitation Centre. Therefore in an emergency, the services of the police and armed forces were available. Until 24.10.2000 no such need or occasion had arisen. The natural protection afforded by the environment itself looked after the safety of the inmates and the centre existed "peacefully", so to say, until about 7 p.m. on 24.10.2000.

Undoubtedly the conducive geographical situ in a landscape full of scenic beauty with “hills and valleys, dales and fields” around it, a healthy climate and the natural protection afforded by nature herself, proximity to the Bandarawela Police Station and the army camp at Diyatalawa, availability of roads and rail transport and easy access to the Bandarawela 16 Hospital, may have been the factors that would have influenced the authorities in 1990, in their choice of Bindunuwewa as a suitable location site for a rehabilitation centre. Albeit, the irony of it is that in my visit to Vidyapeetaya playground my observation was that the Bindunuwewa site was severely exposed and vulnerable if attacked from Vidyapeetaya side.

The “Village”

Bindunuwewa is essentially a Sinhalese village. According to the testimony of W.N.R. Wijayapala, Divisional Secretary, Bandarawela, there are three villages around the rehabilitation centre, namely, Watagamuwa, Kandekumbura and Sapugasullpatha. These villages are sparsely populated. Watagamuwa comprises 197 families. Kandekumbura comprises 110 families and Sapugasullpatha 260 families. The total population comes to about 1600. Their main occupation is growing of vegetables. In the terraced hill slopes where water is available paddy cultivation too is done. There are a few government servants and about 50 persons employed in the forces both police and army living in the area. I recall here how Robert Knox who in September 1666 caught up in King Rajasinghe II’s quaint hobby of “Collection of a sort of menagerie of European Captives”, in his “An Historical Relation of Ceylon” described Kandyan Peasants’ life style, at page 236, “let us take a view of this people at their meals. Their dyet and ordinary fare, is but very mean, as to our account. If they have but Rice and 17 Salt in their house, they reckon they want for nothing. For with a few green leaves and the juice of a lemon with pepper and salt, they will make a hearty meal. Beef here may not be eaten; it is abominable. “

These villagers are basically peace-loving people. It is evident from the statistics supplied to the Commission by the Officer-in-Charge, Crimes, Bandarawela Police Station, on the directions given by the Superintendent of Police, Bandarawela. For the period January 1999 up to 14.07.2001, only three non-summaries have been instituted in the Magistrate’s Court of Bandarawela apart from the murder cases relating to the death of 27 inmates of the Centre. The details are as follows:-

Case No.BR 436/99 is relating to a murder committed by a police officer on 06.06.1999. Case No.BR 821 is pertaining to a murder by strangulation committed on 03.11.1999. Case No. 18035 pertains to a murder committed on 31.12.2000.

Of these three cases, two are from the Bandarawela village and the other is from Warakarodawatta. I recall here what Robert Knox observed of these Kandyan Peasants as far back as 1666. He remarked thus:-“They are not very malicious one towards another; and their anger doth not last-long; seldom or never any blood shed among them in their quarrels “.

Human Factor

Equally important in the selection of a suitable place to set up a rehabilitation centre is the all important human factor, namely, whether the rehabilitation centre is acceptable to the people in the locality. The introduction of the LTTE youth for rehabilitation to the centre in 1993, to wit, Tamil youth who have been indoctrinated by the LTTE, who have had military training under the LTTE and who had fought for the LTTE against the established government would not have been viewed at favourably by the villagers or the people living around. Highlighting this aspect was the evidence of DIG Kotakadeniya and Dr. Navaratna that in the year 1990 the choice of the Bindunuwewa site as a centre for rehabilitation would have been all right, for the reason that trainees were of a different stock, to wit, JVP youth whom the villagers considered as their own misguided kith and kin. But when the LTTE youth were introduced to the centre in 1993, villagers would have considered the centre to be something “hostile” or “alien” to the village.

DIG Kotakadeniya testified that quite a number of youths living in and around Bindunuwewa have joined the Police and the Army, and some of them are fighting the LTTE in the North and the North-east. The grief the villagers would have suffered, whenever one of their own children died 19 while in action, or whenever their dead bodies were brought to the village for burial, may have instilled into their minds a hatred toward the LTTE. In fact it was elicited from the Divisional Secretary, Bandarawela, Mr. Wijepala that during this period three Army soldiers from villages around the rehabilitation centre died while in action and that about a month prior to the incident, a major attached to the Army from Dowa about 1 1/2 k.m from the centre too died while in action. When the LTTE youths were brought to Bindunuwewa for rehabilitation in the year 1993, there had been protests from some quarters but these were disregarded by the authorities, may be because building and space were readily available at Bindunuwewa. Both Dr. Navaratna and Prof. Harendra de Silva testified that when bunk beds and other facilities were provided to the centre they had information that there was a feeling of jealousy among the villagers since they, being themselves poor could hardly afford to give their children such facilities. The view expressed by DIG Kotakadeniya and Dr. Navaratna receives support from the contents of the posters that had come up in the village with the first rays of the rising sun on that fateful day 25.10.2000. Those posters read as follows:-“Remove Bindunuwewa Rehabilitation Camp immediately”, “Why is the Big

Man feeding the tigers with milk”, “Good water for tigers, muddy water for us”. 20

In his evidence Dr. Navaratna told the Commission of a proposal by the authorities to set up a rehabilitation centre at Kulegedera, Gampaha for the female LTTE surrendeers who are presently housed in the building belonging to the Department of Social Services at Gangodawila which is known as “Meth Sevana”. In fact Her Excellency the President was personally interested in this venture because Her Excellency was keen to initiate measures to improve the life-style and the living conditions of these inmates of “Meth Sevana”. However, there were protests coming from the people, priests, government servants and the politicians of the area. After taking into consideration the risk factor involved if the “pulse of the people” was ignored, the authorities have decided to drop the idea with a view to selecting a suitable site elsewhere.

Dr. Navaratna described in detail what he termed “Stakeholders Approach”, a concept applied in marketing and expressed the view that all the “focal share-holders” namely the persons to be rehabilitated, villagers, the police, the politicians, important government officials in the area, the priests and other religious dignitaries should be consulted and their views examined prior to setting up of a site for a rehabilitation centre.

Feeling the pulse of the people - a vital factor.

It is axiomatic that a rehabilitation centre cannot come up in a vacuum. It has to be set up in an environment inhabited by people. Therefore, it is vital that the centre should be acceptable to the people. This is especially so when the persons who would be undergoing the rehabilitation process at the centre and the people in the village or the locality where the centre is to be established are of two different ethnic communities. In the circumstances, awareness programmes become important, whereby the people should be made to understand or realise that the people to be rehabilitated are a badly affected segment of the society, in that they are “victims of war” and are “destitute” for the reason that they cannot go back home because they had run away from the iron grip of the LTTE. Intelligence reports, surveys and studies and feasibility reports should be called for prior to the setting up of a rehabilitation centre and careful examination and consideration is necessary before deciding on a site. For these purposes assistance of our Universities would be readily available.

Even after the establishment of a site, there should be a mechanism to gather information in and around the centre to carry out continuous surveillance, and in the event of any attempts made to disrupt the Institution, prior knowledge will be available, so that effective measures could be taken by the

authorities to avoid any future calamity.

The external environment of the centre comprising the public, can at any time be influenced and instigated by dubious elements to create disturbances and harm inmates of a rehabilitation centre to achieve their ulterior objectives. This possibility has to be always borne in mind by the management (Authorities).

4. Visit to Meth Savana

The distance from the capital city of Colombo to the point at Soratha Road, Gangodawila where Meth Sevana is situated is about 13 kilo meters. It is in a densely populated area. Public transport is available. Willingness by the Department of Social Services to accommodate LTTE women surrendeers in their building seems to be the only factor which can be attributed for its location.

In this building Social Services Department provides housing for women who are on probation under Magistrate's orders and also destitute children. There is a separate unit for the LTTE women surrendeers. There is no security personnel apart from a few watchers employed by the Social Services Department. Entrance to the unit is through a wooden door which was locked at the time we arrived there. Sri Lanka has experienced two sad incidents which did attract the attention of the International Community, namely, incident referred to as "Black July" in the year 1983 and the Bindunuwewa tragedy. Location-Wise Meth Sevana appears to me as highly exposed and vulnerable. 24

Presently, there are six inmates and two resident teachers living there. When the learned Deputy Solicitor General Palitha Fernando and I spoke to them they responded well. Samudra who is 16 years of age is from Trincomalee. She has come to Meth Sevana on 28.03.2001. Gowri is 15 years of age and has come to the Rehabilitation Centre in March 2001. Of the other four, Devanayagy has already completed her period of rehabilitation and living there expecting a foreign employment. Col Vipulagune stated to me that it was Prof. Harendra de Silva who has helped her to get her passport. Suganthini is a married woman with a child of 3 months. Col. Vipulagune brought to my notice that he has already recommended her release. One of the girls has sat for the Advanced Level Examination and is pending results.

They all told us that they are happy. They cook their own meals with the help of Sabitha a cook provided by the Centre. She is a young girl who has been rehabilitated at this Rehabilitation Centre. She gets a salary of Rs.5000/-. Teachers are good and understanding they said. Two of them are living with

them sharing the same meals. Sewing is the vocational training they get. But they complained that two of the machines are not in good condition. We do not see any recreation facilities provided for them. Within that enclosed unit the authorities may have found it difficult to provide them 25 with recreation facilities. Another complaint that they made to me is that they are unaware of their date of release. They said they would like to know the date on which they can go back to their parents. In fact this was one of the demands Bindunuwewa inmates also made to the authorities. All the inmates stated that once they are released they are uncertain about their future. They requested that some employment be provided for them once they are released.

5. Admission of persons to the rehabilitation centres

The evidence pertaining to the criteria applicable to the admission of persons to rehabilitation centres were elicited from Mr. K. Jinasena, Senior Asst. Secretary (Legal), Ministry of Defence, Col. M. A. Vipulagune, Deputy Commissioner - General, Rehabilitation, Senior Superintendent of Police Lukshman de Silva, a former Deputy Commissioner General of Rehabilitation and Captain Abeyratne Officer -in-charge, Bindunuwewa Centre. In this regard, the Regulations 20 (A), 20 (B) and 20 (C) of the Emergency (Miscellaneous Provisions and Powers) Regulation No.01 of 2000 made in terms of section 5 of the Public Security Ordinance published in the Gazette No.1 130/8 of 03 May 2000 marked P31 which are in force prescribe the procedure.

Intake of inmates to these rehabilitation centres fall into two categories namely:

- (a) Detainees:- persons detained under the provisions of Regulation 17 or 19 of the Emergency Regulations or section 9 of the Prevention of Terrorism. (Temporary Provisions) Act No.48 of 1979. 27
- (b) Surrendeers :- persons who have surrendered to police officers, officers of the armed forces or public officers or any person authorised by the President in that regard in terms of Regulation 20 (C) of the Emergency Regulations.

The purpose of rehabilitation of detainees as set out in Regulation 20(1) is “in the interest of the welfare of such persons”, the objective being to induce these youth to return to society as respectable citizens. It is a form of custody. The inmates whether “ detainees” or “surrendeers” are described as being in the custody of the Commissioner General of Rehabilitation. They are all persons who have not been convicted of any offence.

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Mr. Jinasena testified that in the case of a detainee, the Secretary to the Ministry of Defence may consult either the Advisory Committee appointed under Regulation 17 (4) of the Emergency Regulations or Advisory Board appointed under Section 12 of the Prevention of Terrorism (Temporary Provision) Act before making a rehabilitation order. Speaking about the functions of the Committee, Mr. Jinasena told the Commission that it is the President acting in terms of the Emergency Regulations who appoints the Committee. The Committee that was functioning at the time of the incident was headed by retired Judge of the Court of Appeal the late Hon. Ananda Grero. The other members were Mr. Dappula de livera, Senior State 28 Counsel, Mr. E. P. Amarasinghe retired Deputy Commissioner of Prisons, and G.S.A. de Silva, Senior Assistant Legal Draftsman. Mr. Jinasena has functioned as its Secretary. He described the functions of the Committee in the following terms. "The function of the Committee was to inquire, process, classify and recommend the release or rehabilitation of suspects or surrendeers under the PTA or Emergency Regulations. The Committee had the authority to inquire into persons who were taken into custody under the PTA or persons who had surrendered under the ER. The Committee after scrutiny and assessment of the reports and consideration of their involvement decided the suitability for rehabilitation and the period of rehabilitation". The Rehabilitation order specifies the period of rehabilitation, albeit there is criticism that Emergency Regulations permit the Secretary, Ministry of Defence to detain a person indefinitely for rehabilitation by a Rehabilitation Order. In a "brief paper" submitted to the Commission by the Secretary to the Civil Rights Movement of Sri Lanka Mrs. Suriya Wickramasinghe titled "Detention In The Context Of Rehabilitation and Surrender" she has remarked thus:-

While the period of rehabilitation has to be specified in the Rehabilitation Order, no maximum period is prescribed. The order may therefore be for any length of time. There is no provision enabling more than one order for rehabilitation to be made in respect of a person. Nor is there any provision to extend the period of rehabilitation. However, the 29 Commissioner General is by Regulation 20(b) (2) (d) empowered to "make recommendations to the Secretary regarding the release of youth who have completed their training. This suggests that release at the end of the period specified in the Rehabilitation Order is not automatic.

This in fact was one of the main grievances which prompted the inmates of Bindunuwewa Centre to demand their release from Capt. Abeyratne. In fact Col. Vipulagune admitted that the inmates of Bindunuwewa Centre had such a grievance. In his evidence he said "I went there about one year ago. There was a big complaint with a petition. They said that they want married persons to be released as soon as possible and others to be released after 6

months. When we got that petition we submitted that to the Ministry of Defence. The Ministry of Defence gave instructions saying that this cannot be done because they have certain records and that they have to undergo the period the Ministry was giving". He told the inmates about this situation.

In the case of the surrendees, the procedure is different. At the point of surrender, a surrendee is required to make a statement. According to Mr. Jinasena, the surrendee is provided with a form where he has to state that his surrender is voluntary. This is in conformity with Regulation 20 C (1) of the Emergency Regulations. Within 10 days of such surrender, the surrendee should be handed over to the Commissioner General of Rehabilitation who shall assign a centre. In fact the distinction between 'detainees' and 'surrendees' is well recognised by the Regulations because in the regulations 20 C centres where surrendees are to be rehabilitated are referred to as "Protective Accommodation and Rehabilitation Centres" whereas in terms of Regulation 20 B centres for rehabilitation of detainees are referred to as "Youth Development & Training Centres". However in practice both detainees and surrendees are housed in one rehabilitation centre. This is in clear violation of the provisions made by the said Regulations. Simultaneously the officer or person to whom the person surrenders shall inform the Secretary to the Ministry of Defence within 10 days of the surrender and handing over, the fact of surrender and the handing over of the surrendee to the Commissioner General of Rehabilitation.

In terms of Regulation 20 C even persons surrendering "through fear of terrorist activities" fall into the category of surrendees. The factual position is that they cannot be considered as 'surrendees' because they have neither committed nor are suspected or accused of committing any offence. They are persons seeking protection. This Commission is of the view that these persons should not be housed in a rehabilitation centre meant for "detainees" or "surrendees". In this regard it is appropriate to recount an important item of evidence deposed to by Sinnathamby Rajendran, an inmate who had suffered injuries on 25.10.2000. He testified that on 15.09.2000, he having 31 obtained clearance from the Army accompanied by his mother, wife and two children had proceeded to Wannu to see his elder sister "Akka". On his entry to the un-cleared area, he was taken a captive by the LTTE and locked up in a room. He was unaware what happened to his mother, wife and the children after he was taken a captive. However a few days later one night, he managed to escape and had run for miles until he came across an Army camp. He explained to the Army the ordeal he underwent. After recording his statement, on 24.09.2000, the Army had handed him to the Diyatalawa Army Camp who in turn brought him to the Bindunuwewa Rehabilitation Centre. During his testimony he complained to the Commission that no one had told him why he was brought there and how long he was to be kept at

the Bindunuwewa Rehabilitation Centre. I recount his exact words "I was sad and still sad for the reason that there was no reason to keep me in a rehabilitation centre ". Although the Regulation 20 C provides for a person who surrenders "through fear of terrorist activities" to be sent to "Protective Accommodation and Rehabilitation Centre", I do not see any moral basis to keep such persons under any custody. Hence, there is a justification in Sinnathamby Rajendran posing the question "why am I kept in a rehabilitation centre?".

Even though the purpose of rehabilitating a surrendee is not referred to in the Regulations, it can safely be inferred that as in the case of 32 rehabilitation of a detainee the purpose is "in the interest of the welfare of such person" in order to prepare them to return to society as responsible citizens. Mr.Jinasena who functioned as the Secretary to the Jayalath Committee and thereafter as Secretary to the Committee headed by the late Dr. Ananda Grero which was functioning at the time of the catastrophic event explained to the Commission that once the Committee was informed about the surrender the Committee proceeds to process the reports and decide whether a surrendee is fit for rehabilitation. The period of rehabilitation would range from 3 months to 12 months. To process and make the recommendation it would take at least a period of 2 months. There is a provision in the Regulation for the period of rehabilitation to be extended on a request made by the Commissioner General for a period of 3 months at a time up to an aggregate period of 12 months. At the end of the period of rehabilitation, the Commissioner General of Rehabilitation is informed that the person who was sent for rehabilitation has been released.

Capt. Abeyratne Officer-in-charge of the Rehabilitation Centre, Bindunuwewa testified that there had been instances where persons who had been arrested were brought and handed over to the rehabilitation centre under the guise of a surrendee. (Vide the proceedings of 07.06 .2001). This is a violation of the procedure clearly laid down in Regulation 20 of the Emergency Regulations. 33

Mr. Jinasena conceded that the determining factor for rehabilitation in the case of a surrendee is the fact of surrender. A statement made by the surrendee to the effect that he voluntarily surrendered and the certification by the officer or person to whom the surrender was made affirming that fact makes such surrendee eligible to gain admission to a rehabilitation centre. This mode of admission is thoroughly inadequate and unsuitable and would pose a danger to the institution. For example, it would leave room for any terrorists organisation to plant a "hard-core" or a spy in order to get information or to give misinformation with a view to disrupting the whole set up. Secondly, the fact that it takes at least 2 months for the Committee to process the reports and make its recommendation also could cause problems

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to the centre. For example by the time the recommendation is made, the new comer can initiate or cause disturbances among the inmates or collect necessary information if he was sent to spy. By the time the Committee concludes processing of relevant material it may well be that they have come to the conclusion that the person is not suitable for rehabilitation. Mr. Jinasena, when questioned by the DSG on this matter testified that if the Committee decided that the person concerned was not fit for rehabilitation, he is released or if the Committee finds that action should be taken under normal law to prosecute him, the Police is permitted to inquire into their 34 cases while they are under rehabilitation. On this point, Mr. Jinasena highlighted an alarming situation to the following effect:

DSG :- "If the investigation notes reveal that he was a "hard-core " terrorist then what will you do?"

Mr. Jinasena "Even then if he is a surrendee invariably he should be rehabilitated and the Committee recommends that he be sent for rehabilitation ".

Q:- "Therefore what was important was not his past, but whether he has regretted and then surrendered in order to be rehabilitated?"

A:- Yes.

Commissioner:-

A:- "Is there any means by which the Committee get at his past except the statements that he made to the Police or Army at the point of surrender? "

A:- "Very rarely we get some other reports from the intelligence unit of the Army."

It was elicited from Mr. Jinasena that the Committee was not aware as to how the last three inmates who were admitted to the Bindunuwewa 35 Rehabilitation Centre had gained admission to the said Centre. They are as follows:-

- (1) No.39 Sivagnanasunderam Sivananthan,
- (2) No.40 Mylvaganam Kanagasingham,
- (3) No.41 Sundaram Selvaraj.

During the incident, all three had died. There was one Anton James who had come from Batticaloa with a history of 13 years fighting for the LTTE against the Government. Capt. Abeyratne as well as Lt. Abeyratne testified that prior to the escalation of violence on 25.10.2000 Anton James was found giving telephone calls. For that purpose the telephone had been removed from the

Office without the knowledge of Capt. Abeyratne and removed to one of the trainee's hostels. I would refer to his involvement as per his statement made to the police at the point of his "alleged surrender" elsewhere in my report.

It is pertinent to mention here that the ex-child combatants and children who had run away from the uncleared areas for fear of conscription were living in the same wards along with the adults in the Bindunuwewa Centre. In fact at the time of the incident Bindunuwewa Centre housed 9 inmates who were under 18 years. UNICEF representatives at the discussion they had with the Commission on 24th April 2001 expressed their concern on this matter because Regulation 27 of the Convention of the Rights of the Child 36 to which Sri Lanka is a signatory requires such children to be separated from the adults. To ensure protection and care for such ex-combatant children, the convention lays down that "in accordance with their obligations under international humanitarian laws in armed conflicts, States should take all feasible measures to ensure protection and care of children affected by armed conflict".

6. Methods adopted in the Rehabilitation of Persons in Such Centres

To ascertain the rehabilitation process followed in the rehabilitation centres evidence was elicited from Professor Harendra de Silva, Paediatrician, Chairman, Child Protection Authority, Mr. Lakshman de Silva, Senior Superintendent of Police, Capt.Y.K. Abeyratne, Officer-in-Charge Bindunuwewa Centre and Mr. Vas Gunawardana, District Secretary, Badulla. In addition, the Commission had the privilege of having some meaningful discussions with the representatives of the UNICEF.

According to the testimony of Mr. W. G. Mitrarama, Secretary to the Ministry of Youth Affairs, during the period 20.03.1993 to 25.10.2000, 901 persons had been handed over to the Bindunuwewa rehabilitation centre for rehabilitation and 861 persons had been released after rehabilitation. On 25.10.2000, 40 persons who were still undergoing the rehabilitation process and one person who had already completed his period of rehabilitation were housed in the centre. The tragedy that struck the centre on 25.10.2000 took away the lives of 27 inmates, 14 were injured.

Mr. W. G. Mitraratna and Col. Vipulagune testified that presently there are two rehabilitation centres for the LTTE surrendeeds. One centre, Meth Sevana, located at Gangodawila and housed in a building belonging to the Department of Social Services, provides shelter for female surrendeeds. Presently 6 Tamil women are housed in that centre. There is another centre located at Telipillai, Jaffna. According to Mr.Mitraratna and Col. Vipulagune,

out of the 14 injured at Bindunuwewa centre 11 are presently housed at Tellipillai. The remaining 3 persons have been released because they have completed their period of rehabilitation. Presently this centre accommodates 53 surrendeeds.

Colonel Vipulagune placed before the Commission details relating to these two existing centres. Tellipillai rehabilitation camp is located within the army controlled area in the Jaffna Peninsula. It is in a private land occupying three and a half acres. Perimeter is secured by a barbed wire fence 6 ft. in height. The Centre comprises 3 two-storied buildings, one for the surrendeeds, one for the staff and the other for the police personnel. Staff consists of 5 permanent officers attached to the National Youth Council and 4 Instructors who are on contract basis. Army personnel attached to the camp are in civvies but the policemen are in uniform. Security consists of 50 policemen. Attorney-at-Law Mr. Appathurai Vinayagamurthy, Member of Parliament who volunteered to testify before the Commission told the 39 Commission that he has visited the Tellipillai rehabilitation centre. Commenting how the inmates are treated he said "They are treated very well. They have no complaints".

Gangodawila centre "Meth Sevana" is exclusively for female surrendeeds. The centre is housed in a building belonging to the Department of Social Services. Three large rooms have been allocated to the rehabilitation centre for the vocational training purposes of the surrendeeds. The surrendeeds live in a separate room. The staff consists of five female officers and three Instructors. When questioned about the security, Col. Vipulagune stated that the Dept. of Social Services is against having any security personnel or security points inside the premises. It must be observed here that in view of the horrendous experience we had at Bindunuwewa which for years enjoyed a visibly "comfortable , calm and peaceful atmosphere" the Commission would strongly recommend that this centre be removed to a suitable locality where adequate safety and protection can be made available for these female surrendeeds. Commission visited Meth Sevana and it is dealt with under "Visit to Meth Sevana".

When questioned about the methods of rehabilitation practised in these centres Col. Vipulagune stated to the Commission that the same methods 40 carried out at Bindunuwewa centre are followed in these centres as well. Elsewhere in this chapter I have made a detailed study of the methods adopted for rehabilitation. In the event of a peace proposal succeeding in seeing the light of day new centres may have to be established to house ex combatants who will have to undergo rehabilitation processes.

Even though two types of rehabilitation centres are envisaged namely, Youth Development and Training Centres under Regulation 20 B and Protective Accommodation and Rehabilitation Centres under Regulation 20 C, in

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practice we find the one centre functioning on the lines of both types. This is a clear violation of the provisions of the Regulations.

Regulation 20 A spells out the reason why a detainee be subjected to rehabilitation. It reads as follows:

“In the interest of the welfare of such persons”.

In the case of surrendeeds, why a surrendee be subjected to rehabilitation is not spelt out, but it can be safely inferred that the reason would be the same. The task of rehabilitation is a difficult one for the following factors namely:

- (I) That the detainees and some of the surrendeeds are ex-combatants who had fought the war for a terrorist organisation against the Government 41 for a separate state. Members of such an organisation are fed with disinformation on alleged misdeeds of the Government security forces, harassment and discrimination of Tamil people by the Government and discriminatory treatment of the Tamil minority by the majority Sinhalese, all aimed at creating hatred and animosity towards the government and Sinhalese people. They are then subjected to indoctrination and mind-set changes employing methods based on human psychology, practised by separatist movements the world over to ensure discipline, commitment and dedication to their cause.
- (II) In the case of detainees the authorities are aware of the degree of involvement and culpability. Whereas the authorities know nothing of the surrendeeds involvements, their history or their background except the fact that they had surrendered, determining factor for rehabilitation being the fact of surrender. As I have pointed out elsewhere in my report, this leaves room for a “hard core” to gain admission to a centre or to be planted there. Therefore, among the inmates at rehabilitation centres there are persons ranging from those with minimal involvement to “hard core”.
- (III) Apart from the ex-combatants there are persons who had run away for fear of conscription by the LTTE or run away from uncleared areas because they have been made destitute by the war. Housing and 42 mingling of different types of detainees can lead to not only explosive situations but also affect the effectiveness of the rehabilitation programme.

Evidence adduced before this Commission revealed that the Bindunuwewa centre housed detainees, surrendeeds, and persons who would fall into the category of “hard core” who had gained admission “under the guise of a surrendee”, e.g. case of Anton James. Moreover the centre gave shelter to children (under 18 years) and adults.

Notwithstanding all these drawbacks the rehabilitation process at the Bindunuwewa centre appears to have functioned reasonably well. Mr. Colin Glennie Resident Representative of UNICEF who had visited the Bindunuwewa centre accompanied by Dr. Hiranti Wijemanne on 8 November 1999 has made the following observation:

“On the whole, the centre was providing good care and rehabilitation in spite of the lack of resources necessary. The environment was ideal for such a centre in terms of its location in Bindunuwewa. The caring attitude of Capt .Abeyratne was particularly commendable”.

Prof. Harendra de Silva testified to the methods of rehabilitation in general but gave more emphasis to the rehabilitation of child combatants and 43 children who had run away from “uncleared areas” for fear of conscription by the LTTE.

The Oxford English Dictionary, Second Edition attributes the following meanings to the term “Rehabilitation”:

- 1a. The action of re-establishing (a person) to his former standing with respect to rank and legal rights.
- b. Reinstatement (of a person) to any previous position of privilege.
- c. Re-establishment of a person’s reputation: vindication of character.
2. a. The action of replacing a thing in, or restoring it to a previous condition or status.
- b. Restoration to a higher moral state.
- c. Restoration (of a disabled person, a criminal etc.) to some degree of normal life by appropriate training.
- d. The retraining of a person, or the restoration of industry, the economy, etc. after a war or a long period of military service.

The purpose of rehabilitation is to reintegrate the inmates back to society as responsible citizens, leaving no room for them to be re-drawn into a terrorist organisation or into a web of anti-social intrigues in the future. Vide in this regard the booklet titled “Re Born” published by the 44 Department of the Commissioner-General of Rehabilitation, Ministry of Youth Affairs and Sports, marked P77.

The Regulations themselves do not define the word “rehabilitation”, but in terms of Regulation 20 B one of the important aspects in the rehabilitation process is to provide vocational, technical and other training to youth. In these centres the rehabilitation process is geared at two-pronged objectives namely: (a) mental rehabilitation, (b) economic rehabilitation.

Mental Rehabilitation

To achieve the first objective various methods are adopted, for example at the Bindunuwewa centre (a) religious observances relating to all three religions, Hinduism, Christianity, and Buddhism were given a special place in their day to day work schedule. The Centre also provided them with opportunities to participate in festive occasions. Hall No.4 marked in the sketch P56 had been used for the above purpose and this particular hall contained Shrine Rooms for the devotees of all three religions. Priests of all denominations used to visit the centre to facilitate the religious observances vied paragraph 7 of "Note for Record" marked Y3.

There were meditation programmes as well, (b) As a step to facilitate reintegration, mixing with different ethnic and religious groups is essential. At Bindunuwewa the inmates participated in shramadana camps in the 45 village and the Bandarawela hospital. According to Capt. Abeyratne there were instances where at the requests of bereaved families in the village the inmates had helped them by digging graves. During Vesak, Deepavali and Christmas inmates celebrated in the camp itself. They lit Vesak Lanterns and provided "dansals" to the villagers. (c) The inmates were provided with facilities to engage in sports and aesthetic activities. The inmates of Bindunuwewa centre had performed a musical evening at the Badulla Town Hall for the music lovers. Professor Harendra de Silva too testified to the above facts and had even taken photographs on these occasions. Some of these photographs were produced before the Commission. The book containing the photographs is marked as Y and the cassette as Y1.

Economic Rehabilitation

For economic rehabilitation much emphasis had been placed on vocational and technical training. For those inmates who had had no schooling, the centre afforded a basic education in Tamil, English, Sinhala and arithmetic by trained instructors. At the initial stages when the centre was functioning under Major General Ananda Weerasekara, the centre had employed retired teachers and teachers in service for teaching purpose referred to as "Guru Piyas" and welfare officers who were of the same age group. At the time when this incident occurred, Bindunuwewa centre had about 20 instructors and 4 welfare officers. Hall No.1 in the sketch marked 46 P56 was set apart for vocational and technical and other training purposes. The vocational training included carpentry, motor mechanism, electrical work and tailoring.

Prof. Harendra de Silva in his testimony before the Commission pointed out that the psychological rehabilitation which is an important area in the process of rehabilitation has not received adequate attention and its rightful place until the year 2000. Professor de Silva as well as the UNICEF representatives in the discussions they had with me expressed the view that this is an area

where experience is needed to train the care givers to provide psychological support to the inmates. Prof. de Silva further placed before the Commission certain meaningful steps taken to train the working staff namely, (a) An opportunity was afforded to Capt. Abeyratne and Capt. Mahanama to attend a conference in Congo in December 1999. (b) A seminar for training of officers on basics of counselling with Dr. Chris Hobbs and Dr. Helga Hanka (UK) in February 2000 was held at the Bindunuwewa centre (this was sponsored by the UK Government). (c) Counselling programme by Dr. Elizabeth Jareg (Norway) in March 2000. (d) Counselling programme - Conflict resolution through theatre by James Thompson (UK) in July 2000. In his submission Prof. de Silva has referred to the keen interest shown by the Foreign Minister in rehabilitation work. Steps too had been taken to reintegrate ex-child combatants through Don- 47 BOSCO Negombo with extended vocational training. Such programmes were organised because “centre based rehabilitation” requires staff who have a good professional knowledge of working with inmates so that they could “adequately attend and cope” with psychological and emotional needs of the trainees. The inmates at Bindunuwewa were provided with bunk beds and mattresses.

Prof. Harendra de Silva also testified that there was a proposal for a Rs.2 million project to train the inmates of Bindunuwewa in cost effective brick making and home building in collaboration with the University of Moratuwa. Unfortunately, because of the destruction caused to the Bindunuwewa centre this project did not see the light of day.

Dr. Sunil Navaratne who was the Director-General of the National Youth Services Council (NYSC) at the relevant time, told the Commission that Foreign Minister had spent one million rupees from his decentralised budget for the welfare of the inmates of the Bindunuwewa rehabilitation centre and also that there is presently a Presidential Task Force functioning to look into the welfare of these rehabilitation centres.

Regulation 20 B requires the Commissioner-General of Rehabilitation to arrange financial assistance for youth who have completed their 48 rehabilitation so as to enable them to commence business enterprises utilising the training they had received. This is an area where the Non Governmental Organisations may be able to lend support. In fact the assistance given in this regard by Don-BOSCO was mentioned at the proceedings. Vied documents marked P53 and P55.

Observations

The need to balance rehabilitation objectives, human rights and security is a challenging and difficult task.

There are various actors in a rehabilitation centre: detainees, managers of the

centre, security personnel, trainers, counsellors, teachers, psychiatrists and organisers and conductors of various religious, social, sports and cultural activities. These actors should possess knowledge, skills, values, attitudes and attributes necessary to make the rehabilitation process effective.

The former Prisons Commissioner H. G. Dharmadasa in an interview with the Commission submitted that the inmates in these rehabilitation centres being ex-combatants at some point of time fighting a war against the government, may have the tendency to become hostile under certain circumstances. Prof. Harendra de Silva in his paper "Institutional 49 Development Project for the Bindunuwewa Rehabilitation centre for Former Child Combatants" marked P50 expressed the same view when he said

"It is highly possible that many of the young adults at the centre are suffering from Post Traumatic Stress Disorder (PTSD) characterised by re-experiencing of symptoms sleep disturbance, nightmares, flashbacks, as a result of their past experiences. The people who care for or are geared to rescue traumatised people may also be influenced by them in a way that may trigger similar psychological conditions in them, unless provided with special guidelines and training".

I also refer here to paragraph 10 of "Note for Record" where it was observed that the trainees at Bindunuwewa seemed to be "unusually docile and obedient" and Mr. Vass Gunawardana's observation is that they looked "too obedient". Mr. Colin Glennie has come to the conclusion that it could be an outcome of rigorous discipline by the LTTE during their stay with the LTTE. In this regard I consider it appropriate to quote an observation made by Daya Somasundaram a Tamil Psychiatrist from Jaffna referred to in Rajmohan Gandhi's "Revenge Reconciliation" at page 396 that teenage Tamil boys initiated into militancy "became obsessed by the need to see blood and began to derive pleasure from brutally killing people". Therefore, in the rehabilitation process it is very important that the centre should have a staff who have a good professional knowledge/experience of working with 50 inmates of such background. To achieve this purpose training of staff in psychological rehabilitation with continuous reinforcement training as well as periodic supervision imparting knowledge and know-how by experts is a prerequisite.

There is a need to change the mind set of inmates. The mind set reflects the psychological and mental make up of the individuals. "It is the state of the mind that affects the way people perceive, think, feel and act towards any situation ". As mentioned elsewhere members of organisations fighting for a separate state have conditioned minds. This mind set has to be changed for the rehabilitation process to become effective. There are modern techniques used in human resource development programmes to bring about desired mind set changes. For example, Niuro Linguistic Programming (NLP) is the

study of best methods of communicating with the brain and the central nervous system using verbal and non verbal language to achieve certain behavioural patterns. The rehabilitation programme needs to employ such methods appropriately adapted to achieve mental rehabilitation.

As a pre-step to mind rehabilitation disinformation embedded in the minds of inmates has to be dispelled. They have to be fed with information on steps taken and proposed by the government to provide essential services to Tamil people in the North and East, to rehabilitate people in government 51 controlled areas and proposals for addressing the genuine grievances of the Tamil people including the proposal for devolution of power through constitutional changes.

In the case of ex-child combatants and children who had run away for fear of conscription by the LTTE, in order to safe-guard the child's dignity, confidentiality and to facilitate them with special care and attention, they should be separated from adults in rehabilitation. The staff working with these child trainees should be selected with care and be given specialised training. The staff selection criteria should include not only knowledge and skills in their particular fields but also values and attitudes. They should be people who have moderate views on the country's ethnic crisis and are willing to treat the inmates as misguided youths who could be rehabilitated and reintegrated to society.

Agencies like UNICEF would be willing to provide necessary expertise to train the staff.

There is a need for a review of the rehabilitation programme at these centres. Feed back information on inmates rehabilitated and released with regard to their current activities and role in society is needed to assess the effectiveness of the rehabilitation programme.

7. Administration of the Centre

Bindunuwewa Rehabilitation Centre was established in 1990 for the rehabilitation of JVP youth. Then it was functioning directly under the Ministry of Youth Affairs. By 1993 Tamil youth selected from among persons who had been detained in terms of the provisions of Regulations 17 or 19 of the Emergency Regulations or Section - 9 of the Prevention of Terrorism (Temporary Provisions) Act and "surrendees" under the provisions of Regulation 20c of the Emergency Regulations were brought in. As at 25.10.2000 when the incident in question occurred the centre was administered by the National Youth Services Council.

Centre Well Looked After

Captain Y. K. Abeyratne was the Officer-in-Charge. According to his testimony when he was drawn into the centre as its OIC he was attached to the Education Department as a Grade II Principal. He had been in the teaching profession for quite a long period. He is a Cadet Corp. Officer and had gained experience during his stay in the centre since its inception. He has participated in a number of counselling programmes and attended a conference in Congo in December 1999. His deputy was also a Cadet 53 Corp. Officer, Lieutenant P. Abeyratne. He too had been in the teaching profession. He was a new comer to the centre.

Capt. Abeyratne testified that the trainees prepared their own meals with the assistance of four cooks given by the centre. The trainees had their own food committee which decided the menu, and looked into the quality of the food. The Officer-in-Charge, his Deputy and the rest of the staff who lived with the trainees in the centre ate the same food so that they were able to help the trainees to maintain the quality of the food they ate. Accompanied by a member of the staff they did the marketing. A sum of Rs.75/- was spent on each trainee per day for the meals. Captain Y.K. Abeyratne testified before the Commission that neither he nor any of his staff ever carried weapons. There had been 41 inmates housed in the centre at the time of the incident one of whom had already completed his period of rehabilitation. Evidence before the Commission showed that there was a very close relationship and an understanding between the inmates, the QIC and the rest of the staff until 24.10.2000.

“Note for Record” submitted to the Commission by the UNICEF Resident Representative Colin Glennie pertaining to a visit to the Rehabilitation Centre Bindunuwewa on 8 November 1999 had this to say:

“On the whole the centre was providing good care and rehabilitation inspite of the lack of all the resources necessary. The caring attitude of Capt. Y.K. Abeyratne was particularly commendable”.

Professor Harendra De Silva, paediatrician who took a keen interest in the welfare of the inmates of the Bindunuwewa Rehabilitation centre in his evidence has appreciated and commended the manner in which Capt. Abeyratne administered the centre. Mr. Vas Gunawardane, the District Secretary, Badulla, who had occasion to visit the centre and participate in a full day seminar also commended Capt. Y.K. Abeyratne regarding the way in which he administered the camp. Dr. N.S.J. Navaratne Secretary to the Ministry of Samurdhi, Rural Development, Parliamentary Affairs and Up Country Development told the Commission that during his tenure of office as Director-General of the National Youth Services Council, he had visited the Bindunuwewa centre on four occasions. His observations were to the

following effect: "Inmates were very obedient, well behaved and disciplined. I was in fact surprised about it". He commended the administrative capacity of Capt. Y.K.Abeyratne. Prof. Harendra de Silva in his submissions marked P55 states that Capt. Y.K. Abeyratne's commitment was recognised at the National Children's Day Celebrations in October 2000.

Inmate Rajendran Speaks Out

Sinnatamby Rajendran 33 years of age was an inmate of the Bindunuwewa rehabilitation centre who had suffered injuries during the attack on the centre. He spoke well of the period of his stay at the centre, but felt sad because he was kept for no reason. Otherwise his stay there had been a pleasant one. He said "I was treated well. We attended the morning assembly at 6.30 a.m. We were told how to discipline ourselves. Tamil, Sinhala and English languages were taught to us. We were provided with vocational training as well. I got a training in carpentry. I had been to the Campus (referring to "Vidyapitaya") to see a drama. I have no complaints about the food. The food was good. During playtime inmates engaged in sports. I too joined them and watched them when they played volley ball. Capt. Abeyratne once told me that I was a good man and that he would like me to give a helping hand in cooking. I consider Capt. Abeyratne a good man. We were taught to be good citizens. We had good teachers and instructors. They were soft spoken, nice people. They never used the word "umba" in addressing us. They were so nice. Whatever the religion Christianity, Hinduism or Buddhism we were able to practise our religious observances freely." I carefully observed his demeanour and deportment whilst he spoke of the period of stay at the Bindunuwewa rehabilitation centre. I got the impression that he really meant what he said. There is hardly any evidence before the Commission 56 to dispute the fact that Capt. Abeyratne did look after the inmates who were in his custody with all care, love & affection.

Capt. Abeyratne produced an article which appeared in the Dinamina titled "Tamil Youth of Bindunuwewa celebrate Vesak" marked as P58 and a report that appeared in the Lankadipa where it is stated that on Vesak day the inmates of Bindunuwewa made an offering of coffee to the villagers marked P58.

Reasons that led to the Breakdown in the Administration

The calm and peaceful atmosphere that prevailed at the centre came to an abrupt end soon after the routine evening assembly on 24.10.2000. On the evidence led before the Commission the following reasons could be attributed to this sudden and unexpected breakdown in the administration:

- (1) The administrators had failed to see, understand and take remedial actions to arrest the brewing discontentment and frustration smarting in the minds of the inmates regarding their main grievance that there

was uncertainty about their period of rehabilitation in the rehabilitation centre. It is manifestly clear from the testimony of Capt. Abeyratne that one of the demands made by the inmates was that they should be released. Capt. Abeyratne was helpless because he did not have any authority to do so. In his evidence Capt. Abeyratne referred to an utterance made by surrendee Jayakanthan which is to the following effect: "We are married people. We should be released after six months. We have to go home". According to Dr. Navarame when he visited the centre on a few occasions he observed that this was one of their main grievances. The inmates had told him that the officers to whom they surrendered had given them a false assurance that their period of stay in the camp would be 2 to 3 weeks. This matter is dealt with in the chapter titled "Admission of persons to the Rehabilitation Centre".

- (2) It can safely be inferred from the evidence that the presence of a police post inside the camp was not to the liking of the inmates. In this regard DIG Kotakadeniya expressed the view that continuous stay inside the camp by the police would lead to unforeseen problems which could ultimately end up in a confrontation. The former Commissioner-General of Prisons H. G. Dharmadasa in his evidence expressed the same view. His explanation was that in the context of the situation in the country a policeman's attitude towards the inmates will not be a cordial one and the inmates too would abhor and detest policemen's presence inside the rehabilitation centre which they consider their home. Both of them suggested that when a rehabilitation centre where LTTE detainees or surrendeers are to be housed is to be set up, it is advisable to have the police post at a reasonable distance away from the camp so that the police would be in a position to keep the inmates under their surveillance as well as the people of the village amidst whom the centre is located.
- (3) An advance crisis management mechanism does not appear to have been in place at the centre. The mechanism needs to incorporate measures to observe and monitor behavioural changes of people in and outside the centre. The peaceful atmosphere that prevailed at this centre came to an abrupt end on 24.10.2000. Even though Capt. Abeyratne is silent about it, it is likely that the crisis situation had been brewing for quite sometime without being observed by the management of the centre. Grievances regarding keeping the inmates for indefinite periods prevailed. Steps should have been taken without being noticed and felt by the inmates to observe their behaviour and utterances to find clues to possible unrest. Such task should have been assigned to a carefully selected counselling staff and not to the security

staff. The external environment should have been observed and monitored by appropriate personnel without the knowledge of the people living around the centre. From the time the inmates became unruly after the evening assembly on 24.10.2000 the management of the centre had concentrated primarily on the situation inside the centre to bring it under control ignoring possible developments outside the centre. It is pertinent to mention here that Capt. Abeyratne admitted that it was after the mob broke 59 in to the rehabilitation centre that he contacted the Commissioner-General of Rehabilitation for the first time. No plausible explanation came out from Capt. Abeyratne as to why he did not inform the Commissioner-General of Rehabilitation or the Deputy Commissioner - General of Rehabilitation about the serious developments that were taking place inside and outside the rehabilitation centre until the damage was done. It appears that the information on the unruly behaviour of the inmates in the centre had leaked out to the public outside through Lt. Abeyratne, Deputy to Capt. Abeyratne giving an opportunity for extremist elements to exploit the situation to achieve their objectives. Such a development had to be anticipated considering the type of inmates housed in the centre.

If the developments outside the centre had been correctly observed and the situation correctly assessed the attack on the centre could have been either prevented or the loss of life and property minimised. Any advance crisis management system in place should be capable of quickly deploying security personnel to deal with such attacks. Advance crisis management is essential in an environment of distrust and hardening of attitudes between the two communities.

- (4) The presence of extremely "hard core" LTTE terrorist Anton James who had gained admission to the rehabilitation centre under the guise of a 60 surrendee would have had a devastating influence on the inmates of the rehabilitation centre. "Anton James factor" is considered in detail by me in the chapter dealing with escalation of violence on 25.10.2000.
- (5) Abeyratne administration failed to fathom the gathering storm. Capt. Abeyratne did not want even to admit that he lost control of the inmates soon after the routine evening assembly of the inmates on 24.10.2000. The evidence of Nandakumara a cook attached to the centre and that of Lt. Abeyratne and also of police constable Saman Bandara reveal that Capt. Abeyratne not only lost control of the inmates who had been in his custody but was virtually a hostage in their hands. However, the Captain's position was that he was with the inmates right along from the time the inmates ran amok soon after the

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routine evening assembly on 24.10.2000 up to the time the camp was brutally attacked and destroyed.

- (6) Question would arise whether non availability of perimeter security was a contributory factor to the breakdown in the administration. In this regard Deputy Inspector-General Kotakadeniya expressed the view that consideration should have been given to the type of youth who are admitted to these centres for rehabilitation. In the case of LTTE youth whether arrested by the forces or surrendered voluntarily, they are persons who have been indoctrinated and have undergone military training and fought for the LTTE against the Government. These circumstances would have instilled into them a hatred towards the Sinhalese and the Government. There is every possibility that under certain circumstances they would revolt and rise against the administration and attempt to escape from custody. The risk of an attack from outside too cannot be ruled out. Hence the DIG suggested that when setting up a rehabilitation centre for the LTTE youth the centre should be distinctly separated from the people around with a well thought out perimeter security mechanism.

One of the criticisms that could be levelled against the administration is that there was no perimeter security provided by the authorities and also that the centre had been separated from the rest of the village only by wire fences. It must be mentioned here that high walls with police and army personnel guarding the perimeter would not be acceptable to the current thinking that the inmates should not get the feeling that they are living in an atmosphere of imprisonment.

In this regard UNICEF in a letter addressed to the Commission dated 18 May 2001, had this to say: "Establish safeguards in the centres established for former child combatants to prevent the occurrence of future such events. This would be a challenge as to how security could be provided without creating an atmosphere of imprisonment".

Mr. Dharmadasa, the former Commissioner - General of Prisons in his testimony told the Commission that during 1971 JVP insurrection he was in-charge of Koggala Rehabilitation Camp. He went on to describe the Perimeter Security and the Gate Room in that camp to the following effect:

"Perimeter Security" should be to prevent break in as well as break out situations. If there are no security walls there should be double barbed wire fences 5 to 6 feet apart with the middle section secured with criss crossed barbed wire at ground level. The perimeter fences should be guarded from outside by armed personnel. They should have clear instructions not to allow any outsider to get near the fence. Inmates of the camp should have clear

instructions that they should not get close to the inner fence.

The Gate Room should be established to control all entrances and exits to the camp. It should be located at a suitable point on the 63-perimeter fence. There should be two parallel gates adjoining the two perimeter fences at the point where the Gate Room is located. The Gate Room must be properly secured and manned.

8. Revolt in the Rehabilitation Centre

Before coming to the details of what happened on 24.10.2000 Capt. Y.K. Abeyratna described the programme of work for the day at Bindunuwewa Rehabilitation Centre. A bell is rung at 5.30 a.m. to inform the inmates to wake up. By 6.30 a.m. the inmates practise their religious observances at hall No.4 which was meant for that purpose. The morning routine assembly is at 7.00 a.m. The inmates start the day singing the National Anthem. Thereafter, They are informed of the days' menu. "Leader of the day" addresses the assembly on a topic like "peace". Then they take their "oath". After the assembly, inmates are engaged in cleaning the premises, making the flower beds and removing dirt to keep the environment clean etc.. Breakfast is taken at 8.30 a.m. and the time allocated for vocational training is from 9.00 a.m. to 12.15 p.m. Thereafter the inmates take their lunch break. Language classes commence at 2.15 p.m. and go on till 4.15 p.m. Then comes the play time. The inmates play volleyball, cricket and other games. Thereafter they gather at the volleyball court for the evening assembly. After the assembly at 6.30 p.m. once again the inmates attend to their religious observances. At 7.30 they have their dinner.

Meals are prepared by the inmates themselves with the assistance of the cooks provided by the centre. Purchase of provisions and vegetables etc., are done by their Food Committee and for that purpose they go marketing to the Bandarawela Town accompanied by a member of the staff. Apart from the 3 main meals, breakfast, lunch and dinner, they are provided with a glass of milk in the morning and in the afternoon. They are also given a plain cup of tea around 10.00 a.m. A day's meals and tea cost the centre Rs.75/- per head.

Thus, according to Capt. Y.K. Abeyratna the inmates were well looked after by him, while they were spending their stay at the centre. According to Col. Vipulagune similar programmes are carried out in the existing Rehabilitation Centres, 'Meth Sevana' in Gangodawila and Tellipillai in Jaffna.

Version of the Administrators:

What occurred in the camp on 24 October 2000 soon after the routine evening

assembly was a prelude to events of 25 October 2000 which resulted in the total destruction of the Bindunuwewa Rehabilitation Centre. Capt. Y.K. Abeyratna who testified before the Commission on 31 May 2001 was on leave for four days and had returned to the centre around 2 p.m. on 24 October. On his way to the camp he did not notice anything unusual outside the camp. Nor did he observe any posters on the way side from Bindunuwewa junction right up to the main gate. During his absence Lt. P. Abeyratna acted for him but Lt. P. Abeyratna made no complaints to him about any unusual incident or the behaviour of the inmates during his absence. To him everything looked normal. In fact around 4.30 p.m. some officers attached to the National Youth Services Council had come to the Centre to pay the salaries of the staff attached to the Centre and they left the Centre around 5.15 p.m.

There was a slight drizzle that evening. Nevertheless, after the play time was over as usual around 6 p.m. inmates had assembled at the usual place for their evening assembly. Capt. Y.K. Abeyratna too had been present. He told the Commission that he made it a habit to be present at the evening 67 assembly for the reason that at the end of the evening assembly the inmates discussed how to get about for the next day's programme. This particular day at the end of the evening assembly an inmate named Madi Alagan complained to him that he did not receive a letter sent to him by his family. One of the inmates who was sweeping the office had found an open envelope addressed to Madi Alagan. Capt. Y.K. Abeyratna after questioning the two instructors who were with him namely Nistar and Pushparajah at the time answered that no such letter had come and that he would make further inquiries about it. Then another inmate complained that he did not receive a telephone message sent to him by his family. In this instance too Capt. Y. K. Abeyratana having inquired from the two instructors told the inmates that no such telephone call had come. In fact one of the inmates Sinnathamby Rajendran who gave evidence before the Commission in his answer to a question put to him by the Deputy Solicitor-General told the Commission that he had no such complaints to make because he received all the telephone messages sent to him by his family. Thereafter another person complained about their food. Capt. Y.K. Abeyratna told the Commission that he was surprised because it was the inmates who prepared their meals according to their own menu and also did their marketing and purchased their provisions for the day. By then he had sensed that something else was in the offing. At that point of time one Jayakanthan in a loud tone made the following utterance: "We are married people. We should be released after 68 six months. We have to go home". Then the other inmates too had joined Jayakanthan and demanded that Capt. Y.K. Abeyratna should give a positive answer. Albeit, the latter did not have any authority to make any decision on that issue. Therefore, he had told the inmates that he would speak to the authorities the following day and place their request before the authorities.

Then they became restive, noisy and boisterous.

Thereupon about 20 of them surrounded Capt. Y.K. Abeyratne whereas the others hurried in the direction of their hostels. Those who surrounded Capt. Y.K. Abeyratne pressed him for their release shouting "You are a Captain you can do it". Capt. Y.K. Abeyratne described how those inmates who went towards their hostels picked up iron pipes lined up along the flower beds. He said he felt that they were smashing up the electric bulbs.

At that point of time Capt. Y.K. Abeyratne heard two gun shots coming from the direction of the police post. With the sound of the gun shots the inmates who were with him ran towards the police post shouting aloud "Police fired at us". Capt. Y.K. Abeyratne went along with them. He did not see any policeman in the police post. He saw the inmates causing damage to the police post. Then they went to the office probably in search of the police officers and broke some window panes. What happened on that side of the camp was spoken to by Police Constable Bandara and Lt. P. Abeyratne. In fact during our visit to the Bandarawela Rehabilitation Centre the Commission did observe the damage caused to the police post and also the office.

When a police party headed by HQI Seneviratne arrived at the Centre the inmates did not permit him to come. Later on they allowed him to come in without arms. Then HQI along with a constable had come in and removed what was inside the police post. Thereafter he observed some police vehicles and a few policemen about 200 meters away from the main gate. About half an hour later he observed a gathering of about 50-100 people on the Vidyapeetaya playground. It was around 7.30 p.m. then. They started throwing stones at the Centre. He had sent a message to the HQI to disperse the crowd. Thereafter, a platoon of soldiers had arrived at the Centre. He requested them to disperse the crowd. Thereafter he thought everything was settled. The Centre looked "calm". Before he went to sleep he had warned Madi Alagan and Anton James not to create any more trouble.

Lieutenant Abeyratne's Version:

Lt. Abeyratne too testified before the Commission. He is a reluctant witness. He was the Deputy to Capt. Y.K. Abeyratne and during the latter's absence from 19 October 2000 to 24 October 2000 he was acting for Capt. Y.K. Abeyratne. He did not observe anything unusual during that period. On 24.10.2000 whilst the evening assembly was in progress he was standing in front of the office watching what was happening at the assembly. He did not take part because he was ill. He saw the inmates questioning Capt. Y.K. Abeyratne in a high tone and also how Capt. Y.K. Abeyratne was trying to settle matters. He observed that despite Capt. Y.K. Abeyratne's efforts, the inmates were getting aggressive.

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Thereupon Lt. P. Abeyratne had seen some of the inmates running in the direction of their hostels and picking up iron pipes lined along the flower beds. He also saw some inmates surrounding Capt. Y.K. Abeyratne. They were armed with iron pipes and clubs. It must be mentioned here that for some reason or the other Capt. Y.K. Abeyratne did not mention the fact that the inmates who surrounded him were armed with iron pipes. Lt. P. Abeyratne said that those inmates were pressing Capt. Y.K. Abeyratne for their release saying "You are a Captain. You can release us". In fact this utterance was referred to by Capt. Y.K. Abeyratne as well. Lt. P. Abeyratne told the Commission that he thought those inmates would attack Capt. Y.K. Abeyratne. At that point of time he even thought that Capt. Y.K. Abeyratne had been taken a hostage. At the same time he observed some of the inmates running amok smashing up tube lights, breaking windows etc. Therefore he hurried to the office in order to make a telephone call to the Bandarawela police. Then he noticed Madi Alagan, Nirmal and a few others following 71 him. Hence without going to the telephone he turned back and hurried towards his residence. While he was going there he was attacked by Madi Alagan with an iron rod and at that point of time he heard two gun shots from the direction of the police post. Later on in his evidence, he changed the above position and told the Commission that he was returning from the office without giving a call and before he was attacked he heard the gun shots and then the inmates ran towards the police post. He was attacked at that stage.

He said he tried to ward off the blow. But the blow alighted on his chest. He received injuries on his left palm and a deep cut injury on the chest. In this part of his testimony I observed a conflict of testimony between his evidence and Police constable Senaka Bandara's evidence. I will be dealing with this point in the evaluation of evidence.

After receiving the injuries, fearing a further attack he managed to escape through the barbed wire fence from the cemetery side and proceeded to the closest house to make a call to Bandarawela police. In that house there were two young women. There was no telephone there. Since he was bleeding and there were blood stains on his shirt he asked for a shirt from the inmates. They obliged and he changed over to that shirt and kept his blood stained shirt with the inmates of the house intending to collect it later on. 72 They appeared frightened. He then went to the adjoining house because there was a telephone there. When he went in, he saw driver Karunasena of the Rehabilitation Centre making a call to the police. He took the receiver from him and informed the police about the incident and requested the police to send a police party immediately. He thought the inmates in that house would have heard what the driver and he were complaining to the police. In fact it was suggested by Mr. Kumarage that Lt. P. Abeyratne had told the inmates

that tigers attacked him and that tigers would attack the village too. Thereafter, Lt. P. Abeyratne had got into a van and proceeded to the police station. At the entrance he met two police vehicles going out. He came back to the Centre along with the Police. Once he went in, one of the inmates treated his injury. He further testified that since the inmates detested the presence of police inside the camp the HQI withdrew the police post from the Camp.

During the night he found about 15 inmates surrounding him. In the morning he was not allowed to get out of the Rehabilitation Centre. He felt that the inmates were no more listening to the administrators.

Version of the Inmates

Sinnathamby Rajendran and Perumal Gnaneshwaran who had suffered injuries during the attack on 25.10.2000 testified before the Commission. Sinnathamby Rajendran recounted in detail the events of 24.10.2000. I observed that he was calm and composed in giving his evidence. I did not observe any anxiety or fear in him. His story is that soon after the evening assembly, the inmates without going to Kovil (Hall No.1) for religious observances started questioning Capt. Y.K. Abeyratne. It was drizzling and the atmosphere was misty. Madi Alagan complained to Capt. Y.K. Abeyratne of a letter sent to him being opened by the officers, without handing it over to him. The inmate who had cleaned the office had found an opened envelope with Madi Alagan's address. According to Gnaneshwaran, the inmate who found the opened envelope was Nirmal. Another complaint was that they did not receive telephone messages sent to them by their families. Rajendran did not have any such complaints. In fact he was in receipt of a telephone call given to him by his brother. Capt. Y.K. Abeyratne had told the inmates that since he had just returned to the centre from home, he needs time till the next day to provide solutions to their problems. The inmates demanded that he should give the solutions immediately. Witness had tried to intervene. He told them it was not good to create troubles, but the inmates had warned the witness to keep away because being a married man, witness did not understand their problems. Thereafter, as it was raining witness took shelter under a shed near the police post. Gnaneshwaran in the course of his evidence told the Commission that he heard the inmates telling Capt. Abeyratne that they can't stay for one year. Gnaneshwaran's evidence was brief. He did not describe the happenings in detail. From the place where he was, Rajendran could see Capt. Y.K. Abeyratne speaking to the inmates in the rain. Then he observed the inmates going towards the Kovil (hall No.4). That day, he was helping in the preparation of inmates' meals. Hence, he went to the kitchen.

From there he saw the inmates proceeding towards the police post. Thereafter, he heard two gun shots. Rajendran did not state why the inmates

proceeded towards the police post before the gun shots. Witness Rajendran further testified that the inmates who were standing near Capt. Y.K. Abeyratne ran towards the police post carrying with them clubs and iron pipes. When Capt. Y.K. Abeyratne tried to calm them down saying that police had only fired two warning shots merely to scare them, the inmates pushed him to a side and proceeded towards the police post. Rajendran proceeded to describe the violent conduct of the inmates. They attacked the police post with whatever weapons they carried and “smashed” the police post. Gnaneshwaran’s evidence elicited the fact that the inmates had smashed up tube lights as well. Therefore, according to Rajendran, the 75 inmates set fire to a gas cylinder and exploded it. I recollect here the evidence of Lt. Balasuriya where he spoke of seeing four fires burning in the premises of the rehabilitation centre when he looked in the direction of the Rehabilitation Centre from the Vidyapeetaya playground.

Further Rajendran told the Commission that after about 1/2 or 3/4 of an hour, a police party led by HQI came near the main gate. Capt. Y.K. Abeyratne had told the inmates that police had come to give them protection, but the inmates flatly refused to permit the police to come inside the centre. But they agreed to allow only the HQI to come in. HQI had come in and spoken to the inmates and told them that the police had come to give them protection and take them away. But the inmates persisted that they did not want the police protection. HQI had then told them that if they don’t want the police to give protection, he would remove the police from the centre. So saying, he left the rehabilitation centre. According to Rajendran, after the police left the centre people started stoning their buildings. It went on till 11 or 11.30 in the night and came to a stop. Thereafter, he went to sleep.

Policeman Senaka Bandara’s Version

On 24.10.2000 Senaka Bandara was the Officer-in-charge of the security at the Rehabilitation Centre. He had two security assistants and a 76 home guard to assist him. By 6.00 O’ Clock in the evening he was off duty. He was wearing a T-shirt and a uniform trouser. When the evening assembly was in progress he was standing in front of the Turpentine tree opposite the Police Post. Police Post had two T-56 guns one for Senaka Bandara and the other for two security assistants. During the day, they did not carry any weapons. But in the night since they had to guard the main gate they carried T-56 weapons.

It was around 6.30 p.m. when Senaka Bandara observed Capt. Abeyratne addressing the inmates in a loud tone. He said, “I cannot release you without an order from the authorities”. The distance between the place where the assembly was held and the turpentine tree under which Senaka Bandara stood, was about 100 ft. He heard the inmates making the following utterance.

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“Why are you keeping the Police here? We are people who have raised our hands to the LTTE. Better we kill these people, take their weapons, go back and join the LTTE”. They were shouting. Then he saw a group of inmates rushing in the direction of their hostels. On their way they picked up iron pipes which were lined up along the flower beds. A short while later Senaka Bandara saw these detainees coming towards the Police Post shouting “Kill the Police Officers and take the weapons”. Then, he had 77 armed himself with his T-56 gun but had instructed the security assistants not to open fire but to take cover behind some bush. Then one detainee shouting “We want to kill you all, we want to take your weapons and go back to the LTTE”, had dealt a blow on Lieutenant Abeyratne with a club. Answering the questions put to him by State Counsel, S. Tissera he went on to describe the episode in the following manner.

Q: With what did the inmate assault Lieutenant P. Abeyratne?

A: It was yellow and black in colour, may be an iron rod.

Q: Did it hit Lieutenant P. Abeyratne?

A: I think so, it even hit my hand.

Q: Then what did you do?

A: Then a detainee with a sword, tried to attack saying that he wants to kill me first. Q:

Was it a sword or something else? A: It was bit long, so I say that it is a sword.

Q: Were there any swords in the camp?

A: Before that I had not seen.

Q: Being in charge of the Security in the camp, were you not aware whether there were weapons in the camp?

A: We had only 4 officers. So, it is difficult for us to check their barracks. We were not even instructed by the HQI or anybody else.

Q: Did you get injured by the sword?

A: No, I went back, took my weapon and fired in the air two shots.

Q: When you were leaving, were you running or were you being chased?

A: I ran from that point. I could not control the situation so I ran. We managed to evade and escape through the barbed wire fence and we went to Bandarawela Police Station in a vehicle and complained the incident to the HQI.

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Thereafter a Police Party led by the HQI had come to the Rehabilitation Centre.

Answering a question put to him by the State Counsel whether he was allowed to come in he said, "I was not taken into the camp premises, but another officer brought all my belongings or whatever was remaining in the Police Post".

I recount here an answer given to a question put to this Police Officer by the Commission.

Q: Of the Police Officers who came, how many were allowed to go into the camp?

A: Only the HQI was allowed to go into the camp by the detainees.

Whether firing of warning Gun Shots was the Immediate Cause for the Up-rising

The developments prior to the firing of two warning gun shots by policeman Senaka Bandara were very carefully looked into by me with a view to resolving the question whether the gun shots were the immediate cause for the "up-rising" at the time gun shots were fired in the air. I have already placed on record the version of the administrators Capt. Y.K. Abeyratne and Lt. P. Abeyratne, inmate Sinnatamby Rajendran who has survived the gruesome attack and policeman Senaka Bandara. I do not see any conflict of testimonies on this point. On the factual position deposed to by the above witnesses I come to the conclusion that at the time the warning shots were fired the inmates had already staged the "up-rising". Yet, it appears that the situation was aggravated by the gun shots.

Was policeman Senaka Bandara justified in firing the two warning gun shots?

I observe a conflict of testimony relating to the facts pertaining to the attack on Lt. P. Abeyratne. According to Lt. P. Abeyratne, it was when he was going towards his residence to make a telephone call that he was attacked from behind by Madi Alagan. According to Senaka Bandara he saw Lt. P. Abeyratne running towards him while being chased by the inmates. At 81 the same time he saw an inmate dealing a blow on the Lieutenant from behind and even though he attempted to ward off the blow, yet the blow hit Lt. P. Abeyratne. It must be borne in mind that the police post and staff residences were located in close proximity and according to Lt. P. Abeyratne he had seen policeman Senaka Bandara standing in front of the Police Post and that it was getting dark. It may be that he did not notice Senaka Bandara trying to save himself from the attack that came from behind.

According to Senaka Bandara, at the same time, one of the inmates attempted to "cut him" with a sword. It was then that he stepped back and fired two

warning shots in the air. He gave two reasons for his act. Firstly, he feared that his life was in danger. Secondly, he knew the gravity of the consequences that were to follow in the event of a T-56 gun falling into their hands. In the attendant circumstances of the situation he was placed, I come to the conclusion that the act of firing two warning gun shots in the air by policeman Senaka Bandara who was in charge of the security on that day was justified and warranted.

Police Version

On information given by Senaka Bandara, around 7.20 p.m. on 24.10.2000 that there was some trouble at the Bindunuwewa Rehabilitation Centre a police party consisting of about 15 policemen led by the Headquarters Inspector Jyantha Seneviratne and Officer-in-Charge of 82 Crimes Inspector Karunasena had proceeded to the Bindunuwewa Rehabilitation Centre. They were armed with T-56 weapons. When they arrived at the main gate, there was no crowd gathered. But according to Inspector Karunasena, he saw about 15 inmates armed with clubs and stones, standing outside their hostels close to the main gate. They were shouting in Tamil and Sinhala. When the police party approached the main gate, they said "only the chief officer can come in, but without any weapons". The Headquarters Inspector complied with their demand and went in alone.

A little while later, police party waiting outside the gate received a message from the Headquarters Inspector directing the policemen carrying weapons to retreat from the main gate. The police party complied with that order. According to the HQI he had witnessed the distraction caused to the Police Post by the inmates and how the inmates conducted themselves that night. Thereafter Headquarters Inspector came out accompanied by Capt. Y.K. Abeyratne and some inmates. To Capt. Y.K. Abeyratne, HQI said "Abey, I will not keep our men inside the camp". This utterance made by the HQI is a clear indication that he had decided to withdraw the police post from the Rehabilitation Centre. The above item of evidence deposed to by I.P. Karunasena corroborates the version of Capt. Y.K. Abeyratne, Lt. P. Abeyratne and inmate Sinnathamby Rajendran that on the night of 83 24.10.2000 the police post was withdrawn from the Bindunuwewa Rehabilitation Centre.

Version of Lt. Balasuriya

This witness is of vital importance because it was through his testimony the Commission was able to get a picture of the developments that were taking place outside the Rehabilitation Centre that night.

On 24.10.2000, on the orders of Brig. Jayaweera, Lieutenant Balasuriya had proceeded to Bindunuwewa Rehabilitation Centre around 9 p.m. with a

platoon of 10 soldiers armed with T-56 guns. He was made to understand by Brig. Jayaweera that there was a commotion at the Rehabilitation Centre. When they arrived at the Agrarian Services Centre, he saw a police party with ASP Dayaratne and the HQI. The ASP had come up to him and said "people have surrounded the camp, they do not listen to us, they are armed with kattys and clubs, disperse them". While he was talking to the ASP, Lt. P. Abeyratne had come up to him and complained to him that the inmates came to attack the police and they attacked him as well. Lt. Balasuriya had observed blood on Lt. P. Abeyratne's body.

Thereafter, taking a policeman along with him, Lt. Balasuriya and his platoon proceeded to Vidyapeetaya playground (marked as G in the sketch P56). There was a crowd of about 20 people gathered there. They were from the village close by. They had clubs with them. But when they saw the army, 85 they threw away the clubs. Lieutenant had questioned them why they had gathered there. The crowd had complained that Lt. P. Abeyratne had been attacked by the inmates and that the inmates had challenged the villagers too. The crowd further told him that they had a fear that the inmates would attack their houses in the night. To quote their own words "we have female children they will attack our families". They said "they are tigers. They have come here after murdering Sinhala soldiers. Why are they being treated this way". The crowd also complained that while the villagers did not have water to drink, the inmates were provided with bowser loads of water. At that point of time, Lieutenant had noticed three fires inside the rehabilitation centre. He ordered the crowd to disperse or else he will open up fire. Then the crowd had dispersed. He did not see any police officer among the crowd.

Thereafter Lt. Balasuriya with his army platoon had proceeded to the other side of the camp along the Maduwelpathana Road. On their way they came across a small gathering and had dispersed them. While dispersing they said "police are scared. Police are running away. Since you are doing the duty we'll go away". As they proceeded further up, just passing the cemetery, they found another gathering of about 30-40 people. They were all villagers. They were in the process of making banners with a view to staging a demonstration. Some of them had clubs in their hands. When Lieutenant 86 Balasuriya questioned them as to why they had gathered there, they complained that they got information that Lt. P. Abeyratne had been attacked by the inmates. They said that there had been instances where village damsels when passing the rehabilitation centre were jeered at by the inmates and that on a number of occasions the villagers had complained to the police and the latter had not responded. Another grievance was that the villagers had no drinking water, but the inmates were provided with bowser loads of good drinking water. They were also unhappy and suspicious of the fact that some of the inmates who had been released were working in the

Bandarawela town. Further they informed the Lieutenant that they were going to have a demonstration against the rehabilitation centre at the Bandarawela town the following day. However, Lieutenant warned the crowd to disperse and that he will have to open fire if they don't comply with his order. Thereafter the crowd dispersed. Having cleared the perimeter, when he came back to the main gate, Capt. Y.K. Abeyratne had come up to him. In his testimony, Lt. Balasuriya said "I said, I have sent the villagers back to their homes. Can I come into the rehabilitation centre and speak to the inmates". Lt. Balasuriya told the Commission that he wanted to settle matters with the inmates as well in the same manner he did with the villagers. But Capt. Y.K. Abeyratne discouraged him saying "there is no problem inside. The problem came from the villagers. If the villagers went away, there is no need for you to come in". This dogmatic attitude of 87 Capt. Y.K. Abeyratne could be explained in two ways. Firstly, that he did not assess the situation inside the rehabilitation centre even though the factual position clearly indicates that he was a mere hostage in the hands of the inmates who were supposed to be under his care and custody. Secondly, even if he knew that he was under the control of the inmates he did not want to show either the police or the army that he was powerless. He wanted to show that the inmates are still under his control and no assistance is necessary either from the police or the army. I am reminded here that Capt. Y.K. Abeyratne in his evidence told the Commission that he told the police to look after the villagers and that he would look after the centre.

The time was 11.30 p.m. Lt. Balasuriya and his platoon was back at the main gate. Neither ASP Dayananda nor HQI Jyantha Seneviratne was present. There were about 4 to 5 policemen standing a little distance away from the main gate. Lt. Balasuriya had then made a call to Capt. Dematanpitiya and wanted to know whether he could come back. Capt. Dematanpitiya wanted him to assess the situation again. Thereafter, Lt. Balasuriya and his platoon had done some more rounds. He was back at the main gate. It was 1.30 a.m. Everything appeared "normal". There were no gathering of people around the centre. He saw a police jeep parked some distance away from the main gate with I.P. Karunasena seated inside. He found the Inspector sleeping for the reason he had to attend courts in the morning. There were three other policemen in the jeep. Since he had completed his mission, Lt. Balasuriya decided to go back to the Diyatalawa Army Camp. On the way he saw another jeep parked at the Bindunuwewa Junction with IP Jayaratne inside. He did not find ASP Dayananda or the HQI who had detailed him at 9.00 p.m. anywhere around.

Anton James factor

Since his name transpired in the evidence relating to the events of 24th and 25th October 2000, evidence of Lance-Corporal Wasantha Bandara of the

Army to whom this person had surrendered and Sergeant Chandrapala Silva of Batticaloa Police Station who had recorded his statement were led before the Commission. Anton James's statement is marked P84. Sergeant Silva testified that at the time Anton James was handed over by Lance Corporal Wasantha Bandara, he was a disabled person. Sergeant Silva thought that Anton James had surrendered because he could not serve the LITE in active combat any more. Anton James was 25 years of age. Sergeant Silva had observed healed wounds caused by gun shot injuries on his right arm; his left arm had been broken and was disabled. There were healed wounds on the back of his neck and on his abdomen. On a perusal of Anton James's statement I find that he had fought for the LTTE against the Sri Lanka government and involved in a number of acts of terrorism for a period of 13 years. He had participated in attacks on a number of army camps including Kiran camp and Air Force Camp at Arantalawa. He was involved in the murder of 18 STF personnel while in Batticaloa and murder of policemen who were on duty. He fought for the LTTE against Operation Jaya Sikuru. While in action fighting for the LTTE he broke his left arm. Even after he was disabled he had taken part in a number of attacks, transport of explosives and gathering information. The reason given in his 90 statement for his surrender was that LTTE leader for Ampara, Nagesh was forcing him to marry a woman named Suganthini, a prostitute with whom he had sexual intercourse. It is unbelievable how this person was sent for rehabilitation. This person was handed over to the Bindunuwewa Rehabilitation Camp on 03.08.2000, about 2 1/2 months prior to the attack on Bindunuwewa Rehabilitation Centre. He died in the attack on the Rehabilitation Centre. Anton James factor justifies my recommendation that all the surrendeers before they are recommended for rehabilitation should face a strict screening and that fact of surrender should not be the determining factor.

Conclusion

Events that occurred soon after the routine evening assembly on 24.10.2000 as spoken to by Sinnathambi Rajendran, Capt. Abeyratne, Lt. P. Abeyratne, Cook Nandakumara, Policeman Senaka Bandara to wit:

- i) fact that about 20 inmates surrounded Capt. Y.K. Abeyratne, some of them carrying clubs. [According to Lt. P. Abeyratne he thought the inmates were about to assault Capt. Y.K. Abeyratne].
- ii) fact that the inmates had armed themselves with iron pipes and clubs,
- iii) act of "smashing" of electric bulbs by the inmates,
- iv) act of attacking and causing injuries to the 2nd in command Lt. P. Abeyratne,

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- v) act of causing damage to the Police Post and causing security personnel including Senaka Bandara to flee from the Rehabilitation Centre,
- vi) act of causing damage to the office and the residence of Capt. Y.K. Abeyratne,
- vii) act of exploding a gas cylinder,
- viii) act of taking Capt. Y.K. Abeyratne a hostage came to a climax with the removal of the Police Post by the HQI Jayantha Seneviratne. Administration had crumbled and the inmates gained control of the Bindunuwewa Rehabilitation Centre.

It is appropriate at this stage to reiterate the dogmatic and arrogant attitude of Capt. Y.K. Abeyratne which prevented Lt. Balasuriya from “settling matters” inside the Rehabilitation Centre. When Lt. Balasuriya returned to the gate around 11.30 p.m. after dispersing the crowd Lt. Balasuriya had spoken to Capt. Y.K. Abeyratne. He said, “I have sent the villagers back to their houses. Can I come to the Rehabilitation Centre to speak to the inmates”. Capt. Y.K. Abeyratne’s reply was “there is no problem inside. The problems came from the villagers. If villagers went away there is no need for you to come in”. Thus, the eleventh hour chance of preventing the escalation of violence on 25.10.2000 was lost.

9. Reasons why large crowds gathered around the Rehabilitation Centre on 25 October 2000

It is in evidence that on this day there had been a gathering of about 2000 people at the Vidyapeetaya playground, about 300 people at the main gate, and a large gathering of people on the cemetery side of the Centre as well. The northern boundary is precipitous and therefore it was difficult for the people to gather there.

Eye witnesses evidence has established that initially the crowd broke into the Centre from Vidyapeetaya side. Elsewhere in my report I have observed that the physical setting of the Vidyapeetaya playground has made it strategically suitable to launch an attack on the Rehabilitation Centre from there. Apart from the fact that it is on a higher elevation than the Rehabilitation Centre, anything and everything happening inside the Rehabilitation Centre could have been very well seen and observed by the people who had gathered there that morning. Vidyapeetaya playground is also readily accessible from three directions to the people of the adjoining villages and also to heavy vehicles as well.

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On a careful consideration of the totality of the evidence led before the Commission I confidently place on record the following factors which had been instrumental in inducing people from the adjoining and surrounding villages, Bindunuwewa, Maduwelpatana, Watagamuwa, Kandekumbura and Sapugasulpotha to flock around the perimeter of the Bindunuwewa Rehabilitation Centre.

- (1) The fact that Lt. Abeyratne was attacked by the inmates of the Rehabilitation Centre had been conveyed to the villagers by Lt. Abeyratne himself.

Maduka Attanayake a villager living about 500 meters away from the Rehabilitation centre told the Commission that on 24.10.2000 in the night a person employed in the Centre named "Karu" came to her house and took a telephone call to the police. Then another gentleman had come near the door but without entering her house had a conversation with Karu about an assault by the inmates and the troubles at the centre. (In fact she was referring to Lt. P. Abeyratne). On hearing that conversation she was frightened and closed the door. Janaka Prasad a Grade 10 student testified that while he was assisting his uncle Ajantha in his shop around 7.30 p.m. on 24.10.2000 Lt. P. Abeyratne had come and told his uncle that he was badly beaten by the 'tigers' and the 'tigers' might invade the village. Immediately thereafter his uncle had closed the shop. Imihamy 95 Mudiyansele Dayananda a villager from Walgamuwa 3 kilometers away from the Centre testified how two persons, one wearing a blood stained shirt stopped the van he was going home and asked for a lift to the police station. He had told the occupants that he was assaulted "by the LTTE fellows" in the camp. Lt. P. Abeyratne in his evidence described how he went to a nearby house where there were two young women, got a shirt from them and changed over to that shirt leaving behind his blood stained shirt to be collected later. Lt. P. Abeyratne's evidence on this point is corroborated by Inspector Jayaratne who testified that the same night on an information given to him by some villagers he took the blood stained shirt into custody and later produced it at the police station. He had recorded the statement from the girl to whom Lt. P. Abeyratne had handed over the blood stained shirt. There is no doubt that this news of an impending attack on the village would have reached the village and aroused the fear, anger and animosity of the villagers.

- (2) The evidence led before the Commission also revealed that soon after Lt. P. Abeyratne told the inmates of the two houses what was happening at the Rehabilitation Centre rumours began to spread in the village.

Mr. Rumour had a field day

Imihamy Mudiyansele Dayaratne spoke to how two policemen who he

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met on the road near the Rehabilitation Centre stopped the van and cautioned them to be vigilant. They said “that the LTTE fellows are creating trouble, be vigilant they might come in that direction”. I.M. Dayaratne who lived 3 k.m. away from the Rehabilitation Centre testified that on 24.10.2000 he left Bandarawela town around 7.30 p.m. and on his way to his village, he met two armed police officers at the bend close to the main gate at the Bindunuwewa Centre. Both of them had told him that there was a commotion inside the camp and the inmates would come to the village that night and they wanted him to pass this information to the villagers as well. On his way down the road, close to the cemetery, Dayaratne saw 5 to 6 people gathered in front of a boutique. He conveyed to them what the police had told him. But by that time they were aware of the news. News of an alleged impending attack on the village coming from the mouths of policemen undoubtedly had poisoned the minds of the villagers. D.V. Ravindralal a youngster from Watagamuwa village situated 2 k.m away from the Rehabilitation Centre said that on 24.10.2000 after going home he went to a friend’s place to play cards. It was around 8.30 p.m. While they were playing cards, Appuhamy Weerasinghe, an uncle of Ravindralal had told the people who were playing cards that 10 ‘tigers’ had escaped from the camp. Immediately they had stopped playing cards, and gone home. Ravindralal had told his household about this information. I am reminded of the character called “Rumour” introduced by Shakespeare in the 2nd part of King Henry IV. The bard compared rumour to a musical pipe upon which thoughtless people can easily play a tune.

“Rumour is a pipe

Blown by surmises, jealousies, conjectures;

And of so easy and so plain a stop,

That the blunt monster with uncounted heads,

The still discordant wavering multitude,

Can play upon it”.

In fact rumours that spread in the village was one factor which prompted the people to gather in large numbers at the Vidyapeetaya playground, cemetery and also the main gate. Lt. Balasuriya, when he went to Vidyapeetaya playground around 10.00 p.m. on 24.10.2000, had questioned the people why they had gathered there. The villagers replied “We have grown up female children in our houses; they will attack our families”. They further told Lt. Balasuriya that the detainees had attacked Lieut. Abeyratne and that they had challenged the villagers as well. When he questioned the people gathered near the boutique at the cemetery side they also came out with the same story.

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Evidence of Samurdhi Niyamaka Kumarasinghe a villager from Kandegedera revealed that he was drawn towards the Rehabilitation Centre on 25 October 2000 morning around 8.30 on an information given to him by his sisters that inmates of the Rehabilitation Centre were about to “come out”. He gave this news to Bandula Attanayake and along with Attanayake who has armed himself with a club and two others Nandasiri and Ranjith had proceeded to Bandula Attanayake’s land which is located close to the Rehabilitation Centre.

- (3) Evidence elicited from Mr. Wijepala, Divisional Secretary, Bandarawela that when he went to his office on 25.10.2000 around 9.15 a.m. he found a telegram, addressed to him by “Sapugasulpatha villagers” which read as follows: “We inform that a demonstration will be held on 25.10.2000 agitating for the removal of Bindunuwewa Rehabilitation Camp”. The time of despatch was 8 a.m. This telegram is marked P84. On his way to the Rehabilitation Centre he saw some posters. He could remember some headings. e.g. “Remove the camp”; “Chase the Captain”.

Nandakumara in his evidence told the Commission that when he left home around 5.40 a.m. on 25.10.2000 on reaching Maduwelapata junction, 3 kilo meters from the Rehabilitation Centre he observed a poster titled 99 “Remove Bindunuwewa Rehabilitation camp immediately”. He saw two more similar posters on his way to the Centre. Nandakumara also spoke of seeing about 25-30 posters hung at the Bindunuwewa junction the contents of some read as follows: “Why is the big man feeding the tigers with milk”; “Good water for tigers and muddy water for us”; “Tigers flesh to our dogs”.

Lt. Balasuriya in his evidence told the Commission that on 24.10.2000 night when he did his rounds on the perimeter of the Centre to disperse the crowds he met a group of people who were making preparations to stage a demonstration. The above evidence would suggest that a section of the villagers would have been drawn to the Centre on 25.10.2000 morning to stage a demonstration agitating for the removal of the Rehabilitation Centre from Bindunuwewa. Inspector Karunasena mentioned to the Commission how people had stopped Kirioruwa bus and induced the school children and other passengers to agitate for the removal of the Rehabilitation Centre. In fact Nandakumara’s testimony reveals that about 15 among the people who gathered near the main gate were holding posters.

In fact it was elicited from Sisira Saman a young villager from Aluthgama that on 25.10.2000 early morning he had joined some villagers who were in the process of making posters agitating for the removal of the 100 Rehabilitation Centre from Bindunuwewa. He admitted that he himself wrote the slogans contained in two posters. The evidence to the effect that his

handwriting has been identified by the EQD too was led in evidence. According to Sisira Saman they had made 15 posters.

- (4) The fear, hatred and anger that had been instilled into the hearts of the villagers owing to the gruesome crimes committed by the LTTE appeared to be one factor which aroused villagers to converge on the Vidyapeetaya playground. I recount here an utterance made by the villagers who had gathered at the Vidyapeetaya playground on 24 October 2000 night to Lt. Balasuriya. "They are tigers, they have come here after murdering Sinhala soldiers. Why are they being treated in this way?" I have already referred to the fact that few months prior to the Bindunuwewa incident, in the adjoining villages, there had been funerals of three army soldiers and a Major who had died while in action.
- (5) There is also evidence that crowds were transported from outside to the Vidyapeetaya playground in buses, private vans and also three wheelers. That evidence was elicited mainly from Sunil Wickramasinghe Bandara. He had seen 10 to 15 vehicles parked along the road at the entrance to Vidyapeetaya. Ravindralal too had seen people being transported to the 101 main gate side as well. This may well be the work of extremist elements to exploit the situation to achieve their own objectives.
- (6) Withdrawal of the police post from the Rehabilitation Centre at the behest of the inmates by the Head Quarters Inspector on 24.10.2000 was an act of betrayal in the eyes of the villagers. When Lt. Balasuriya ordered the villagers to disperse they said: "Police are scared, the police are running away". On the other hand the utterance made by the ASP to the effect that "People have surrounded the camp, they do not listen to us, they are armed with katties and clubs disperse them" looks like a "cry in despair". This attitude of the police made the villagers come prepared to defend their villages.
- (7) Factual position that the inmates had staged a revolt in the Centre, fact of Capt. Y.K. Abeyratne and his deputy Lt. P. Abeyratne being kept as hostages in the centre appear to be the proximate factor which had aroused the wrath of the people.

These factors explain why crowds converged upon the Rehabilitation Centre in large numbers on that fateful day 25.10.2000.

10. Escalation of violence on 25 October 2000

The day, 25 October 2000 dawned upon Bindunuwewa Rehabilitation Centre

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with a difference. It was unusual. Sinnathamby Rajendran had a sleepless night. On 24.10.2000, he went to sleep around 11.15 p.m. He told the Commission that he could not have slept for more than 2 or 3 hours. When he woke up the beds were empty. "None of the fellows were inside" he said.

Even though Capt. Y.K. Abeyratne spoke of everything being normal after 9.30 p.m. on 24.10.2000 it was mere wishful thinking. I recall Lt. P. Abeyratne, 2nd in command, telling the Commission that he was being watched throughout the night by about 15 inmates. Neither Rajendran nor Gnaneshwaran spoke of the usual sound of the morning bell which puts them up at 5.30 a.m. everyday. Neither Capt. Y.K. Abeyratne, nor Lt. P. Abeyratne spoke of hearing the wake up bell. Neither Rajendran nor Ganeshwaran spoke of going "clean" to the routine morning assembly that morning.

According to Nandakumara, when he came to the main gate to report for work on 25.10.2000, he found the main gate closed. It was around 6.30 a.m. 103 He saw three police jeeps parked on the road close to the main gate. From the main gate, he observed about 15 inmates standing opposite their hostels. Most of them were armed. Jaykanthan had a long screwdriver, Kanakalingam had a screwdriver and a spanner. Others had iron pipes, black and yellow in colour. Liyanaralalage Kumarasinghe, a Samurdhi Niyamaka too testified to the fact that about 20 inmates standing outside the buildings armed with screwdrivers, clubs and stones.

Nandakumara was allowed to go in on condition that he come back in 10 minutes time. When he complained to Capt. Y.K. Abeyratne about it, Capt. Y.K. Abeyratne warned him to obey the inmates because he too was under "their control."

When Nandakumara was sent out of the gate, there was a gathering of about 300 people there. They didn't carry any weapons. But he saw about 15 of them holding posters. Witness Ravindralal, a villager from Maduwelpathana, a reluctant witness who had been present around the Rehabilitation Centre from about 7 a.m. watching what was happening yet did not want to come out with the involvements of the villagers, admitted the fact that there was a crowd of about 300 gathered near the main gate around 7.30 a.m. He also admitted that they were villagers and also that he saw people being brought in from the surrounding villages in vehicles. It 104 was elicited from Inspector Karunasena, Inspector Jayaratne that Kirioruwa bus had been stopped and passengers, mostly school children had been drawn into the area with a view to starting a demonstration agitating the removal of the Rehabilitation Centre at Bindunuwewa. Dayaratne a villager from Watagamuwa spoke of seeing a private bus plying between Bandarawela and Heeloya stopped on the Maduwelpathana Road close to the main gate. These witnesses spoke of the presence of the policemen carrying guns standing

amongst the crowd gathered at the gate.

Rajendran corroborated Nandakumara's evidence regarding the behaviour of the inmates as well as the gathering of people at the Vidyapeetaya playground prior to the actual confrontation. He categorically said that it was the crowds gathering at the Vidyapeetaya playground who threw stones at the Centre. Rajendran described the reaction of the inmates thus, "when the crowds threw stones, our fellows were also getting ready to attack, armed with clubs and stones"- vide page 27 of the proceedings of 20.07.2001. 105

Mob invades the Rehabilitation Centre

Capt. Y.K. Abeyratne's version

Capt. Y.K. Abeyratne gave a vivid description of the episode of mob invasion. His presence with the inmates right up to the point at which the assailants set upon them was spoken to by Sinnathamby Rajendran.

Capt. Y.K. Abeyratne's attention had been focused on the Vidyapeetaya site of the Rehabilitation Centre because he had observed a crowd gathering there from 7.30 a.m. Samurdhi Niyamaka L. Kumarasinghe, Ravindralal a villager from Maduwelpathana, Nandakumara a cook attached to the Rehabilitation Centre and Sunil Wickramasinghe Bandare a technical officer attached to the Vidyapeetaya also had observed a large gathering of people in the Vidyapeetaya playground prior to the mob invasion. Nandakumara's estimation of the gathering was 1500 to 2000 people. He also had observed that most of the people who had gathered there were villagers. He had observed them entering the playground from the small gate. In our visit to Vidyapeetaya playground we noted this small gate below the pavilion. Sunil Wickramasinghe Bandare further testified that he saw 10 to 15 vehicles parked at the entrance to the Vidyapeetaya which indicated that people had been transported to the playground from the surrounding villages as well. There were about six or seven police officers armed with T-56 weapons 106 standing amongst the crowd. Vidyapeetaya playground is at a higher elevation than the Bindunuwewa site, and a steep slope separates them. The boundary line is demarcated by a short fence running along the slope parallel to both Vidyapeetaya playground and the rehabilitation centre. From the edge of the playground, the rehabilitation centre was clearly visible and as I have mentioned earlier everything happening inside the centre other than the interior of the billets can be clearly observed from the edge of the playground.

By 8.30 a.m. Capt. Y.K. Abeyratne found that the gathering of the people had increased and the crowd which stood close to the pavilion appeared aggressive. He heard them making the following utterances "Kill them. The tigers must be killed". Capt. Y.K. Abeyratne observed policemen amongst the

crowd and he did not see them making any positive attempt to disperse the crowd.- Vide page 39 of the proceedings of 13.06.2001. He thought that the crowds were getting impatient and aggressive. They were preparing to invade the centre. He shouted at the people not to come in. Meanwhile the inmates too were forming themselves into a group. Some of them were armed with iron pipes and clubs. This item of evidence is corroborated by Sinnathamby Rajendran as well.

At this stage it is relevant to mention an item of evidence spoken to by Sunil Wickamasinghe Bandare. When he inquired from the crowd gathering at the Vidyapeetaya what the commotion was about he was told that the people were preparing to attack the "camp" and that the inmates had electrified the camp and were going to "explode gas". In fact Inspector Karunasena and Sub Inspector Walpola testified that the inmates exploded a gas cylinder which forced the mob to a hurried retreat.

According to Capt. Y.K. Abeyratne, when the crowd at the Vidyapeetaya playground appeared to be impatient and aggressive, the inmates hurried towards the playground in a group, but stopped 10 meters this side of the fence whereas the crowd, stood 10 meters away from the fence. Thus, there was a distance of about 20 meters separating the crowd and the inmates. At that point of time, Capt. Y.K. Abeyratne saw the mob cascading into the rehabilitation centre and chasing the inmates while they were running towards their billets. He found the people running into the rehabilitation centre from the cemetery side as well. Even though the police were armed with guns, he did not see the policemen firing at the crowd to stop them from breaking into the camp. Capt. Y.K. Abeyratne's version of the 'cascading mob' from the Vidyapeetaya playground is corroborated by Nandakumara. When the mob broke into the rehabilitation centre, Capt. Y.K. Abeyratne, his deputy Lt. P. Abeyratne, Clerk Dayarame and instructor 108 Pushpakumara, clerk Ajith Herath jumped out through the barbed wire fence behind Capt. Y.K. Abeyratna's quarters. He saw some crowd gathered there as well. He thought they were waiting to catch the inmates in the event of their running away from that side. But Capt. Y.K. Abeyratne did not say that these people carried any weapons. Through the crowd he managed to come to the Agrarian Services Centre and made a call to Col. Vipulagune and apprised him of what was happening inside the rehabilitation centre. On his way he saw ASP Dayaratne with his Motorola making a call. When he came back after making the call, he saw the building on fire. He told the Commission that for all these to happen it did not take more than 10 minutes.

When Capt.Y.K. Abeyratne was shown the photograph marked P66A, he recognised the scene and identified the location as a place close to the main gate. Looking at the photograph with his naked eye, he recognised a person being carried away by policemen with the assistance of some civilians. This

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point is marked as P66A1. He also recognised some civilian standing with clubs in their hands whilst the policemen were just looking on. One person was having a sword. He could see about 8 policemen standing there. Shown P56B, he recognised the view as a part of the Vidyapeetaya playground. He pointed out on the photograph the place from which the crowd first broke into the rehabilitation centre. He also told the 109 Commission that he noticed some persons armed with clubs. Shown photograph marked P66C, he told the Commission that the damaged buildings seen there were the halls which housed the inmates.

Cook Nandakumara's version

From the main gate Nandakumara had seen people throwing stones at the Centre from the Vidyapeetaya side. Suddenly he found the crowd at the Vidyapeetaya playground invading the camp site. However, the police officers who stood near the gate prevented people coming into the Centre from that side. He also found people coming from the cemetery side as well. Nandakumara said that he managed to get into the Centre. He found the building on fire. People were excited and running about. This witness at the commencement of his evidence was reluctant to describe the weapons he saw in the hands of the assailants. They were armed with short axes, short knives and iron rods- Vied page 23 of the proceedings of 16.06.2001. Of the villagers who testified before the Commission, Nandakumara is the only one who had courage to describe the weapons the assailants carried at the time of the assault on the Rehabilitation Centre. He corroborated the evidence given by Sinnathamby Rajendran and Ganeshwaran on this point. These two are inmates who had suffered injuries. Nandakumara had recognised some of these people as villagers. He told the Commission that since he was 110 scared that he too would be attacked by the mob he left the place. On his way to the Bindunuwewa junction, he had seen about 25 posters hung there.

Divisional Secretary Mr. Wijayapala's version After reading the contents of the telegram marked P84 he had proceeded to the Rehabilitation Centre Bindunuwewa. When he alighted from his vehicle near the Agrarian Services Centre, he observed a commotion inside Rehabilitation Centre. Near the Agrarian Services Centre there was a big police truck and 2 to 3 police vehicles parked there. There were about 10 to 12 policemen. He observed a crowd of about 500 people near the gate. Those people were not allowed to go into the Rehabilitation Centre by the Police. Inside the Rehabilitation Centre he heard people shouting "attack, kill". Near the gate he saw Inspector Karunasena, OIC Crimes.

He saw people running about the camp carrying clubs. Some of them were coming out of the hostels. He recognised some of the people to be villagers. Answering a question put to him by the Commission whether the people

who were inside the Centre wore any special dress, his answer was that they were dressed in sarongs and trousers. Most of them were villagers he said. He saw some injured persons being carried away. Police officers did not allow the people to come near them. He said that he shouted "Don't make a 'Black July', go away from this place". When he went inside the 111 Centre, he met ASP Dayaratne and HQI Seneviratne. They were on a higher elevation about 100 feet away from the gate. This item of evidence comes from a Senior Public Servant. It establishes the presence of the ASP and HQI whilst the assault on the Rehabilitation Centre was still on. He also saw about 50 people standing along the edge of the Vidyapeetaya playground. He did not observe any tear gas being fired at the crowd. There were three dead bodies lying around. Some bodies were still burning. Buildings were on fire.

Answering the questions put to him by Mr. Kumarage who appeared for the aggrieved party, he said that he inferred that it was the people armed with clubs who had inflicted injuries on the inmates. He did not see any police officers arresting any person. He did not tell the HQI or ASP to take any one into custody because it was the duty of the police to arrest the offenders. He further said people of Sapugasulpotha and Alutgama could easily gain entrance to the Vidyapeetaya playground.

Version of the Villagers

Samurdhi Niyamake Kumarasinghe was drawn towards the Rehabilitation Centre on information given by his sisters on 25.10.2000 morning that inmates were about to "come out". From Bandula Attanayake's garden he had seen crowds invading the Centre, both from the Vidyapeetaya side as well as the cemetery side. He saw villagers among the crowd, some were armed with clubs and iron rods. He could not say whether all were villagers. He stated that having invaded the Centre the intruders ran into the halls. He saw the halls on fire.

Susil Wickramasinghe Bandara deposed to what he saw from the Vidyapeetaya playground. He had seen a large crowd of about 500 to 1000 people gathered in the playground and observed people from the adjoining villages coming into the playground through the small gate, below the pavilion. They were ordinary villagers wearing Sarongs and Shirts. Close to the main entrance to the Vidyapeetaya he saw 10-15 vehicles parked outside the gate along the road. There were vans, buses and three wheelers. Some of the people assembled in the playground were carrying clubs. Some were in the process of collecting poles and stones. He had prevented girls and boys 113 studying at Vidyapeetaya going towards the Rehabilitation Centre. He saw the inmates running towards their billets and the mob charging after them and attacking them. The assailants were putting mattresses on the fallen people and setting fire. Vide the proceedings of 23.07.2001 at pages 55

and 56. He observed some persons carrying 2 children of about 10-12 years of age towards the playground in an attempt to save their lives from the unruly mob. One of them had a head injury. He heard some people shouting "Don't feed the cubs with milk". The mob was damaging the halls made of zinc sheets and setting them on fire. Answering a leading question put to him by Mr. Rajakeshari that the intention of the crowd was to launch an attack on the Rehabilitation Centre, he said, "yes".

Good Samaritans

Mallika Pathmalatha a teacher living in her official quarters at Vidyapeetaya stated to the Commission that she went to the office that morning around 8.30 to make a telephone call to the Examinations Department. She observed a large gathering of men and women in the playground. She said she noticed a big commotion. She heard some women crying. It appears from her evidence that she had come towards the edge of the playground soon after the mob had invaded the Centre. Some people were shouting "Don't do any harm to the children. Do not attack the children".

She recounted how she saw a young person carrying a child of about 10 years of age and another person holding another boy, looking elder to the other boy coming towards the Vidyapeetaya playground. When they brought the children to the edge of the playground she held the second child by his hands. His shirt was bloodstained. She removed it. She also took off the 'Pabalu' chain he was wearing. He had some lacerations on his body and was shivering in fear. Witness had consoled him. Thereafter, she and the other person brought the two children to the Vidyapeetaya playground. They managed to find a Police vehicle and hand over the two children to the Police. The child she was holding was reluctant to go with the Police 115 leaving her behind. When she consoled him only he left her and went to the Police vehicle. In fact I noticed tears in her eyes when she recounted this incident. The two persons who saved the life of these two children were young. So is witness Mallika Pathmalatha. Theirs were acts of extreme courage.

Version of the inmates

Sinnathamby Rajendran and Perumal Ganeshwaran described in their own way the episode of mob attack on them and their colleagues with whom they were living under one roof. According to Rajendran, when the crowds broke into the Centre Police were shouting at them ordering them to go to their halls. He said he heard some gun shots when the crowds started invading the Centre. He ran to a hall and soon it was set on fire. He was hit on his head with a stone and he fell unconscious. Soon after he regained his consciousness, he saw the person who was next to him dead. Then a person

armed with a sword came to attack him, but a young fair person had intervened and saved him from the attacker. Rajendran had spoke to his saviour in Sinhala and told him that his name is Jayasekara. He further showed the young person a photograph of Jesus Christ he was keeping with him. This man escorted him to a police jeep. While he was waiting inside the jeep, he saw three other inmates getting into the jeep with injuries. Police Officers who were there helped them to get in. Of these three, Amaradeepan and Chandrasekaran survived. The other succumbed to his injuries. He came to know through Eshvaran (witness Perumal Ganeshwaran before the Commission) that Police had fired at the inmates. In this witness even though he received injuries during the mob attack I didn't observe any rancour or hatred towards anybody, for instance, he described how a child 117 inmate Uththamanadan ran to a policeman and embraced him and how he was protected and rescued by the policeman.

Answering a question put to him by Ms. Manori Muttettuwegama on behalf of the Human Rights Commission, Rajendran said "I saw policemen among the crowd. I thought they were going to protect us. Later on I felt very sad". His description of the mob was "they wore shirts, sarongs and trousers".

According to Perumal Gnaneshwaran, the invading crowds were armed with iron rods, knives and axes. With the other inmates, he ran towards their billets. He entered the Kovil hall (Hall No.4). The mob started attacking the halls. The inmates who were inside the Kovil hall jumped through the window and ran towards the police. None of the inmates who ran towards the police for protection carried any weapons. He saw some policemen firing at them. He too received a gun shot injury. One of the inmates was shot dead. The person who died received a gun shot injury on his head and he fell. This item of evidence is corroborated by Dr.(Mrs.) K.K. Joozar who had performed the post-mortem on the body of a person whose identity was "not known"- Vide P43. Of the nine injuries found on the body of this deceased, seven injuries were gun shot injuries. Another person too received a gun shot injury on his leg. Gnaneshwaran told the Commission that after 118 receiving a gun shot, he ran towards a police truck. Seven others also got into the police truck. They were followed by four persons who came to the truck and attacked them. One person was killed inside the police truck he said. He had held his hand to ward off the blows and as a result he received injuries on his hands as well - Vide pages 65 and 66 of the proceedings of 20.07.2001. This item of evidence casts serious aspersions on the conduct of the policemen. Firstly their firing at the unarmed inmates who were running out of the Rehabilitation Centre heading for a police truck for protection; secondly, for permitting the assailants to attack the injured inmates who had already got into the police truck killing one of them.

Police Version

I caused notices to be served on the police officers who were in my opinion in some way implicated or concerned in the Bindunuwewa incident. I also informed them that they were entitled to be represented by Attorneys-at-Law. That was in compliance with the implied requirement of natural justice embodied in Section 16 of the Commissions of Inquiry Act. Assistant Superintendent of Police Dayaratne and Sub Inspector Wijesinghe were represented by Attorneys-at-Law. Whereas the other police officers noticed who testified before the Commission were not represented by Attorneys-at-Law.

Inspector Karunasena

Inspector Karunasena who was the Officer-in-Charge of Crimes in the Bandarawela Police testified that after the Army was instructed to disperse the crowds on 24.10.2000 night by ASP Dayaratne the latter had detailed IP Karunasena and four policemen to the area near the main gate and IP Jayaratne with three policemen to the village. Thereafter even before the Army reported back, the ASP and the HQI had left the scene. Even though the ASP said that he and the HQI will come back during the night none of them came to see what was taking place. Since everything outside the 120 Rehabilitation Centre was normal there was no necessity for him to call either of them.

Around 6.45 a.m. the following morning he got information that people had stopped the Kirioruwa bus and were in the process of inducing people to stage a demonstration for the removal of the Rehabilitation Centre from Bindunuwewa. Having looked into that information, immediately thereafter, he made a telephone call to the HQI and informed him of these developments. Around 6.45 to 7 a.m. he noticed a crowd gathering on the Vidyapeetaya side. Meanwhile police parties from five police stations namely Haputale, Diyatalawa, Uva Paranagama, Ella and Welimada reported to him. From Haputale Sub-Inspector Hettiarachchi came with a police party of eight policemen; Sub-Inspector Ratnayake, from Diyatalawa; with five home guards and four policemen. Sub Inspector Walpola, Uva-Paranagama with four policemen; Sub-Inspector Wijesinghe, Ella with four policemen; and Sub-Inspector Abeynarayana, Welimada with five policemen. He deployed them to different points. In all he had 63 policemen to deploy he said.

According to him it was around 7.30 a.m. the ASP and the HQI arrived. By this time he observed a large crowd on the Vidyapeetaya side. He did not notice any weapons in their hands. He told the Commission that he never thought that there was a threat from this crowd to the Rehabilitation Centre. After sometime he saw 50-60 people from the crowd gathered in the Vidyapeetaya grounds running down the slope towards the Centre.

Thereupon the ASP, the HQI and he hurried in that direction inside the camp. The crowds having come down the slope started throwing stones at the inmates and inmates too retaliated by throwing stones at the crowd. The policemen too were caught up in the stone throwing incident. Suddenly the inmates exploded a gas cylinder and he saw a cloud of smoke billowing up from that direction. The people ran back to the Vidyapeetaya grounds. He also thought that it was a bomb and ran back towards the main gate. After a while when the people realised that it was not a bomb they broke into the Rehabilitation Centre in large numbers. He estimated the numbers to be 1500 to 2000. He admitted that the police did not take any action to prevent the mob from invading the Centre.

When he was examined as to why he did not request the HQI to bring riot squads, tear gas, rubber bullets and additional policemen, he gave the following reasons.

- (1) That he did inform the HQI about the Kirioruwa bus incident and the fact that people were getting ready to stage a demonstration. 122
- (2) That the HQI was personally aware of the developments at the Centre the previous night.

He said that he expected the HQI to attend to all these matters. When he was questioned why he did not inform the ASP about the developments he said through his Motorola, he could contact only the HQI and since he had informed the HQI about the Kirioruwa bus incident, the HQI should have informed the ASP about these developments. Further, he told the Commission that the ASP was personally aware of the incidents that occurred on the previous night. Karunasena further stated that it was the ASP who directed the Army to disperse the crowds on the previous night. It was the ASP who had directed the police stations under him to send policemen to the Centre. The ASP was therefore well aware of the impending danger.

When Inspector Karunasena was questioned as to why, he being the OIC Crimes, failed to call for riot squads, tear gas, rubber bullets and additional policemen directly he said, to call for these he had to get permission from the HQI. Since he had already informed the HQI of the developments around Bindunuwewa he was not bound to make orders.

When he was examined as to why he did not take action to prevent people invading the camp his answer was that since the ASP and the HQI were present at the scene, they should have given orders. He did not get any such orders from the HQI or the ASP. Further he told the Commission at that point of time he never anticipated any threat from the crowds.

When the people who invaded the Centre was chasing after the inmates he

ordered the policemen who were near him to shoot. He said it was the maximum that he could do to prevent the occurrence of any crime. He said he was not aware of any civilians receiving any gun shots. He came to know that one of the inmates had died of gun shot injuries, only the next day.

When he was confronted with the photographs marked P66A, P66D, P66E his answer was those photographs were not clear enough and when the Deputy Solicitor-General drew his attention to the photograph marked P66A which was earlier shown to DIG Kotakadeniya who had identified the presence of policemen and also the presence of civilians carrying clubs and one person carrying a sword, this witness said he could see some people in police uniform. He further said the technology is so developed now, such photographs could be invented.

When he was examined by the learned counsel Mr. Upul Kumarapperuma who looked after the interests of ASP Dayaratne as to whether he had any grievances against his superior officers, he said he has no such grievance. He conceded that there was a disciplinary inquiry against him which is being handled by ASP Dayaratne. It was suggested to him by the learned counsel that he was falsely implicating the ASP due to animosity, which allegation he vehemently denied.

He admitted that he did not arrest any person at the crime scene. He was not given any orders to arrest anyone by the ASP or HQI who were present at the scene. He conceded that the assailants were freely moving about while the policemen were around. On the same day evening he was asked to arrest the villagers by the superior officers. He arrested 367 suspects and brought them to the police station and the Senior Superintendent of police remarked "Very Good Karunasena".

He stated that the HQI and the ASP had sufficient time to take steps to prevent this attack. They could have evacuated the inmates. In fact DIG Kotakadeniya too expressed the same view.

Sub-Inspector Walpola

On 25.10.2000 he was attached to the Uva-Paranagama police. Consequent upon an order given by ASP Dayaratne he had reported to Bandarawela Police Station around 6.45 a.m. and thereafter met Inspector Karunasena at Bindunuwewa. Sub-Inspector Abeynarayana who came with a police party from Welimada too had reported to Inspector Karunasena at the same time. Sub-Inspector Walpola had with him nine officers. Thereafter Inspector Karunasena had taken him to Vidyapeetaya playground and detailed him there with five of his officers and an officer from another station. In all including Walpola 7 policemen had been detailed at Vidyapeetaya ground. It is pertinent to mention here that Capt. Abeyratne and a number of other

witnesses spoke of a large gathering of about 1500-2000 people at the Vidyapeetaya playground. They also spoke of some of them carrying weapons.

Walpola spoke of seeing 15 to 20 people entering from the village through the gate shouting slogans. They said "the tigers are not allowing us to live in the village. Government and the officials are feeding the tigers 126 with milk". Walpola had asked them to speak to the ASP and the HQI. Thereafter they left the place. Those people were wearing shirts and sarongs. When he proceeded to the edge of the playground, he observed a gathering of people around the Rehabilitation Centre shouting and crowds from the cemetery side throwing stones at the inmates. He said he observed the inmates exploding a gas cylinder. He saw Inspector Karunasena, Sub-Inspectors Ratnayake and Abeynarayana going towards the Centre from the main gate. Just prior to the explosion he said that he saw ASP Dayaratne standing near the barracks where the inmates lived. At that point of time he saw a crowd of about 50-60 people coming along through a drain from the pavilion side. He took the T56 gun he was carrying at the time and arranged it. Then Sub-Inspector Ratnayake shouted at him not to shoot. He was ordered to keep aside the T56 weapon because if it was seized more damage would be done. Thereupon he said he gave it to a home guard and proceeded towards the Centre. As he was going he noticed an injured person jumping towards the ASP and ASP ordering Sub-Inspector Ratnayake to rescue him. He saw people moving about carrying clubs, and knives. He did not arrest anyone because he did not receive any orders from his superiors. Answering a question put to him by the Commission he said he did not see any vehicles parked at the main entrance to the Vidyapeetaya playground. His testimony to the effect that there was no crowd gathering at the Vidyapeetaya playground and that he did not see any vehicles parked near the main gate at 127 the entrance to the Vidyapeetaya conflicts with the evidence given by the lay witnesses as well as Inspector Karunasena who had observed a large gathering at the Vidyapeetaya playground. He stated that when he proceeded to the Centre there were people freely moving about carrying weapons. He did not arrest anyone of them.

He told the Commission that ASP Dayarame told him not to divulge to the CID ASP Dayaratne's presence at the Bindunuwewa Rehabilitation Centre while the attack was taking place. This position was denied by ASP Dayaratne.

Sub-Inspector Ratnayake

On the orders of ASP Dayaratne around 7.45 p.m. on the 24th October, 2000 he had proceeded to the Diyatalawa camp and requested the authorities to send troops to Bindunuwewa Rehabilitation Centre. Thereafter he proceeded

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to the Bandarawela police station to meet the ASP. Then the ASP also got into his jeep and he drove to Bindunuwewa. Near the Bindunuwewa Centre he collected Inspector Karunasena as well. When they alighted from the jeep near the Agrarian Services Centre, he spotted about 150-200 people collected there. On the orders of the ASP they managed to disperse the crowd. Later on he saw the HQI also present there with some policemen.

Around 9.30 p.m. an army battalion arrived and the ASP gave instructions to them to disperse the crowd on the perimeter of the Rehabilitation Centre. He saw the ASP giving instructions to Inspector Karunasena and Inspector Jayaratne. Thereafter he dropped the ASP back at his residence at Bandarawela. The ASP had instructed him to report back at the Bandarawela Police Station the following morning.

Even though the ASP in his evidence testified that he had come back with Inspector Ratnayake after going back to the Bandarawela police station and then proceeded to Vidyapeetaya and the village and that he saw Lt. Balasuriya and his troops at the Vidyapeetaya grounds, this witness did not speak of a second visit.

On 25.10.2000 around 6.55 a.m. he proceeded to Bindunuwewa and met Inspector Karunasena. The latter had detailed him to the area to the south of the Agrarian Services Centre with orders not to allow any vehicles to come up towards the Centre. He did not see any incidents in the area where he was detailed. He did not speak of crowds passing him at any time.

Around 8.45 a.m. he had heard some gun shots. At 9.10 a.m. he was summoned by the ASP who was standing near the main gate but outside the Centre. This witness did not state at what time the ASP arrived. He saw people running here and there inside the Centre as well as outside. With reluctance he admitted that some people were armed with clubs and moving about inside the Centre. He saw the place on fire. The ASP had instructed him to despatch the injured to the hospital. Even though he had seen people armed with clubs this witness did not speak of arresting anyone.

Sub-Inspector Abeynarayana

On 25.10.2000 he was attached to Welimada Police Station. He along with six other officers had proceeded to Bandarawela Police Station and from there along with Sub Inspector Walpola who had come in his jeep proceeded to Bindunuwewa and reported to Inspector Karunasena who was near the Agrarian Services Centre around 6.45 a.m. He and his party did not carry any weapons or even batons because there was no order to that effect. IP Karunasena after detailing other police parties who had come from other police stations detailed him to the area around the Agrarian Services Centre. He received instructions not to allow any person to go into the Rehabilitation

Centre. He testified that some of the policemen were carrying weapons. But not all. Around 7.30 a.m. he observed gathering of people. He and other policemen who were there took steps to prevent them from going towards the Centre. None of those people did carry any weapons. He saw women and children among this crowd. He and the other policemen were able to prevent them from coming into the Centre.

While he was in the process of dispersing the crowds he heard sounds coming from the Centre and also he noted people coming down the slope from the Vidyapeetaya side and throwing stones at the inmates. Inmates too retaliated by throwing stones. While the stone throwing incident was going on IP Karunasena, SI Ratnayake and he had proceeded in that direction. While they were so proceeding he heard people shouting "gas, gas". Fearing that the inmates were going to explode some gas container he and the other policemen ran back. He saw the crowd retreating towards the Vidyapeetaya slope. Inmates too were running towards the Centre. Thereafter he said he did not come back to the Rehabilitation Centre, but went down from the main gate towards the Agrarian Services Centre to prevent people from coming towards the Centre.

Then he heard sounds of beating on the zinc sheets and gun shots. He proceeded towards the Centre. He saw people running here and there carrying clubs. Some people were fighting with the inmates. He observed ASP Dayaratne standing amidst the crowd. Then an injured person of about 14 years of age wearing a striped shirt fell near the ASP and the latter had directed Sub Inspector Abeynarayana to take him away. He and the policemen around rescued him from the crowds and removed him to a police truck. He said he saw the HQI some time later. He did not take any steps to arrest any of the assailants, even though he saw some of the 132 assailants attempting to attack the injured person he himself was taking away to save him from further attack.

Sub-Inspector Wijesinghe

On the orders of the OIC along with a sergeant and three police officers he had reported to Inspector Karunasena at Bindunuwewa around 6.45 a.m. He was attached to the Ella police station then. From two police constables who were there he came to know that there had been some incident the previous night at the Rehabilitation Centre. Thereafter Inspector Karunasena had detailed him along with his party to Maduwelapathana Junction. Two other constables from his station joined him there. He kept his jeep along with him but he did not have a communication equipment. Of his police party he had detailed four to two different places while keeping two constables along with him. Since he had to concentrate on the security at that point he was not in a position to send officers to check what was going on inside the camp.

Around 7 a.m. he saw four or five people coming from the jungle side down the road. He did not allow them to proceed. Little while later some more people came and the crowd was about 15 people. There were women 133 among that crowd. He did not allow any of them to proceed passing his point.

Around 7.30 a.m. he heard some gun shots and noises coming from the direction of the Rehabilitation Centre. Further he told the Commission that the crowd he did not allow to go did not carry any weapons. It is only around 1.00 p.m. when his meals were brought by some policemen he came to know what really had taken place at the Bindunuwewa Centre. Even Sub Inspector Hettiarachchi's position was that he came to know about the incident only when police officers brought his meals.

The evidence elicited before the Commission has established that from Maduwelpathana junction up to Sapugasulpatha there had been three security points and all these officers testified that no crowds had passed through their points to the cemetery. The reason given by Sub Inspector Hettiarachchi was that the land to the right of this road is rugged, hilly and precipitous.

Inspector Jayaratne

According to Inspector Jayaratne when he came along with HQI Seneviratne in the latter's jeep to Bindunuwewa, ASP Dayaratne had detailed him with three police constables to the village. He was to look after the area in between Maduwelpathana junction up to Sapugasulpotha. After going to the Maduwelpathana junction he had proceeded along the road towards Sapugasulpotha. He saw a gathering of about 20 villagers there. They said "You are coming only now. We are guarding the village. Tigers are going to attack the village". He spoke to them and dispelled their fear. Thereafter they went away.

Jayaratne further testified that on an information received to the effect that Lt. Abeyratne had left a blood stained shirt at a house in the village he proceeded to that house and took into custody a blood stained shirt. He also had recorded a statement from the girl who had received the blood stained shirt from Lt. Abeyratne. On the following day he had produced the shirt at the police station. 135

Around 9.30 p.m. he met army soldiers patrolling the perimeter in a jeep. He further testified that no other significant event took place in that area that night. Around 6.45 a.m. on 25 October 2000 a bus conductor complained to him that some people had obstructed his bus at the Kirioruwa road and were in the process of inducing the passengers to join a demonstration. Inspector Jayaratne said he spoke to Inspector Karunasena through his communication

equipment and Inspector Karunasena indicated to him that he will take action. At the same time two other police parties had arrived and one party was posted near the Maduwelpathana junction and the other one at the northern end of the village. He looked after the middle section. His position was that no one entered the cemetery from that side. Around 8.30 he had heard beating of zinc sheets and at the same time had seen a cloud of smoke billowing up from the camp side.

Around 10 o'clock he got a message from the HQI and he proceeded to the main gate. There he was asked to despatch the injured to the hospital. He got some news that two injured children had been brought to the Vidyapeetaya side. He directed two of his officers to take them to the hospital. Apparently they were the two children rescued by Mallika Padmalatha and the two young men. Inspector Jayaratne said he did not arrest a single person.

Sub Inspector Hettiarachchi

On 25.10.2000 he was attached to the Haputale Police Station. Only a few days back he had reported for duty at Haputale on a transfer from Vavuniya. When he was at Vavuniya he was in-charge of Sithambarapuram Refugee Camp. It comprised 12500 refugees. He described in detail an incident where he managed to save the inmates of the Refugee Camp from an outside attack. On the orders given by the OIC he had set off to Bandarawela around 6 a.m. on 25.10.2000. Thereafter he reported to Inspector Karunasena around 6.10 a.m. at Bindunuwewa. He was accompanied by a sergeant and 10 police constables. The police constables were carrying T56 weapons. He did not carry any weapon because he did not receive such orders and also at that time he did not have a service revolver. Inspector Karunasena detailed him to a point at Sapugasulpotha village. To reach that point he had to pass Maduwelpathana junction. Later he came to know that in between Bindunuwewa Camp and the point at Sapugasulpotha where he was detailed, there had been two other points namely Inspector Wijesinghe and his party at the Maduwelpahtana junction and Inspector 137 Jayaratne at a point midway between the point where Sub Inspector Wijesinghe and his party were and his point. He told the Commission that Inspector Karunasena gave the following instructions to the police parties gathered near the Agrarian Services Centre before they were detailed to various points:-

1. That T56 weapons that they were carrying were meant for self defence.
2. That they should not allow anyone to go into the Rehabilitation Centre or go out of the Rehabilitation Centre.

Further they were told that important people would be having discussions and settle this matter. SI Hettiarachchi's complaint was that he did not receive proper instructions from Inspector Karunasena. He said that the

distance between the place where he was detailed and the main gate was about 1 km. From there he could see the Vidyapeetaya playground, but not the Rehabilitation Centre. If one were to go to the Rehabilitation Centre from the point where he was detailed he had to do a difficult climb because that area was rugged and hilly. In fact in our visits to Bindunuwewa we noticed that there were precipices and rugged hills around that area. I am inclined to accept his position that it is rather difficult for people to enter the cemetery from that point. Among the ordinary people who were going for their day to day work he did not notice anyone carrying any weapons. Around 2.00 O'clock, when meals were brought to him by some policemen he came to know about this brutal attack. He said he was shocked. He was 138 there till 5.15 p.m. Until he got a message from Inspector Ratnayake to go back to the Bandarawela Police Station. His position was that no suspicious persons passed through his point during the period he and his men guarded this point at Sapugasulpotha. He said he didn't come across any person carrying weapons or suspicious persons for him to arrest.

HQI Jayantha Seneviratne

He testified to the following factual position: On 24.10.2000 night while he was resting at his residence he received information from the duty officer that there was some trouble at the Bindunuwewa Rehabilitation Centre. Thereupon, along with some police officers present at the Police Station and Inspector Jayaratne he set off from the Police Station. At the gate he saw Senaka Bandara who had been posted to the Rehabilitation Centre running towards the Police Station carrying a T56 weapon. HQI got him into his jeep. Senaka Bandara told him that the inmates of the Bindunuwewa Centre were having some dispute with Capt. Y. K. Abeyratne and they having attacked Lt. P. Abeyratne attempted to seize his T56 weapon. After firing a shot in the air he had escaped. While driving the HQI had seen two home guards attached to the Centre standing at the edge of the road carrying their guns. He got them also into the jeep. When he arrived at the gate he saw Inspector Karunasena also coming there 139 in a van. The HQI then proceeded towards the main gate of the Centre. As he was proceeding Capt. Y.K. Abeyratne surrounded by five or six inmates who were armed with clubs and iron rods came up to him. He noticed that Capt. Y.K. Abeyratne was not his usual self. The latter requested the HQI to ask the policemen carrying guns to retreat. He ordered his men to retreat. Then the inmates allowed only the HQI to enter the Centre but unarmed. The HQI said that the camp was dark at that time. There were street lamps. He proceeded towards Capt. Y.K. Abeyratne's office and while he was having a conversation with Capt. Y.K. Abeyratne the inmates stood around him. They were still armed. One of the inmates who was conversant in Sinhala conveyed to him what the inmates were telling in Tamil. They said "police are firing at us. We are not drug addicts or rapists.

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We have come here because we don't want war". The HQI told the Commission that he thought it best to remove the police post. With the permission of the inmates he got a police constable to come into remove the police belongings inside the police post. When he went up to the police post he saw the whole place ransacked. Information Books, and all other documents had been burnt. Police caps and uniforms had been thrown on the floor. Policemen's beds had been overturned. The HQI said he felt very sad. He was in a helpless position. Thereupon he found a cardboard box and got the policemen to collect what was left. When the policemen was in the process of collecting the uniforms thrown about, some inmates using the clubs and rods they 140 carried threw out some of the uniforms and caps lying on the floor uttering filth in Tamil.

In such a situation I found it hard to believe the story that the HQI had meekly given into the demands and dictates of the inmates and removed the police post from the camp that night. I have discussed in my report the HQFs conduct in removing the police post from the Rehabilitation Centre that night and its repercussions.

After the arrival of the ASP at the Agrarian Services Centre under ASP's order he detailed 17 policemen to various places on the perimeter. This position has been contradicted by Inspector Karunasena's and Inspector Jayaratne's evidence. According to their evidence, only two police parties were detailed in the vicinity of the Rehabilitation Centre that night, namely, Inspector Karunasena with 4 policemen was put on duty near the main gate and Inspector Jayaratne with three policemen was detailed to the village Maduwelpathana. The HQI further testified that the troops arrived around 9.30 p.m. He saw the ASP giving them instructions to proceed with the police officers and look after the perimeter. Further the ASP had given instructions to the army not to leave without informing either of them. Reluctantly he admitted that the ASP and he left the scene without waiting for a feed back from the army. Around midnight he received a telephone call 141 from a caller who allegedly was giving the call from Batticaloa. The caller said that he received information that people were surrounding the Bindunuwewa Rehabilitation Centre. The HQI told the Commission that he did not give any weight to this call because when he returned from the vicinity of the Rehabilitation Centre everything was normal and that there were two Inspectors detailed there at that time. The following morning he got a telephone call from Inspector Jayaratne complaining that army had gone without informing him. Secondly Jayaratne told him that there was a traffic block at Bindunuwewa and there were groups of people on the road. The HQI denied that the call was relating to an obstruction caused to two buses on Kirioruwa road by the crowds who were attempting to stage a demonstration agitating for the removal of the Rehabilitation Centre. He did

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not convey this telephone call he received to the ASP.

After considering the evidence deposed to by the HQI and the evidence given by Inspector Karunasena and Inspector Jayaratne on this point I reject the evidence of HQI and accept that Inspector Karunasena in his call to the HQI had brought to his notice the Kirioruwa bus incident and the fact that people were getting prepared to stage a demonstration.

Thereafter the HQI had proceeded to the ASP's office in order to proceed to Badulla along with the ASP for a disciplinary inquiry scheduled for that date. In fact ASP Dayaratne was the inquiring officer. When the 142 ASP and he were about to leave for Badulla at 8.30 a.m. he picked up a message from Inspector Jayaratne which was to the following effect:- "Mob is invading the Rehabilitation Centre. It is on fire. Send reinforcement". It was suggested to this witness that had he acted on the telephone call he received around 7.00 a.m. without waiting until the news of a savage attack on the Rehabilitation Centre the incident could have been prevented. On receiving the telephone message he had ordered Inspector Ranasinghe to send a riot squad and reinforcement immediately. ASP and he then proceeded directly to the Rehabilitation Centre. His position was that by the time they reached the Rehabilitation Centre, the damage had been done already. Killings and mayhem were over. Since the buildings were still on fire he telephoned the fire brigade to come immediately. He thought sending the injured to the hospital at that point of time should be his prime concern. Therefore promptly he took steps to see that the injured were sent to the hospital. He denied Capt. Dematanpitiya's version that when he arrived at Bindunuwewa with his battalion, civilians were still moving freely carrying weapons. Inspector Karunasena, Sub Inspector Walpola, Divisional Secretary of Bandarawela Mr. Wijayapala and Inspector Ratnayake spoke of the presence of the HQI whilst the crimes were still happening and assailants were freely moving about inside the Rehabilitation Centre. Even though Inspector Karunasena spoke of HQI and ASP coming to the scene around 7.30 a.m. there is no other evidence to support that position and that they 143 were present at the time the crowds broke in to the Rehabilitation Centre. Anyway I have no doubt that, after assessing the evidence that came up before me, both the ASP and HQI were present in the Rehabilitation Centre while the crimes were still taking place and assailants were freely moving about carrying weapons inside the Rehabilitation Centre.

When HQI was confronted with the photograph marked P66A he identified the presence of five or six policemen. In fact he went on to say he could even identify Inspector Karunasena among them. He also conceded that some of the persons were armed with clubs and one person was armed with a sword. Anyway he said while he was inside the Rehabilitation Centre he did not see an incident like that. He said if he was present at the scene as shown in the

photograph he would have promptly arrested the suspects carrying weapons and he would have ordered his officers to take them into custody. He did not rule out the possibility that he may have been elsewhere in the Centre when the incident shown in the photograph was taking place. It is significant that all the police officers who gave evidence before me took up the position that their prime concern was looking after the safety of the injured, so much so that Mr. C. Kumarage who appeared for the aggrieved parties suggested that they acted as ambulance men and not as policemen.

The HQI went on to say that in the evening he along with Inspector Karunasena proceeded to the village to arrest the suspects. But by then they had fled the village. On the 26th morning Inspector Karunasena had brought all the villagers to the police station. Anyway after recording their statement on the orders of the Senior Superintendent of Police without producing them before the Magistrate they were discharged. Thereafter he said the CID took over.

I take the view that the police officer was suppressing material facts to the Commission. Therefore I do not consider him to be a trustworthy witness.

ASP Dayaratne

ASP Dayaratne's version is to the following effect-

On 24.10.2000 around 7.40 p.m. he had received information from the duty officer Gamini that there was some trouble at the Bindunuwewa Rehabilitation Centre. Thereupon he had ordered OIC Diyatalawa, Sub Inspector Ratnayake to call for assistance from the army at Diyatalawa Army Camp and then for Ratnayake to report to him at Bandarawela Police Station. Once SI Ratnayake met the ASP at Bandarawela in his jeep, the ASP proceeded to Bindunuwewa. He, Sub Inspector Ratnayake and other policemen had alighted from the vehicle near the Agrarian Services Centre. He saw Inspector Karunasena standing among a crowd of about 200 people. He spoke to the crowd and came to know that they had gathered there hearing that the inmates of the Centre had attacked the army personnel and the police personnel who were attached to the Centre. The ASP had dispelled their fears and persuaded them to go back. He heard hooting from the direction of the Vidyapeetaya. He thought that there was a gathering of people there as well. Even though he could not see what was happening inside the Centre, there was intermittent throwing of stones towards the police from the direction of the billets occupied by the inmates. Then the HQI also arrived there and intimated to him that in order to avoid 146 confrontation he was compelled to remove the policemen from the police post.

I have considered this aspect elsewhere in my report and I have come to the conclusion that the HQI had in fact withdrawn the police post that night heeding the dictates of the inmates.

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Around 9.30 p.m. the army personnel arrived. He gave instructions to Lt. Balasuriya to disperse the crowds gathered at the perimeter and not to leave without informing either of them. However when this witness was examined by his Attorney Mr. Kumarapperuma he shifted from the original position and stated that he told the army to report to Inspector Karunasena. Thereafter he said he left for the Police Station to inform his superior officers. After informing the superiors along with Sub-Inspector Ratnayake he had come back to the Centre and then went towards the village and the Vidyapeetaya and came back to the Police Station as he did not see any crowds gathered around the Centre.

These details about a second visit spoken to by ASP Dayaratne are not supported by SI Ratnayake or Inspector Karunasena. In fact Inspector Karunasena's testimony is in conflict with that of the ASP. Having considered these details regarding his movements on 24.10.2000 night I 147 come to the conclusion that this officer is suppressing material facts to the Commission.

The ASP and the HQI both conceded the fact that they left the scene around 10.30 or 11 that night before getting a feed back from the army who were instructed to disperse the crowds around the Centre. The ASP did not accept the position that he should have taken steps to harness and mobilise a riot squad that night itself. But he conceded the position that if he and the HQI did not leave the scene that night and stayed back till dawn, the attack on the Rehabilitation Centre by the mob would have been prevented. On 25.10.2000 morning he had received a telephone call from the HQI to the effect that the people were gathering around the Rehabilitation Centre. He did not think that it was going to be a threat to the Centre. He thought that the people were gathering to have discussions with the Commissioner General of Rehabilitation who was expected that day. Further he said that the HQI did not tell him about an obstruction to a bus by the crowds on the Kirioruwa Road. On receiving this call, he had telephoned the Brigadier and requested him to send troops to Bindunuwewa. According to the ASP and HQI they received the telephone message that the mob was invading the Rehabilitation Centre and the Centre was on fire at 8.30 a.m. To support his position ASP marked Officer's Visiting Book as Z and the relevant entries as ZI. However the HQI's position too was different. What the HQI said 148 was that he got a call from Inspector Jayaratne to the effect that there was a traffic block at Bindunuwewa and there were groups of the people gathering along the road. HQI said that he did not inform the ASP about this information he got. Thus the ASP's position that he requested the army to come at 8 a.m. on 25.10.2000 is not supported by the HQI. The position of the army as deposed to by Capt. Dematanpitiya and Major Jayaweera was that they were requested by the ASP to send troops only around 8.30 a.m. and that the army platoon left around 8.45 a.m. I accept the Army version as creditworthy. It is interesting

to note that both the ASP and HQI were more concerned and interested in attending a disciplinary inquiry at Badulla scheduled for that date. Hence, the ASP and the HQI had proceeded to meet ASP (2) Wijepala to give instructions to him to oversee Bindunuwewa. ASP Dayaratne's decision to proceed to Badulla for an inquiry that morning while they were well aware of the happenings on the previous night and also when they had information that people were gathering around the Rehabilitation Centre, cannot be justified. ASP Dayaratne further testified that when he and the HQI were about to leave for Badulla, they received a message from IP Jayaratne that people had invaded the Rehabilitation Centre and the Centre was on fire. Further the message requested the Bandarawela Police to send reinforcement. It is obvious that even by 8.30 a.m. other than the police parties which had arrived from other Police Stations, no reinforcement had been sent to Bindunuwewa. ASP Dayaratne 149 further told that he ordered all policemen at Bandarawela Police Station to proceed to the Rehabilitation Centre and specially ordered a tear gas team to be dispatched to the Rehabilitation Centre. Thereafter he and the HQI proceeded to the Rehabilitation Centre and arrived there around 9.10 a.m. As he alighted from the jeep near the Agrarian Services Centre he heard a gun shot. He later came to know from Inspector Karunasena that Inspector Karunasena had given orders to some policemen who were with him to shoot. Witness did not know whether anyone was injured or killed by that shooting. His position was that the attack was over by then. As I have already referred to, evidence that came before this Commission from Inspector Karunasena, Sub-Inspector Walpola, Sub-Inspector Ratnayake and Additional Secretary Mr. Wijepala was that he was present whilst the attack was still on. When this position was put to him the ASP denied it. Evidence do not clearly establish that either the ASP or HQI was present at the time the mob broke in to the Centre. Albeit, a careful scrutiny of the evidence before me in this regard, I place on record that I accept the position that the ASP and HQI were present whilst the attack was still going on. When he was confronted with the photograph P66A he admitted that there were police officers looking on while the assailants were around carrying clubs and one carrying something like a sword. He did not arrest or give any orders to arrest any suspect because had he done that, it would have created more 150 problems. I have given my mind to the conduct of these officers in another Chapter.

Police Constable Wijeratne

In order to support the position taken up by the ASP that tear gas was fired at the crowd on his orders, evidence of police constable Wijeratne was led by Mr. Upul Kumaraperuma who appeared on behalf of ASP Dayaratne. This witness testified that on the orders given by Inspector Ranasinghe he proceeded to the Bindunuwewa Rehabilitation Centre in a police vehicle

which carried a police party. He was armed with tear gas. When he arrived at the Centre it was between 9.25 a.m. and 10 a.m. He said that the ASP ordered him to fire tear gas at the crowds gathered in the Vidyapeetaya grounds and he complied with his orders. He said he fired six rounds. He categorically stated that when he came to the Rehabilitation Centre there were no civilians inside the Centre. He noticed some officers of the Intelligence Unit present inside the Camp. Anyway his evidence conflicts with that of the ASP who testified that he ordered Police Constable Wijeratne to fire tear gas at the crowds inside the Rehabilitation Centre moving about carrying weapons.

His evidence also contradicts the position taken up by Sub-Inspector Kurukalasureiya of the Intelligence Unit, who told the Commission that he had arrived at the Bindunuwewa Rehabilitation Centre around 9.15 a.m. and was there at least for two hours and during that period there were people 152 inside the Rehabilitation Centre armed with clubs. He categorically stated that no tear gas was fired while he was inside the Centre. Having considered the totality of the evidence I am unable to accept Wijeratne's version that he fired tear gas between the period 9.25 to 10.00 a.m.

ASP Wijepala

ASP Wijepala's evidence was led by Mr. Upul Kumarapperuma on behalf of ASP Dayaratne. According to him on 25.10.2000 ASP Dayaratne was acting for the Superintendent of Police, Bandarawela, who was away in Colombo. He received a telephone call from ASP Dayaratne around 7.00 a.m. The latter told him that there was a demonstration at Bindunuwewa the previous night and he had settled it. Then around 8.30 a.m. ASP Dayaratne and HQI Jayantha Seneviratne met him at ASP Wijepala's office. ASP Dayaratne told him that if anyone asked about him, to tell that there had been a demonstration at Bindunuwewa the previous night and it was settled. ASP Dayaratne further told ASP Wijepala that he had detailed policemen at the Centre and that everything was normal. When ASP Dayaratne telephoned him around 7.00 a.m. ASP Dayaratne did not tell him that he was going for a disciplinary inquiry at Badulla, but, at 8.30 a.m. ASP Dayaratne told him that he and HQI Seneviratne were going to Badulla for a disciplinary inquiry. On being questioned by the Commission whether he was asked to oversee Bindunuwewa ASP Wijepala answered in the negative. According to him by 8.35 a.m. ASP Dayaratne and HQI had already left his office. Having carefully considered ASP Dayaratne's testimony and that of ASP Wijepala, I come to the conclusion that ASP 154 Wijepala's evidence do not support the alibi taken up by ASP Dayaratne. In fact ASP Wijepala's evidence conflicts with ASP Dayaratne's evidence and cast serious doubts on ASP Dayaratne's conduct.

Inspector Linton Perera

In the course of his evidence he testified that in view of a statement made to the Criminal Investigation Department by ASP Dayaratne to the effect that he directed Police Constable Wijeratne to fire tear gas at the crowds gathered at the Rehabilitation Centre, the officers of the CID who took over the investigations on 25.10.2000 night itself had investigated into it. In their investigations they found some empty tear gas shells at a quarry in Sapugasulpotha village, about 200 to 300 meters away from the Centre lying on the other side of Vidyapeetaya. Some workmen at the quarry have made statements stating that on 26.10.2000 a police party had come there and ordered them to leave the quarry. While they complied they heard some shots being fired. When they came back they found it difficult to open their eyes. The Government Analyst's report pertaining to the empty shells is marked P16.

Inspector Linton Perera also spoke of taking into custody a number of posters that appeared around Bindunuwewa. Some of these posters had been sent to the Government Analyst. Even though he arrested a number of villagers as suspects in this regard according to the EQD's report only the handwriting of Sisira Saman tallied with the writing in the posters. This suspect was arrested and produced before the Magistrate. EQD report relating to the posters is marked as P85.

In this regard evidence of Sriyananda Bandara, quarry workman, was led as corroborative evidence. His evidence was that on 25.10.2000 some time between 2 and 3 p.m. some persons came in a jeep, blue in colour and ordered them to run away from the metal quarry where they were working. He along with others had hidden in a shrub jungle close by and from there he heard two gun shots and also saw smoke coming from that direction. CID Inspector Nalaka Wickramasinghe Senanayake testified that he recorded the statement of Sriyananda Bandara and also recovered two empty tear gas shells. I observe a conflict of evidence regarding the distances.

Real Evidence

In order to prove the documents marked P66A to P66K, evidence of Sub-Inspector Kurukulasooriya who is attached to the District Internal Intelligence Bureau, Bandarawela was led before the Commission. He had proceeded to the Bindunuwewa Rehabilitation Centre with an officer of the same unit named Nagahawatta. It was around 9.15 a.m. when he reached there. Along the road close to the main gate he observed about 900 people, most of them women, he said. Inside the Centre too he saw a large gathering. Some of them were carrying clubs. He saw ASP Dayaratne, HQI Jayantha Seneviratne, Sub Inspector Ratnayake and Inspector Karunasena along with a number of other policemen inside the camp. By that time the attack was

over. Yet he saw the civilians still moving about, some of them carrying clubs. Some of the policemen were in the process of removing injured and dead bodies to the hospital. He admitted that he took photographs marked P66A to P66K. P66G, P66H, and P66K were taken in the hospital. They were injured inmates who had received injuries and who had been treated by the hospital authorities. In the photograph P66A he spoke of the presence of six policemen and about 8 civilians. Looking at the photograph he said these civilians are carrying clubs. Answering the questions put to him by the State Counsel he said he is unable to say that a particular civilian is carrying a club or a sword. This officer had been inside the Rehabilitation Centre for about 2 hours. Even when the army came he 158 was there. But he categorically stated that no tear gas was fired while he was there inside the camp and that no effective measures were taken by the Police to disperse the crowds.

Army Version

According to Capt. Dematanpitiya on the order given by Major Jayaweera around 8.45 a.m. on 25.10.2000 he had proceeded to Bindunuwewa. By then he was aware that there had been trouble at Bindunuwewa the previous night and the army had reported back after clearing the perimeter. Major Jayaweera had indicated to him that there is trouble again. Capt. Dematanpitiya thereafter left the Diyatalawa camp with 15 soldiers, all of them were armed with T56 weapons. He had received the orders around 8.30 a.m. and left Diyatalawa camp around 8.45 a.m. He and his battalion alighted from their vehicles near the Agrarian Services Centre and proceeded towards the gate. He saw people armed with blood stained clubs, they were abusing the army. They said "We have taken the revenge now. It is useless coming now". He did not see any police officer in the rank of Sub-Inspector or Inspector until he went up to the gate. He saw the HQI and some police officers inside the Rehabilitation Centre. There were civilians inside the Centre as well. He ordered the crowds to move without blocking his way. When soldiers were lining up with their T56 weapons, crowds dispersed. When they proceeded up to 15 meters inside he saw four burning bodies and four people standing there carrying clubs, two of them were in trousers and the other two were in sarongs. Even while the army was advancing they were reluctant to move. He grabbed one person and then all 160 of them complied with his orders. He saw all four of them going towards the Vidyapeetaya playground.

It was when the army proceeded further up he saw the HQI and about 15 policemen. The HQI did not speak to him. The army did not take any person into custody because he thought policemen were around for that purpose. Anyway, he did not see policemen taking any person into their custody. Thereafter he set up a point at the Vidyapeetaya playground and another point at the cemetery side and also effected some road blocks. Through his

communication instrument he had informed his superior of the situation. He said when he and his troops took these measures to drive away the crowds not a single policemen came for their assistance.

It was around 11.30 a.m. when he spoke to the HQI. It is very strange that until 11.30, even though there is evidence that both the ASP and HQI were present none of them cared to speak to the army. This clearly indicates that there had been a communication gap and lack of co-ordination between the police and the army. Previous night's happenings do support this view. Anyway according to the HQI he spoke to the army as soon as they arrived.

When he asked the HQI whether he needs any further assistance then they wanted the army to clear the roads for the police vehicle to despatch the 161 injured people. HQI said that the crowds were pelting stones at the police vehicles. By then he received 50 more troops to assist him. Major Jayaweera corroborated the fact that on Brig. Munasinghe's orders received around 8.30 a.m. he had detailed Capt. Dematanpitiya with his battalion to the Bindunuwewa Rehabilitation Centre and that they left the Diyatalawa camp around 8.45 a.m. Had there been proper co-ordination and understanding between the police and the army I place on record that this sad episode could have been prevented.

It is pertinent to mention here that the Commission summoned Brig. Jayasuriya for the purpose of eliciting from him the military situation in the country at the time of this incident. This evidence was taken for the purpose of seeing whether there were any extraneous or external forces operating to stage this attack on the Rehabilitation Centre. He testified that the ground situation was very much favourable to the army at the time this incident occurred. Anyway I have considered this matter in another chapter and have come to the conclusion that no extraneous or external forces or persons were involved in staging the attack on Bindunuwewa. 162

Who were the assailants?

Evidence clearly established that the mob having invaded the Centre set fire to the buildings and reduced them to ashes, massacred 26 inmates (one died of shooting by the Police) and inflicted injuries on the surviving 14 inmates. In fact two of the surviving inmates Rajendran and Gnaneshwaran appeared before the Commission and gave evidence. Crimes were committed unabated. The whole place was converted into a cemetery within a few minutes.

Cook Nandakumara has deposed to the presence of the villagers amongst the people who had assembled near the gate. Most of them were in sarongs and shirts. Mr. Wijayapala, Divisional Secretary, Bandarawela who had occasion to

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meet the people of the surrounding villages expressed the view that this mob consisted mainly of villagers. Sunil Wickramasinghe Bandara technical officer attached to the Vidyapeetaya playground from the small gate. Both of them described what they wore at the time of the attack. Their description was that they wore sarongs, shirts and trousers. This fact is corroborated by the description given by Sinnathamby Rajendran. None of them carried any guns.

Inspector Karunasena's evidence was that on the orders of the Superior Officers around 4.00 p.m. on that day he went to the village to arrest the assailants. But by then the villagers had deserted their houses. HQI corroborated this fact. The following day he arrested 367 villagers and produced them as suspects but were released on the orders of the Senior Superintendent of Police. Mr. Munasinghe, Superintendent of Police attached to the Criminal Investigation, testified that he and his team carried out investigations after taking over from the Bandarawela Police. He told the Commission that he arrested 26 people and 13 policemen. Of the people he arrested, all except three people are from the villages adjoining Bindunuwewa. I place on record that the assailants who had massacred 26 inmates (one inmate was killed by police shooting) and injured the surviving inmates on that fateful day 25.10.2000 belong to the surrounding villages.

It must be borne in mind that I do not in any way brand the villagers of Bindunuwewa as criminals. I have referred to the fact that apart from the murder cases relating to the Bindunuwewa incident only three non-summary inquires have been instituted in the Magistrate's Court of Bandarawela for the period extending from January, 1999 up to October 2000. I recount here the testimonies of Mr. Wijayapala, Divisional Secretary of Bandarawela and Seneviratne, Grama Sevaka of the area that these villagers are farmers with a simple and peaceful way of living. I also recount here what Robert Knox J 164 had observed of the Kandian peasants during his stay in the Kandian provinces from November 1659 until his escape in 1669, that "their anger doth not last long seldom or never is a bloodshed among them in their quarrels". I also recount here the testimony of Mallika Padmalatha a teacher, as to how lives of two young child inmates were saved by two young men and her risking their own lives. There is also the testimony of Sinnathamby Rajendran how he was rescued by the "young fair person". Padmalatha also spoke of wailing women among the crowd. Therefore even though there was a mob invasion I place on record that only a handful of them namely those who had been armed with poles, iron rods, kattys, axes and knives were responsible for the escalation of violence at Bindunuwewa on 25th October 2000. Mr. Munasinghe Superintendent of Police attached to the Criminal Investigations Department testified before the Commission that at the criminal investigation suspects had been taken into custody and the report was handed over to the Hon. Attorney General for further action.

As I have discussed in my report the relationship between the villagers and the inmates of the Centre had been cordial from 1993, the year in which LTTE detainees and surrendeers were introduced to this Centre up to 25.10.2000, the date on which the mob invasion occurred.

Conduct of the inmates in relation to the events of 25.10.2000

I think it is incumbent upon me to place on record the conduct of the inmates as well, as established by the evidence of the witnesses who testified before the Commission. In my discussion of the events of 24.10.2000 I have come to the conclusion based on evidence that the inmates had revolted against the administration and that Capt. Abeyratne, Lt. Abeyratne and some of the staff members were kept as hostages. Lt. Abeyratne was attacked. The policemen at the police post had fled to escape the wrath of the inmates and the HQI was forced to withdraw the police post. Certainly such conduct was irreconcilable with their demands for release. This was the situation that prevailed at the Rehabilitation Centre at the time of the mob attack on the Centre. According to Sinnathamby Rajendran on 24.10.2000 night he went to sleep around 11.15 p.m. but could not sleep for more than 2 or 3 hours. When he woke up and looked around he found all the beds empty. It indicated that by 3 a.m. on 25.10.2000 the inmates had gone out of their billets. Evidence also has come from Nandakumara that when he came to the main gate to report for work around 6.30 a.m. on that day he found about 15 inmates standing opposite their billets. They were carrying weapons, such as iron pipes and screwdrivers. Witnesses Ravindralal and Kumarasinghe also testified that when they came towards the main gate that morning they had seen some inmates standing opposite their hostels carrying weapons.

Just prior to the mob broke into the Centre, evidence has revealed that there had been a confrontation between the inmates and the crowd on the Vidyapeetaya side. The latter had thrown stones at the inmates and the inmates had retaliated by throwing stones at the crowd. According to Inspector Karunasena, the police officers had run towards the Centre when this stoning incident occurred but were caught up in the stone throwing by both sides. In fact Sinnathamby Rajendran himself spoke to the conduct of the inmates in the following terms " I saw when the crowd threw stones our fellows were also getting ready to attack armed with clubs and stones" -Vide page 27 of the proceedings of 20.07.2001. There is another item of evidence coming from Sunil Wickramasinghe Bandare, Nandakumara, IP Karunasena, SI Walpola that while the stone throwing was going on, the inmates had blown up a gas cylinder which made the villagers who were in the process of throwing stones to make a hurried retreat to the playground and also made the police officers to run back. They thought the inmates were exploding bombs. Apart from this, there is evidence coming from Capt. Abeyratne that just before the stone throwing incident occurred he got information from one

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of the inmates that Anton James was making a call from the telephone that had been disconnected from the office and taken to one of the billets. He also spoke of the inmates charging at the Vidyapeetaya in a group and stopping 10 meters this side of the fence whereas the crowd 167 was on the side of the fence 10 meters away from it. Even though I do not in any way condone the criminal acts of mayhem and murder which led to the killing of 27 inmates and injuring of 14 of them, setting fire to the buildings where the inmates were housed and devastating the whole Centre, it is my duty to place on record this conduct of the inmates which undoubtedly would have provoked the villagers who had been getting on so well with the inmates ever since 1993.

Specific questions were put to the witnesses by the learned Deputy Solicitor General, Senior State Counsel, State Counsel and the other learned Counsel who assisted the Commission, to the witnesses with a view to eliciting from them whether any particular "external forces" masterminded the attack on the Rehabilitation Centre or whether "any particular person" or "group of persons" were responsible for this heinous crime. I have to place on record that no evidence came up before me to that effect.

Result of the events at the Bindunuwewa Rehabilitation Centre on 25th October 2000. Evidence of the then Magistrate Mr. Vikum Kaluarachchi was led to establish the fact that he conducted the Inquest Proceedings and recorded statements of some of the injured persons. Medical evidence was led to establish the death of inmates and to establish that 14 other inmates had suffered injuries in the attack. I have therefore to report to Your Excellency that the events at the Bindunuwewa Rehabilitation Centre on 25.10.2000 resulted in

- (1) The deaths of 27 inmates - The Judicial Medical Officers who had conducted the post-mortem examination on the deceased persons had observed that most of the deceased persons had injuries in the head area causing damage to the skull and the brain and cause of death was due to cardio respiratory failure resulting from shock and haemorrhage. Most of the injuries had been caused by heavy cutting weapons and blunt weapons. The medical experts also have expressed the view that most of the deceased persons had been burnt while they were unconscious after receiving injuries in the head and brain regions. Their post-mortem reports have been marked P2 to P15 and P37 to P49. In respect of one of the bodies which was not identified the medical expert who performed the post- 169 mortem has expressed the view that the deceased had died of injuries caused by fire arms. Post-mortem report relating to this body is marked P43.

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- (2) Causing injuries to 14 inmates-Photocopies of the medico legal reports in respect of the injured persons issued to me by the Honourable Attorney General are marked P17 to P30. Medical experts have noted that most of these inmates had received cut injuries, lacerations and fractures caused by sharp and blunt weapons. Even though Perumal Gnaneshwaran spoke of receiving a gun shot injury on his fingers, medico legal report does not speak of gun shot injuries. Anyway while giving evidence I observed that he has lost one finger.

Of the 27 inmates, following bodies have been identified at the Inquest proceedings and post-mortem Examinations :-

1. S. Siva Kuban
2. P. Madi Alagan
3. S.V. Rasa
4. K.T. Madi Alagan
5. P. Kanseepan
6. M. Balakumar
7. Karunakaran
8. Gunapala Jayawardane
9. V. Wijendran
10. S. Thurairajah
11. V. Senduran
12. Anton James
13. S. Mohan
14. R. Kumar
15. K.PRavindran

In respect of 12 bodies identity was unknown.

Details of injuries received by the deceased persons and the injured persons is at Appendix M.

Further I have to report to Your Excellency that according to a report submitted by Col. Vipulagune, Deputy Commissioner General of Rehabilitation the damage caused to the buildings and the machinery etc. is valued at Rs. 1,270,0007-. His report is at Appendix N to this report.

11. Conduct of persons in relation to the events of 24 and 25 October 2000

Capt. Abeyratne

The sheer irresponsibility of Capt. Abeyratne on this matter is borne out by the replies given by Col. Vipulagune to questions put to him by the Deputy Solicitor General.

Q:- Now if you can recall 25.10.2000, you were aware of the incident of Bindunuwewa Camp?

A:- Yes.

Q:- Can you tell the first time that you received any information about this incident?

A:- 25th morning by about 10.30.1 got a call from Capt. Abeyratne that this camp was being attacked by some unknown crowd.

Q:- Now you were the Deputy Commissioner of Rehabilitation at that time?

A:- Yes.

Q:- You are a person who could have been contacted over the phone at any time?

A:- Yes. 172

Q:- You never heard of any incident on the 24th ?

A:- Yes.

Q:- You were not aware of any threat to this rehabilitation centre?

A:- No.

Q:- Everything you heard, you heard after the incident?

A:- Yes.

Q:- If you had information that some people were gathering around the camp and that there was a potential threat to the camp, what action would you have taken?

A:- First thing is I would have definitely informed the Commissioner General. Then I know Brigadier of Diyatalawa Camp. I would have also informed him and got help. I would have told the Senior officer in the police.

According to the testimony of Col. Vipulagune I have referred to above, had Capt. Abeyratne informed the developments in the Rehabilitation Centre on time he would have taken necessary steps to prevent the occurrence of the attack on the Rehabilitation Centre. Capt. Abeyratne was duty bound to inform the Commissioner General of Rehabilitation about the developments of 24.10.2000 on that day itself. Even if he was not allowed to go out of the camp, he could have intimidated Lt. Balasuriya and even the HQI Seneviratne when he had occasion to speak to them to do so. Further as I have referred to 173 elsewhere in my report the evidence of Lt. Balasuriya revealed that in fact he wanted to “speak to the inmates and settle the matters”, but Capt. Abeyratne did not entertain that idea, even though by that time the inmates had forced the HQI Seneviratne to withdraw the police post from the Rehabilitation Centre. By that time there was certainly a defiance of his authority by the inmates because by then they had already staged an uprising against the administration which was irreconcilable with the demands made by them for their release. Therefore, I place on record that the stubbornness of Capt. Abeyratne prevented Lt. Balasuriya and his men to enter the Rehabilitation Centre and thereby let off an opportunity to “settle the matters” with the inmates. Hence I place on record that this conduct of Capt. Abeyratne was a contributory factor to the sad events of 25.10.2000.

Lieutenant Abeyratne

He was the second in Command. His conduct on 24.10.2000 also calls for scrutiny. His leaving the bloodstained shirt with a villager and telling a number of villagers that he was attacked by the tigers and the tigers would attack the village that night was one of the factors that aroused the wrath of the villagers against the inmates. His conduct created a dent into the cordial relationship the villagers had with the inmates and had the effect of provoking the villagers against the inmates of the Rehabilitation Centre.

Conduct of the Police

The evidence placed before the Commission in no uncertain terms establish the following factual position relating to the police involvement, namely,

- (1) That on 25.10.2000 around 8.30 a.m. there was a large gathering of people armed with clubs, axes, swords, knives and iron rods at the Vidyapeetaya playground. With the numbers increasing they became aggressive and started throwing stones at the Rehabilitation Centre. They were making utterances of provocative nature. They were getting prepared to launch an attack on the Rehabilitation Centre. That was the scenario at the Vidyapeetaya playground. On the other hand even though there is hardly any evidence to ascertain how people in the cemetery side conducted themselves there is evidence

that soon after the Vidyapeetaya mob broke into the Rehabilitation Centre, there was a flow of people coming from the direction of the cemetery as well. Therefore, undoubtedly the assembly of people both on the Vidyapeetaya side and the cemetery side was an unlawful assembly, assembled with the intention of launching an attack on the Rehabilitation Centre. That is a lapse on the part of the ASP and HQI by their failure to send sufficient reinforcement to guard the perimeter. The police Officers detailed on the Vidyapeetaya playground and the main gate had miserably failed to take 175 any meaningful steps to disperse the unlawful assembly by using such means provided by law.

- (2) That no meaningful steps had been taken by the police to prevent the mob from the Vidyapeetaya side breaking into the Rehabilitation Centre and also to stop people from the cemetery side coming into the Rehabilitation Centre from that side.
- (3) That once the mob invaded the Centre, acts of setting fire to the buildings, attack on the inmates and the massacre of inmates continued unabated while the police were just looking on.
- (4) That the police had opened fire on the unarmed inmates who were running for protection towards the police trucks parked outside the main gate, thereby causing death of one inmate and injuring two others.
- (5) That the police had failed to arrest any offender even though the assailants were seen moving about freely carrying weapons while the policemen were standing nearby. Actions and omissions of Police is dealt with in detail in a separate Chapter.

12. Whether the actions or omissions of the police were warranted under the circumstances

Matters pertaining to the conduct of policemen necessarily involve a question of mixed law and facts. The relevant provisions of law that have to be considered are; firstly, provisions of Section 95 of the Criminal Procedure Code and secondly, Section 51 of the Penal Code. In addition preventive measures referred to in Departmental Order No.A18 of the Police Department relating to police actions regarding disturbances are also important.

Section 95 of the Code of Criminal Procedure Act No. 15 of 1997 reads as follows:-

95.(1) Any Magistrate or police officer not below the rank of Inspector of

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police may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

- (2) If upon being so commanded any such assembly does not disperse or if without being so commanded it conducts itself in such a manner as to show a determination not to disperse, the Magistrate or the police officer may proceed to disperse such assembly by the use of such force as is reasonably necessary to disperse the assembly and may require the assistance of any person (not being a member of the Army, Navy or Air Force, whether of Sri Lanka or of any other country, acting as such) for the purpose of dispersing such assembly and if necessary arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.
- (3) If any such assembly cannot be otherwise dispersed and it is necessary for the public security that should be dispersed a Magistrate or the Government Agent of the District or any police officer not below the rank of Superintendent of Police may cause it to be dispersed by requiring any commissioned or non-commissioned officer in command of any personnel of of the Sri Lanka Army, Navy or Air Force to disperse such assembly by military force and to arrest and confine such persons as form part of it as may be necessary in order to disperse the assembly or to have them punished according to law. Every such commissioned or non-commissioned officer 177 178 shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting and detaining such persons.

It must be mentioned here the caution found in sub-section 3 of the Section "shall use as little force and do as little injury to persons and property" should apply with equal force to police officers who are armed with sophisticated and powerful weapons such as T56 guns in quelling disturbances. The particular degree of force which a police officer will be justified in using must be determined by the necessities of each individual case. Question also would arise whether the police officer who gave the orders to fire when giving such order acted with due care and attention in the context of the situation that existed. Therefore, the law requires police officers engaged in quelling disturbances to;

- (1) Firstly to act with due care and attention.

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- (2) Use as little force and do little injury to persons as may be consistent with the situation.

As I have mentioned earlier in the circumstances of this case, it is pertinent to refer to the law relating to the right of private defence of the 179 body and of property contained in chapter IV of the Penal Code titled General Exceptions. Section 90 of the Penal Code lays down;

Every person has a right, subject to the restrictions contained in section 92, to defend-Firstly- His own body, and the body of any other person, against any offence affecting the human body;

Secondly- The property, whether movable or immovable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

When the right of private defence of the body extends to causing death is laid down in Section 93 which is to the following effect.

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely-

Firstly- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; Secondly- Such an assault as may reasonable cause the apprehension that grievous hurt will otherwise be the consequence of such assault; Thirdly- An assault with the intention of committing rape; Fourthly- An assault with the intention of gratifying unnatural lust; Fifthly - An assault with the intention of kidnapping or abducting; sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonable cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such rights extend to causing any harm other than death is dealt with in Section 94 of the Penal Code. It is to the following effect;

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 92, 180 181 to the voluntary causing to the assailant of any harm other than death.

Commencement and the continuance of the right of private defence of the body is dealt with in Section 95 and it is to the following effect;

The right of private defence of the body commenced as soon as a reasonable apprehension of danger to the body arise from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death is dealt with in Section 96 of the Penal Code and when such right extends to causing any harm other than death is dealt with in Section 97;

96. The right of private defence of property extends, under the restrictions mentioned in section 92, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the rights, be an offence of any of the descriptions hereinafter enumerated, namely-

First - Robbery;

Secondly- House-breaking by night;

Thirdly-Mischief by fire, or explosives committed on any building, tent, or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly-Theft, mischief, or house-trespass under such circumstances as may reasonable cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.

97. If the offence the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does not extend, subject to the restrictions mentioned in section 92, to the voluntary causing to the wrongdoer of any harm other than death.

The right of private defence of property commences when a reasonable apprehension of danger to the property commences - Vide Section 98 of the Penal Code.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief- Vide Section 98 of the Penal Code.

Senior Deputy Inspector General of the Police Kotakadeniya abhorred the conduct of Head Quarters Inspector Jayantha Seneviratne on 24 October night, namely, for acting according to the dictates of the inmates who by then had attacked and injured the Second in Command Lt. P. Abeyratne, chased away the security personnel who provided security to the Centre, and taken

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control of the administration of the Centre in defiance of the authority of Capt.Y.K. Abeyratne. The HQI himself had witnessed the destruction caused to the police post.

The removal of the police post from the Centre by the HQI would have given the impression to both the detainees and villagers that the police were very weak, specially the villagers would have lost faith and hope that the police could give them adequate protection. The senior DIG considered the removal of the police post as an "astonishing move". This conduct of the I 184 HQI was in fact a contributory factor to the events that occurred on the following day.

According to the Asst. Superintendent of police Dayaratne's own admission when he proceeded to Bindunuwewa along with the Officer -in-Charge Diyatalawa police station Ratnayake soon after the police had withdrawn the police post, he found 150-200 people assembled near the main gate. The OIC had observed some people at the Vidyapeetaya grounds as well. Thereupon the ASP had ordered Inspector Karunasena and Inspector Jayaratne to disperse the crowd. According to Inspector Karunasena the crowd pretended to go away. But he saw them taking cover behind the bushes nearby. On ASP Dayaratne's request the troops arrived around 9.30 p.m. and he instructed them to disperse the crowd gathered on the perimeter. There is also evidence that while the police party was there stones were thrown at them from the direction of the billets occupied by the inmates. These circumstances indicate that a confrontation was likely even at that stage. In that situation after detailing Inspector Karunasena with four police officers at the gate and Inspector Jayaratne with three officers at the Maduwelpathana junction the ASP and HQI even without waiting for the arrival of Lt. Balasuriya to get a feed back left the scene. This conduct of the two high ranking officers cannot in any way be justified and is highly questionable.

When the learned Senior State Counsel referred these circumstances to DIG Kotakadeniya, who was summoned by the Commission to give evidence, he remarked that the police had "become complacent". His observation was that the two high ranking officers should have remained there that night and that would have given "confidence not only to the villagers but also to the inmates". (Vide page 21 of the proceedings of 22.06.2001). He expressed the view that the ASP and the HQI should not have left the scene until trained reinforcements had arrived. He further observed that a riot squad should have been harnessed and detailed at Bindunuwewa that night itself.

Testimonies of a number of witnesses to which I have already referred to establish that early morning around 6.30 on the 25th October the inmates were seen in front of their billets armed with weapons. (Vide evidence of Nanadakumara). Around 6.45 a.m. crowds started gathering at the main gate

and witness spoke of two buses being obstructed by some people on the Kiri Oruwa road and they were in the process of inducing the passengers to stage a demonstration agitating for the removal of the Centre. Capt. Abeyratne spoke of seeing people gathering at the Vidyapeetaya playground, the point to which the Centre was severely exposed and vulnerable. At the same time people were assembling on the cemetery side as well. All these items of 186 evidence indicate in no uncertain terms that the situation was becoming tense and in such a situation a local curfew should have been declared. Senior DIG Kotakadeniya testified that there is provision for the imposition of a local curfew in order to prevent a confrontation and an occurrence of a savage attack of this nature. Thereafter the police should have taken effective measures to evacuate the inmates whose number was 41 until the situation was fully controlled. (Vide evidence of DIG Kotakadeniya on 22.06.2001 page 18). Failure to take such vital steps by the police is not justified.

Coming to the events of 25.10.2000 it must be mentioned that in his testimony before the Commission ASP Dayaratne stated that there is no riot squad available at the Bandarawela police station. DIG Kotakadeniya placed before the Commission a conflicting position. He said "every head quarters police station has it, it consists of baton party, tear gas and arms party". In fact Inspector Karunasena found fault with his superior officers for not sending the riot squad, ammunition, tear gas and reinforcements even after he personally spoke to the HQI and intimated to him about the Kirioruwa bus incident and the fact that people were getting prepared to stage a demonstration, calling for the removal of the Rehabilitation Centre from Bindunuwewa.

From 7.00 in the morning people had been gathering in large numbers at the main gate, Vidyapeetaya playground and the cemetery. According to Inspector Karunasena police parties from five police stations, namely, Diyatalawa, Ella, Welimada, Haputale and Uva Paranagama had arrived at Bindunuwewa and reported to him between 7.00 to 7.15 a.m. on that day. In all he had about 63 policemen at his disposal for him to deploy under six senior officers. Inspector Karunasena complained to the Commission that apart from the four police constables he had with him and three police constables Inspector Jayaratne had with him, no reinforcements came to his assistance from the Bandarawela police station. This amounts to dereliction of duty by the ASP and the HQI. There is no explanation coming from either ASP Dayaratne or the HQI Jayantha Seneviratne why they did not take any action to send reinforcements from Bandarawela police station. Hence the factual position was that Inspector Karunasena did not have sufficient strength of policemen to cover the entire perimeter. It appears that the gathering on the cemetery had come from that portion of the perimeter not covered by the police units under Sub Inspector Wijesinghe, Inspector

Jayaratne and Sub inspector Hettiarachchi.

Even though Karunasena had deployed police parties to different points, apparently no action had been taken by them to prevent the people assembling around the perimeter. However Sub Inspector Wijesinghe 188 detailed at Maduwelpathana junction, Inspector Jayaratne detailed to look after the area between Maduwelpathana and Sapugasulpotha and Sub Inspector Hettiarachchi detailed at Sapugasulpotha had covered a distance of less than 1 km. To the right of Maduwelpathana-Sapugasulpotha Road there is a rugged and a steep climb and then a precipice before reaching the cemetery. It is difficult to believe that the crowds had entered the cemetery from this side. Inspector Walpola who was detailed at the Vidyapeetaya playground categorically denied a gathering of people at the Vidyapeetaya playground where he and his men were on duty. Witnesses, including Inspector Karunasena spoke of seeing 1500-2000 people assembled at the Vidyapeetaya playground. Sub- Inspector Walpola's position that there was no gathering of people at the Vidyapeetaya playground is a diabolical lie. This officer was suppressing facts to the Commission and by doing so was uttering falsehood. The position taken up by Sub-Inspectors Ratnayake and Abenarayana that they did not allow the people to gather on the main gate side too cannot be accepted in view of the evidence given by lay witnesses that people had gathered on the main gate side as well.

On being questioned about mob reactions Senior DIG Kotakadeniya stated that in his experience, a mob however innocent their motive may have been at the time they assembled, if they are allowed to remain for sometime they become restless and aggressive and could easily be provoked by the 189 slightest happening or by deliberate acts or utterances by miscreants. I do agree with the Senior DIG on this point for the reason that "Great hates can accompany seemingly non violent proceedings".

I have already come to the conclusion that this assembly was an unlawful assembly. The police should have taken action under the relevant provisions of the Code Criminal Procedure Act and should have exercised their rights and duties to disperse the unlawful assembly. In this regard the Senior DIG referred us to the Departmental Order No.DOA 18 relating to police action regarding disturbances. This document is marked P81.

It was established by evidence that by 7.30 a.m. there was unlawful assembly of people not only on the Vidyapeetaya playground but also the cemetery and the main gate as well. Even though according to Inspector Karunasena's evidence seven points with police parties had been detailed and installed by him, no action had been taken by police to disperse the unlawful assembly of people which amounts to a dereliction of duty by them.

Another significant feature that I observed is that no police officer had dared to enter the Rehabilitation Centre until the mob broke into the Rehabilitation Centre from the Vidyapeetaya side. It was at that point of 190 time according to Inspector Karunasena, that the HQI and the ASP and some policemen walked into the Rehabilitation Centre and they in fact were caught up in the stone throwing incident which occurred between the people from the Vidyapeetaya side and the inmates. Even when the crowds broke into the Centre the police had not taken any effective measures to prevent them from charging into the Rehabilitation Centre. The totality of evidence has established that at the time the mob invaded the Rehabilitation Centre, some of them were armed with clubs, poles, axes, knives and katties. Police should have been able to identify such targets and opened fire after sufficient warning under the circumstances. Failure to do so amounts to a dereliction of duty.

Evidence which I have already discussed in my report do establish that ASP Dayaratne, HQI Jayantha Seneviratne, Inspector Karunasena, Sub Inspectors Walpola, Ratnayake and Abeynarayana were around whilst the crimes were committed inside the Rehabilitation Centre.

With the high ranking police officers present at the crime scene it was their right and duty to give orders to the sub-ordinate officers in terms of the provisions of Chapter VIII of the Code of Criminal Procedure Act which I have already referred to. If the area involved is large and the ASP would not have been able to exercise general supervision an Inspector of Police is 191 entitled to issue such orders because he is in such control of the immediate situation. This evidence has been elicited from the DIG Kotakadeniya - Vide page 27 of the proceedings of 22.6.2001. In this instance I hold that the high ranking police officers i.e. Inspector and above had failed to take such action and I hold that such conduct of the Police is not justified.

Once the mob entered the premises of the Rehabilitation Centre, a serious breach of the peace and serious outbursts of violence took place. The criminal elements present amongst the mob set upon the inmates murdered 26 of them (one died of police shooting) and caused injuries to the others, set fire to the buildings, set fire to the dormitories, bunk beds and the mattresses. There is no evidence before the Commission that the police took any action to prevent the occurrence of these crimes. This inaction by the police I hold is not justified.

As established through real evidence, by the photograph marked P66A and the oral evidence elicited from both lay witnesses and the police witnesses, it is evident that the assailants were freely moving about whilst Policemen were just looking on. Capt. Dematanpitiya spoke of the presence of 4 men with clubs near four burning bodies while the police were just standing

nearby. Hence I come to the conclusion that the police had not 192 taken any action to arrest the criminals at the crime scene. This failure on the part of the police I hold is not justified.

Apart from the provisions of law available to the Police to exercise their rights and duties I referred to above in terms of Chapter VIII of the Code of Criminal Procedure Act, there is also provision under Chapter IV of the Penal Code (already set forth above) for the police to have exercised the right of private defence of the body and of property because the assailants were in the process of committing murder and causing injuries by inflicting blows on the inmates with weapons such as poles, clubs, axes, knives and swords and by setting fire to them and on the other hand setting fire to the buildings. This right extends to the voluntary causing of death or any other harm to the assailants. At Bindunuwewa, police have failed to exercise this right given to them under the law. Their failure to exercise that right is not justified. Had they used this right given to them under the law it would have at least minimised the number of casualties and the damage caused to the buildings.

This issue whether the actions and omissions on the part of the police would make them partners in crime and make them criminally liable is not a matter for the Commission and it is being looked into by the Honourable Attorney General. I also should place on record Good Samaritan's work 193 done by some policemen. Sinnathamby Rajendran spoke of an incident where a child inmate, Uththamadeepan had run to a policeman and embraced him when he was chased after by the assailant, and how he was rescued by that policeman. In the circumstances of this case I consider this act as a heroic act. The identity of this policeman was not established..

Police shooting

It is manifestly clear from the testimony of Perumal Gnaneshwaran that whilst the inmates who escaped from the Kovil hall (Hall No.4) were in the process of running towards the police truck that the police had opened fire. He stated that the person who ran ahead of him was shot and fell. Another person received a gun shot on his leg and Gnaneshwaran himself had received gun shot injuries on his fingers. He described that it was while they jumped through the barbed wire fence towards the police truck that they opened fire at them. None of the inmates carried any weapons at that time. He said they ran towards the police for protection. According to the evidence of Inspector Karunasena and Perumal Gnaneshwaran the shots were fired by the police from a downward position in an upward direction. The medical evidence relating to the post-mortem on the body of the deceased who had died of gun shot injuries is consistent with the description given by this witness. 194 Inspector Karunasena admitted that he ordered the three policemen who were near him to shoot and that they complied. That was the

maximum he could do in that situation he said. As I stated earlier the evidence of Perumal Gnaneshwarn is very clear on this point. The inmates were running towards a police truck. They were unarmed. They were being chased after by the assailants. While they were jumping out from the barbed wire they were shot at. There is no evidence to the effect that any of the assailants or civilians received any gun shot injuries. Police shooting was not an act done to prevent the mob running into the Centre or while they were running in the direction of the billets. These circumstances did not exclude Inspector Karunasena's duty to warn the crowd by first firing in such manner as to avoid striking any of the persons. Hence I have to report that the order to shoot by Inspector Karunasena and the act of shooting by three policemen consequent to that order were more than what was warranted in the circumstances.

13. Queries raised by Attorney -at-Law Mr. A. Vinayagamurthy, M.P.

Qi Q'uite expectedly events occurred at Bindunuwewa became the subject of discussion at the sittings of the Parliament on 23 November 2000. (reported in the Hansard Vol.2, No. 133, Column.206) Mr. A. Vinayagamurthy in particular having tabled a letter called for a full and impartial inquiry into these incidents. Several other MPs viewed these happening with alarm and concern. It is creditable that the Honourable Member of Parliament voluntarily came before the Commission and gave evidence. He had been to the Bindunuwewa Rehabilitation Centre subsequent to the incident of 25 October 2000. He has spoken to the injured persons as well. He told the Commission that he has been to Tellipillai Rehabilitation Centre as well. Answering the Commission he stated that he was "very satisfied with the manner in which the detainees and surrendeers are treated there". I have very carefully considered his evidence both oral and written.

I have already placed on record that 27 inmates were killed and the 14 survivors too received injuries during the attack on the Rehabilitation Centre on 25.10.2000. I have also placed on record based on the totality of evidence (including the interviews and discussions I had in the Commissioner's 196 Chambers), the circumstances under which this incident occurred. I refer to the following passage in paragraph 3 of the letter tabled by Mr. Vinayagamurthy. It reads as follows: "Apparently the clash took place in the context of the inmates agitation for their early release and unrest in the area after posters had appeared a couple of days earlier urging for the closure of the Rehabilitation Camp".

The learned counsel who assisted the Commission on behalf of the Honourable Attorney-General and the counsel who appeared for the aggrieving parties and also the Human Rights Commission did examine the

witnesses pertaining to the date on which the posters had appeared at the Bindunuwewa junction and a few places on Maduwelpathana and Sapugasulpatha road. All the witnesses who spoke of seeing the posters had seen them only on 25.10.2000.

I have already expressed the view that the relationship between the villagers and the inmates had been extremely cordial until 24 October 2000. The agitation for early release was one of the demands the inmates had put forward to Capt. Abeyratne on 24 October 2000. Having considered the evidence relating to the conduct of the inmates I have expressed the view that acts of taking Capt. Abeyratne and his staff as hostages, chasing the security personnel out of the Centre in defiance of the authority of the 197 administration and thereby staging a revolt were irreconcilable with their demand for release.

The letter contains the following passage, namely “the villagers, all of whom were members of the Sinhala community were armed with clubs, machetes and other such implements”. This position is incorrect. Only the “criminal elements” amongst the villagers were armed with such weapons. Even though there was a mob invasion only the “criminal elements” amongst these villagers were responsible for this savage attack.

I have also placed on record that this attack was not master-minded or planned by any external forces and that it was not a pre-planned one. I have examined very closely the conduct of the police and have made my observations. Consequent upon crime investigation conducted by the Criminal Investigations Department 31 villagers and 10 policemen are to be indicted by the honourable Attorney General, before a Trial-at-Bar.

14. Recommendations

It must be observed that there are no set guidelines laid down internationally for the prevention of unexpected calamities of this nature. Specially for “a break in” situation that was experienced at Bindunuwewa Rehabilitation Centre. It is my concern, as expected of me by Your Excellency, to set forth preventive strategies and recommendations so that preventive measures could be taken to avoid such calamities in future. Having considered the totality of evidence led before me, the discussions I had with the representatives of the UNICEF, experts and Professionals in various fields, superior police officers in the rank of Deputy Inspector-General of Police, I place on record the following recommendations.

1. The distinction between the detainees and the surrendeeds is well recognised by the Emergency Regulations. The Centers where

surrendees are to be rehabilitated are referred to as “Protective Accommodation and Rehabilitation Centres”, in the Regulation 20C whereas centres for Rehabilitation of the detainees are referred to as “Youth Development and Training Centres” in the Regulation 20B. However, in practice we find one centre functioning on the lines of both types. This is a clear violation of the provisions made under the said Regulations. I have already discussed this aspect in the chapter dealing with “admissions of persons to the Rehabilitation Centre”. It is recommended that detainees and surrendees be separately housed as required by the Regulations. This would enable the authorities to provide security appropriate to each category for the reason that both categories may not require the same degree of security.

2. In the case of a surrendee, the fact of surrender is the determining factor in considering the suitability for rehabilitation. A statement made by the surrendee to the effect that he voluntarily surrendered and the certification that the surrender was voluntary by the officer or person to whom the surrender was made, qualifies such person for admission to a Rehabilitation Centre. I have discussed in my report the dangers involved in adopting such a procedure. It is recommended that this Regulation be amended and appropriate provision made to enable the authorities to make a proper screening for ascertaining their involvements in terrorist activities prior to the recommendation by the Committee. It is also recommended that proper guidelines be made available to the Committee. The Regulation should contain mandatory provisions that the decision be made within a particular time limit.
3. One of the main grievances of the inmates at Bindunuwewa was the uncertainty of their period of rehabilitation. Even the women surrendees at 200 “Meth Sevana” in Gangodawila are unaware of their date of release. It is recommended that when detainees or surrendees are sent to a Rehabilitation Centre they should be made aware of their period of stay in the Centre and their date of release. It is desirable that whenever a detainee or surrendee reaches a particular level of rehabilitation for the Commissioner-General to recommend his or her release even before the specified date. Such provision will certainly have a telling effect on their conduct during their stay in the Rehabilitation Centre. In deciding the period of rehabilitation their civil status also should be taken into consideration.
4. Section 20A (1) provides that a person who surrenders “through fear of terrorist activities” be sent for rehabilitation. There is no moral basis to keep a person who surrenders through fear of terrorist activities to be kept under any form of custody whether under the custody of the Commissioner-General of Rehabilitation or otherwise. It could well be

an infringement of human rights. In the case of Sinnatamby Rajendran, I have come to the conclusion that there is justification in his posing the question “why am I kept in a Rehabilitation Centre?” Therefore I strongly recommend that this provision in the Regulation be repealed.

5. It is desirable to have a well thought out plan for follow up action after their release with support at community level to further reintegration with their families and community to prevent them being re-recruited.
- 6.(a) In the case of ex-child combatants and children, in order to safe guard their dignity, confidentiality and to provide them with special care and attention, they should be separated from the adults in rehabilitation. It must be borne in mind that Sri Lanka is a signatory to the “Convention of the Rights of the Child” which lays down that “in accordance with their obligations under International Humanitarian Laws in armed conflict State should take all feasible measures to ensure protection and care of children affected by armed conflict”.
- (b) In addition, the staff working with these children should be selected with care and be given specialised training.
7. It is further recommended that the staff selection criteria should include not only knowledge and skills in their particular fields but also attitudes. They should be people who have moderate views on the country’s ethnic crisis and are willing to treat the inmates as misguided youth who could be rehabilitated and reintegrated to society.
8. In the selection of a site for such Centres in future, specially due to the war situation in the country, the authorities should not only give consideration to the availability of geographical locational factors but also should take into consideration the all important human factor as well. It is vital that the Centre should be acceptable to the people. This matter has been considered in detail in the chapter titled “Location of the Rehabilitation Centre”. In this context it is advisable to call for intelligence reports, surveys, studies and feasibility reports prior to the taking of any decision in the selection of a site. In this regard resources available in our Universities can be made use of.
9. I also emphasise the need to have a mechanism to gather information in and around the centre and to carry out continuous surveillance so that if any attempts are made to disrupt the Institution, prior knowledge will be available and effective measures could be taken by the authorities to avoid any such calamity.

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10. In view of the experience Sri Lanka had at Bindunuwewa, a well thought out perimeter security is required to prevent the recurrence of any "break in" situations or "break out" situations in a Rehabilitation Centre. In this regard I have taken into consideration the views expressed by a Senior Deputy Inspector-General of Police and a former Commissioner-General of Prisons. I also took into consideration the current thinking that the inmates should not get the feeling that they are living in an atmosphere of imprisonment. Therefore, it is recommended that the perimeter security mechanism adopted in 1971 at Rehabilitation Centres for JVP surrendees be adopted in the Centre where LTTE detainees and surrendees are to be housed. Namely, to fix double barbed wire fences 5 to 6 feet apart with the middle section secured with criss-crossed barbed wire at ground level. Perimeter fences should be guarded from outside at chosen points by armed personnel. They should have clear instructions not to allow any outsider to get near the fence. Inmates of the camp should have clear instructions that they should not get close to the inner fence. The Gate Room should be established to control all entrances and exits to the Camp. It should be located at a suitable point on the perimeter fence.
11. It is desirable that a police post be established in the immediate vicinity of the Rehabilitation Camp but not inside the camp. It should be a point from where both the Rehabilitation Centre itself and the outside could be observed. It is advisable to have a staff consisting of at least an OIC, in the rank of Sub-Inspector, 2 Police Sergeants and 24 Police Constables with adequate transport, communication and allied facilities. The OIC and the 24 men should be hand-picked and be given sufficient training and instructions before they are posted. Standing orders and contingency plans spelling out what is to be done in an emergency should be established for the guidance of the men attached to the police post. Regular visits by supervisory officers to the police post must be made mandatory, for the reason that it would make it possible for any developments within the Rehabilitation Centre or outside be communicated to the authorities concerned for immediate action.
12. Walls of the buildings that housed inmates at Bindunuwewa were made of zinc sheets which easily gave into the mob attack from outside. Because the zinc sheets are inflammable the mob was able to set fire to the buildings easily. Had there been walls of a permanent nature the number of casualties and damage caused to the buildings would have been minimised. Hence I recommend that the surrendees and detainees selected for rehabilitation be housed in buildings made

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of permanent structures, so that the inmates could live with peace of mind.

13. Evidence also revealed that there are non-governmental organisations whose assistance could be made available to facilitate the welfare of the inmates during the period of their stay at a rehabilitation centre and as well as the post rehabilitation period. The representatives of the UNICEF, in the discussions they had with me, expressed their 205 willingness to provide expertise if necessary. I recommend that these avenues be explored and made use of in the future.
14. On 18.09.2001, the Commission visited “Mem Sevana” Rehabilitation Centre at Gangodavila established for the rehabilitation of LTTE women surrendees, for the purpose of seeing whether the safety of the inmates was adequate location wise. With the war situation still on, this Centre is severely exposed and vulnerable. Hence I strongly recommend that this Centre be moved to a place which would ensure their safety and protection.
15. Having considered the totality of evidence led before me, I have come to the conclusion that the conduct of the following officers on 25.10.2000, should be the subject of a disciplinary inquiry, for the reason that their inaction, and attitude at the time of the incident is indefensible. There is ample evidence that they were present at the time of the incident and made no effort either to avert the attack or to disperse the mob and arrest the offenders. 206

1. A.W. Dayaratne (Assistant Superintendent of Police)
2. R.M.T.K. Jayantha Seneviratne (Chief Inspector)
3. S.J. Karunasena (Inspector of Police)
4. N.G.S. Walpola (Sub Inspector)
5. P. Ratnayake (Sub Inspector)
6. K.W.C.N. Abeynarayana (Sub Inspector)

Ample evidence has been elicited at the inquiry to the effect that the administration was partly responsible for the creation of the situation and as such it is desirable that the conduct of the following officers also is enquired into at such inquiry.

1. Capt. Y.K. Abeyratne former Officer-in-Charge, Bindunuwewa Rehabilitation Centre.
2. Lt. P. Abeyratne Second Officer, Bindunuwewa Rehabilitation Centre.

16. Apart from the preventive strategies I have recommended above, it is incumbent upon the State to apprehend and punish the perpetrators of these crimes committed at Bindunuwewa on 25.10.2000. At the hearing before the Commission, the learned Deputy Solicitor General stated that the 207 Honourable Attorney General, having considered the notes of investigation, has already decided to forward indictment against some suspects. A confidential cover containing a list of the suspects against whom indictment will be forwarded was produced before the Commission and is annexed to this Report.

15. Acknowledgements

In presenting my Report it would be my duty to acknowledge all those whose labours contributed to the successful conclusion of the work of the Commission.

In this regard I must express my gratitude to the Honourable Attorney - General for the assistance given to me in general and particularly for assigning Deputy Solicitor -General S. P. Fernando, Senior State Counsel S. K. Gamalath and State Counsel S. Tissera to assist me at the inquiry. I am thankful to all these State Counsel for their assistance.

I am also thankful to the other learned counsel who appeared at the inquiry. It was heartening to see that most of them remained until the conclusion of the recording of evidence. I found, in leading evidence, as well as in cross-examination they were conscious about the time limit within which I have to conclude the work of the Commission.

I acknowledge with gratitude Prof. Harendra de Silva who apart from giving valuable evidence relating to methods of Rehabilitation, for being present at my request as an observer when the evidence of Tamil persons 209 who had received injuries during the attack on the Bindunuwewa Rehabilitation Centre gave evidence in camera before the Commission.

I acknowledge with gratitude the assistance given by Mr. Prasantha de Silva, District Judge of Bandarawela who permitted the Commission to conduct a number of sittings in the court house of the District Court for the recording of evidence. I am also thankful to Mr. Aditya Patabendi Magistrate of Bandarawela for providing me with his Court staff to conduct the proceedings in the Court house.

The staff attached to the Commission comprised of the Police team headed by Senior Superintendent of Police Mr. Mahinda Hettiarachchi and Inspector of Police B.A.S.S. Perera, Police Sergeant S.K. Vitanage, Police Constable V.P.M. Perera, and Police Driver .D.R. Kuruppu, Mr. M.K.M. Razeek,

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Interpreter Mudliyar, Stenographers Mrs. Olga Fernando, Mrs. Manel Panagoda, Mrs. Pushpa Gunarathne, Mrs. S.M. Fernando, Mrs. K. Gopalapillai, Mr. R.D.C. Seneviratne and Mr. M.H. Fernando.

Clerical assistance was provided by Mr. S.N.M.B. Samaratunga, Administrative Officer, Mr. G.A. Gunawardana, Mr. W. Chandraratne, Mrs. B.A.S. Anupama Dias, Miss. Y.M.L.P.Jayarathne, Mr. M.A.M. Buhary, Mr. S. Vitarana and Mr. T.D.U. Shantha Kumara. I am happy to state that all of 210 them worked as a team, sometimes working for long hours with a sense of dedication to duty.

Finally, I must express my gratitude to the Secretary to the Commission Mr. Edmund Jayasuriya, a retired officer of the Sri Lanka Administrative Service who carried out his duties with ability and devotion. He assisted the Commission in arranging the venues for sittings both in Colombo and Bandarawela. He was able to get the maximum co-operation of the staff. His assistance to me in the preparation of the report too is very much appreciated.

P.H.K. Kulatilaka

Commissioner.

Edmund Jayasuriya

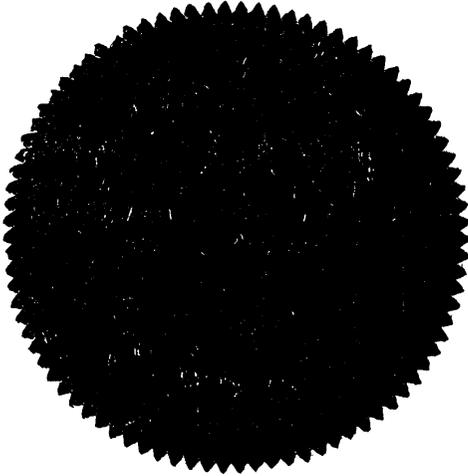
Secretary.

Signed at Colombo on this day of November 2001.

Appendix - A

Ref. No. SP/6/N/221/2001

**BY HER EXCELLENCY
CHANDRIKA BANDARANAIKE KUMARATUNGA
PRESIDENT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**



TO: HON. JUSTICE PEDURU HEWA KANKANANGE KULATILAKA
Judge of the Court of Appeal

GREETINGS

WHEREAS, on or about October 25, 2000, an incident took place at Bidunuwewa Rehabilitation Camp, Bandarawela, in the course of which several persons were injured and 27 inmates died:

WHEREAS, in the interests of public safety it is necessary to hold an inquiry and to obtain information regarding the manner of administration

Report of the Presidential Commission of Inquiry

of the said Bidunuwewa Rehabilitation Camp, Bandarawela, the conduct of the public officers, the circumstances which led to the aforesaid incident and the persons directly or indirectly responsible therefor:

NOW THEREFORE, I **Chandrika Bandaranaike Kumaratunga, President**, reposing great trust and confidence in your prudence, ability and fidelity, do, in pursuance of section 2 of the Commission of Inquiry Act (Chapter 393), by these presents appoint you, the said **Peduru Hewa Kankanange Kulatilaka** to be my Commissioner and to inquire and report on the following matters:-

- (a) The circumstances that led to the incidents that took place at Bindunuwewa Rehabilitation Camp on 25.10.2000 in the course of which 27 inmates died and 14 persons were injured.
- (b) The administration of the Rehabilitation Camp at Bindunuwewa and the conduct of public officers in so far as it is relevant to the said incident;
- (c) The person or persons, if any, directly or indirectly responsible, by act or omission for:-
 - (1) bringing about the said incidents;
 - (2) causing injuries to persons, or the death of the inmates.
- (d) Criteria applicable to the admission of persons to rehabilitation centres and the location of such centres.
- (e) Methods adopted in the rehabilitation of persons admitted to such centres.
- (f) The measures necessary to prevent the recurrence of such incidents and the remedial measures if any, to be taken in this regard, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant:

AND I do hereby authorize and empower you, the said Commissioner to hold such inquiries and make all other investigations into the aforesaid matter as may appear necessary, and require you to transmit to me within three months from the date hereof a report thereon, under your hand, setting out the finding of your inquires and your recommendations:

AND I do hereby direct that such part of any inquiry relating to the aforesaid matters as you may in your discretion determine, shall not be held in public:

Report of the Presidential Commission of Inquiry

AND I do hereby require and direct all public officers and other persons to whom you may apply for assistance or information for the purpose of your inquiry, to render all such assistance and furnish all such information as may be properly rendered and furnished, in that behalf:

AND I do hereby declare that the provisions of section 14 of the Commissions of Inquiry Act (Chapter 393), shall apply to the Commission

Given at Colombo, under the seal of the Republic of Sri Lanka, this First **Eighth day of March Two Thousand One.**

By Her Excellency's Command,



K. Balapatabendi, PC
Secretary to the President

Report of the Presidential Commission of Inquiry

SP/6/N/221/2001

In the exercise of the powers vested in me by Section 4 of the Commissions of Inquiry Act Chapter 393, I do hereby enlarge the time for the rendering of the final report of the Commission, until the Seventh day of September, 2001.


PRESIDENT

President's Office
Colombo 01

25th May 2001

SP/6/N/221/2001

In the exercise of the powers vested in me by Section 4 of the Commissions of Inquiry Act Chapter 393, I do hereby enlarge the time for the rendering of the final report of the Commission, until the Fifteenth day of November, 2001.


PRESIDENT

President's Office
Colombo 1.

September 28, 2001.

Appendix - B: List of individuals with whom discussions and interviews were held

Date	Name	Designation
11.04.2001	Mr. Upali Samaraweera	Commissioner General of Prisons
11.04.2001	Mr. H. A. Herbert	Commissioner of Prisons
19.04.2001	Mr. Ananda Weerasekara	Major General
24.04.2001	Mr. L.P.A.A. Chandrasena	Superintendent of Prisons, Badulla.
24.04.2001	Mr. Ranjith Ekanayake	Superintendent of Prisons, Negombo
26.04.2001	Mr. Colin Glennie	Resident Representative, UNICEF
26.04.2001	Ms. Pauline Taylor	Programme Director, Save McKeown the Children, UK
26.04.2001	Mr. Gunnar Anderson	Representative, Save the Children, Norway.

Appendix - C: List of persons and parties who have made written representations

Date	Person or Party
12.04.2001	Secretary, Samasewaya Bandarawela.
24.05.2001	Secretary, Civil Rights Movement of Sri Lanka, 31, Charles Place, Colombo 3.
29.06.2001	General Secretary, Socialist Equality Party, 90, 1st Maligakanda Lane, Colombo 10.
22.04.2001	Executive Registrar Justice, Peace and Human Development Catholic Commission, Diocese of Badulla.
04.06.2001	Mr. A. Vinayagamoorthy Hon. M.P. for Jaffna. 215 216

Report of the Presidential Commission of Inquiry

Appendix - D

LIST OF WITNESSES **WHO GAVE EVIDENCE BEFORE THE COMMISSION**

NO.	Name of Witness	Designation	Folios in proceedings
01.	Mr. C. Vass Gunawardana,	District Secretary, Badulla.	Volume (1) folios 05-09 Volume (3) folios 01-11
02.	Dr. Chandrasiri Wijeratne,	District Medical Officer, General Hospital Bandarawela	Volume (1) folios 10-12
03.	Dr. Samantha De Silva,	Judicial Medical Officer, Base Hospital, Diyatalawa.	Volume (1) folios 12-13 Volume (4) folios 46-56
04.	Dr. D. C. Rupasinghe,	Judicial Medical Officer, General Hospital, Badulla.	Volume (1) folios 13-14 Volume (3) folios 12-21
05.	Mr. S. K. Jinasena,	Senior Assistant Secretary (Legal), Ministry of Defence, Baladaksha Mawatha, Colombo 3.	Volume (2) folios 10-39
06.	Mr. Lakshman De Silva,	Senior Superintendent of Police, Directorate of Internal Intelligence, No. 10, Cambridge Place, Colombo 7.	Volume (2) folios 40-77
7.	Mr. W. G. Mitraratne,	Secretary, Ministry of Youth Affairs, 7A, Ried Avenue, Colombo 7	Volume (2) folios 78-82
08.	Dr. Senarath Mahinda Colombage	Teaching Hospital Colombo South, Kalubowila.	Volume (4) folios 01-15
09.	Dr. L. B. L. De Alwis	Consultant Judicial Medical Officer, National Hospital, Colombo.	Volume (4) folios 16-25
10.	Dr. E. A. Chandrasiri	Medical Officer, Municipal Counsel	Volume (4) folios 26-45
11.	Dr. Kumudu Kumari Joozar,	Colombo Judicial Medical Officer, National Hospital, Colombo.	Volume (4) folios 26-45
12.	Dr. S. P. A. Hewage	Assistant Judicial Medical Officer, National Hospital, Colombo.	Volume (4) folios 57-67
'3.	Dr. P. B. Dasanayake,	Judicial Medical Officer, Judicial Medical Officer's Office, Colombo.	Volume (4) folios 68-70
'4.	Dr. M. S. Subramaniam,	Assistant Judicial Medical Practitioner, Judicial Medical Office, Colombo.	Volume (5) folios Sinhala 01-11

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15. Prof. Harendra De Silva,	Chairman, National Child Protection Authority, No.205/1, Castle Street, Colombo 8.	Volume (5) folios English 01-14 Sinhala 12-18
16. Captain Y. K. Abeyratne,	(Former O. I. C., Bindunuwewa Camp), Co-ordinating Officer, Rehabilitation Commissioner's Department, 3 rd Floor, High Level Plaza, Delkanda, Nugegoda.	Volume (5) folios English 59-166 Sinhala 19-81 Volume English 01-18 Sinhala 01-28 Volume (7) folios Sinhala 01-67 English 01-87
17. Mr. Vikum Kaluarachchi,	Magistrate, Magistrate Court, Welimada.	Volume (5) folios Sinhala 29-52 English 19-38
18. Mr. T. M. Nandakumara,	Bindunuwewa Rehabilitation Camp, Bandarawela.	Volume (8) folios 29-78
19. Mr. R. M. Senaratne	Grama Niladari,, 'Swarna', Marabedda, Bandarawela.	Volume (8) folios 79-95
20. Mr. H. M. G. B. Kotakadeniya	Senior D. I. G., Police Headquarters, Colombo.	Volume (9) folios English 1-38 Sinhala 1-32 Volume (10) folios 1-32 Sinhala 1-29
21. Dr. Sunil Jayantha Navaratna	Secretary, Ministry of Samurdhi Rural Development, Parliamentary and Up-Country Development.	Volume 10 folios English 33-62 Sinhala 30-57
22. Mr. W. N. R. Wijayapala	Divisional Secretary, Bandarawela.	Volume (11) folios 01-33
23. Mr. P. M. Balasuriya	Lieutenant, Army Camp, Diyatalawa.	Volume 11 folio 01-33
24. Mr. M. A. Vipulaguna	Deputy Commissioner of Rehabilitation, National Youth Service Council	Volume 12 folios- English 01-20 Sinhala 01-17
25. D.A.C.M. Dematanpitiya	Captain, Army Camp, Diyatalawa.	Volume 12 folios English 21-54 Sinhala 18-52
26-Mr. H. M. Senaka Bandara	Police Constable, Police Station, Bandarawela.	Volume 12 folios English 55-77 Sinhala 53-77

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27. Mr. Sinnathamby Rajendran	(Inmate)- Rehabilitation Camp, Tellipalai.	Volume 13 folios English 01-33 Sinhala 53-77
28. Mr. P. Gnanaeswaran	(Inmate) Rehabilitation Camp, Tellipalai.	Volume 13 folios Tamil 58-77 Sinhala 59-80
29. Mr. I. M. Dayaratne	Resident of Maduwelpathana	Volume 14 folios 01-09
30. Mr. D. V. S. Ravindralal	Resident of Madawalatenna.	Volume 14 folios 09-29 Volume 17 folios English 01-19 Sinhala 01-20
31. Mr. L. Kumarasinghe Liyanage	Resident of Kandekumbura.	Volume 14 folios 30-43.
32. Mr. S. W. Bandara	Technical Officer, Bandarawela.	Volume 14 folios 44-60
33. Miss. W. H. Mallika Padmalatha	Teacher Official Quarters, Uva Vidya Peetaya, Bindunuwewa, Bandarawela.	Volume 14 folios 60-68
34. Mr. A. Vinayamoorthy	(Member of Parliament) Attorney-at-Law, 270/4, Thimbrigasyaya Rd, Colombo 5.	Volume 16 folios English 01-08 Sinhala 01-09
35. Mr. N.K. Jayasuriya	Brigadier, Army Headquarters	Volume 16 folios English 08-12 Sinhala 09-13
36. Mr. H. Dharmadasa	Retried Commissioner General of Prisons, 425/17, Old Kottawa Road, Udahamulla, Nugegoda.	Volume 16 folios English 12-29 Sinhala 13-27
37. Lt. P. Abeyratne	2 nd Officer, Bindunuwewa Rehabilitation Centre.	Volume 17 folios English 20-47 Sinhala 20-48
38. Mr. Nandana Munasinghe	S.S.P., CID, New Secretariat Building, Police Headquarters, Colombo 1.	Volume 18 folios English 38-59 Sinhala 44-63
39. Mr. M.M. Wasantha Saman Bandara	L/CPL	Volume 18 folios Sinhala 64-65

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40. Mr. S. J. Karunasena	Inspector of Police (under interdiction)	Volume 19 folios Sinhala 01-101 English 01-92 Volume 20 Sinhala 49-93
41. Mrs. K.M. Attanayake	Bank clerk, Rural Bank, Bindunuwewa.	Volume 20 folios Sinhala 14-28
42. Mr. H.M.J. Prabath	No.6, Hapugasulpatha, Bindunuwewa, Bandarawela.	Volume 20 folios Sinhala 14-28
43. Mr. D.T.N. Jayasumana	Surveyor, Institute of Surveying and Mapping, Diyatalawa	Volume 20 folios Sinhala 28-30
44. Mr. I. M. Dayaratne	Resident of Maduwelpathana	Volume 20 folios 31-48
45. Mr. J.M.C. Jayaweera,	Major, Staff College, Batalanda, Makola.	Volume 21 folios English 01-06 Sinhala 01-11
46. Mr. R.D.L. Jayaratna	Inspector of Police, 'Siri Medura', Ananda Maithri Mw., Balangoda. (under interdiction)	Volume 21 folios English 07-50 Sinhala 12-67
47. Mr. T. Ratnayake	Sub Inspector, Police Station, Diyatalawa (under interdiction)	Volume 21 folios Eng.50-68 Sin.67-91
48. Mr. N.G. Sujeewa Walpola	Sub Inspector, Police Station, Uva-Paranagama (under interdiction)	Volume 22 folios Sin.01-72 Eng.01-48
49. Mr. A.W. Dayaratna	A.S.P. Merchant Tower Police Guard Room, Kollupitiya.	Volume 22 folios Eng.49-69 Sin.73-102 Volume 23 folios Sin.01-129
50. Mr. T.N.P. Fernando	A.S.P., Directorate of National Intelligence, Kandy.	Volume 23 folios 130-134
51. Mr. R.M.T.K. Jayantha Seneviratna	Chief Inspector, Police Station, Ampara.	Volume 25 folios Sin.01-135
52. Mr. G.P.J. Kurukulasuriya	Sub-Inspector, District Information Centre Police Station, Bandarawela.	Volume 25 folios Sin.01-25
53. Mr. M.P.S.S. Wijesinghe	Sub-Inspector, Police Station, Ella.	Volume 25 folios Sin 26-57
54. Mr. R.M. Wijayaratna	P.C.28446, Police Station, Bandarawela.	Volume 25 folios Sin 58-71

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55. Mr. N.C. Silva	Police Sergeant 37718, Police Headquarters, Batticaloa.	Volume 26 folios Sin.01-08
56. Mr. K.W.C.N. Abeynarayana	Sub-Inspector, Police Station, Welimada.	Volume 26 folios Sin.09-38
57. Mr. M.M.T.D. Hettiarachchi	Sub-Inspector, Police Station, Haputale.	Volume 26 folios Sin.39-70
58. Mr. W. M. Wijepala	A.S.P. S.P. Office, Bandarawela.	Volume 27 folios Sin. 18-35
59. Mr. R. Linton	Inspector of Police, C.I.D., Police Headquarters, Colombo 1.	Volume 27 folios Sin.01-18
60. Mr. Nalaka Senanayaka	Inspector of Police, C.I.D.	Volume 28 folios Sin.01-12
61. Mr. Mr. Sriyananda Bandara	Resident of Bindunuwewa	Volume 28 folios Sin. 13-30
62. Mr. R. A. Sisira Saman	Resident of Bindunuwewa	Volume 28 folios Sin.22-31

Appendix - E: List of Documents produced at the inquiry

- P. 1. Bandarawela District Secretary, Mr.W.A. N. R. P. Wijayapala's letter of 28.10.2000 produced by Mr. C. Vass Gunawardana, Divisional Secretary
- P. 2. Post-mortem Report of deceased S. S. Sivaruban produced by Dr. D. C.Rupasinghe.
- P. 3. Post-Mortem Report of deceased P. Madialagon produced by Dr. D. C. Rupasinghe.
- P. 4. Post-Mortem report of deceased S. Vipulananda Rosa produced by Dr. Samantha De Silva
- P. 5. Post-Mortem report of deceased K. Thambi Madialagon produced by Dr. Samantha De Silva.
- P. 6. Post-Mortem report of deceased P. Kandeepan produced by Dr. Samantha De Silva.
- P. 7. Post-Mortem report of deceased M. Balakumar produced by Dr. Samantha De Silva.
- P. 8. Post-Mortem report of deceased Karunakaran produced by Dr. E. A. C. Wijeratne.
- P. 9. Post-Mortem report of deceased Gunapala Jayawardana produced by Dr. Q. A. C. Wijeratne.
- P. 10. Post-Mortem report of deceased V. Wijendran produced by Dr. E.A.C. Wijeratne.
- P. 11. Post-Mortem report of deceased S. Thurairaja produced by Dr. E. A. C. Wijeratne.
- P. 12. Post-Mortem report of deceased V. Senduran produced by Dr. E. A. C. Wijeratne.
- P. 13. Post-Mortem report of deceased R. Kumar produced by Dr. E.A.C. Wijeratne.
- P. 14. Post-Mortem report of deceased K. P. Ravindran produced by Dr. E. A. C. Wijeratne.
- P. 15. Post-Mortem report of deceased Anton James produced by Dr. E. A. Wijeratne.
- P. 16. Additional report submitted by Mr. R. Linton, I.P. C.I.D. to the Magistrate about the Bindunuwewa incident.

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- P. 17. Medico- Legal Examination form of Mr. Kandasamy Sridaran.
- P. 18. -Do- of Mr. Puwanendran Ruban.
- P. 19. - Do - of Mr. Jeganathan Uttamanathan.
- P.20. - Do - . of Mr. Alagathurai Pushparaj.
- P.21. -Do- of Mr. Sinnathamby Sudaharan.
- P.22. -Do- of Mr.NicklasEdwin
- P.23. -Do- of Mr. Sinathamby Rajendran
- P.24. -Do- of Mr. Muthusamy Wijekumar
- P.25. -Do- of Mr. Thambipillai Shashikumar
- P.26. - Do - of Name illegible
- P.27. - Do - Unidentified
- P.28. -Do- of Mr. Asokan
- P.29. - Do - of Mr. Thambiraj Thawaraj
- P.30. -Do- of Mr. Kandasamy Chandrasekaran
- P.31. Extraordinary Gazette No. 1130/8 of 03.05.2000 in which procedure regarding surrendeeds is published produced by Mr. S. K. Jinasena, Senior Assistant Secretary (Legal) Ministry of Defence
- P.32. List of names of the inmates of the Bindunuwewa Camp on the 24th October 2000, produced by Mr. S. K. Jinasena, Senior Assistant Secretary (Legal) Ministry of Defence.
- P.33. Reports received and Rehabilitation order issued by the Secretary/Defence in respect of surrendeeds who were at Bindunuwewa Rehabilitation camp on 24.10.2000 produced by Mr. S. K. Jinasena, Senior Assistant Secretary (Legal) Ministry of Defence.
- P.34. Letter dated 07.05.2001 from Mr. Lakshman De Silva forwarding the list of main Rehabilitation Centres.
- P.35. Letter dated 04.05.2001 of Col. M. A.Vipulaguna, Deputy Rehabilitation Commissioner General, produced by Secretary, Ministry of Youth Affairs Mr. W. G. Mithraratne.
- P.36. Letter dated 26.10.2000 of Mr. W. W. R. P Wijayapala, Divisional Secretary- Bandarawela, produced by Mr. C. Vass Gunawardana District Secretary, Badulla.

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- P.37. Post-Mortem Report of deceased, unidentified male body Tag No.2 produced by Dr. S. M. Colombage.
- P.38. Post-Mortem report of deceased, unidentified male body Tag No. 11 produced by Dr. S. M. Colombage.
- P.39. Post-Mortem report of deceased, unidentified body No. 1 produced by Consultant Judicial Medical Officer Mr. L. B. L. de Alwis.
- P.40. Post-Mortem report of deceased, unidentified body No. 6, produced by consultant Judicial Medical Officer Mr. L. B. L. de Alwis.
- P.41. Post-Mortem report of deceased, unidentified body No. 10, produced by consultant Judicial Medical Officer Mr. L. B. L. de Alwis.
- P.42. Post-Mortem report of deceased, unidentified body No.4 produced by Dr. (Mrs.) K. K. Joozer.
- P.43. Post-Mortem report of deceased, unidentified body No.5 produced by Dr. (Mrs.) K. K. Joozer.
- P.44. Post-Mortem report of deceased, unidentified body No.8 produced by Dr. (Mrs.) K. K. Joozer.
- P.45. Post-Mortem report of deceased, unidentified body produced by Dr. S. P. A. Hewage.
- P.46. Post-Mortem report of deceased, unidentified body Tag No.7 produced by Dr. P. B. Dassanayake.
- P.47. Post-Mortem report of deceased, unidentified body Tag No.9 produced by Dr. P. B. Dassanayake.
- P.48. Post-Mortem report of deceased, unidentified body Tag No.3 produced by Dr. P. B. Dassanayake.
- P.49. Post-Mortem report of deceased, S. Mohan produced by Dr. M. Sivasubramaniam.
- P.50. Project proposal report of Bindunuwewa Camp, produced by Professor Harendra de Silva.
- P.51. Background paper on the problem of child soldiers produced by Professor Harendra de Silva.
- P.52. Report produced by Prof. Harendra de Silva of the Workshop organised by Save the Children Norway, Save the Children UK and UNICEF on 25th March 2000 in the Galle Face Hotel.
- P.53. A, B and C letters written by Capt. Abeyratne requesting Professor

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Harendra de Silva, that youth be rehabilitated in the DON BOSKO produced by Prof. Harendra de Silva.

- P.54. Professor Harendra de Silva's letter No. M. 08/2000 of 03.11.2000 requesting Rev.Fr.F. Mallawarachchi to admit two youths produced by Professor Harendra de Silva.
- P.55. Recommendations made by Professor Harendra de Silva produced by Professor Harendra de Silva.
- P.56. Map of Bindunuwewa Rehabilitation Centre prepared by the Institute of Surveying and Mapping, Diyatalawa.
- P.57. Larger scale map of Bindunuwewa Rehabilitation centre prepared by the Institute of Surveying and Mapping, Diyatalawa.
- P.58. Tamil Youth of the Rehabilitation Camp, celebrates the Vesak, paper cutting of 03.06.1999."Divayina".
- P.59. Lanka Deepa, paper cutting, Bindunuwewa suspects given coffee on the Vesak day produced by Capt. Y.K. Abeyratne.
- P.60. Activities of the inmates in the Rehabilitation camp-paper cutting of "Tharunaya".
- P.61. Letter dated 16.08.1999 addressed to Chairman, National Youth Council, Maharagama, by Capt. Y. K. Abeyratne.
- P.62. Petition dated 16.08.1999 submitted by the trainees to the O.I.C. of the Rehabilitation Camp.
- P.63. Order in connection with Anton James produced by Capt.Y.K Abeyratna
- P.64. Inquest proceedings prepared by Mr.Vikum Kaluarachchi Magistrate, Bandarawela produced by Mr.Vikum Karuarachchi.
- P.65. Inquest proceedings of identification parade produced by Mr.Vikum Kaluarachchi.
- P.66. Twenty eight photographs produced by C.I.D.
- P.67. Letter dated 15.12.1998 addressed to S. P. Bandarawela by Capt.Y.K. Abeyratna to strengthen the security of the camp.
- P.68. Letter dated 31.12.1998 addressed to O.I.C., Bindunuwewa Camp by S. S. P. Bandarawela produced by Capt. Y.K. Abeyratne.
- P.69. Letter dated 09.01.1999 addressed to S. S. P. Bandarawela by Capt. Y.K. Abeyratne produced by Capt. Y.K. Abeyratne.

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- P.70. Letter dated 10.01.1999 addressed to O.I.C. Rehabilitation Camp by H.Q.I. Bandarawela.
- P.71. Certificate awarded to Capt. Y.K. Abeyratne for his services at the rehabilitation camp produced by Capt. Y.K. Abeyratne.
- P.72. A letter dated 02.12.1999 addressed to the Secretary, Ministry of Samurdhi, Youth Affairs and Sports by the H. E. the President offering a scholarship in the Republic of Kongo produced by Capt. Y.K. Abeyratne.
- P.73. A certificate dated 26.02.1999 from Red Cross produced by Capt. Y.K. Abeyratne.
- P.74. Certificate of participation on applied theatre follow up project phase conducted by Capt. Y.K. Abeyratne.
- P.75. Letter dated 10.02.1999 addressed to the Secretary, Defence by Secretary, Ministry of Samurdhi, Youth Affairs and Sports produced by Capt. Y.K. Abeyratne.
- P.76. Letter dated 19.03.1999 addressed to Capt. Y. K. Abeyratne by Professor Dr. David Ratnavale, National Programme of Human Disaster Management produced by Capt. Y. K. Abeyratne.
- P.77
&
- P.78. Documents showing the projects carried out to rehabilitate detainees and the Vocational Training Programme produced by Capt. Y.K. Abeyratne.
- P.79. Letter dated 30.12.1998 addressed to O.I.C., Bindunuwewa camp, by S. S. P. Bandarawela.
- P.80. Letter dated 25.01.2000 written by S. S. P., Bandarawela Mr. B. M.Premadasa to Governor Hon. M. S. Amarasiri.
- P.81. Police Department order No. 18 produced by Senior D. I. G. Mr. H. M.G. B. Kotakadeniya.
- P.82. Contingency Plan produced by Senior D. I. G. Mr. H. M. G. B. Kotakadeniya.
- P.83. Telegram sent by the Bindunuwewa Sapugas-ulpatha Villagers to Divisional Secretary on 25.10.2000 produced by Mr.W.A.N.R.P. Wijayapala, Divisional Secretary.
- P. 84. Statement of Anton James

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- P.85. Government Analyst's report relating to the posters.
- P.86. List of names of those who are to be charged in connection with the Bindunuwewa incidents that took place on 25.10.2000.
- Z. Officers visiting Book-Police Station, Bandarawela from 05.10.2000

Appendix - F: List of persons served with notices made under section 16 of the Commissions of Inquiry Act

- | | | |
|----|-----------------------------------|--------------------------------------|
| 01 | Mr. A. W. Dayaratne | (Assistant Superintendent of Police) |
| 02 | Mr. R.M.T.K. Jayantha Seneviratne | (Chief Inspector) |
| 03 | Mr. S.J. Karunasena | (Inspector of Police) |
| 04 | Mr. R.D.L. Jayaratna | (Inspector of Police) |
| 05 | Mr. T. Ratnayake | (Sub Inspector) |
| 06 | Mr. N.G.S. Walpola | (Sub Inspector) |
| 07 | Mr. M.P.S.S. Wijesinghe | (Sub Inspector) |
| 08 | Mr. K.W.C.N. Abeynarayana | (Sub Inspector) |
| 09 | Mr. M.M.T.D. Hettiarachchi | (Sub Inspector) |

Appendix H: Letter from Amnesty International

Her Excellency

President Chandrika Bandaranaike Kumaratunga

Presidential Residence

“Temple Trees”

Colombo 3

Sri Lanka

Ref.: TO ASA 37/00.17

27 October 2000

Dear President,

Amnesty International is calling for a full and impartial inquiry into the killing of at least 26 inmates of the Bindunuwewa rehabilitation camp near Bandarawela on 25 October 2000 . We also urge you to institute a thorough review of the detention regime affecting people held under the Prevention of Terrorism Act (PTA) and emergency regulations (ERs) to prevent the recurrence of such incidents. Such a review should include a thorough examination of the detention provisions under the ERs, including those for rehabilitation and surrender which we believe were key contributing factors for this latest gruesome incident.

According to information received, at least 26 inmates, all young Tamil men aged between 14 and 23 undergoing rehabilitation after they were arrested or surrendered as suspected members of the Liberation Tigers of Tamil Eelam (LTTE), died as a result of injuries sustained in a vicious attack by a mob of hundreds of people from nearby villages. The villagers, all of whom were members of the Sinhalese community, were armed with clubs, machetes and other such implements.

Apparently, the clash took place in the context of the inmates' agitation for their early release and unrest in the area after posters had appeared a couple of days earlier urging for the closure of the rehabilitation camp. We understand that on the previous day a guard had temporarily been taken hostage by the inmates and that there had been tension in the rehabilitation camp as a result. According to reports received when the mob arrived at the centre, the police officers in charge ran away, allegedly to call for assistance from the Diyatalawa army camp. They failed in their duty to protect the inmates.

We have noted that according to the government, “external forces” incited the violence. However, it is clear that police personnel deployed at the

rehabilitation camp were at the very least negligent in their duty to protect the inmates. It is also of concern that there are allegations that some of these police officers may have been involved in inciting the villagers or may have assisted them in entering the camp.

We welcome your condemnation of the attack and the swift action taken by sending two police teams to investigate this incident. However, in our view, there is a further need for a full and impartial investigation to ensure that those found to be responsible are brought to justice and that compensation is paid to the victims and the relatives of those who were killed.

We also see an urgent need for a comprehensive review of the detention regime affecting people detained under the PTA and ERs, including the provisions for rehabilitation and surrender. As you know, the provisions for the rehabilitation of prisoners (ER20) permit a person to be detained indefinitely for the purpose of rehabilitation, on the basis of a Rehabilitation Order issued by the Defence Secretary. ER20A(1) provides that prisoners held in preventive detention or for investigation under the emergency regulations, or who are detained under Section 9 of the PTA, can be the subject of such orders, which are issued "in the interest of the welfare of such person". While the Rehabilitation Order must contain a time period, there is no maximum time limit for the period of rehabilitation specified in ER20A. It appears possible, therefore, for people who were originally detained for preventive or investigative reasons to find themselves subject to lengthy detention under Rehabilitation Orders. Reports of agitation among the inmates of the Bindunuwewa rehabilitation centre about delays in their release, despite the time periods of the Rehabilitation Orders having expired, confirm this.

Under ER20, people who surrender to the police or armed forces in connection with a range of offences should be handed over within ten days of the surrender to the care of the Commissioner General of Rehabilitation. They should be assigned to a "Protective Accommodation and Rehabilitation Centre" and given appropriate training. Such people can be held for rehabilitation for up to two years. People who "surrender" because they fear they will be attacked by terrorists, may also be detained for rehabilitation themselves.

Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a party, requires that all people arrested shall be promptly notified of the reasons for their arrest and promptly informed of any charges against them. Article 9(3) of the ICCPR specifies that "anyone arrested or detained on a criminal charge shall be promptly brought before a judge ... and shall be entitled to trial within a reasonable time or to release". The provisions for rehabilitation and surrender as set out in ER20 are clearly in violation of both standards.

Report of the Presidential Commission of Inquiry

In December 1997 and January 2000 we appealed to the then Minister of Justice for a full and impartial inquiry after respectively three and two detainees had been killed at Kalutara prison. We were pleased to hear that a presidential commission of inquiry under High Court Justice A. Raja Nihal Fernando was appointed after the killings in December 1997 with a mandate to investigate the killings and the conduct of prison guards and others involved in the first incident. The commission was also mandated to make recommendations for measures to prevent the recurrence of such incidents and any remedial measures to be taken. It reportedly concluded its investigations on 23 April 1998. To date, however, to our knowledge, the findings of the commission have not been made public, nor is it known what its recommendations were and whether they have been or are being implemented.

We also learned that the investigations into the killings at Kalutara prison in January 2000 have stalled after the police in April sent the dossier to the Attorney General's department for procedural advice in relation to the holding of an identification parade of the alleged perpetrators.

This apparent lack of decisive action to bring to justice those responsible for the killings and generally remedy the situation of detainees may have been factors contributing to the recent killings.

We request that you give these issues your urgent consideration.

Yours sincerely,

Vincent del Buono Deputy Secretary General

Report of the Presidential Commission of Inquiry

Appendix -1

List of Documents received by the Commission

No	Date	From Whom	Subject	Folio No
01	06/04/2001	Mr.U .Yuwarakkumar	Request to give evidence	01
02	19/04/2001	Mr. H.M.C. Podinilame	Request to help the Commission	02
03	20/04/2001	Mr. S.A. Mahindadasa	Request to give evidence in camera	05
04	07/04/2001	Mr. P.I.Nimal Dharmasiri	Request to give evidence in camera	13
05	25/04/2001	Mr. Stanley Jayaweera	Request to give evidence in camera	14
06	18/05/2001	Mr. Colin Glennie, UNICEF	Volunteering to assist the Commission	22
07	07/06/2001	Major P. de S. Hettiarachchi	Extract of vehicle movement Register	30
08	13/06/2001	Col. M.A. Vipulagune, Deputy Rehabilitation Commissioner General, National Youth Council.	Details of Surrendeeds	31
09	14/06/2001	Mr. Nanadana Munasinghe Superintendent of Police (Administration).	Photographs and Copies of Investigation Reports	32
10	14/07/2001	Mr. N.K. Seneviratne, H.Q.I., Bandarawela.	Non summary cases at Bindunuwewa from Jan 99 to July 2000	40
11	17/08/2001	Mr. Nandana Munasinghe S.S.P., CID, Colombo 1.	Estimate of the damage to buildings at Bindunuwewa.	46
12	13/08/2001	Col. M.A. Vipulagune Deputy Rehabilitation Commissioner General National Youth Council.	Instructions to Rehabilitation Centre	47

Appendix J: List of inmates at the Rehabilitation Centre, Bindunuwewa as on 25/10/2000

Perimpanayagam Nirmalaraj
Munisamy Wijekumar
Marimutthu Balakumar
Vigneshwaran Jeyakanthan
Thambipillai Shashikumar
Selvarajah thurairajah
Vinayagamurthy Senduran
Kadiragamathamby Madialagan
Anton James
Wishwalingam Vijendran
Gunapala Jayawardana
Sinnathurai Mohan
Niclas Edwin
Thiruchittampalam Muhundan
Sivam Kuvendran
Sinnathamby Sudaharan
Kandasamy Pushparajah Kandeepan
Sundaralingam Sivasangar
Ganeshamoorthy Ashokan
Punniamurthy Madialagan
Thambiraj Thavaraj
Vishwambaram Rubishkumar
Ramasamy Karunakaran
Kandasamy Chandrasekaran
Dunkan Ramachandran
Jeganadan Uttamanadan
Alagathurai Pushparajah
Puvendran Ruban
Amarasingham Amaradeepan
Vipulanandarasa
Sinnathamby Rajendran
Kanapathipillai Raveendran
Canagasingham Prabakaran

Gokulamani Sajeewan
Perumal Sridaran
Kandasamy Sridaran
Somasundaram Selvarajah
Balachandran Sivanadan
Sivagnanasundaram Sivanadan
Mailvaganam Kanagasinhm
Sundaran Selvarajah

Appendix K: List of deceased persons

Perimpanayagam Nirmalaraj
Marimutthu Balakumar
Vigneshwaran Jeyakanthan
Selvarajah Thurairajah
Vinayagamurthy Senduran
Kadiragamathamby Madialagan
Anton James
Wishwalingam Vijendran
Gunapala Jayawardana
Sinnathurai Mohan
Thiruchittampalan Muhundan
Sivam Kuvendran
Kandasamy Pushparajah Kandeepan
Sundaralingam Sivasangar
Punniamurthy Madialagan
Wishvanbaran Rukeshkumar
Ramasamy Karunakaran
Duncan Ramachandran
Vipulanandarasa
Kanavadipillai Ravindran
Kanagasinhm Prabakaran
Gokulamani Sajeewan
Somasundaran Selvarajah

Report of the Presidential Commission of Inquiry

Balachandran Muralidaran
Sivagnasundaran Sivanadan
Mailvaganam Kanagasinhm
Sundaram Selvarajah

Appendix - L

ANALYSIS OF CASES OF DEATH OF 27 INMATES

Deceased	PMRNo	Marking	Cause of Death	Nature of Injuries/Weapons Used
Sivagnaneswaran Sivaruban	AR1477/00	P2	Shock following extensive cuts and bums.	15 cut injuries, 4 bums, mostly on head.
P. Madialagan	AR 1477/00	P3	Cranio cerebral Injuries	Cut injuries on the Head.
S.V. Rasa	2000/4	P4	Cardio pulmonary Failure due to bleeding into the brain	Laceration in the head. 2 fractures in the skull.
K.T. Madialagan	2000/3	P5	Cardio pulmonary Failure due to external bleeding abdominal bleeding and bleeding in the brain	7 bum injuries 28 stab injuries, 1 cut injury, 6 lacerations.
P. Kandeepan	2000/5	P6	Cardio pulmonary failure due to brain damage & bleeding into brain	Crush injury front of skull stab injury
Marimuthu Balakumar	2000/2	P7	Cardio pulmonary failure due to external bleeding; bleeding into the brain	Abrasions, Lacerations
Karunakaran	No Number	P8	Cardio respiratory failure due to shock and haemorrhage owing to damage to skull & brain	Cut injuries (Sharp & blunt Weapons).

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Gunapala Jayawardana	No Number	P9	Cardio respiratory failure due to shock by burn & haemorrhage	Cut and fracture (sharp and blunt weapons).
Visvalingam Wijendran	None	P10	Cardio respiratory failure due to haemorrhage	Damage to skull and brain by sharp and blunt weapons.
Selvaraja Thurairaja	None	P11	Cardio respiratory failure due to shock and haemorrhage	Fracture of all facial bones and cut injuries by sharp and blunt weapons in the brain.
Vinayagamoorthi Senduran	None	P12	Cardio respiratory failure due to shock and haemorrhage	Damage to skull, brain, heart, lung by sharp and blunt weapons.
R. Kumar	None	P13	Cardio respiratory failure due to shock and haemorrhage	Injuries to brain by sharp and blunt weapons.
K.P. Ravindran	None	P14	Cardio respiratory failure due to shock and Haemorrhage	Injuries to skull and brain by sharp and blunt weapons.
Anton James	None	P15	Cardio respiratory failure due to shock and haemorrhage	Burns and cut injuries in the skull and brain by sharp and blunt weapons.
Unidentified body (2)	SRI 791	P37	Cranio cerebral Injuries and deep burns	Damage to brain by blunt weapons and bum injuries.
Unidentified body (11)	SRI 800	P38	Cranio cerebral injuries - following sharp weapons, trauma to the head	Damage to head by sharp weapon, bum injuries.
Unidentified body (1)	None	P39	Cranio cerebral injuries by heavy sharp cutting weapons.	Damage to skull and brain by sharp heavy cutting weapons, burnt after death

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Unidentified body (6)	None	P40	Cranio cerebral injuries	Damage to skull & brain by heavy blunt weapons.
Unidentified body (7)	None	P41	Shock following extensive burns	Damage to brain and burns
Unidentified	None	P42	Shock following extensive burns	Damage to head, and Bum injuries
-Do -	None	P43	Aspiration of blood following cranio facial injuries by fire arms	Injuries to brain by firearms and sharp weapons firearm injuries in the upper & lower limbs
Unidentified	None	P44	Shock following extensive burns	Extensive burns.
- Do -	None	P45	Extensive cranio facial injuries	Damage to face, head by heavy blunt weapons
- Do -	None	P46	Shock following extensive burns and injuries to head	Damage to head/ extensive burns
Unidentified body	None	P47	Shock following extensive burns and head injuries	Damage to head by blunt force and bum injuries
Unidentified body No.3	None	P48	Multiple cut injuries to brain	Damage to brain by sharp cutting heavy weapons, and blunt trauma
S. Mohan	None	P49	Cranio cerebral injuries	Injuries to the brain with blunt weapons

Report of the Presidential Commission of Inquiry

INJURIES OF SURVIVORS

No.	Name	MLENo	Types of Injuries	Type of weapons Used	Nature of Injury
01	Chandrasekaran	900/00	Laceration, cut, fracture	Sharp, blunt	Grievous
02	Navaraja	889/00	Fracture	Blunt	Endangering life
03	Asokan	888/00	Injured not examined by JMO		
04	Unknown	887/00	Laceration, cut	Sharp	Grievous
05	Perumal Eshwaran	1858/00	Laceration, cut	Sharp	Grievous
06	Thambipillai Shashikumar	1857/2000	Laceration, Fracture	Sharp	Grievous
07	Vijekumar	1856/2000	Laceration, cut, Fracture	Sharp	Grievous
08	Sinnathambi Rajendran	18/2001	Cut	Sharp	Grievous
09	Nicolas Edwin	17/2001	Abrasion	Blunt	Non Grievous
10	Sinnathambi Sudaharan	16/2001	Abrasion	Blunt	Non Grievous
11	Alagathurai Pushparaja	15/2001	Abrasion	Blunt	Non Grievous
12	Jeganathan Uththamanathan	14/2001	Laceration	Blunt	Non Grievous
13	Ruban	13/2001	Laceration	Blunt	Non Grievous
14	Kandasamy Sridaran	12/2001	Laceration, cut	Sharp, blunt	Grievous

Appendix M:

ඕසුසුවුව තරුණ ප්‍රති ආවර්ධන පුහුණු මධ්‍යස්ථානයේ විනාශ වූ ගොඩනැගිලි පිළිබඳ වටිනාකම් ගණනය කිරීම

මධ්‍යස්ථානයේ අඩි 100 . 0" x 20" . 0" ප්‍රමාණයේ සේවාසිකාගාර භූමි පඨන වලට ප්‍රමාණයේ සේවාසිකාගාරයක අඩක් සම්පූර්ණයෙන් දැවී විනාශ වී තිබූ අතර අනෙකුත් ගොඩනැගිලි සියයක පහළ, දොරවල් විදුරු හා පහළ පසු කිහිපයක් කැඩී බිඳී තිබූ බව 2000 නොවැම්බර් මස 10 වන දින එම ජ්‍යාමායාට ගොස් පරීක්ෂා කිරීමේදී දක්නට ලැබුණි.

සේවාසිකාගාර වල ඒකකවලට සහ වහලුට වසරක් තහනු සහ පොලවට සිමෙන්ති යොදා නිමකර තිබුණි නිසාම වසරක් තහනු 4"x2" සහ 2"x2" ශී රාමු යොදා නිමකර තිබූ අතර වහලුය 4"x2" පරාල, 2"x2" ශී සහ 5"x3" බාලක හා කණු යොදා නිමකර තිබුණි ගොඩනැගිලි වලට විදුලි බලය ලබා දී තිබුණි.

එම ගොඩනැගිලි පෙර තිබූ තත්වයට පැවත ගොඩ නැගීම සඳහා අවශ්‍ය වන මුදල පහත විස්තර වන ආකාරයට ගණන් බලා ඇත

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එ අනුව දැරිය යුතු සම්පූර්ණ මුදල පහත දැක්වේ.

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U. W. මුණසිංහ
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2000 12 16

Appendix - N: List of the suspects against whom indictment will be filed by the Hon. Attorney General

1. Kangana Mudiyansele Dhammika
2. Prabath Mangala Wickamasingha
3. Veediye Gedara Sumith Kumara
4. Munasingha Arachchige Sami
5. Attanayaka Mudiyansele Sudubanda
6. Rajapaksha Arachchilage Sisira Saman Rajapaksha
7. Rajapaksha Mudiyansele Nimal Rajapaksha alias Namal
8. Jayaweera Mudiyansele Priyantha Jayaweera
9. Ratnayaka Mudiyansele Sugath Chaminda
10. Ratnayaka Mudiyansele Navaratna
11. Muthukuda Wijesingha Arachchilage Namal Yasakerththi Wijesingha
12. Herath Mudiyansele Gunapala alias Daya
13. Dissanayaka Mudiyansele Sepala Disanayaka
14. Aparakka Jayasundara Mudiyansele Chandana Vasantha Bandara Jayasundara
15. Herath Mudiyansele Jayantha
16. Rajapaksha Mudiyansele Gamunu Rajapaksha
17. Heenkenda Mudiyansele Jayatunga alias Podimahathun alias Sudumahathun
18. Rajapaksha Mudiyansele Ajantha Rajapaksha
19. Samarawickama Don Samarasekera
20. Attanayaka Mudiyansele Bandula Attanayaka
21. Rajapaksha Mudiyansele Premananda
22. Rajapaksha Mudiyansele Nuwan Nanda Kumara
23. Hennayaka Mudiyansele Nilantha Wijayarathna Bandara
24. Adhikari Jayasundara Mudiyansele Nishantha Indika Bandara

Report of the Presidential Commission of Inquiry

25. Palitha Varnasuriya
26. Saneera Varnasuriya
27. Ranjith Rupasingha
28. Don. Anil Samarawickrama
29. Keerthi Batuwatta
30. Asela Gunawardana
31. Harsha Gunaratna Bandara
32. Senaka Jayampathi Karunasena
33. Raigala Dasili Lekamlage Jayaratna
34. Malapathirannahelage Samudra Sudesh Wijesingha
35. Kalamulla Waduge Chinthaka Nuwan Abenarayana
36. Hettiarachchi Mudiyansele Thilina Damsith Hettiarachchi
37. Ranamuka Arachchilage Sudath Senarath Bandara
38. Nakathi Gedara Sujeewa Walpola
39. Ranasingha Arachchilage Premalal Wijesiri
40. Narissa Mudiyansele Amarasiri Upali Milton
41. Tiron Roja Ratnayaka

III: Interim Report of the Sri Lankan Human Rights Commission on the Incidents at the Bindunuwewa Rehabilitation Centre

Interim Report on the Incidents at the Bindunuwewa Rehabilitation Centre, Bandarawela - 24 & 25 October 2000

Introduction

On the 25th of October 2000, Mr. Senaka Dissanayake, the Regional Co-ordinator of the Human Rights Commission assigned to the Badulla District, brought to the notice of the Commission, that in the early hours of that day there had been an incident at the Bindunuwewa Rehabilitation Centre, in the course of which several inmates had been killed and several others seriously injured. In response to this information, the Commission decided to inquire into the matter and accordingly having informed Mr. T E Anandarajah, Acting Inspector General of Police and General Rohan Daluwatte, Chief of Defence Staff of the Joint Operations Bureau, Sri Lanka Army, the Commission visited Bandarawela on the 27th of October 2000.

We interviewed Mr. B.M.Premaratne, Senior Superintendent of Police, Bandarawala, Mr. Laxhman Seneviratne, Senior Superintendent of Police, Badulla, ASP Mr. Dayaratne and Brig. C. Gunasinghe, the Commanding Officer of the Diyatalawa Army Camp. On the material date, Mr. B. M. Premaratne, SSP Bandaradwala had not been in his Division and A.S.P. Mr. Dayaratne had been acting for him.

The three Police Officers concerned stated that they had no personal knowledge of any of the incidents and furnished us with such information as they said that they had been able to obtain in the course of their investigation. We thereafter visited the Bindunuwewa Rehabilitation Centre and made our observations. We also visited the Diyatalawa Army Hospital and interviewed 10 detainees who had sustained injuries. We recorded statements from nine of them as the other was not in a fit condition to make a statement. We also had the assistance of our Regional Co-ordinator.

As at the 24th of October 2000, this Centre came under the administrative control of the National Youth Services Council (NYSC) which now functions under the Ministry of Youth Affairs. The Officer in Charge of this Centre was Captain Y. P. Abeyratne who is a Volunteer Officer in the Cadet Corp. of the

Sri Lanka Army. He had been employed in this capacity by the NYSC and had been in charge of the centre for about six years. He is reported to have maintained a satisfactory working relationship with the inmates. He was assisted by another Volunteer Officer namely Lieutenant P. Abeyratne who had been assigned to the Centre about two months back.

There were four other civilian officers attached to the Centre. There was a Police Post within the Centre manned by a Reserve Police Constable, a Grama-Arakshaka and two Security Assistants, all of whom were from the Bandarawela Police. Three of these officers carried weapons namely two T56 firearms and a shotgun.

We have not yet been furnished with a record of the number of detainees as maintained by the officials attached to the Centre. According to the records maintained at the Regional Office of the Human Rights Commission, there were 46 detainees at the Centre as at the 15th of October 2000. At this point, it is pertinent to note that one of the functions of the HRC is “to monitor the welfare of persons detained by a judicial order or otherwise” . Accordingly Mr Dissanayake, the Commission’s Regional Co-ordinator in Badulla had regularly visited the Centre and inspected the conditions of detention. The Co-ordinator also received and recorded all information pertaining to new admissions to the Centre as well as releases from the Centre on the termination of rehabilitation. The detainees at the Centre consisted of young Tamil men who had been arrested or had surrendered as suspected members of the LTTE. They were undergoing rehabilitation and had been detained at the Centre for periods ranging from one to fifteen months, according to the information furnished to us from records available at the regional office of HRC.

According to the figures furnished to us by the Police officers we questioned, there had been 41 detainees at the time of the incident. Mr. Jayantha Seneviratne, HQI Bandarawela Police has furnished to our Regional Co-ordinator a list containing the names of 27 detainees who were fatally injured. The Police had informed the Co-ordinator that 14 other detainees had sustained injuries. Of the injured one had succumbed to his injuries yesterday. According to these figures given by the Police, the detainees accounted for as dead and injured aggregate to 41. However, there is a discrepancy in regard to the precise number of detainees who would have been in the Centre on the day of the incident, when this figure is considered in the light of records maintained at the Regional Office of the Commission. Our Regional Co-ordinator is investigating this discrepancy.

The Version Given by the Senior Superintendents of Police

According to the information furnished by the Superintendents of Police, the

OIC of the Centre had held the usual meeting with inmates in the evening at about 6:00 p.m. of the 24th of October. At this meeting some inmates had protested against what they alleged was the undue delay in releasing them from the Centre and had demanded their immediate release. In the course of the argument that ensued the OIC had been surrounded by some of the detainees. One of the police officers on duty had fired in the air and thereafter the detainees had turned violent. They had forcibly entered the store room, armed themselves with iron rods, poles and implements and had caused damage to the building. They had also set fire to some documents said to have been maintained at the Police Post and had destroyed the florescent lights, and caused damage to the furniture and the Police Post. They had also taken a gas cylinder and attempted to set fire to it but had failed. The Police Officers and the Assistant to the OIC had deserted the Centre as they feared that they were in danger of physical injury. Lieutenant Abeyratne, the Asst. to the OIC is said to have been attacked by one of the inmates and sustained a bleeding injury in his chest. He is said to have gone to a house in the neighbourhood to change his shirt which was allegedly blood stained and had telephoned the Bandarawela Police to inform them of the disturbances at Bindunuwewa. In the account given to us by the Police officers there was no suggestion that the inmates had taken any of the officers on duty at the Centre as hostage and were holding them.

We were unable to interview either the OIC or his Asst. as they were said to be at the office of the CID in Colombo.

On receiving a telephone message at the Station to the effect that there was unrest at the Centre and that an attempt had been made to snatch the weapons of the Police Officers on duty, Mr. Jayantha Seneviratne, HQI Bandarawela Police had set out at about 7.45 p.m., with a contingent of about 10 officers, all armed with T56 weapons and had arrived at the Rehabilitation Centre at about 8.00 p.m. I.P. Karunasena, OIC Crimes, is said to have set out shortly thereafter along with another contingent of Police Officers all of whom were also armed and arrived at the Centre.

According to S.S.P. Premaratne there had been about 30 Police Officers led by the HQI and all carrying T56 weapons present in the vicinity of the Centre by about 8:00 p.m. The inmates had objected to the Police entering the Centre and the HQI had persuaded the detainees to permit him to enter the Centre without the other officers. They had agreed to allow him to do so provided he came in unarmed. The HQI thereupon entered the Centre by himself, unarmed, and spoke to the inmates and the OIC Capt. Abeyratne. The inmates protested against the action of the Police Officer in firing a shot. The HQI had adopted a conciliatory tone and accepted the position that this had been an error and suggested to Capt. Abeyratne that the Police should withdraw to avoid further unrest. Capt. Abeyratne had welcomed this

suggestion and stated that he would be able to maintain order within the Centre. By this time a contingent of soldiers from the Diyatalawa Army Camp had also arrived and were present in the vicinity of the Centre.

Meanwhile about 200 to 300 persons who were said to be villagers had gathered in the vicinity and were shouting. Upon observing their presence the HQI had inquired from Capt. Abeyratne as to what action should be taken. Capt. Abeyratne had informed him that he would look after affairs within the Centre and that the Police should prevent any outsiders from entering the Centre.

Thereupon the Police and the Army persuaded the crowd to withdraw and the HQI left at about 10:30 p.m. leaving the rest of the Police personnel in the charge of IP Karunasena and IP Jayaratne who remained along with the contingent of soldiers under the command of Capt. Balasuriya. By about 11.30 p.m. the situation appeared to have returned to normal. In those circumstances, the Commanding Officer informed us that the army contingent withdrew at 1:15 a.m. having informed IP Karunasena. The Police personnel remained at the scene. Upon his return to the Station, the HQI had directed that Police personnel from the other stations in the division who had been instructed by the ASP to report to the Police Station at Bandarawela be ordered to proceed to the Centre. He had also received an inquiry from the ICRC, Batticaloa over the telephone as to whether there had been any unrest at the Centre and the HQI had informed the ICRC that the situation was under control. According to the HQI several Police Officers had left for the Centre in pursuance of the directive and there had been 69 Police Officers armed with T56 weapons gathered at the scene. However, there are no records by way of any official entries to substantiate this claim.

At about 6:45 a.m. (i.e on 25th) the HQI had received a message over the radio telephone from IP Jayaratne that persons were gathering in the vicinity of the Centre and that the Army had withdrawn. The HQI informed ASP Dayaratne of this development. He thereafter received a further message over the radio telephone from IP Jayaratne at about 8:15 a.m. stating that a crowd had entered the Centre and that the Centre was on fire. He had asked for reinforcements. The HQI had rushed to the scene and found that several persons had entered the Centre, the Police were also within the Centre and found several detainees dead and injured and the buildings on fire.

SSP Premaratne stated, that according to the information he had been given, in the early hours of the morning of the 25th, the detainees had behaved in an unruly manner and damaged the buildings. Some of the detainees had indecently exposed their persons to passers-by and had pelted stones. By this time, a large number of villagers had gathered from all sides of the Camp and had started pelting stones towards the direction of the detainees. Thereafter

the crowd had entered the camp and attacked the detainees with clubs, iron rods, knives, machetes etc. They had damaged the building and set fire to it. Detainees were murdered, maimed, badly wounded and injured. All this was done very swiftly and was over within 10-15 minutes. The crowd left the place thereafter. The SSPP stated that the police officers on duty had not fired at the mob nor tried to prevent them from entering the Camp even by firing shots in the air. The wounded were transported to the hospital by the Police later on. Both SSPs admitted that the inaction of the police officers was a grave lapse on their part.

The SSPP also observed that the soldiers should not have left the scene and even if they were leaving they should have informed the Police. They also complained that the army came very late when they were informed of the unrest in the morning of 25th. This was emphatically refuted by the Commanding Officer, who said that his men withdrew at 1.15 a.m. on the 25th. They had gone to assist the Police and had left only after they had accomplished the task given to them by persuading the villagers to leave the place. With regard to the incidents of the following day, the Commanding Officer said that it was he who received the telephone call from the Police and that it came to him at around 08.45 a.m on the 25th. He immediately sent a platoon which reached the scene of the crime around 09.15 a.m. By that time, every thing was over and the mob had left the place.

The SSPP also reported on other connected matters. According to them, there had been opposition by the villagers to the camp being located in that site. SSP Mr Premaratne stated that he had written to the higher authorities recommending that the camp be shifted to some other location. However, no action had been taken to implement the recommendation. They also mentioned that an inmate by the name of Anthony James who had been admitted to the centre recently had been agitating and attempting to incite the other inmates. However when we inquired from the officers whether they had received any specific complaints against James, they replied that there had been no such specific complaints.

We questioned the SSPs on two other matters. We inquired about the action that had been taken immediately after the incidents of the 25th to investigate and arrest those who were responsible for the violence and killings. We also wished to know what action they were taking regarding the posters that had appeared in Banadarwela town inciting people to violence against the inmates of the Binudunuwewa centre. Both SSPs stated that the attempts made by the HQI to arrest suspects was ineffective as large numbers had been taken into custody for questioning indiscriminately. They expressed the view that the arrests seemed to have been made in a manner that had rendered the entire exercise meaningless and had the effect of thwarting proper investigations. In regard to the posters the SSPs denied any

knowledge of the posters and stated that they were unaware that several posters had appeared in Bandarwela as stated by us. The Regional Co-ordinator who had seen the posters stated that they were still to be seen in the Bandarwela town.

Description of the Scene

Thereafter, the HRC visited the Bindunuwewa centre accompanied by the SSPs. On our way we observed, a large number of posters that were displayed prominently in Bandarawela. The content of the posters which incited people to act in order to remove the camp and deal with the inmates indicated that most of them had appeared before the incidents of the 25th. As alleged they could have appeared on the 24th night.

At Bindunuwewa, we inspected all the buildings in the centre. We were shown the damage inflicted by the inmates on the 24th. The Store did not show any signs of forced entry; the doors were intact and did not have any visible signs of damage. The glass panes of some of the windows in the office and officers' quarters had been broken. There were a few charred pieces of paper and a small quantity of ash in the office that indicated that a few papers had been burnt. At the same time we noted that articles such as the television, radio, refrigerator had not been damaged by the inmates. It was evident that some damage had been caused by the inmates. But the account we had received had suggested that the inmates had gone round smashing up the buildings and causing extensive damage. What we observed of the damage caused by the inmates did not lend credence to that account.

We examined the premises for any signs that would suggest that a very large crowd had converged from all directions, and forcibly entered the premises. We did not find any visible signs of areas that had been heavily trampled by a large crowd. There was a footpath leading to the playground of the training school adjoining the centre; this section was not protected by a fence. We were informed that part of the crowd came from this direction.

We found the halls which accommodated the detainees completely damaged and pulled down. There was a dead body found in the debris during our visit. This body had not been identified earlier. Even the equipment used for vocational training had been heavily damaged. The condition of the buildings clearly indicate that those who caused the damage made sure that the buildings were damaged beyond repair and would not be available for use.

The Survivors' Version

In the afternoon the Commission visited the Diyatalawa Army camp and spoke to nine of the ten inmates who had been hospitalised in the army

Hospital. One of the survivors could not speak to us as he was very badly wounded. Of these ten survivors, one was aged 11 and other 12 years. There were three others who were below the age of 18 years. While we were interviewing the survivors we observed that a team of C.I.D. officers had arrived and were conducting investigations.

According to the nine survivors who gave their account of the events of the 24th and 25th, the detainees had raised issues with the OIC of the Camp on the 24th with regard to the following matters: letters received for the detainees were not delivered to them; telephone calls/messages received for them were not transmitted to them: they were being detained for unduly long periods such as one year or more when they should be held for shorter periods of three to nine months. It also transpired that when the OIC explained that it was not within his power to release them early as orders have to come from the authorities who dealt with such matters, they agitated and surrounded the OIC demanding that he should take immediate action to expedite their release. Observing this melee, one of the police officers had fired his gun in the air. This had caused further agitation among the detainees who caused damage to fluorescent-lights, the police post etc. The accounts given by the survivors also mention that they objected to the police party entering the Centre. However, after some time, they allowed the HQI to come in without any arms. They also mentioned that some villagers gathered near the centre and threw stones at the inmates. The detainees requested the OIC of the Centre to tell the villagers that the detainees had no problem with them, and that they should not do them any harm. Their problems were with the administration. During the discussions the detainees had stated that they will not follow the vocational training classes till the OIC expedites the release of the detainees who were in the centre for long periods. Thereafter conditions had returned to normal and the detainees had retired to their halls and gone to sleep. According to them, the police personnel and the others who came to the camp had left the place by about 11:30 p.m.

On the morning of 25th, when the detainees got up in the morning they saw a large number of civilians surrounding the camp and a number of police officers standing by. The crowd started to pelt stones and came into the centre and attacked the inmates with knives, machetes, clubs, iron rods etc. They state that the crowd consisted of both men and women. According to these survivors, they were attacked when they were in the halls of residence. The halls of residence were set on fire by the mob and two or three inmates were thrown into the fire. Many were clubbed to death. They said that the police officers did nothing to stop the crowd. When some of the detainees tried to run for safety, one of them was shot down by the police officers. We observed that one of the survivors to whom we spoke had lost two fingers in one of his hands as a result of gunshot injuries. According to statements made by some

of the survivors, when they had tried to hide in the police truck, the mob came in and attacked them. Two police officers were watching while they were being assaulted and did nothing to stop the assault. One of the injured, however, stated that the police were helpless as there was a large crowd and they failed to control the crowd even though they made some attempts. The survivors whom we interviewed do not speak of any disturbance caused by the inmates on the 25th morning prior to the attack on the centre by the crowd. According to them when they woke, they had seen the crowd gathered around the centre. The crowd had then entered the centre and started attacking the inmates soon thereafter. According to this account there was no time for the inmates to engage in protests and disturbances on the 25th morning.

Summary of Findings and Recommendations

We give below a summary of our main findings and recommendations

The events of the 25th morning

From all the information that we received in the course of our inquiry it is clear that the police officers, approximately 60 in number, have been guilty of a grave dereliction of duty in not taking any effective action to prevent the acts of violence that resulted in the deaths of 26 inmates and injury to several other inmates of the Bindunuwewa camp. There are various estimates of the crowd that entered the camp that morning ranging from a few hundred to several thousands. From what we could gather from the evidence available to us we felt that the large estimates of 2000-3000 exaggerated the size of the crowd. These estimates must be received with caution as they appear to be calculated to mitigate the inaction of the police. In any event the crowd that collected had not possessed any firearms and were armed only with knives poles and implements. The police on the other hand were fully armed and could have easily brought the crowd under control and dispersed it; at least some of the persons who were leading the crowd could have been arrested.

The Situation preceding the Events of the 25th.

All the accounts of the incidents that occurred on the 25th agree that the inmates had agitated for their release and had acted in an unruly manner. The accounts however differ in regard to the nature and seriousness of the disturbance that had been caused. A small crowd of "villagers" had collected and the inmates and the crowd had thrown stones at each other. What is however clear is that by about 11.30 p.m. the situation had returned to normal. The army which had arrived on a message from the police had left at around that time. According to the information supplied to us by the police about 30 police officers had been left behind to guard the camp. At this stage, both the police and the army had apparently assumed that there was no

serious threat to the security of the inmates.

We also made inquiries concerning the relations between the camp inmates and the residents in the neighbourhood. The SSPs stated that the residents had complained against the continuance of the rehabilitation camp in Bindunuwewa. In 1998 there had been an exchange of correspondence between the SSP Bandarawela Police Division and the OIC of the centre in which issues regarding the security of the centre had been raised. The SSP had stated that he was not in a position to provide additional security to the camp owing to a shortage of police cadres and had recommended that the centre be relocated. There is however no evidence of any overt agitation or collective protest against the camp or its inmates by the residents. Our regional co-ordinator who had regularly visited the camp has reported that the relations between camp inmates and residents had not given cause for any concern prior to these incidents.

However the incidents of the 24th suggest that the inmates were raising new demands and articulating them more aggressively. We have not been able to investigate whether this was due to the activity of detainees who had come recently and who were out to create a disturbance in the centre with some ulterior motives. The name of Anton James was mentioned to us as one of the agitators. The survivors whom we questioned were not able to speak with any certainty about James and the role he played in the disturbances of the 24th. But this is an aspect of the Bindunuwewa tragedy that should be fully investigated.

Action after the 25th

The action taken by the local police to arrest the persons who were responsible for the violence and the killings seems to have been totally ineffective. Mr. Premaratne the SSP Bandarawela commenting on the action taken admitted that the manner in which large numbers of villagers resident in the neighbourhood of the camp had been arrested had only had the effect of thwarting any purposeful process of investigation. The timely action taken to send special investigating teams from Colombo would hopefully prevent any cover-up by all those who are accountable for the police inaction that led to the tragedy.

We strongly recommend that there be a fair, impartial and effective investigation into the events that occurred and that appropriate and deterrent disciplinary action be taken against the errant officers irrespective of rank and the full rigour of the law be visited on all offenders who should be prosecuted swiftly and brought to justice.

We welcome the decision by the government to pay compensation to the families of the deceased and to the injured.

Posters

When we interviewed the two SSP we found that they were unaware that a large number of posters had appeared in Bandarawela town, allegedly on the night of the 24th inciting people to violence against the inmates and the rehabilitation camp. The posters provide a line of investigation which may lead to persons or organizations which may have planned and led the attack on the camp. We learn that a statement made by one of the suspects who has been arrested had identified and named some of the persons who were responsible for the posters. He has further identified those who instigated the violence and led the attack on the camp. We strongly recommend that this line of investigation be pursued. We think such a course of action is vital, as all the information we have been able to gather so far does not suggest that what occurred on the 25th was an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack.

Issues Pertaining to Rehabilitation

The administration and management of rehabilitation under the provisions of section 20A(1) B(1) and C (1) of the Emergency Regulations of May 2000 need to be reviewed.

The inmates of the Bindunuwewa Rehabilitation centre were all young persons sent to the centre on a rehabilitation order of the Defence Secretary. They included both suspects arrested under the PTA as well persons who had surrendered voluntarily to escape the LTTE. Some of them were as young as 11-14 years. The policy of sending all these persons to one centre and treating them alike is inadvisable and needs to be re-examined. The location of centres of this type would also need careful consideration. In some cases where the inmates cannot get back to their homes on account of the LTTE, the release after they complete their term of rehabilitation poses problems which need to be satisfactorily resolved. The Commission proposes to examine all these problems and make recommendations for dealing with them.

Safety of the Survivors

A matter which engaged our urgent attention was the security of the survivors who were hospitalized. We made some interim arrangements with the Commanding Officer of the Diyatalawa camp who readily agreed to be responsible for their safety until they were discharged. The detainees expressed concern for their safety and requested that they be relocated in a safer area. The security and welfare of these survivors is a matter that should be given immediate attention by the authorities.

Initiatives to Promote Ethnic Harmony and Reconciliation

Interim Report of the Sri Lankan Human Rights Commission

One of the disturbing conclusions emerging from the Bindunuwewa incidents is that our society is still not free from racial violence and that it can express itself in very brutal forms. The Bindunuwewa tragedy needs to be inquired into fully and all the underlying causes that led to the atrocity uncovered. The disturbances and unrest within the centre, the unusual speed with which a group mounted a poster campaign, the violence in the plantation areas that followed the incidents (which included the killing of two detainees from the plantation areas), the inaction of the police, the participation of local residents people regardless of the numbers involved, role and possible involvement of outsiders, all point in different directions and open different lines of investigation. No doubt, investigations have to be pursued on all these lines and everyone responsible for the incidents of the 25th and who has any complicity in them need to be brought to justice speedily. At the same time it would be necessary to strengthen all the initiatives that have been taken in the recent past to promote ethnic harmony and reconciliation and involve the local communities more effectively in those efforts.

On our return to Colombo and learning of the disturbing developments in the Plantation areas, we contacted the Secretary of the Ministry of National Integration and Ethnic Affairs and stressed the need for immediate action such as the formation of peace committees at the local level with the support of religious leaders and civil society organisations. There is also need for launching a medium and long term programme of national integration and ethnic harmony drawing lessons from the Bindunuwewa case.

Faisz Musthapha PC, Chairman/HRC

Godfrey Gunatilleke, Commissioner/HRC

Manouri Muttetuagama, Commissioner/HRC

Sarath Cooray, Commissioner/HRC

N. Selvakkumaran, Commissioner/HRC

01 November 2000

Human Rights Commission of Sri Lanka

Colombo

VI: Supreme Court judgment on acquittal of the accused of the Bindunuwewa massacre

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. Munasinghe Arachichige Sammy

S.C. Appeal 20/2003 (TAB)

H.C. Colombo No. 763/2003

2. Dissanayake Mudiyanseelage Sepala

3. Rajapaksa Mudiyanseelage Premananda

4. Senaka Jayampathy Karunasena

5. Tyron Roger Ratnayake

Accused-Appellants

Vs

Hon. Attorney-General

Respondent

Before T.B. Weerasuriya, J.

C.N. Jayasinghe, J.

N.K. Udalagama, J.

N.E. Dissanayake, J.

Raja Fernando, J.

Counsel: Dr. Ranjith Fernando for 1st, 2nd and 3rd Accused-Appellants

D.S. Wijesinghe P.C. with Priyantha Jayawardena Chandrika Silva and K. Molligoda for the 4th Accused-Appellant.

C.R. de Silva P.C. Solicitor-General with Sarath Jayamanna SSC and P.Nawana SSC for the Respondent

ARGUED ON: 12.11.2004, 23.11.2004, 29.12.2004 AND 30.11.2004

Supreme Court judgment

WRITTEN SUBMISSIONS

TENDERED ON: 05.01.2005 AND 02.02.2005

DECIDED ON: 21.05.2005-06-20

WEERASURIYA J

This case was tried against 41 accused before a Trial -at-Bar upon an indictment containing 83 counts.

For convenience, 83 counts in the indictment could be classified into five groups in terms of the alleged offences based on two different principles of criminal liability, as follows:-

- (1) Count 1 of the indictment alleged that on or about 25th October 2000 at Bindunewewa, Bandarawela, the accused along with others unknown to the prosecution were members of an unlawful assembly, the common object of which was to cause hurt to the detainees of the Bindunuwewa Youth Rehabilitation and Training Centre and thereby committed an offence punishable under Section 140 of the Penal Code.
- (2) Counts 2 - 22 of the indictment alleged the commission of the offence of murder of 27 detainees (named in the indictment) by the members of the said unlawful assembly in the prosecution of the common object of the said unlawful assembly or was such that the members of the said unlawful assembly knew to be likely to be committed in the prosecution of the said object and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.
- (3) Counts 29 - 42 of the said indictment alleged the commission of the offence of attempted murder of 14 detainees (named in the indictment) by the members of the said unlawful assembly in the prosecution of the common object of the said unlawful assembly or was such that the members of the said unlawful assembly knew to be likely to be committed in the prosecution of the said object and thereby committed an offence punishable under Section 300 read with section 146 of the Penal Code.
- (4) Counts 43 - 69 of the indictment alleged the commission of the offence of murder of 27 detainees (named in the indictment) by the accused along with others unknown to the prosecution and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
- (5) Counts 70 - 83 of the indictment alleged the commission of the offence of attempted murder of 14 detainees (named in the indictment) by the

Supreme Court judgment

accused along with others unknown to the prosecution and thereby committed an offence under section 300 read with section 32 of the Penal Code.

The prosecution led the evidence of 58 witnesses comprising officials of Bindunuwewa Rehabilitation Camp, senior Police officers in charge of the area, Army officers who came to assist the Police to disperse the crowd, certain Police officers who were on duty at the time of the attack, most of the detainees who survived the attack, several villagers, Medical Officers who conducted the post-mortem and medico-legal examinations in respect of the deceased and injured detainees, and police officers who conducted investigations.

At the close of the prosecution case on 21/06/2003, 23 accused listed on the indictment were discharged on the application made by the State on the basis that there was no evidence against them. The remaining 18 accused were called upon for their defence and at the conclusion of the trial 5th, 7th, 12th, 15th, 19th, 25th, 33rd, 34th, 35th, 36th, 38th, 39th and 40th were acquitted of all the charges. 4th, 13th, 21st, 32nd, and 41st accused were convicted on 1st, 2nd, 16th, 29th, 30th, 31st, 33rd, 35th - 37th, 38th, 39th, 41st and 42nd counts, and following sentences were imposed on them:-

Counts 2 - 16 death sentence

Count 1- 6 months R.I.

Counts 29 - 1 year R.I.

Count 30 - 7 years R.I.

Count 31 - 3 years R.I.

Count 33 - 2 years R.I.

Count 35 - 1 year R.I.

Count 36 - 1 year R.I.

Count 37 - 1 year R.I.

Count 38 - 3 years R.I.

Count 39 - 2 years R.I.

Count 41 - 1 year R.I.

Count 42 - 1 year R.I.

They were also fined Rs. 1000/- each on counts 30, 31, 33, 38 and 39 of the indictment.

General Comments

It is to be noted that the foregoing charges were a sequel to the killing of 27 detainees and injuring 14 detainees at the Rehabilitation Centre at Bindunuwewa on 25.10.2000.

The first three accused-appellants who were residents of Bindunuwewa village, had been convicted on account of their membership of the unlawful assembly with the common object of causing hurt to the detainees of the Rehabilitation Camp and thereby attracting vicarious liability in terms of section 146 of the Penal Code in respect of the charges in the indictment.

The 4th and 5th accused-appellants being Police Officers who were on guard duty around the camp on 25.10.2000 were found guilty on the basis of the illegal omissions and positive (illegal) acts for having aided and abetted the commission of offences set out in the indictment and thereby rendered themselves to be members of the unlawful assembly resulting in criminal liability in terms of section 146 of the Penal Code. Accordingly items of evidence with regard to the villagers (1st, 2nd and 3rd accused-appellants) would differ from the evidence presented by the prosecution against the Police Officers (4th and 5th accused-appellants) Thus complicity of the two groups as classified above will be considered separately under two different heads in this judgement. In fact, the Trial-at-Bar proceeded to examine the evidence in respect of the accused based on that same classification.

At the hearing of this appeal on the application of the learned Solicitor General, the 5th accused-appellant was acquitted of all the charges preferred against him.

Submissions on behalf of 1st - 3rd accused - appellants

Learned counsel for the above appellants submitted that the Trial-at-Bar had failed to consider the following circumstances and thereby misdirected itself in imputing vicarious liability on the 1st - 3rd accused-appellant.

- (a) that the evidence led against the 1st - 3rd accused-appellants only established their presence at the scene on 25/10/2000.
- (b) that the evidence disclosed that there was a 'news' that Tigers were attacking the village and due to that reason there was a large gathering of villagers ranging from a minimum of 500- to 3 - 4 thousand at various points at various times.
- (c) That the Trial-at-Bar had wrongly applied the "Lucus principle and the Ellenborough principle" in respect of these accused-appellants.

The situation at the Rehabilitation Camp on 24th night as a background to the incident.

On 24th night when Headquarters Inspector Jayantha Seneviratne came to the camp on the information he received that there was a commotion in the camp and that the detainees had tried to grab weapons from the officers, the villagers had assembled near the camp. They (the villagers) had received the information that Lt. Abeyratne had been attacked and injured and that the Police post inside the camp had been abandoned, which were factually correct. The crowd witnessed the remnants of the Police post being removed and the detainees abusing the Police and throwing stones. The villagers had planned to stage a peaceful Satyagraha opposite the camp on the following morning, for removal of the camp. Accordingly, posters were seen all over the town calling for the removal of the camp on the following morning.

The Police sought the assistance of the army and Lt. Balasuriya who came with a platoon of 24 men around 8.50 p.m. dispersed the crowd and left around 1.30 a.m.

Commencement of the unlawful assembly

Evidence led at the trial reveals that the villagers had assembled on 25th morning in large numbers. As the crowds continued to swell, there were reports of traffic congestion and blocking of roads. The number of villagers gathered on 25th morning had been estimated as varying between a minimum of 500 to three to four thousand people.

The detainees were seen inside the camp by Capt. Abeyratne walking along with clubs in their hands. The detainee Asokhan had conceded that they (detainees) carried clubs, rods, iron poles, knives and axes.

The incident of stone throwing which took place on 25th morning from both sides were not considered as a threat to the detainees as conceded by Lt. Abeyratne.

It was evident that the immediate cause for the attack by a section of the crowd was the provocative act of the detainees, in charging into the crowd with clubs, rods and stones in their hands. The crowd having retreated for a moment which reflected a moment of having got frightened, nevertheless broke into the camp with all their fury from the Vidyapeeta site. It is from this point one could assert with justification the commencement of the unlawful assembly with the common object of causing hurt to the detainees.

Law relating to membership of unlawful assembly and vicarious liability

Section 138 of the Penal Code defines an unlawful assembly. For the purpose of this case it is sufficient to state that an unlawful assembly of five or more persons is designated an unlawful assembly, if the common object of the persons comprising that assembly is to commit any offence.

Section 139 of the Penal Code provides that;

“ Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly or continues in it, is said to be a member of an unlawful assembly.”

The effect of this section was considered in the early case of *Kulatunga v. Mudalihamy* (42 N.L.R. 331) where it was held that the prosecution must prove that there was an unlawful assembly with a common object as stated in the charge. So far as each individual is concerned, it had to prove that he was a member of the assembly which he intentionally joined and that he knew the common object of the assembly.

The vicarious liability imputable on the basis of being a member of an unlawful assembly as provided for in section 146 of the Penal Code read as follows:

“If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence is a member of the same assembly, is guilty of that offence.”

In terms of that section, for vicarious liability to be imputed on the members of an unlawful assembly the prosecution must prove either

- (a) that the offence was committed in prosecution of the common objective of the unlawful assembly, or
- (b) that the members of the unlawful assembly knew that the offence was likely to be committed in prosecution of the common object.

(Vide *Andrayes v. Queen* 67 N.L.R. 425)

It is well settled law that mere presence of a person in an assembly does not render him a member of an unlawful assembly, unless it is shown that he has said or done something or omitted to do something which would make him a member of such an unlawful assembly or where the case falls under section 139 of the Penal Code.

Dr. Gour in *Penal Law of India* discusses the law in respect of unlawful assembly as follows: (Vol 11 page 1296 - 11th edition.)

“ All persons who convene or who take part in the proceedings of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without taking any part in the proceedings are not guilty of the offence, even though those persons possess the power of stopping the assembly and fail to exercise it.

Mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he has done something or omitted to do something which would make him a member of an unlawful assembly or unless the case falls under section 142 I.P.C.....If members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It would be necessary therefore for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly. Where the evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons like guns, spears.... axes etc. this kind of omnibus evidence has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication”

Dr Gour at page 1299 states that

“.....the first thing to remember in cases of this nature is that where a large number of persons has assembled and some of them resort to violence or otherwise misbehaved, it need not necessarily mean that every one of the persons present actually shares the opinions, intentions or objects of those who misbehave or resort to violence.

In fact the possibility of some of the persons actually resenting or condemning the activities of the misguided persons cannot be ruled out. Caution should therefore be exercised while deciding which of the persons present can be safely described as members of an unlawful assembly. Although, as a matter of law, an overt act on the part of a person is not a necessary factor bearing upon his membership of an unlawful assembly, in a case of this nature it will be safer to look for some evidence of participation by him before holding that he is a member of the unlawful assembly.”

It would be helpful to reproduce the following passages from RATANAL and DHIRAJLAL's Law of Crimes dealing with the same issue. Vol. 1, 24th Ed. pages 598 and 599)

“It is settled law that mere presence of a person at the place where members of unlawful assembly had gathered for carrying out their illegal common objects does not make him a member of such assembly. The presumption of innocence would preclude such a conclusion. Whether a person was or was not a member of unlawful assembly is a question of fact. .”

Whenever in uneventful rural society something unusual occurs, more or so where the local community is faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with the view of participating in the occurrence but as curious spectators. In such an event,

mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly. Vicarious liability would attach to every member of the unlawful assembly if that member of the unlawful assembly either participates in the commission of the offence by overt act or knows that the offence which is committed was likely to be committed by any member of the unlawful assembly. If one becomes a member of the unlawful assembly and becomes or continues to remain a member of the unlawful assembly and his association in the unlawful assembly is clearly established, his participation in commission of the offence by overt act is not required to be proved if it could be shown that he knew that such offence was likely to be committed in prosecution of the common object of the unlawful assembly. But while finding out whether a person was a curious spectator or a member of an unlawful assembly, it is necessary to keep in mind that the life in a village is ordinarily uneventful except for small squabbles where the village community is faction ridden and when a serious crime is committed, people rush just to quench their thirst to know what has happened.

Where a large crowd collected, all of whom are not shown to be sharing the common object of the unlawful assembly, a stray assault by any one accused or any particular witness could not be said to be an assault in prosecution of the common object of the unlawful assembly so that the remaining accused could be imputed the knowledge that such an offence was likely to be committed in prosecution of the common objective of the unlawful assembly.

A mere innocent presence in an assembly of persons does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a Court is not entitled to presume that any and every person who was proved to have been present near a riotous mob at any time or to have left at any stage during its activities is in law guilty of every act committed by them from the beginning to the end or each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage but at all the crucial stages and that he shared the common object of the assembly at all these stages. It is not uncommon that an unruly crowd on the rampage may contain some miscreants who may go beyond the common object and commit ad hoc crimes graver than the mob had as its objective.

ASSESSMENT OF CULPABILITY OF 1ST - 3RD ACCUSED - APPELLANTS

(A) 1st Accused -appellant (Munasinghe Arachchige Sammy)

The evidence which is seemingly incriminatory against the 1st accused-appellant emanates from two witnesses namely Ariyasena and Piyasena. These two witnesses had arrived at the scene at two different times and speak to facts and circumstances after the attack on the camp had virtually ended which was evident by the fact that when they arrived at the scenes billets were on fire. As between Ariyasena and Piyasena, the first to arrive at the scene was Ariyasena.

E.A.C. Ariyasena, a postman attached to Makulella Post Office on his way to work around 7.00 a.m. on 25.10.2000 had seen a large gathering of people around the camp. After his work he came back to the camp around 8.20 or 8.30 and found two billets on fire and a crowd of 3000 - 4000 people gathered at various points, namely, Vidyapeeta grounds, near the gate and around the camp. In his view the crowd inside the camp, was in the region of 700 - 800, who were armed with clubs. Driven by a desire to ascertain the plight of the detainees, some of whom were known to him, he entered the camp through the cemetery side and saw a young boy falling on to the fire and rescued that boy. Soon thereafter another boy came and informed him that the injured boy was his brother. Ariyasena looked for some water and went towards the kitchen and having failed to find some water he took the boys along the edge of the ground, when someone struck him a blow on his back. On turning round he saw a crowd of about 20 - 30 armed with clubs, among whom was the 1st accused-appellant.

The Trial -at -Bar had erroneously stated that after receiving a blow on his back when Ariyasena turned round he saw only the 1st accused-appellant armed with a club which could lead to a wrong inference being drawn that it was the 1st accused-appellant who struck Ariyasena when he was taking the two boys to a safer place. (page 66 of the judgment)

There was another item of evidence which could give a different complexion in respect of the attitude of some people were gathered inside the camp, towards the detainees, if viewed in proper perspective. Ariyasena disclosed that he called for help from a person whom he described as "Hitchchi" to take the injured boys to Vidyapeeta grounds and he (Hitchchi) obliged even though with some reluctance. (vide Vol. V pages 2152 and 2164) It must be noted that the people inside the camp were found armed with clubs (vide Vol. V, p 2134)

The question may be suitably posed as to why the 1st accused appellant did not assist Ariyasena...illegible....only an innocent villager. It has to be recalled

that Ariyasena did not seek assistance from the 1st accused appellant and someone in the crowd had shouted whether Ariyasena was a tiger. This would show that there were some elements inside the camp who had strong feelings against the detainees. Therefore the difficult question is how to distinguish between people who formed the unlawful assembly to cause hurt to the detainees, and the innocent villagers who had come there to witness the incident who could be falling into the category of "Hitchchi" due to the circumstances peculiar to this case, which would be enumerated later in the judgment.

The Trial - at- Bar had observed that if Sammy (1st accused-appellant) had no intention to cause hurt to the detainees without going into the camp with a club in hand at the commencement of the attack he could ..illegible ...camp Accordingly, the Trial-at-Bar was of the view that the accused-appellant's presence inside the camp at the commencement of the attack armed with a club, was sufficient to draw the inference that he was a member of the unlawful assembly with the object of causing hurt to the detainees.

The finding of the Trial-at -Bar that the 1st accused-appellant was present at the commencement of the attack is erroneous for the reason that there was no evidence to that effect. The evidence of Piyasena does not support the proposition that the 1st accused-appellant was near the camp with a club in hand at the commencement of the attack. It is to be emphasised that Piyasena had arrived at the camp between 9.00 and 9.30 a.m. and he had seen the 1st accused-appellant near Sugathan Mama's boutique which was 150 meters away from the camp. It is manifest that when Piyasena came to Sugathan Mama's boutique the attack was almost over and the billets were on fire. This is evidenced by the fact that Captain Dematapitiya who arrived at the camp after 9.45 a.m. dispersed the crowd assembled near Sugathan Mama's boutique. It must be noted that within 20minutes after the arrival of Piyasena, the army had come and dispersed the crowd. Therefore there was no evidence to suggest that the 1st accused-appellant was found near the camp by Piyasena, at the commencement of the attack on the camp, having assembled near Sugathan Mama's boutique.

It is to be noted that the Trial-at-Bar too had observed at page 27 of the judgment that when Piyasena arrived at the scene, the camp was on fire and the detainees were 'finished' implying that they were not alive by that time.

On an overall examination of the evidence, the presence of a large gathering of people ranging from a minimum of 500 persons to three thousand persons in and around the camp could be due to several reasons. It was revealed that among the gathering were a Buddhist priest of the temple, women, students of Vidyapeetiya and ordinary villagers (vide evidence of Piyasena) The reasons for the unusual gathering of people could be summarized as follows:

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- (1) the incident on 24th night involving detainees which culminated in the removal of the Police Post.
- (2) the news that the detainees who were suspected of having connections with the L.T.T.E. taking control of the camp.
- (3) The information that the Deputy Commander of the camp Lt. Abeyratne had been injured due to an attack by a detainee.
- (4) the decision of the villagers to stage a peaceful satyagraha in the morning calling upon the authorities to remove the camp from Bindunuwewa and the publication of posters in the town to that effect.
- (5) the fear and anxiety of villagers about their safety and the curiosity to know as to what is happening in the camp.

In view of the circumstances peculiar to this case as enumerated above which generated an unusual interest among the villagers in respect of the incident at the camp, it is justified to expect a group of innocent villagers who may or may not form the majority to gather without any intent of causing hurt to the detainees. In the circumstances, it would be safer to look for some evidence of participation by each person alleged to be a member of the unlawful assembly, lest innocent persons be punished for no fault of theirs although as a matter of law an overt act is not a necessary factor bearing upon membership of an unlawful assembly.

In the light of the material adverted to in the preceding paragraphs I am of the view that it is unsafe to arrive at a finding that the 1st accused-appellant was a member of the unlawful assembly with the object of causing hurt to the detainees named in the indictment.

(B) 2nd Accused-appellant (Sepala Dassanayake)

The evidence to impute liability on the 2nd accused-appellant emanates from Wickremasnghe Banda, a technical officer of the Vidyapeetaya (Training College) . He testified that he saw 2nd accused-appellant coming out of the main entrance of the camp with a club in hand.

He admitted in his evidence that his statement to the C.I.D. was based mainly on the facts disclosed to him by the Vice Chancellor and other villagers. He referred in particular to the fact that it was from the Vice Chancellor that he came to know that the 2nd accused-appellant was armed with a club. He admitted that he gave false evidence in Court for fear of reprisal by the villagers. Nevertheless, at a subsequent stage of his evidence he stated that he actually witnessed the incident and that his evidence was not false or hearsay.

Having regard to the material on which he gave false evidence in respect of the 2nd accused-appellant, it is not prudent to rely on his evidence to sustain a verdict of guilt pronounced on the 2nd accused-appellant.

(C) 3rd Accused-appellant (Rajapakse Mudiyansele Premananda)

The evidence against the 3rd accused-appellant emanates from the following witnesses:-

- (1) Don Sugath Jayantha
- (2) Rick Anderson
- (3) Dr. E.A.G. Wijeratne.

The 3rd accused-appellant had gone with Sugath Jayantha and Padmananda to the camp as they had heard that the detainees were attacking the village. The 3rd accused-appellant had alighted from the vehicle near the Agricultural Training Centre and had gone into the camp where there was a commotion. After about 15 minutes, he had come running with a bleeding wrist injury stating that he had cut his hand by an aluminium sheet. He had taken treatment for the injury from Dr. Anderson and given his name as Siripala.

The Trial-at-Bar had held that since the 3rd accused-appellant had stayed inside the camp for about 10- 15 minutes, he should explain as to how he got injured; his subsequent conduct namely, giving a false name to Dr Anderson raises suspicion and that he tried to cover up as to how the injury occurred.

There is no dispute that the 3rd accused-appellant had gone into the camp and stayed there for 10 - 15 minutes and that he had received a cut injury whilst he was inside the camp.

It is to be noted that the suggestion to go to the camp had come from Padmananda who accompanied Jayantha and the 3rd accused-appellant and the reason for that was given by Padmananda himself that the detainees were attacking the village. On their way to the camp, they had refrained from discussing anything pertaining to the incident in the camp suggestive of any positive act either offensive or defensive in nature. It would appear that their visit to the camp was solely motivated by curiosity on the information that the detainees were attacking the village. This attitude is clearly reflected by the fact that the 3rd accused-appellant had gone into the camp unarmed.

Lucas principle

The prosecution sought to apply the principle laid down in *Rex v. Lucas* (1981) 2 ALL ER 1008) and followed in the local case of *Karunanayake v. Karunasiri Perera* (1982 2SLR 27) The principle laid down in the *Lucas* case

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was that statements made out of Court which are proved or admitted to be false in certain circumstances amount to corroboration. Lies proved to have been told in Court by a defendant is equally capable of providing corroboration.

It is to be noted that a lie told out of court, or in court to be capable of amounting to corroboration must satisfy the following requirements:-

- (1) It must be deliberate
- (2) It must relate to a material issue.
- (3) The motive for the lie must be a realization of guilt and a fear of the truth.
- (4) The statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

There is no doubt that the 3rd accused-appellant had given a false name to Dr Anderson in seeking treatment for his injury found on the wrist area. There is no explanation either from Sugath Jayantha or from the 3rd accused-appellant for giving a false name to the doctor. What has to be ascertained is whether the motive for the falsehood by the 3rd accused-appellant was the realization of the guilt and a fear of the truth. In other words the court has to ascertain whether he knew, that if he told the truth, he would be sealing his fate.

Neither Dr Anderson nor Dr Wijeratne who examined the 3rd accused-appellant on 30th November rejected the proposition that the injury found on his wrists area could be caused by an aluminium sheet. In fact, Dr Wijeratne had confirmed that such an injury could be caused by a sharp edged surface. Therefore there is no material to reject the assertion by the 3rd accused-appellant that the injury was caused by an aluminium sheet. It would appear that Dr Anderson had been satisfied of the statement made by Jayantha that the injury found on the 3rd accused-appellant was caused by an aluminium sheet. There was no evidence to suggest that Dr Anderson had inquired from the 3rd accused-appellant as to the manner the injury was caused.

There was no allegation that the 3rd accused-appellant had given a false address or insufficient address although the name he gave was false. Dr Anderson had noted in his register that the patient named Siripala was brought by Sugath Jayantha, the van driver known to him.

In this situation, the identity of the 3rd accused-appellant could be readily obtained from the person who brought him for treatment. Accordingly, it is difficult to state that by giving his name as Siripala, he could effectually

prevent his identity being established. In the circumstances, it is not justifiable to hold that the 3rd accused-appellant knew that if he told the truth, he would be sealing his fate. Further, there was no material to suggest of an attempt being made to suppress the evidence of Jayantha relating to the visit to the Bindunuwewa camp on 25.10.2000.

The rule laid down in *Rex v Lucas* (supra) is that a falsehood uttered in Court or outside court by a defendant could be taken as corroboration of the evidence against a defendant. The evidence which is sought to be corroborated by the alleged false statement is the evidence of Sugath Jayantha that the 3rd accused-appellant had gone into the camp unarmed and after 15 minutes he had come out of the camp with a cut injury on his right wrist area.

Nevertheless the question is on these facts whether an irresistible inference could be drawn that he intentionally joined an unlawful assembly with the common object of causing hurt to the detainees.

Ellenborough dictum

It was contended by the prosecution that by applying the dictum of Lord Ellenborough, in *R v. Cocharane*, it was obligatory on the 3rd accused-appellant to offer an explanation as to the manner he received an injury on his wrist area.

In his dock statement, the 3rd accused-appellant stated that having heard about the commotion in the camp he went near a tube well in the vicinity of the camp to see what was happening and that he did not harm or kill anyone.

It is necessary to examine the dictum of Lord Ellenborough in *Rex v. Cocharane* (1814 Gurneys Report 499) which reads as follows:

“No person accused of crime is bound to offer any explanation of his conduct or of circumstances of suspicion which attach to him, but nevertheless, if he refuses to do so where a strong prima facie case had been made out and when it is in his power to offer evidence, if such exist in explanation of such suspicious appearances, which would show them to be fallacious and explicable consistency with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest.”

This dictum has been applied in Sri Lanka both in cases of circumstantial and direct evidence. It must be noted that in the following cases this dictum was applied where a strong prima facie case had been made out against the accused.

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- (1) Inspector Arendstz v Wilfred Peiris (10 C.L.W. 121)
- (2) R. v. Seeder Silva (41 N.L.R. 337)
- (3) King v. Wickramasinghe (42 N.L.R. 313)
- (4) King v. Peiris Appuhamy (43 N.L.R. 410)
- (5) King v. Endoris (46 N.L.R. 490)

On a careful survey of these cases, it is manifest that a condition precedent to the application of this dictum is that there must exist a strong prima facie case made out against the accused.

In the instant case the purported incriminating circumstances against the 3rd accused-appellant relied upon by the prosecution were as follows:

- (1) that he was inside the camp for about 10 - 15 minutes and
- (2) that he came running with a bleeding injury on his wrist.

As against these purported incriminating circumstances, there were other circumstances as well, enumerated below which require careful consideration before one arrives at a decision whether a strong prima facie case has been made out:

- (1) that the suggestion to visit the camp originated from Padmananda, the other van driver;
- (2) that the information relating to the situation in the camp was provided by Padmananda;
- (3) that no discussion took place on their way to the camp of any action contemplated by the 3rd accused-appellant;
- (4) that he went inside the camp unarmed;
- (6) that at the time he went into the camp, there was a commotion;
- (7) that he came out running with a bleeding injury stating that it was caused by an aluminium sheet;
- (8) that there was no medical evidence to contradict the position that the injury was not consistent with having been caused by an aluminium sheet;
- (9) that the aluminium sheets were found inside the camp;

Having mentioned the totality of the aforementioned circumstances I am of the view, that the prosecution had failed to establish a strong prima facie case against the 3rd accused-appellant which warrants the application of the

dictum of Lord Ellenborough.

Conclusion

For the aforementioned reasons the convictions entered against the 1st, 2nd and 3rd accused-appellants cannot be sustained. Accordingly I allow their appeals and set aside the convictions and sentences in respect of 1st, 2nd and 3rd accused-appellants and acquit them of all charges preferred against them.

(II) ASSESSMENT OF CULPABILITY OF 4TH ACCUSED APPELLANT

(4th accused-appellant - Senaka Jayampathy Karunasena)

Submissions on behalf of 4th Accused-Appellant.

Learned President's Counsel for the 4th accused-appellant submitted that the Trial -at-Bar had seriously misdirected itself on the following matters in assessing the culpability of the 4th accused-appellant in respect of the charges levelled against him.

- (1) That the charges based on unlawful assembly are misconceived in respect of the 4th accused-appellant since there was no factual or legal basis to have joined him along with the unruly crowd as members of the unlawful assembly.
- (2) That the prosecution must establish necessary mens rea in respect of illegal omissions and positive (illegal) acts to impute vicarious liability in terms of section 146 of the Penal Code.
- (3) That the prosecution must present a consistent case against the accused- appellant whether by way of illegal omissions or positive (illegal) acts or both.

Basis of the prosecution case against 4th accused-appellant.

Learned Solicitor-General submitted that the prosecution presented its case against the 4th accused-appellant on the basis of illegal omissions and positive (illegal) acts. The allegation of illegal omissions consisted of the general allegation of intentional failure to comply with the duty imposed by law and certain specific illegal omissions by police officers. Two specific instances of illegal omissions highlighted were:

- (a) failure to arrest miscreants and
- (b) failure to take action when certain detainees were attacked inside the truck.

The positive (illegal) act enumerated by the prosecution were:

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- (a) shooting at the detainees and
- (b) removal of dead bodies with a view to destroy evidence.

Law relating to illegal omissions

The relevant provisions of the law which govern illegal omissions are found in sections 30, 31, and 42 of the Penal Code.

Section 30 - "In every part of the code, except where a contrary intention appears from the context which refer to acts done extend also to illegal omissions"

Section 31(1) "The word 'act' denoted as well a series of acts as a single act"

Section 31(2) "The word 'omission' denotes as well a series of omissions as a single omission."

Section 42 "A person is said to be "legally bound to do" whatever it is illegal in him to omit."

In Criminal Law by Wayne R Lufave and Austin W. Scott (Second Edition), (1986) at p 202) illegal omissions are defined as follows:

"More difficult, however are crimes which are not specifically defined in terms of omissions to act but only in terms of cause and result. Murder and manslaughter are defined so as to require the killing of another person; arson so as to require the burning of appropriate property. Nothing in the definition of murder, manslaughter or arson affirmatively suggests that the crime may or may not be committed by omission to act. But these crimes may in appropriate circumstances be thus committed. So, a parent who fails to call a doctor to attend his sick child may be guilty of criminal homicide if the child should die for want of medical care, though the parent does nothing of an affirmative nature to cause the child's death."

At page 210, it is stated that;

"one's failure to act to save someone toward whom he owes a duty to act is murder if he knows that failure to act will be certain or substantially certain to result in death or serious bodily injury. If he does not know that death or serious injury is substantially certain to result, but the circumstances are such as to involve a high degree of risk of such death or injury if he does not act (in some jurisdictions he must, in addition, be conscious of this risk), his failure to act will afford a basis for liability for involuntary manslaughter. A failure to act which, under the circumstances, amounts to no more than ordinary negligence would not, by the general rules of criminal homicide made him liable for either murder or manslaughter. Thus it cannot accurately be said that an omission to act (assuming a duty to act) plus death equals

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murder or equals manslaughter without considering the mens rea requirements of those crimes.”

The above proposition of the law would make it clear that the mere fact that there was a duty to act in the given circumstances and death has resulted due to the said failure to act will not be sufficient to establish the offence unless the prosecution proves that the omission was intentional.

Section 139 of the Penal Code lays down that;

“Whoever being aware of facts which render any assembly an unlawful assembly, intentionally join the assembly or continues in it, is said to be a member of an unlawful assembly.”

Therefore the vital ingredient of the offence of being a member of an unlawful assembly is the intention to join the assembly with a particular common object. Thus onus of proving the ingredient lies on the prosecution. In this case, the prosecution has sought to rely both on positive (illegal) acts and illegal omissions to establish the necessary mens rea on the part of the 4th accused-appellant. It is the duty of the prosecution to present its case consistent with this position. In order to establish an intention to join the unlawful assembly the purported (illegal) positive acts and the illegal omissions must necessarily point in the same direction.

The prosecution must necessarily rely on circumstantial evidence to establish that the 4th accused-appellant intentionally joined the unlawful assembly with the object of causing hurt to the detainees. Therefore the inescapable inference from both the positive acts and the omissions taken together must be that the 4th accused-appellant had only the intention to join the unlawful assembly with the common object of causing hurt to the detainees. If the proved facts do not exclude other reasonable inferences then a doubt arises whether the inference sought to be drawn is correct. (Vide *Rex v Seedar de Silva* (41 N.L.R. 337 at page 344 *King v. Abeywickrema* 44 N.L.R. 254)

Insufficiency of action: Does it amount to inaction?

The prosecution contended that the police did some acts to prevent the commission of offences but the action taken viewed in the light of final outcome, namely, death of 27 detainees and injuring 14 was insufficient and therefore the 4th accused-appellant entertained the common object of other members of the unlawful assembly.

There is no dispute that the Police Officers are bound to prevent the commission of offences. Chapter VIII of the Code of Criminal Procedure deals with the powers of the Police Officers to command any unlawful assembly which is likely to cause a disturbance of the public peace to disperse and their right to disperse such assembly and if the said assembly

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shows a determination not to disperse, the police are empowered to fire at them with a view to disperse such assembly.

Section 56 of the Police Ordinance lays down the duties of Police Officers as including the duty to preserve the peace and detect and bring offenders to justice and to use their best endeavour and ability to prevent all crimes, offences and public nuisances.

It is necessary to highlight that a decision with regard to the course of action that should be taken in a situation of this nature is essentially a matter within the discretion of the officer in charge of the police party. Departmental Order No. A 19 Rule 29 states "it will be appreciated that no rules or regulations can be drawn up for every conceivable contingency that may arise. The man on the spot that is Senior Police Officer at the scene must decide what best he should do and use his judgment and discretion as the situation may seem to dictate"

Part III B(2) of the said Departmental Order states as follows:

"in dealing with disorderly crowds the officer in charge of the Police must consider carefully the number of men at his disposal. Due regard must be paid to the particular circumstances of each case and as to whether the party of Police is strong enough to avoid any danger of being rushed and overpowered if the crowd is engaged in hand-to hand combat."

Having regard to the departmental orders referred to above the officer in charge has exercised his discretion bona fide and to the best of his ability, he cannot be faulted for the action he has taken even though it may appear that another course of action could have proved more effective in the circumstances.

Purported illegal omissions and positive (illegal) acts of the Police establishing their complicity.

The general allegation that the Police did nothing to save detainees came mainly from the two detainees namely Gnaeshamoor Ashokan and Kandasamy Chandrasekeran. Ashokan stated that the Police did not do anything when they saw crowds outside the camp carrying clubs. However, in re-examination he stated that Police shot at the fence to disperse them. (vide Vol. III page 1038)

Chandrasekeran stated that the Police did not come and save them when they were attacked but later admitted that he did not see any Police that time but he saw Police Officers at the initial stage when they were asked to stay inside the billets.

The evidence relating to alleged illegal omissions of the Police must be

assessed against the other evidence of detainees who sated that the Police took steps to save them. (Vide evidence of Uttaranathan - Vol 3 page 953) (Sinnatamby Rajendran) (Vol. III page 1179) (Ganeshamoorthy Ashokan - Vol. III page 1031 and 1038)

It was submitted by the prosecution that the 4th accused-appellant had admitted in his dock statement that he was stationed near the main entrance to the camp at the time of the attack implying that he could see the detainees being attacked and merely stood by and watched the attack. On a reading of the said dock statement it would appear that there was no such admission. He had stated that he came up to the entrance when the attack commenced and immediately ordered his men to shoot in the air and proceeded towards the camp. He had explained that the reason for not shooting at the attackers directly was the inability to distinguish between the detainees and the villagers in the commotion. It was revealed that he was not possessed of even tear gas equipment at the time, as seen from the evidence of A.S.P. Dayaratne who stated that he brought tear gas equipment when he came to the camp that morning.

Two purported specific acts of illegal omissions.

(1) Failure to arrest miscreants at the time of the incident.

It was submitted that the alleged omission would indicate that the Police did entertain an intention to share the common object of the members of the unlawful assembly.

In dealing with this allegation one has to be mindful of the fact that only 65 officers were available to the 4th accused-appellant at the time of the break-in by the unruly mob. The 4th accused-appellant was not in a position to muster the full strength of the Police unit at the entrance to the camp for the reason that some of his men were deployed around the perimeter of the camp running into approximately 1.5 kilometres. In the circumstances it would be clear that the Police were greatly outnumbered.

Considering the public feeling against the detainees and the fact that the Police were getting outnumbered any attempt to arrest the offenders could have led to a backlash against the Police. It is to be recalled that when Police did in fact arrest 367 persons on the following day, the villagers stormed the Police demanding their release on bail.

It was submitted by the prosecution that the Trial-at-Bar had held that if the 4th accused-appellant really wanted to guard the camp and to protect the detainees he could have positioned all his men around the billets without positioning his men around the parameters of the camp. This proposition is clearly unreasonable for the reason that the 4th accused-appellant was under

orders not to enter the camp premises.

In the light of the aforesaid material it is not justifiable to draw the inference that the failure to arrest the offenders on that day was an indication that the 4th accused-appellant shared the common object of the unlawful assembly. In this regard, what matters is the intention of the officers that would be seen from their actions and not on the extent of the damage.

(2) Failure to take action when detainees were attacked inside a truck

Two detainees namely Nicholas Edwin and Tambirajah Navarajah had given evidence that they were attacked by the crowd in the presence of the Police inside the truck parked at the entrance to the camp. However, Gamini Rajapakse a villager who gave evidence at the trial claimed that when a detainee who came running towards the Police truck near the turn off to the camp was attacked, there were no police officers at that point.

Purported positive (illegal)acts of the Police

The prosecution claimed that certain items of evidence led at the trial had taken the prosecution into a new dimension which shows that in addition to illegal omissions the police had done overt and positive acts. The purported positive acts were:

- (1) shooting by the police resulting in the death of 4 detainees.
- (2) Removal of dead bodies with a view to destroying the evidence.

Shooting by the Police

The evidence with regard to Police shooting emanates from the following witnesses:

- 1) Ganeshmurthy Ashokan
- 2) Perumal Easwaran
- 3) Sinnathamy Sudaharan
- 4) Kandasamy Chandrasekaran

The medical evidence has revealed that only one detainee had sustained and succumbed to gun shot injuries and injuries found on him were slanted upwards.

Ganeshmurthy Ashokan stated that he was shot by the Police when he with other detainees ran for protection. But in re-examination, he conceded that the Police shot in the air and shot at the fence to save them and at the point he lay on the ground. (Vol III p 1038)

Perumal Easwaran claimed that he was shot in the right hand and his finger was severed. However, evidence of Dr Kahandage clearly showed that he had cut injuries on both hands and a laceration in the right hand which had been caused by sharp edged weapons. (Vol, IV pages 1621 - 1623)

Though Sinnethamby Sudaharan claimed that he sustained gun shot injuries while he was running towards the playground, Dr Chandana who examined him testified that he had minor injuries on the face and right shoulder caused by a blunt weapon. (Vol IV pages 1561 - 1566)

Despite the assertion by Kandasamy Chandrasekeran that a detainee named Karunakaran was shot in the leg near the tube well, it was revealed at the post-mortem examination held by Dr Wijeratne on the body of Karunakaran that he had stab and cut injuries which could be caused by a sharp weapon and injuries caused by blunt weapons. It is to be noted that he had no gun shot injuries. (Vol. IV pages 1561 - 1566)

On the available evidence, it is apparent that the Police fired shots in the air from a lower elevation; from the road outside the camp. Most of the empty cartridges were found on the road near the entrance to the camp.

On a careful analysis of the evidence of 4 witnesses who testified on the act of shooting, it would appear that only one detainee had sustained gun shot injuries. The allegation that the Police shot at the detainees is not borne out by medical evidence. In the circumstances it is highly probably that the detainee who succumbed to gun shot injuries was accidentally shot when the Police were firing in the air.

The Trial-at -Bar had failed to evaluate the evidence with regard to the alleged shooting and had accepted the evidence of the detainees at its face value.

Removal of dead bodies

It was submitted that the Trial-at Bar had held that the Police had removed the dead bodies without having recourse to normal procedure with a view to destroy evidence. A.S.P. Dayaratne conceded that he was instructed by the D.I.G. to remove the bodies to preserve the peace in the area as there was a large concentration of Tamil estate workers in the surrounding area.

In view of the above evidence, it was a total misdirection by the Trial-at Bar to hold that dead bodies of the detainees were removed from the scene with a view to destroy evidence.

Positive acts by the police which would negate the proposition that there was an intentional failure on their part to prevent the commission of offences.

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The following items of evidence would reveal that police officers on duty around the camp did their best to prevent or minimize the harm which was being caused by the unruly mob. They would negate the position that there was an intentional failure on the part of the police and the 4th accused-appellant in particular to prevent the commission of offences and share the common object of causing hurt to the detainees. Even if the matter is left in a state of doubt, it is to be highlighted that the prosecution had failed to establish the necessary mens rea.

- (1) Police shot in the air with a view to disperse the crowd immediately when the crowd broke into the camp. (Vide evidence of Capt Dayaratne (Vol. II page 147) and evidence of Ashokan (Vol. III page 1038)

14 empty cartridges were found at the bend near the turn off to the camp and 6 empty cartridges were found near the turpentine tree inside the camp. The leaf of the turpentine tree had been damaged at a height of 10.7 meters indicating that firing was in the air.

- (2) The police drove away groups of people preventing them from entering the camp at various points.

(Vide evidence of Capt Abeyratne (Vol. II p 207)

Lt. Abeyratne Vol II page 275

Jeganathan Uttamanathan (Vol III page 955

P.C. Premadasa (Vol. III pages 834 - 837)

Gunapala - Grama Arakshaka - Vol III pages 912 & 913

- (3) police officers intervened and saved the detainees when they were being attacked.

(Vide evidence of Uttamanathan (Vol III p 952 & 957

Sinnathamby Rajendran (Vol. III page 1179)

- (4) Police took steps to dispatch injured detainees to the hospital.

(vide evidence of Ashokan , vol. III page 1031

- (5) The 4th accused-appellant deployed police officers who reported for duty under him having regard to the most vulnerable areas. It is to be noted that the available Police Officers had to be deployed around 8 1/2 acres of land which is approx 1.5 kilometers.

- (6) When the situation got out of hand, the 33rd accused who was under

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the 4th appellant, called for help twice that morning.

- (7) 4th accused-appellant gave clear instructions to the officers who were under him (a) not to allow anyone to enter the camp and (b) not to shoot unnecessarily except upon superior orders.

Conclusion

After a careful examination of all the material enumerated in the foregoing paragraphs, I am of the view that there is no merit in the contention that the 4th accused-appellant along with the villagers, was a member of the unlawful assembly with the common object of causing hurt to the detainees.

In the circumstances, I allow the appeal and set aside the conviction and sentences entered against the 4th accused-appellant and acquit him of all the charges preferred against him.

JUDGE OF THE SUPREME COURT

C. N. JAYASINGHE J

N. K. UDALAGAMA J

N.E. DISSAYAKE J.

RAJA FERNANDO J

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19. bid
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28. Alan Keenan, Making Sense of Bindunuwewa - From Massacre to Acquittals, LST Review, Law and Society Trust, Colombo, August 2005
29. Ibid
30. Sri Lankan Supreme Court overturns convictions in Bindunuwewa massacre by Deepal Jayasekera, 30 June 2005 available at <http://www.wsws.org/articles/2005/jun2005/sril-j30.shtml>
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33. All four accused acquitted, The Daily News, 28 May 2005
34. Sri Lankan Supreme Court overturns convictions in Bindunuwewa massacre by Deepal Jayasekera, 30 June 2005 available at <http://www.wsws.org/articles/2005/jun2005/sril-j30.shtml>
35. Ibid
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37. Ibid
38. Ibid

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- 39 . Ibid
- 40 . Ibid
- 41 . The Court states on p. 42 of their judgment that the police were armed with tear gas. But the Commission report seems to hold that no tear gas was available until reinforcements from the Bandarawela station arrived after the attack was over.
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Asian Centre for Human Rights

C-3/441-C, Janakpuri
New Delhi-110058, India
Phone/Fax: +91-11-25620583, 25503624
Email: suhaschakma@achrweb.org
Website: www.achrweb.org