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Sri Lanka: Miscarriage of Justice

Mass Acquittal in the Bindunuwewa Massacre Case

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1. Introduction

"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.¹

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

On 27 May 2005, a five-member bench of the Supreme Court of Sri Lanka comprising of Justices T.B. Weerasuriya, Nihal Jayasinghe, N.K. Udagama, N.E. Dissanayake and Raja Fernando acquitted all the four accused convicted by the Trial-at-Bar of the High Court on charges of mass murder of 28 inmates and attempted murder of 14 others at the Bindunuwewa Rehabilitation Centre on 25 October 2000.

The Bindunuwewa massacre was reminiscent of the massacre of 52 Tamil prisoners held under Prevention of Terrorism Act at the maximum-security prison of Welikeda in the capital Colombo in July 1983 when Sinhalese mobs including prisoners attacked the minority Tamil prisoners. The killing of 13 soldiers on 23 July 1983 near Thinevely, Jaffna by a group of Tamil armed opposition groups triggered the riots. Violence directed against the Tamil minority started immediately in Colombo, subsequently spreading throughout the country and several hundred Tamils were killed by Sinhalese groups, in addition to the 52 minority Tamil detainees.² The 1983 riots virtually gave birth to the armed movements by the ethnic minority Tamils.

The ethnic biases have plagued the administration of justice in Sri Lanka. It has been almost impossible for the ethnic minority Tamils to obtain justice. The impunity accorded by the Sri Lankan government to the perpetrators of racial violence has increased the alienation of the ethnic minority Tamils. The judgement of 27 May 2005 which established 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 will further increase the distrust of even the moderate Tamil minorities with the democratic institutions of Sri Lanka.

If the ethnic problem in Sri Lanka is to be resolved, the Sri Lankan government must do some soul searching on the mass acquittal of the Bindunuwewa massacre case. Blaming the lack of evidence – which is primarily the failure of the prosecution that systematically destroyed evidence from day one - is unlikely to assuage the sentiments of the victims and ethnic Tamil minorities. The ongoing reconciliation process has as much to do with finding a solution with the Liberation Tigers of Tamil Eelam (LTTE) as it has to do with

¹ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

² . Refer to Amnesty International's Annual Report 1984.

restoring the faith of the ethnic Tamil minorities. The administration of President Chandrika Kumaratunga has abysmally failed on that account.

President Chandrika Kumaratunga and her party's government must not focus only on the brutalities of the LTTE and the threat posed by it but also address the concerns of the Tamil diaspora and the international community about the discrimination and ethnic biases that run through the pillars of the State structure including the judiciary.

President Kumaratunga will undertake one-day visit to New Delhi on 2 June 2005. It provides an opportunity to reiterate that Sri Lankan government does not equate itself with armed opposition group, the LTTE; and that accountability, not impunity whether provided under the law or ensured through machinations of the administration, will be the core issue of any reconciliation processes with the Tamil minorities.

The accountability must start with the prosecution of the culprits of the massacre of the Bindunuwewa Rehabilitation Centre which was intended to be the showpiece for the outside world where former rebels of the LTTE were supposed to be rehabilitated rather than punished. Otherwise, devising the strategies to confront the LTTE or exposing the violence of the LTTE alone cannot address the root causes of the conflict with the ethnic Tamil minorities.

Suhas Chakma
Director

2. The Bindunuwewa Massacre

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 issues with the Officer-In-Charge (OC) Capt. Y.K. Abheyratna of the detainees rehabilitation centre on 24 October 2000 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.³

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 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 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.⁴

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.⁵

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 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. 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.⁶

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 victims⁷ (No.1 to 13) were identified on 25

³. Sri Lankan Human Rights Commission's interim report dated 01.11.2000 on the Bindunuwewa detainees' massacre

⁴. Ibid

⁵. Ibid

⁶. Ibid

⁷. Police name massacre victims, TamilNet, October 27, 2000

October 2000, other 6 victims⁸ (No.14 to 19) were identified on 31 October 2000. Nine victims remained unidentified as the bodies were charred beyond recognition.

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

3. Operation whitewash by SLHRC

Immediately following the massacre, a team of the Sri Lankan Human Rights Commission consisting of Chairman Faiz Musthapha and members Godfrey Gunatilleke, Manouri Muttetuagama 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.⁹

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.¹⁰

⁸ . Four more bodies identified, TamilNet, October 31, 2000

⁹ . Sri Lankan Human Rights Commission's interim report dated 01.11.2000 on the Bindunuwewa detainees' massacre

¹⁰ . Ibid

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.¹¹

Despite the evidence of the policemen's direct role in the massacre, the SLHRC essentially exonerated them, only charging them with dereliction of duty and set the tone for the final acquittal. This is despite the fact that apart from shooting those Tamil detainees who were trying to flee, there was clear complicity of the policemen.

The SLHRC report on the massacre also dispensed with some crucial details. For instance, it did not highlight the fact that at least two persons, including acting Jaffna mayor S Raviraj, had alleged that some of those injured at Bindunuwewa and warded at the Bandarawela hospital had been chained. The report also failed to emphasise the curious fact that the bloodstained poles and iron rods found by a team of investigators at the site of the massacre were not produced as circumstantial evidence in court.¹²

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

The investigation by the SLHRC was a mere cover up operation.

4. The Presidential Commission for Shielding the Culprits

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;

¹¹ . Ibid

¹² . http://www.hrdc.net/sahrdc/hrfquarterly/Jan_march_2002/srilanka_nhrc.htm

(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’.

Justice Kulatilaka Commission of Inquiry was another farce commission to shield the culprits. It was mandated to investigate and recommend on extraneous issues but not the prosecution of the culprits. Soon after the Kokkadicholai massacre of 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.¹³ No one was prosecuted.

Justice Kulatilaka Commission of Inquiry had completed its inquiry in November 2001 and officially handed over to the President some time in early 2002. But it has still not officially been released to the public in Sri Lanka.¹⁴

5. Justice mutilated

As the Justice Kulatilaka Commission of Inquiry was not mandated to recommend prosecution, investigations by the Criminal Investigations Division (CID) of the police and criminal proceedings by the Attorney General’s Department got underway. In effect, Justice Kulatilaka Commission of Inquiry had no use in the prosecution that culminated in the indictment of 41 suspects, among whom were 10 members of the police on 25 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. In the indictments handed down in March 2002, 31 local residents and 10 police officers were each accused of 83 counts. The 83 counts were composed of five categories: 1) one count of belonging to an unlawful assembly with the common

¹³ . Will the Bindunuwewa commission be effective? The Sunday Leader, 3 December 2000

¹⁴ . Bindunuwewa: Justice Undone?, State of Human Rights 2004, Law and Society Trust, Colombo

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).¹⁵

Out of the following 41 persons indicted 19 were policemen¹⁶:

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,

¹⁵ . State of Human Rights 2004, Law and Society Trust, Colombo

¹⁶ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/145/

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.¹⁷

The trial of the 41 suspects¹⁸ 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.¹⁹ The prosecution had given a list of 31 productions and 228 witnesses for the trial.²⁰ Testimony ended in January 2003, and all hearings had concluded by early May 2003.

After more than a year trial, Trial-at-Bar convicted two police officers - Senaka Jayampathy Karunaratne, former officer-in-charge of the Bindunuwewa Police and Tyrone Roger Ratnayake, and three Sinhalese civilians - Sepala Dissanayake, M.A.Sammy and R.M.Premananda and sentenced them to death on 1 July 2003.²¹ All others were acquitted.

The judgement of the Trial-at-Bar was challenged before the Supreme Court. The convicts in their appeals requested the Supreme Court to set aside their convictions and order 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.²²

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.²³

¹⁷ . Bindunuwewa masscre: Forty one indicted, by Kumar Wethasinghe available at http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/145/

¹⁸ Curiously, this is also the number of Tamil inmates present in the Bindunuwewa camp on the day of the attack.

¹⁹ High Court at Bar Case No. 763/2002.

²⁰ .Ibid

²¹ . Bindunuwewa massacre accused receive death sentences, TamilNet, July 01, 2003

²² . <http://www.tamilnet.com/art.html?catid=13&artid=12213>

²³ . Court to hear appeals of Bindunuwewa massacre accused, TamilNet, June 07, 2004

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.²⁴

In its judgement on 27 May 2005, the Supreme Court judges held that “the Trial-at-Bar had totally misdirected itself by holding that the police had removed the detainees bodies from the scene of the massacre to destroy the evidence since the evidence of ASP Dayaratne revealed 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”. The court also acquitted the three villagers, M.A. Samy, D.M.S. Dissanayake and R.M. Premananda.²⁵

It acquitted the first accused on the ground that the finding of the Trial-at-Bar that the first accused-appellant had been present at the commencement of the attack was erroneous since there was no evidence to that effect. The second accused-appellant was acquitted on the ground that it was not safe to sustain the verdict on the false evidence in respect of the second accused-appellant, admittedly given by Wickremasinghe, a technical officer attached to Bindunuwewa Training College. The third accused-appellant was acquitted as the prosecution had failed to establish a prima facie case against him. Justice Weerasuriya, head of the bench, as agreed by other judges, observed that after a careful examination of all materials, he was of the view that there was not any merit on the contention that the fourth accused-appellant Bandarawela Crime OIC S.D. Karunasena along with the villagers was a member of the unlawful assembly with the common object of causing hurt to the detainees.²⁶

How prosecution ensured mass acquittal?

The prosecutors had little intention to prosecute the culprits and systematically destroyed the evidences to ensure acquittal of the accused.

- The Attorney General’s Office did not take many of the most important findings of the Presidential Commission headed by Justice P. H. K. Kulatilaka into account while framing the indictments at the High Court’s Trial-at-Bar;
- The villagers and the police officers together were purposely accused of “unlawful assembly.” How could the police whose responsibility is to deal with “unlawful assembly” be themselves part of unlawful assembly, more so when there is a chain of command for the police? The police can be 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

²⁴ . All four accused acquitted, The Daily News, 28 May 2005

²⁵ . All four accused acquitted, The Daily News, 28 May 2005

²⁶ . Ibid

arrest not a single person! The fact that the report of the Justice Kulatilaka could not be released is self-explanatory.

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.²⁷ The first question is immediately involved in a second one, which concerns the failure to examine the degree of involvement of the HQI and the Assistant Superintendent of Police

- Of the more than 60 police officers stationed at the camp at the time of its attack, only those of medium rank officers – Sub-Inspector and Inspector – were charged. The senior officers ASP Dayaratne's and HQI Seneviratne were not charged despite the fact that they were the senior most officers present. Even those police officers who shot the fleeing inmates were not charged.
- As the witnesses were the villagers against their neighbours and when the prosecution is on their side, the evidence will always be in doubt.
- The prosecution **used photographic evidence** reportedly taken after the attack had taken place to show no specific crimes being committed. But 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.²⁸ From day one, there were efforts to erase all evidence.
- Finally, by awarding the death sentences which was not implemented since 1976, the confirmation of the death sentence automatically went to the Supreme Court to whitewash.

²⁷. 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.

²⁸. 94 Commission Hearings, 17 May 2001.

6. Issues ignored for protection of the culprits

Any court is as good as the prosecution. In Sri Lanka where the independence of judiciary under Chief Justice Sarath Nanda Silva, former Attorney General of Kumaratunga government, is seriously under question, the role of the investigators and prosecutors becomes more important. However, from day one, the investigators and prosecutors have been working in tandem to systematically destroy the evidence.

The five judges bench brushed aside a number of issues which were critical for conviction of the accused.

a. Organised massacre: Posters that were ignored

That Bindunuwewa massacre was an organized massacre was completely overlooked by the prosecution and the Supreme Court.

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”.²⁹

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”.³⁰

Justice Peduru Hewa Kankanange Kulatilaka’s Presidential Commission of Inquiry stated the following:

“(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 Samurdhi Niyamaka Kumarasinghe, a villager from Kandegedera, revealed that he was drawn towards the Rehabilitation Centre on 25 October 2000

²⁹ . http://www.hrdc.net/sahrdc/hrfquarterly/Jan_march_2002/srilanka_nhrc.htm

³⁰ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

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 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 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 (emphasis ours).* 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 such 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".

In fact, Justice Kulatilaka contradicted himself as the revolt by the inmates on 24 October 2005 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".

There were no attempts to find out the truth that it was an organized massacre.

b. 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.³¹

Justice Peduru Hewa Kankanange Kulatilaka's Presidential Commission of Inquiry stated the following:

“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 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.

³¹ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/151/

(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.³²

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.³³

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.³⁴

The police claimed that they had fired to stop the rioters.³⁵ However, the fact remained that not a single Sinhalese was found injured, let alone killed in police firing. The report

³² . Hacked by axe inside police canter – witness, the Island, 28 September 2002

³³ . Bindunuwewa massacre accused receive death sentences, TamilNet, July 01, 2003

³⁴ . Ibid

of Justice Kulatilaka clearly indicated that the police only shot the unarmed inmates and not at those who were attacking them with arms.

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

c. 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.³⁶ This was ignored by the judges.

d. Destruction of evidence

There have been systematic efforts to destroy evidence. Immediately following the massacre, the police arrested about 250 villagers.³⁷ These innocent persons were released only after sit-down protests by other villagers at the front of the police station.

Mr. Premaratne, the Senior Superintendent of Police of Bandarawela commenting on the action taken, 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”.³⁸

During the investigation, it transpired that bullets had been removed from the body of a victim. The police investigators failed to find or locate the bullets or its source during the course of investigation.³⁹

The Trial-at-Bar held the police responsible for removing the detainees’ bodies from the scene to destroy the evidence. Yet, the Supreme Court held that the Trial-at-Bar was misdirected “since the evidence of ASP Dayaratne revealed 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”.⁴⁰

The Supreme Court in effect justified destruction of evidence on the ground of so-called preserving the peace.

³⁵ . OIC Crimes describes the attack on Bindunuwewa Camp, 23 August 2001, The Island , Colombo

³⁶ . Will the Bindunuwewa commission be effective? The Sunday Leader, 3 December 2000

³⁷ . <http://www.hrw.org/wr2k1/asia/srilanka.html>

³⁸ . http://massacres.ahrchk.net/bindunuwewa/main_file.php/The+Bindunuwewa+Massacre/4/

³⁹ . Bindunuwewa massacre accused receive death sentences, TamilNet, July 01, 2003

⁴⁰ . All four accused acquitted, The Daily News, 28 May 2005

e. 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 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.⁴¹

There were about sixty fully armed policemen present at the site of the massacre who did nothing to stop the rioters. The investigators never sought to find out as to who had ordered these policemen to be present there.

The chain of command responsible for the failure to stop the massacre was not investigated.

7. Patterns of impunity

Since the massacre of 48 Tamil prisoners at the maximum-security prison of Welikeda in the capital Colombo in July 1983 by the Sinhalese mobs including prisoners, Sri Lankan security forces have perpetrated a series of massacres against the ethnic Tamil minorities.

In the rarest cases, Sri Lankan government ordered inquiries but not a single person has been prosecuted. Soon after the Kokkadicholai massacre of 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.⁴² No one was prosecuted.

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.⁴³ The report is yet to see light of the day.

⁴¹ . LakBima, 4 September 2001

⁴² . Will the Bindunuwewa commission be effective? The Sunday Leader, 3 December 2000

⁴³ . <http://hrw.org/wr2k2/asia10.html>

a. Kokkuvil Massacre, September 1990

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.⁴⁴

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 who were murdered by the Sri Lankan Army on 9 September 1990 in the Sathurukkondan army camp. The judge in his report urged the Sri Lankan President 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.⁴⁵

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.⁴⁶

b. Kumarapuram massacre, February 1996

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. Soldiers broke open the windows of houses and fired at those inside. The initial death toll of Tamils who were murdered at Kumarapuram on that fateful day was 24. They were killed because they were Tamils.⁴⁷

On the evening of 11th February 1996, at about 5 p.m., two SLA soldiers were found dead with gunshot injuries at the 58th Mile Post junction on the Kiliveddy-Muttur road, which leads to the Kumarapuram village, located half a mile from the scene. On receipt of information about this incident, a group of SLA soldiers entered Kumarapuram, firing at random. Thereafter 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

⁴⁴ . <http://www.tamilnet.com/art.html?catid=13&artid=7375>

⁴⁵ . <http://www.tamilcanadian.com/eelam/hrights/html/article/SU001022145704N2018.html>

⁴⁶ . <http://www.tamilnet.com/art.html?catid=13&artid=6308>

⁴⁷ . <http://www.tamilnation.org/indictment/genocide95/gen95035.htm>

and later killed. On the spot, 12 males, 13 females and 13 small children were killed at night.⁴⁸

A group of twenty soldiers was arrested by the police immediately after the massacre⁴⁹ 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 six accused have been released on bail. Meanwhile one of the accused soldiers died.⁵⁰

The last hearing into the Kumarapuram massacre case was fixed for 14 February 2005.⁵¹

8. Recommendations

International humanitarian law provides that the detaining authorities have the sole responsibility for the safety and security of the detainees under all times and all circumstances. At the end of the trial, not a single officer has been held accountable for the massacre of 28 detainees at Bindunuwewa detention camp. The Supreme Court of Sri Lanka has failed to uphold basic principles of international humanitarian law.

The judgement is a blatant miscarriage of justice that needs to be immediately addressed by the Sri Lankan government as well the international community.

Asian Centre for Human Rights urges President Chandrika Kumaratunga to:

- Make the report of the Presidential Commission of Inquiry headed by Justice P. H. K. Kulatilaka into Bindunuwewa massacre public.
- Invite the Office of the High Commissioner for Human Rights to institute an International Commission of Inquiry in the Bindunuwewa massacre;
- Instruct the government of Sri Lanka to submit an appeal before the Supreme Court for a review of the judgement of 27 May 2005 after taking into account *inter alia* the aspects of organised massacre including the posters that were put prior to the massacre, complicity of the police in organising the massacre, the responsibility of the chains of command of the police both the failure to control the mob and/or participation in the massacre and willful destruction of evidence; and
- Extend invitation to the Special Rapporteur on Independence of Judges and Lawyers to visit Sri Lanka.

⁴⁸ . Kumarapuram massacre victims remembered, The Tamil Net, 11 February 2005

⁴⁹ . Ibid

⁵⁰ . Kumarapuram massacre case inquiry fixed, Tamil Net, 9 November 2004

⁵¹ . Ibid

Asian Centre for Human Rights urges United Nations High Commissioner for Human Rights, Louise Arbour to:

- Raise the issue of mass acquittals in the Bindunuwewa massacre with the government of Sri Lanka;
- Instruct the Office of the High Commissioner for Human Rights to study all the judgements relating to the Bindunuwewa massacre and make the study public within a specific time frame; and
- Consider appointing a High Level Panel of Inquiry into the Bindunuwewa massacre.

Annexure I: 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 Bandarawala 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 Bandarawela town inciting people to violence against the inmates of the Bindunuwewa 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 Bandarawela as stated by us. The Regional Co-ordinator who had seen the posters stated that they were still to be seen in the Bandarawela 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

damaged 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

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.

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Human Rights Commission of Sri Lanka
Colombo