

Evidence Submitted to:  
The People's Tribunal on Sri Lanka - Dublin, Ireland  
January 14-15, 2010

**Extra-judicial Execution of Five Trincomalee Students  
One Father's Affidavit, and other evidence**



Evidence Documented by:



P.O. Box 529, Glen Echo  
MD 20812-0529, USA

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## Abbreviation

GoSL	Government of Sri Lanka
HRW	Human Rights Watch
LTTE	Liberation Tigers of Tamil Eelam
SD	U.S. State Department War Crimes Report
SLA	Sri Lankan Army
TAG	Tamils Against Genocide

**The names/date-of-birth (DD/MM/Year) of the 5 students executed on Jan. 02, 2006:**



- |                            |            |
|----------------------------|------------|
| 1. Manoharan Ragihar       | 22.09.1985 |
| 2. Yogarajah Hemachchandra | 04.03.1985 |
| 3. Logitharajah Rohan      | 07.04.1985 |
| 4. Thangathurai Sivanantha | 06.04.1985 |
| 5. Shanmugarajah Gajendran | 16.09.1985 |

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# 1. Executive Summary

Five male Tamil students were killed in Trincomalee, a big harbor town on the Northeast coast under the control of and heavily garrisoned by the Sri Lankan armed forces and with profound ethnic tensions, on January 2, 2006. The area where the incident took place held an estimated 50 military personnel, including Navy checkpoints on each side, and a police superintendent was in the vicinity, yet there has been no effective inquiry into the incident and the family of the boy who pursued legal remedy has been forced to flee the island for their own safety. 12 Special Task Force (STF – militarized police) members who were initially arrested were quickly released.

A pre-staged effort to terrorize the Tamil population of the city by attacking innocents in a very public venue is a likely explanation of the incident. Close coordination between separate branches of the security forces – the army, navy, STF and police – in the incident lead to the supposition that the effort was directed from a high level in the Defense Ministry (the police report to the Minister of Defense).

The incident started with a grenade being thrown out of a three-wheeler near a common gathering place for students, wounding several of them. Reports have said that the vehicle then proceeded into Fort Frederick, the Army HQ. A short time later, five students were killed by gunfire from men who arrived in a jeep, while the father of Ragihar Manoharan was held back from the area at checkpoints of the security forces within earshot of the firing. The five dead and two wounded students were later transported to a hospital.

Security forces attempted to build the case that the students were LTTE members, and told the father of Ragihar Manoharan that his son's body would not be released unless he signed a statement saying that his son was an LTTE combatant. Dr. Manoharan refused. Dr. Manoharan later received many threats, including ones claiming Trincomalee for the Sinhalese, and bribes, including the offer of a house in the capital. Large numbers of civilians and military forces were in the area while the incident occurred, but collusion and intimidation kept all but one or two from providing much information to the local inquiring magistrate and to the 2008 Commission of Inquiry.

Because of the presence of international entities, including the Sri Lanka Monitoring Mission in Trincomalee, at the time of the incident and the willingness of the family of one boy to pursue justice for their son through all available avenues, the incident received much domestic and international attention and was included in the brief of the International Independent Group of Eminent Persons, who were tasked with inquiring into several human rights abuses of the period.

## 2. Ragihar's Father, Dr. Manoharan's Affidavit

1. My name is Kasippillai MANOHARAN I am married to THEVAKUNCHARAMBAL. I am 56 years of age I was born in 1951. My wife and I are both medical doctors and we used to run a medical facility in Trincomalee. As a result we were well known and trusted within the community. Our former home address was 14 St. Mary's Street, Trincomalee, Sri Lanka. Our family is ethnic Tamil and we observe the Hindu religion. There were five children of our marriage, four boys and one girl. The boys names are JEYHAR, DEVASHARINHAR, SRIKRISHNAHAR, and my daughter's name is DARSHIKA, four of them are living but our third son RAGIHAR who was born on the 22 September 1985 was murdered on the 2 January 2006 at the Ghandi Statue, Fort Road, Trincomalee.
2. I make this statement of my own free will in order to try and assist any investigation body or Commission of Inquiry to identify the perpetrators of my son's murder. This statement is purely related to the circumstances surrounding my son's death and the events following his death. It is my wish that by making this statement the perpetrators will somehow be identified and brought to justice. Only then will my family have peace in their hearts.
3. Before I relate the circumstances of my son's death, I wish to state that my wife and I and the remaining members of my family have had to flee Sri Lanka because we fear for our safety and security should we remain. I will not reveal my current whereabouts in this statement and I am not prepared to return to Sri Lanka to testify, for the reasons that I left in the first place. I am however, willing to testify remotely by video conferencing or some other means, if required to do so. This would be conditional upon the arrangements being made by persons other than members of the Sri Lankan Judiciary or security services and I do not consent to my whereabouts being made known to any members of the Sri Lankan judicial authorities. The persons to whom I have made this statement are aware of my whereabouts and any contact with me can be made through these persons.
4. Firstly I will give a brief biography of my deceased son RAGIHAR. I would describe him as an easy going, sociable, kind and respectful young man. He was extremely popular and well known within the local community of Trincomalee because of his sporting activities and because he was our son. He was a first class table tennis player, having achieved a high standard and was functioning as the Secretary of the Trincomalee table tennis association. He was also the Secretary of the Chess Association of Trincomalee. As far as I am aware he had no political interests or affiliations. His only interests were to get his advanced level examinations and to continue developing his table tennis and chess skills and teaching these skills to others in the community, regardless of ethnic background or religion.
5. The period around the end of December and the beginning of January is the Hindu religious festival of 'Pillaiyar Viratham', this festival requires Hindus to undertake a period of fasting and to attend the temple. On the 2 January 2006 at 18:00 hours in the evening, RAGIHAR informed my wife and I that he was going to the Ganesha temple.

At this time I was seated in the hallway going through some medical books and watching the television, my wife was seeing patients at our home dispensary.

6. About 7:35pm I heard a bomb blast close to my house. I remember the time because I looked at the family clock in the hall as soon as I heard it. I knew it was a bomb blast because I had previously lived in Jaffna for a number of years and I have learnt from experience to recognise the difference between a gunshot sound, bomb blast and fire crackers.
7. Five to ten minutes after the sound of the explosion, two of my sons returned home but RAGIHAR did not. RAGIHAR has his own mobile telephone. Whenever my children are stuck they normally call home. Within a few minutes I received a call on my mobile phone from RAGIHAR and he said "Daddy the forces are around me" - when we say the forces we mean military personnel. In total my son tried to contact me three times. When I checked my mobile telephone after the killing I had one missed call from him listed at a time before the incident. I had also received a text message that just said "Dad" which I received after the phone call when he spoke; this is the last contact I had with my son.
8. I immediately left my home to go toward the Ghandi statue which is situated at the junction of Fort Road and Dock Yard Road (map CB/03/case 5), I know this area is a regular meeting spot for the students, because the students union building is very close by on Fort Road. It is approximately 300 – 350 metres from my house. I went there on my scooter, which has a red cross on it, which denotes my status as a Medical Doctor. I was stopped at the Navy checkpoint (photograph CB/01/case 5 and map CB/03/case 5) near the Memorial hall; this was manned by three soldiers wearing commando [sic] (camouflage) uniform. At the checkpoint one of the soldiers identified my scooter, by a red cross, he said, "are you a doctor?" I said "yes" and told him my name and produced my identity card. I said, "I want to pass through the checkpoint. " The soldier said, "Why do you want to go Doctor?" I said, "my son is not back yet, he is not answering his telephone and I want to go check." The checkpoint said in Sinhala "I can't allow anyone to go inside, but you can walk if you want."
9. Considering there had been an explosion, the soldiers at the checkpoint were not particularly alert, their demeanour was casual and relaxed, they were talking by mobile phone, listening to the mobile phone radio and their guns were slung causally over their shoulder, not in a defensive position. I was not able to see anything unusual at that time because of the light. I did not hear anything unusual either and I did not see any other civilian person nearby at that time. I was unable to ask any questions of anyone else to try and find out what was going on.
10. I left the checkpoint to take my scooter home and returned immediately on foot. I was very concerned at that time because I could not get any reply from RAGIHAR's mobile telephone. The lights around the Ghandi statue were switched off, but I knew there wasn't a power cut because the electricity was working at my home and other places. Visibility was approximately 50 – 75 metres and I could only see soldiers, not civilians, moving around and vehicles. There was a van and three (trishaw) three-wheelers but I could not see well enough to recognise what type of vehicles or what type of military personnel. At the same time I saw a jeep come from the direction of the fort. The jeep was dark and long like a land rover, but I am not certain whether it was open or closed,

it only had parking lights on not headlights. I could not tell whether there were occupants in the jeep because it was too dark. The jeep came down the fort road and did a U turn and stopped in front of the Ghandi statue. Once the jeep had stopped I heard the sound of young male voices shouting something like “help us, help us.” I heard another, male voice that sounded more mature and was louder but I could not distinguish the words that he said.

11. I wanted to go and check for my son but I was refused by the Navy personnel at the checkpoint. I again dialled the mobile phone of my son but there was no answer, I showed the Navy personnel my phone to show that I was calling my son, but I still was not allowed to go in, one said words to the effect, “I don’t know what I can do Doctor I am under orders not to let anyone in.”
12. While I was waiting at the Navy checkpoint I noticed a grey coloured pick up vehicle parked in front of the Valluvar statue (photograph CB/02/case5), which is situated nearby. The pick-up did not have its lights on but I could see it clearly because the streetlights were on in that area.
13. I spent a long time talking and arguing with the soldiers at the check-point trying to get through. Suddenly there was gunfire, I looked toward the Ghandi statue and saw with my own eyes flashes of gunfire, pointing down toward the ground, the firing was rapid bursts of fire – automatic fire. I saw this clearly because there were no streetlights on at the Ghandi statue (photograph CB/13/case5) so the gun flashes were very distinct. I demanded to know what was happening and the soldier called on the radio, walkie-talkie or mobile phone. After he had finished he said something like, “There is firing - five civilians are dead and two civilians badly injured.” I do not know if this was a response to his enquiry. The soldier told me this approximately 3 – 5 minutes after the firing.
14. After the firing, I saw the jeep move up Fort road toward the direction of the fort. I then saw 1 or 2 vehicles, I don’t know what type as it was dark, enter the area near to the Post Office and the Ghandi statue area from the direction of the Urban Council.
15. Within a very short time I was aware of the pick- up truck moving towards the Ghandi statue. I learned later from other people that this pick-up belonged to SP KAPILA JAYESEKERA. I never knew SP KAPILA JAYESEKERA before this time, I would not recognise him and I cannot describe him. This matter is not mentioned in the inquest report, because our lawyer advised us not to give this information now because of our situation. We were very vulnerable at that time.
16. After that I saw a truck and a jeep passing by the spot where I was standing and motorcycle unit on either side. I had also seen a complete motorbike unit entering the area and then go to different points on the roads in the area, effectively sealing off the area of the Ghandi statue. The motorcycle unit consisted of 10 to 15 motorcycles, each with two military personnel, both of them armed with combat weapons.
17. After that I saw the pick-up truck of SP KAPILA JAYASEKERA pass by, again I did not know, at that time, it belonged to him I heard it was his later. I saw that there were about six or seven armed soldiers being carried in the open backed rear section. They were wearing full-face masks, which we call ‘monkey masks’ – only holes for the eyes.

The Navy personnel at the checkpoint said to each other, words to the effect, “ JAYASEKERA has gone, now we can go into the area.”

18. After this the Navy personnel who stopped me at the checkpoint (checkpoint 1 photograph CB/01/case 5, map CB/03/Case 5) said, “The area is clear you can go but no-one is there. If you are looking for your son you should go to the hospital and check for him there.”
19. I went and took my motor scooter and went immediately to the hospital where I arrived about 21:00 hours.
20. On arrival at the hospital the area was full of police and military. One police officer stopped me and told me I could not enter the hospital. I said, “Why? I am a doctor, there are injured people here, I am entitled to enter this hospital. I want to search for my son”. We argued and then one of the male nurses there who knows me well, I do not know his name, but I know him as he is the son of SALAM and the family are also my patients, helped me to get access. I went straight to the ICU (intensive care unit) where I expected to find RAGIHAR. There were two boys in there receiving treatment for serious injuries but neither of them was RAGIHAR. I was happy at that stage to know that RAGIHAR was not there.
21. Then a nurse suggested that I go to the mortuary because there were boys in there. I went immediately to the mortuary and when I entered the first sight was the body of my dear son RAGIHAR. He had clearly been shot; there was a lot of blood. I was totally distressed and had to go back to the emergency unit and get some water. While I was there some police officer came to me and demanded that I sign a statement to declare that my son was an LTTE cadre. He told me that if you do this we will release the body immediately. There were other bodies also in the mortuary.
22. I became angry and refused to make any such declaration, I told him that my son is not LTTE, he is a sports person, table tennis player and coach, he coaches police officers and children, he is a chess player, a student a good boy. I knew that I would be able to get my son’s body released without conceding to such blackmail.
23. I returned to the mortuary with the Chief of the SLMM, Mr Arthur TVEITEN. I went inside with him. I took some photos with my mobile phone (photographs KM/10/case5); I will identify these photographs later in this statement. The SLMM chief became very angry and stated words to the effect, “This is murder, these boys have not been killed by explosion these are gunshot wounds”
24. I called my son’s mobile number again and found that it was tucked in the back of his underpants. It was set on vibrate only, that was probably why I never heard it at the scene of the Ghandi statue.
25. I realised that my son’s ID card, gold chain, wallet, some documents and cash were not present. He had two identity cards, one a national identity card and the other was a district identity card, issued by the Army through the Police headquarters. Both are still missing All those items are still missing and I would like them returned. I noticed that pockets of my son’s trousers had been pulled out so anything he had in them was missing. I still have my son’s small mobile telephone which I recovered. Later I noted



that there were between 13 and 15 missed calls on his phone and he had recorded some video but when we watched it, it was too dark to see anything. There was no sound recorded either.

26. I went back to my home and informed my wife and relatives that our son had passed away. I informed those friends and relatives that they were not allowed to go to the hospital. I then returned to the Ghandi statue to try to get some photos, but it was too dark and unclear. I saw that the military personnel were still at the checkpoints, two or three police officers were near to the murder scene but there were no obvious signs that the area had been secured or evidence collection had started. In fact it was not until later the next day, 3 January 2006 that the area was cordoned off with a tape, or secured from anyone entering the area.

27. In Trincomalee, during the day most of the forces are visible by the colours of their uniform, when it is dark it is not easy to distinguish between the police, army, navy and home guard, in Trincomalee they do not usually wear insignia or badges when they wear 'commando' clothing.

28. The following day, 3 January 2006 at about 07 00– 07:30 hours I went back to the Ghandi statue and made a short video (KM/12/case 5) of the place where my son had been murdered. The spot was very obvious because of the amount of blood on the ground. I was disgusted that there were no police officers posted at the scene and no attempt had been made to preserve the scene or collect any physical evidence. There were a lot of ball point pens and empty bullet casings at the spot. In the area there were many bullets around. There were also a number of crows scavenging, some were swooping in and taking away bullets and casings probably because they had blood on them.

29. After that at about 08:00 hours on the 3<sup>rd</sup> of January, my wife and I returned to the hospital. At 8:30 - 8:45 hours the Judge came to the mortuary for the death inquiry. My wife and I identified my son's body to the investigating Judge VRAMAKAMALAN. A Police officer sub-inspector was there, I don't know his name but I would recognise him again, he was very tall with dark skin. He came to us and said words to the effect, "Why are you wasting your time here, if you sign the papers you will get the body immediately." However, I knew already that the Judge had given an order for a post mortem to be carried out. and that as soon as the post-mortem examination had been carried out, he would release the body. This of course is what happened.

30. While at the hospital I was told that a JMO (Judicial Medical Officer) from Kantale JAHATH was there. Some nurses and doctors from the hospital informed me that the Kantale JMO had been torturing the two injured boys who survived the shooting. He declared that the two boys were LTTE and stated he had the full support of the 'forces'. I did not personally hear or see that, but others of the hospital staff did. DR (Mrs) GUNALAN the DMO (District Medical Officer) said that the Kantale JMO wanted to do the post-mortems but the permanent JMO GAMINI GUNATHUNGA wanted to do them. The permanent JMO carried out the post-mortems also Mrs GUNALAN was present. The post-mortem report stated that all the injuries on my son's body were gunshot wounds. A harbour police officer that was wearing a cap (as seen in video CB/12/case 5) was present during the post-mortem and was given a bullet from the third entry

wound, which was recovered from the right shoulder of my son. I noted that my son's left hand was also burnt, in my opinion it looked like he had grabbed the gun barrel.

31. After the post-mortems, I was asked to sign a statement for the release of my son's body. The statement was in Sinhala, which I cannot read; I demanded that it be written in Tamil or English. After that a statement came in Tamil and I made a declaration in Tamil and my son's body was handed over to me with no declaration of guilt (KM/08/case 5).
32. There were lots of armed Police and Military in the hospital this could only happen in Sri Lanka. At the hospital the Navy and Police made many threats. I know in my heart my son was murdered by the STF (Special Task Force), the only new face in Trincomalee was STF.
33. Lots of 'forces' know my son very well, he is the coach of table tennis and chess, SP DIA SAMARAVEERA knows my son he is the president of the table tennis club and my son is the secretary of the Trincomalee table tennis club.
34. As background information I want to tell you about the Urban Council premises close to the Ghandi statue, within those premises is the office of the Student's Union, that is the reason that the students gather in that area. All the local Police know very well that the students use that place for meeting socially and it was well known that the students were waiting to hear of their exam results or their university places.
35. Later I also heard about the green three-wheeler that had passed by my son and his friends, and that a grenade had been thrown from it. Then the three-wheeler had headed toward the fort, passing through the military check-point. I also heard that another grenade was found in the area, this grenade was destroyed in a controlled explosion with the Judge on the evening of the 2 of January, we heard this explosion around 22:00 or 22:30 hours.
36. On the 10 of January after my son's funeral, the inquest was held into my son's death. The Police did not inform me of the death inquiry, my lawyer telephoned and told me to come immediately to the courts. I visited the court and the Magistrate RAMAKAMALAM invited any witnesses available to kindly come to the Magistrates chambers. There were about 300 people present in the area of the Valluvar statue (photograph CB/02/case 5) and the Ghandi statue on the night of the killings but no one came forward at the hearing, not even the parents. I gave evidence for nearly one and a half hours (KM/04/case 5).
37. The same evening stones were thrown at my house and there was knocking on the door there was an unofficial police curfew after 19:00 hours. I opened the door to see only the police force there. I did not make a complaint to the police but I informed SLMM.
38. After that the harbour police contacted me, they wanted to get my statement. One Muslim Sub-inspector came to get my statement; I went to the police station and was met by SAFFIR. SAFFIR said your son trained my son in table tennis, that is the reason he is a northeast champion. He said words to the effects "we did not do this

Doctor, STF did this murder, don't believe it was our police." When I had finished I went home.

39. On the 11 March 2006 I received a threatening letter through the post (KM/05/ case 5) (English translation KM/14/ case 5). It came in a brown envelope and was stamped. The postmark is very difficult to distinguish but it appears to be from outside Trincomalee town. The address was typed in English and the letter was typed in broken Tamil, consistent with being from someone who was not a native Tamil speaker. The other families of the murdered boys also got the same letter but they received it the day before, 10 March 2006. We do not know if the families of the injured boys got a letter as at that time the injured boys had left the area. The general content accused us of all being LTTE. They knew we were going to court with the case, and said if their 'forces' would be judged and found guilty, we would be killed. The letter was signed from the Vigilant group for the Elimination of the Enemy.
40. I began to make notes in my diary about these contacts by the police and forces, they made numerous calls to my home also harbour police DIG Office, IP, SEBASTIAN came. He wanted to take another statement and wanted me to say that I was satisfied with the police action and security. I refused. They came fully armed to my home on 5 or 6 other occasions requesting me to make a statement to this effect.
41. On May 14 2006 at 11:45 hours SP Kapila JAYASEKERA's pick up truck was parked in front of my house. On the 25 May 2006 I was not there, but army officers came to my house and said to my wife words to the effect "We demand to see your husband."
42. The Minister for Human Rights, Mr SAMARASINGHE, telephoned my home sometime in April 2006 and spoke to me. He said words to the effect, "Look you need to move on after this accident, it was a tragic incident because the forces thought those boys were LTTE. I can tell you that families of victims of crime should be able to get some form of compensation and we can arrange for you to get a nice house in Colombo for you and your family. We can find a nice school for your children. You can start over again here." I told him I do not want any of these things, if you can give me my son back, that is enough. Unless you can guarantee me and my family security I am not interested. You should not call me again."
43. On the 13th July some CID officers visited my home, they introduced themselves as Officer Nimal SAMARASEKERA and one Sub-inspector MANOHARA and gave me a mobile number 0777749111 they said they wanted to get my statement because they wanted to investigate the crime.
44. On Wednesday the 14th of June, the former IG of police, Sandara FERNANDO telephoned me and said words to the effect "Please ignore this case, do not inform other country's human rights organisations, this is our country, we are all from Sri Lanka, this is nothing to do with foreigners. I can offer you and your family all the protection you need."
45. During all of this time only the Non-governmental organisation (NGO) the Non-violent Peace Force gave us protection.

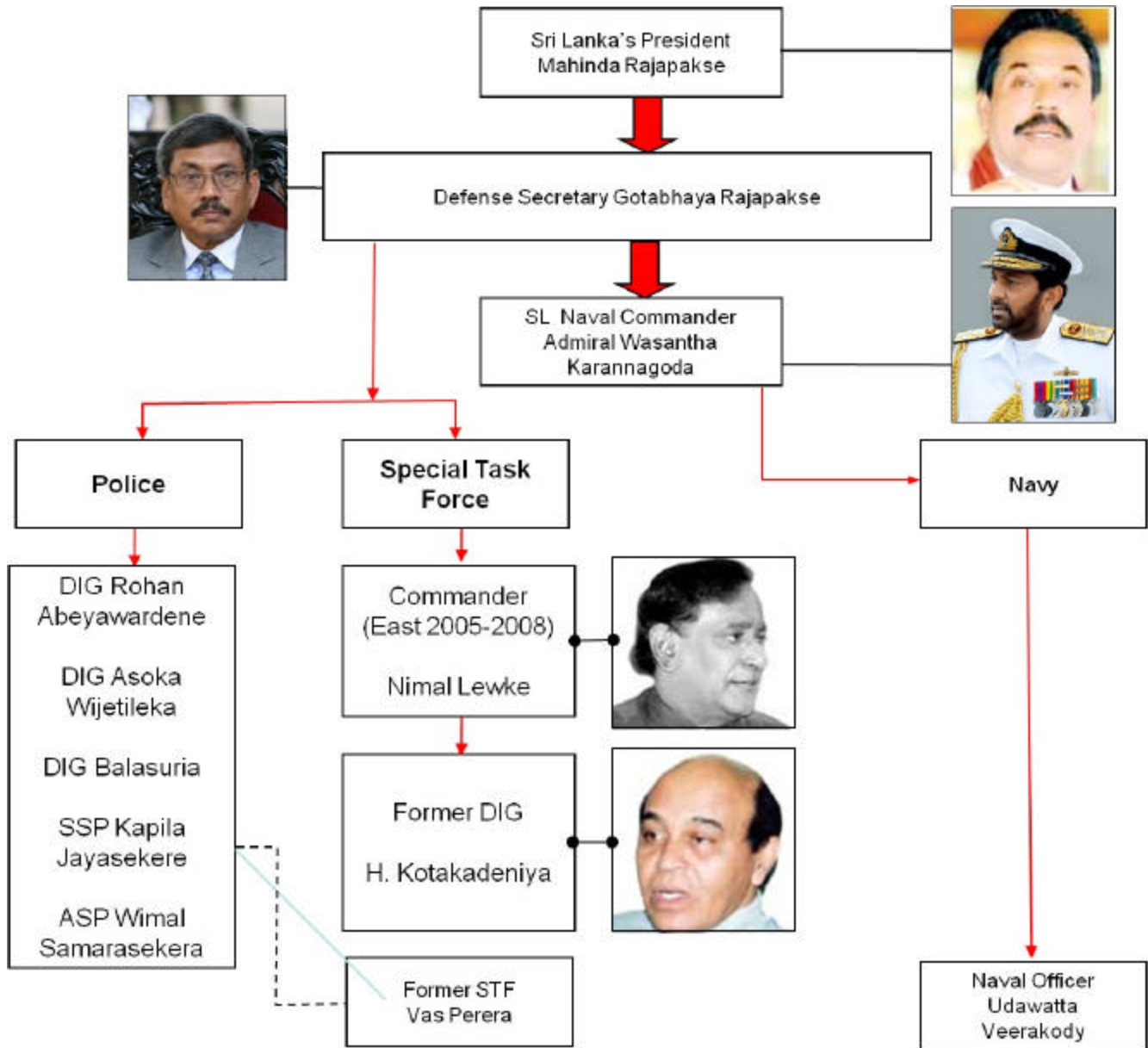
46. On July 17<sup>th</sup> the same Sandara FERNANDO telephoned me and said words to the effect, "I am sending some CID officers to Trincomalee to enquire into your son's matter. Please give full cooperation to these officers. After that if you have an emergency, call me, don't call my office. This is my mobile number, 0777751170."
47. About 6.30 pm on the 18th of July, Sub- Inspector MANOHARA came to my house with four members of the police. He had with him a prepared statement written in Sinhala. He forced me to sign. He told me that if I did not sign I would have to go with him in police custody. I took that to mean I would be arrested and detained. I signed the statement but had no idea of the content. It was only out of fear that I signed this statement. I informed the Human Rights Commission of this. I was very disturbed that no one seemed to be investigating the murder of my son, so I said to Sub-Inspector MANOHARA "If you are not finished with my case in one year's time, my family and I will commit suicide in front of the President's house." MANOHARA said words to the effect, "Please, don't, do that Dr MANHORAN, we need your services in Sri Lanka, I think it is impossible to carry out a murder investigation." I decided there and then that I could not trust the CID inquiry process.
48. On 21<sup>st</sup> July some navy personnel visited my house and threatened me. They stated that somebody's parents had made a complaint about WEERAKODY's son. He told me "You should be careful, don't do anything like this. WEERAKODY's son is not working with this unit." I asked him why he had come to me because I had not said anything. They wrote down their names and contact number on a piece of paper that I still have (KM/07/case 5). They were UDAWATTA WEERAKODY, telephone number 07735897017, Lieutenant DHARINGSIN mobile number 0776667415 and Lieutenant SANIL SHANTHA, mobile number 0714256861. He said, "If you have any problems then inform us directly, do not call headquarters".
49. Some months ago I heard some new information that a retired sergeant who was working on the 2nd of January 2006. It was said that he was standing near the Trincomalee bus stand to collect his dinner at about 18:30 hours. At the same time SP KAPILA JAYASEKERA and his team passed by and stopped his pick-up truck in front of the Sergeant. JAYASEKERA supposedly said that there were some problems near the beachfront and ordered him to return immediately to barracks. I found this strange because at that time there had been no incident near the beach, it is for this reason that I think that SP KAPILA JAYASEKERA planned the bomb attack. If this information is true, I question why JAYASEKERA would have said that an hour before the explosion took place.
50. On the same day as the killings a woman, who speaks Sinhala, Tamil and English and is very influential in the community came to our house to get treatment with my wife. She works in one of the banks near the market in Trincomalee. It is either the Peoples Bank or Bank of Ceylon. She came to my house at 6.30pm. She asked my wife "Where are the boys? Please call your sons back in the house there are some problems in the town centre." After the death of RAGIHAR the woman visited me, she was crying and said words to the effect that "I told you not to let him go out."
51. On the day of the killings, my third son was taking the short route home, along Dockyard Road. He was stopped by some Navy personnel and told to go directly home. Further along in his journey a Police officer stopped him and told him to go along

Vanniya Street by the theatre and old police station side of the road, this was before the explosion took place. This was yet another event that made me suspicious about the build up to the explosion.

52. On the evening of the killings the lights by the Ghandi statue were on when I went back there at 22:00 hours
53. I personally believe that these murders were carried out by the STF under the supervision of SP KAPILA JAYASEKERA. One of the reasons I believe this is because, in the area of my son's murder, around 50 to 60 soldiers were present at the time of the killings, as far as I am aware the police only seized 13 or 14 guns for further examination during their inquiries.
54. I have also been told that some engineering students that were nearby saw the green three-wheeler. They were seated in the area of the Ghandi statue. However, I do not know who they are.
55. Our Sri Lankan national identity cards detail where we are born, my daughter and I were both born in Hatton, but the rest of my family were born in Jaffna. They are treated differently because of where they born which can make everyday movement around the town and other areas more difficult for them. For us born in Hatton there is no problem, but for those born in Jaffna it can cause delays and questioning from the checkpoint security officers.
56. One year after the murders, my family and I considered us to be under virtual house arrest. There was a constant presence of 13 or 14 soldiers outside our house, if we had any foreign visitors once they had left we would be interrogated and questioned as to why they were visiting, what conversations we had and what we had told them. This amongst other reasons is why my family and I felt insecure and under constant threat. We feared for our lives and the lives of our remaining children. This constant fear was the main reason we had to leave our home and country and seek refuge elsewhere.

### 3. Key Personnel Complicit in the Executions

The military command structure that is relevant to the execution of five Tamil youth in Trincomalee on Jan. 02, 2006 is presented in the following figure:



#### 1. Superintendent of Police KAPILA JAYASEKERE –

Present during incident, with 6-7 armed, masked soldiers in back of his grey pick-up truck (Dr. M affidavit)

"Jayasekere's presence at the scene was confirmed to the Magistrate by two police witnesses.." (UTHR).

## **2. Naval Officer UDAWATTA WEERAKODY –**

Came to Dr. Manoharan's house to say "You should be careful, don't do anything like this. WEERAKODY's son is not working with this unit." (Dr. M affidavit)

"after the STF men had arrived on the scene, he saw Naval Lt. Udawatte Weerakody and another naval officer on a motorcycle ride from the scene of the incident towards the Dockyard Rd. checkpoint where Prasanna Hewa Pathirige was. They returned with three guns instead of the two originally slung on their shoulders and handed one to the STF after which the students were shot and killed." (UTHR)

## **3. Vas Perera –**

"a former STF man like Kapila Jayasekera and Vas Perera, the leader of the killer team,"

"Judging by events there is hardly any doubt that the attack on the students in a public place was conceived as teaching the Tamils a lesson. The Sinhalese extremist overtones are evident in the threats claiming that Trincomalee belonged to the Sinhalese. If not the details, the general form of the atrocity was planned at the highest level. In Weerakody, there was a person motivated by revenge [whose father had recently been killed, allegedly by the LTTE]. The plan was executed at local level by Kapila Jayasekera and Udawatte Weerakody being on the scene, with the former instructing the Police and STF and the latter, the naval personnel." (UTHR, 1/2/10, p.14)

## **4. DIG Abeywardene –**

"a former STF man like Kapila Jayasekera and Vas Perera, the leader of the killer team, was then in charge of the Police in Trincomalee." "We also heard from a police source, that late on the night of the incident, a meeting was held under DIG Abeywardene to discuss plans for a cover up."

## **5. DIG and JHU member HMGB Kotakadeniya**

"The new government was backed by Sinhalese extremists that included former DIG and JHU member HMGB Kotakadeniya, who was appointed adviser to the Defence Ministry on police matters. Persons of such a political persuasion make no distinction between the Tamil people and the LTTE. He told the Sunday Times defence columnist (15 Jan.06) that the STF team was sent to Trincomalee just before Christmas 2005, with the approval of Defence Secretary Gotabhaya Rajapakse." (UTHR, 1/2/10, p.14)

"As to the spirit in which the investigation was conducted, CID officer Vithanage Perera told the Col that on 4th January 2006, two days after the incident, he was at the scene of crime and the place had not been marked off nor secured. He saw a large number of police officers in conference and recollected the names of high ranking officers DIG Balasuriya, DIG Rohan Abeywardene, DIG Asoka Wijetileka, SSP Kapila Jayasekera, and ASP Wimal Samarasekera. " (UTHR, 1/2/10, p.12)

#### 4. Time Line

Date	Affidavit of Dr. K Manoharan. Father of Ragihar	UTHR Report 24/35
Jan 2, 2006 18:00 hrs	Ragihar informed mother he was going to the Ganesh Temple.	
19:35 hrs	Dr. Manoharan heard bomb blast close to his house	At 19:35 hrs a green auto rickshaw came along shied a grenade at the youths and moved towards the Fort passing the army check point.
19:40 to 19:45 hrs	Two of Manoharan's son returned home but not Ragihar.	Five of the students were injured in the grenade explosion. Of the two who were unhurt, Manoharan Ragihar and Yogarajah Hemachandran tried frantically for about 15 minutes to persuade some of the many auto rickshaws and vehicles parked there to get the five injured youths to hospital, but to no avail. Yoganathan Poongulalon, one of the injured survivors, told the Magistrate from Hospital the injured had been pleading for help but no help came. 5 to 10 minutes after the blast he saw 4 or 5 persons coming towards him as though to help. At the same time a jeep came towards him and persons came at them shouting in Sinhalese. They pushed four of the injured into the back of the jeep and assaulted them with their guns and hands. Then they pushed them out from the back and shot them on the road. Poongulalon feigned death and survived with gunshot injuries. He placed the time of the shooting at 15 to 20 minutes after the bomb blast. "Later", he said, "the Jeep left." This places the time of the shooting around 7.55 PM as



		also suggested by further testimony.
19:47 hrs:	<p>There was no response from Ragihar's mobile phone. He went home left the scooter and came back . Guards would not allow Dr. M to go through the checkpoint. Coloured pick up truck parked near Valluvar Statue.</p> <p>After this the Navy personnel told Dr. M that he can go now but there is no one there and that if he wanted to see his son he should to to the hospital.</p>	<p>Poongulalon told after beating them the assailants made as if to go, when a man seated in the jeep barked out an order to kill them. It was then that the shooting started. The men noticed two boys seated on the ground ahead at the bend of Dockyard Road and Fort Road. They asked who they were, and then went up to them and shot them dead. These boys were Manoharan Ragihar and Yogarajah Hemachandran. Pararajasingham Kokularaj, the other injured student, told family friends later that he was on the ground when he saw his friend Rohan being shot by the killers. He felt cold in his stomach and passed out. Ponnuthurai Yogarajah, the father of Hemachandran. gave the time at which he heard the bomb blast from his home in Customs Rd. at 7.35 to 7.45. On his way home he heard about 15 gunshots and he later went to the Hospital. He placed the time interval between the bomb blast and the gunshots at about 15 minutes. Lohithathan Rohan, the eldest son of Lohanayaki and her husband Rajendran Lohithathan, Rohan's mother who testified on the 16<sup>th</sup> January.</p> <p>Hemachandran's family called Rohan's cell phone (no. 0776539192). Twice the call was cut off. The third time a stranger's voice spoke in Sinhalese and asked for their names and addresses and said mockingly that Rohan was with</p>

		them. The conversation lasted about 3 minutes. The family remembers that the clock indicated 7.52 PM while this conversation was going on.
21:00 hrs	Dr. M went home took his scooter and arrived at the hospital. Checked the ICU and saw two boys were receiving treatment for serious gun shot injuries.	
	Dr.M went to the mortuary and saw the body of his son	
	A police officer there wanted him to sign a statement to say that his son was an LTTE cadre. There were other bodies in the mortuary.	
	Dr. M returned to the mortuary with the Chief of the SLMM, Mr Arthur TVEITEN. "This is murder, these boys have not been killed by explosion these are gunshot wounds"	
	Dr. M called his son's mobile phone. It was back of his underpants set on vibrate only.	
	Dr. M's son's ID card, gold chain, wallet, some documents and cash were not present.	
	Dr. M went back to his home and informed his wife that thier son had passed away.	
	Dr. M went to the Ghandhi statue. The area was not cordoned off or anyone collecting evidence.	
January 3	The murder scene was cordoned off	
	Dr. M at about 07 00– 07:30 hours went back to the Ghandi statue and made a short video (KM/12/case 5)	
	no police officers posted at the scene There were a lot of ball point pens and empty bullet casings at the spot.	
	at about 08:00 hours on the 3 <sup>rd</sup> of January, Dr. M and wife returned to the hospital.	
	At 8:30 - 8:45 hours the Judge came to the mortuary for the death inquiry. They identified their son's body to the investigating Judge VRAMAKAMALAN.	
	A Police sub- inspector said words to the effect, "Why are you wasting your	

	time here, if you sign the papers you will get the body immediately.”	
	The permanent JMO GAMINI GUNATHUNGA carried out the post-mortems also Mrs GUNALAN was present.	
	The post-mortem report stated that all the injuries on Dr. M's son's body were gunshot wounds.	
	A harbour police officer who was present during the post-mortem was given a bullet from the third entry wound, recovered from the right shoulder.	
	Dr. M made a declaration in Tamil and Ragihar's body was handed over to him with no declaration of guilt (KM/08/case 5).	
	22:00 to 22:30. Heard the explosion. A grenade was destroyed in a controlled explosion with the Judge on the evening of the 2 of January,	
January 10	after Ragihar's funeral, the inquest was held into his death the Magistrate RAMAKAMALAM invited any witnesses available to come to the Magistrates chambers.	
	Dr. M gave evidence. The same evening stones were thrown at his house He did not make a complaint to the police but informed SLMM.	
	Harbour police contacted Dr.M, they wanted to get his statement. Dr. M went to the police station and was met by SAVAHIR. SAVAHIR said words to the effects “we did not do this Doctor, STF did this murder, don't believe it was our police.”	
March 10	The other families of the murdered boys got threatening letters.	
March 11	Dr. M received a threatening letter through the post (KM/05/ case 5) (English translation KM/14/ case 5).	
May 14	at 11:45 hours SP Kapila JAYASEKERA's pick up truck was parked in front of Dr.M's house.	

May 25	army officers came to Dr. M's house and said to his wife words to the effect "We demand to see your husband."	
April	The Minister for Human Rights, Mr SAMARASINGHE, telephoned Dr. M's home sometime in April and spoke to me. He said words to the effect, "Look you need to move on after this accident, it was a tragic incident because the forces thought those boys were LTTE. I can tell you that families of victims of crime should be able to get some form of compensation and we can arrange for you to get a nice house in Colombo for you and your family. We can find a nice school for your children. You can start over again here."	
June 14	The former IG of police, Sandara FERNANDO telephoned Dr. M	
July 13	some CID officers visited Dr. M's home, they introduced themselves as Officer Nimal SAMARASEKERA and one Sub-inspector MANOHARA they wanted to investigate the crime.	
July 17	Sandara FERNANDO telephoned Dr. M and said words to the effect, "I am sending some CID officers to Trincomalee to enquire into your son's matter. Please give full cooperation to these officers. After that if you have an emergency, call me, don't call my office. This is my mobile number, 0777751170."	
July 18	About 6.30 pm Sub- Inspector MANOHARA came to Dr.M's house with four members of the police. He had with him a prepared statement written in Sinhala. He forced Dr.M to sign.	
2006	Dr M considered themselves as under virtual house arrest. There was a constant presence of 13 or 14 soldiers outside his house. This and other incidents made them fear for their lives and the lives of the remaining children. They left their home and country and seek refuge elsewhere.	
Jan 2, 2010	4 <sup>th</sup> year anniversary of Ragihar's killing has passed. No convictions yet.	

## 5. Conclusions

The killing of the five students in Trincomalee need to be put in context of the impunity of killing innocent Tamil civilians that prevailed in Sri Lanka. The US State Department Human Rights Reports substantiate that impunity in the armed forces, the judiciary, the law enforcement and the government of Sri Lanka. The 2006 US Human Rights Report states:

“In January five Tamil youths were shot execution-style in a coastal High security zone in Trincomalee heavily controlled by the police Special Task Force (STF) and the Sri Lanka Navy (SLN). Although civil groups and members of the government widely suspected police STF involvement in the incident, a ballistic report indicated that standard-issue STF guns had not killed the individuals, and the case was dropped. Some credible observers believe the STF committed the killings using non-standard issue weapons.”<sup>1</sup>

Local and international systems have failed to investigate the Trincomalee students killing and to bring the perpetrators to justice:

- Manoharan Ragihar’s case been postponed in Trincomalee Magistrate Court routinely every month for the past three years, on Police request for more time to conduct investigations, and local redress is unlikely to be forthcoming..
- The International Independent Group of Eminent Persons (IIGEP), invited to observe the proceedings of the Commission of Inquiry (Col) setup by the Government of Sri Lanka (GoSL) to investigate and inquire into serious violations of Human Rights including the Trinco-5 killings, terminated its mission pointing out that Col investigations have not been transparent and have not satisfied basic international norms and standards. IIGEP blamed the Government of Sri Lanka for "absence of will" in the inquiry to "investigate cases with vigor, where the conduct of its own forces has been called into question."
- Professor Francis Boyle, an expert in International Law from University of Illinois, who followed the war closely after the current government came to power, commented that “both the United Nations itself and highest level officials are guilty of aiding and abetting Nazi-type crimes against Tamils by the Government of Sri Lanka.”<sup>2</sup>

This document provides a body of evidence, including

- personal affidavit from Ragihar’s father, and
- independent eyewitness accounts and other material evidence put forth by the Independent NGO, UTHR,

TAG urges the Tribunal to

- rule that the Trinco-5 killings constitute war-crimes under the Common Article 3 of the four Geneva Conventions of 1949 to which Sri Lanka is a contracting party, and
- to take steps to urge the international community to prosecute the perpetrators of this crime, and their superiors under the doctrine of command responsibility.

Dr. Manoharan, the father of one of the Trincomalee student victims Ragihar, is prepared to provide testimony on the killings in any international courts of law.

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<sup>1</sup> <http://www.state.gov/g/drl/rls/hrrpt/2006/78875.htm>

<sup>2</sup> <http://tamilnet.com/art.html?catid=13&artid=29486>

## Appendix I

### Sri Lanka: Protect Witnesses in Trincomalee Killings

Murder of Five Youths Highlights Need to End Impunity

JUNE 26, 2006



Tomorrow, a magistrate in the eastern town of Trincomalee will review eyewitness testimony against a dozen security force personnel implicated in the killing of five Tamil young people. An unofficial report by the special investigator for Sri Lanka's National Human Rights Commission alleges that the security forces were responsible for the killings.

Human Rights Watch remains deeply concerned that the only prosecution witness willing to testify so far, Dr. Kasippillai Manoharan, has for months been the target of deadly threats. His son Ragihar was among those killed.

"Dr. Manoharan has courageously come forward to testify about the brutal killings of these five young men," said Brad Adams, Asia director at Human Rights Watch. "The Sri Lankan government should show a fraction of his courage and take urgent measures to control its security forces and protect the doctor and other witnesses who may wish to testify."

On January 2, 2006 at about 7:30 p.m., seven youths, all 20-year-old graduates of Sri Koneswara Hindu College, chatted among themselves near the seafront in Trincomalee. According to eyewitness accounts, a grenade thrown at the youths from a green three-wheeler (or motor trishaw) exploded and injured three of them. Soon thereafter, 10 to 15 uniformed officers allegedly with the elite police Special Task Force arrived in jeeps. The officers put the wounded youth into their jeeps, beat them with rifle butts, and then pushed them onto the road. The officers then allegedly shot the young men, killing five and wounding two.

The army commander in Trincomalee initially reported to the media that seven members of the armed opposition Liberation Tigers of Tamil Eelam (LTTE) had been killed or injured when grenades they had been carrying exploded accidentally. The LTTE has been responsible for numerous attacks on military personnel and civilians in the Trincomalee area.

A government post mortem later determined that the five had died from gunshot wounds. Three had been shot in the head, while two had died from shots to the chest and abdomen, apparently received while trying to flee.

At the time of the incident, Manoharan received a short mobile phone message from his son, who said that he and his friends were pleading with security forces personnel not to shoot them. Manoharan immediately tried to go to the nearby place where he knew his son was, but he was stopped by the security forces at a checkpoint. Manoharan testified at an inquest on January 10 that he heard the young men pleading for their lives and the gunshots. At the same time, the security forces had also briefly detained about 300 people at the seafront and made them kneel or sit, and had shut off all the streetlamps, leaving the area dark.

To date, only Manoharan has come forward to testify as a prosecution witness; no one else in the vicinity of the killings has been willing to do so. President Mahinda Rajapakse pledged

publicly and to the Donor Co-chairs in Tokyo that the perpetrators would be brought to justice, irrespective of rank. A dozen members of the Special Task Force were placed under restraint pending inquiries; they were effectively discharged in April.

Since testifying, Manoharan and his family have been subjected to numerous serious threats. On the evening of the inquest, unidentified persons banged on his door and threw stones at his house. Manoharan also received several anonymous phone calls threatening to kill him and his family because of his testimony. Several days after the inquest, a man on a motorbike who kept his head covered sought medical help at his clinic, but left when only Manoharan's wife, who is also a doctor, agreed to treat him.

Human Rights Watch is concerned that the death threats appear to be coming from the security forces, who do not want Manoharan or others to testify in the case. As a result of the threats, he has had to suspend his medical practice and his children's education has been severely disrupted. His friends have been warned not to come to his home.

According to Manoharan, two policemen on June 12 stopped one of his surviving sons who was traveling to take an exam. On discovering a photo of his deceased brother, the police questioned who he was and then asked, "Are you Dr. Manoharan's son?" After finding on him the card of an international nongovernmental organization, the police said, "Your father is flashing the whole matter at the international level. That is not good for your family. You are going for the exam. You go now, we will see later." The son was too shaken to complete the exam.

On June 21, a policeman who recognized Manoharan detained him for half an hour at a checkpoint for no stated reason. During this time the policeman told him, "You are supporting the LTTE and our high officers are supporting you, so how can we do our duty?"

The following evening at around 9 p.m., a group of naval officers came to the Manoharan house and offered to provide "protection." The source of the offer, the late hour and references to armed groups not under control of the security forces raise concerns that this was not a genuine offer of assistance but a thinly veiled threat. To date, almost all security personnel prominently implicated in the case remain in Trincomalee, posing a threat to Manoharan and prospective witnesses. A senior police officer cited in the special investigator's report as allegedly being "behind the shooting incident" remains in Trincomalee and was recently promoted.

In Sri Lanka, widespread impunity for serious human rights abuses committed by both the security forces and the LTTE is a major, longstanding problem. A successful prosecution of the Trincomalee killings will require meaningful and proactive witness protection measures, Human Rights Watch said. The government must take necessary steps both to protect persons and their families who have agreed to testify, and to create an environment where other witnesses will be willing to come forward.

"Summary executions in Sri Lanka will only stop when those responsible are prosecuted to the full extent of the law," Adams said. "But this rampant impunity will end only when the government takes strong steps to ensure that witnesses can safely come forward."

## Appendix II

### University Teachers for Human Rights (Jaffna)

### Sri Lanka

### UTHR(J)

### Special Report No. 24

Date of Release: 19<sup>th</sup> April 2007

(Advance Copy to the Commission of Inquiry : 26<sup>th</sup> February 2007)

## The Five Students Case in Trincomalee

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Appendix

What Lay Behind the Crime?



## Schematic Diagram

### Gandhi Statue (map)

### Scene of Incident and Environs (map)

#### **0. Introduction**

Five students were killed near the Gandhi statue at the Trincomalee sea front on 2<sup>nd</sup> January 2006. They were beaten and shot execution style by Sri Lankan security forces after a grenade was thrown at them from a passing auto rickshaw. It was a shocking case in which the State has operated with blatant impunity; its disregard for the rule of law has been offensive and insidious. Numerous exposes and statements by human rights agencies have been released on the subject that provide overwhelming evidence of state complicity, but as usual the case has stalled. Both the recorded evidence and the testimonies we have collected from witnesses who dare not go on public record point to a high level collusion between the three arms of the security forces. This further substantiates the belief that an independent investigation and prosecution would have unravelled hidden agendas inherent in the workings of the Defence Ministry.

The public outcry when the cover-up backfired led to 12 STF officers being placed under arrest. They were effectively discharged after a flimsy inquiry citing lack of evidence; scores of initially agitated witnesses anxious to strike a blow for justice at that time slumping into terrified silence. Following international interest shown in the case during July 2006, the Police ordered a second CID investigation under an officer of ASP rank, who had been on the case earlier in the year. At the end of the year, a CID report was said to be with the Magistrate. The Human Rights Commission's own Special Rapporteur too came to some strong conclusions about the role of the STF and the SP (Operations) instructing them. Yet there has not even been the slightest hint of even a token disciplinary action.

We take a new thorough look at the case with the aid of the Magistrate's hearings that have been placed on record. These hearings contain a wealth of leads that any professional investigation should have pursued. Command responsibility in this case would be easier to pin down, but the Sri Lankan elite has shown singular resistance to admitting it as a legal basis for criminal liability. It is an elite without vision that sees itself constantly under siege.

**Scores of violations executed either by subordinates or by unofficial agents over the last 25 years that would be determined as crimes against Humanity in International law, carry no criminal liability in Sri Lankan law.**

Early on, many in Trincomalee with police contacts pointed to SP (Operations) Kapila Jayasekera as having played a central role in the crime. The Magistrate's proceedings make it clear that he was on the scene, but do not record when he arrived. Police and naval personnel at the checkpoints leading to the scene have testified when and which police vehicles entered the area. But there is total silence on the arrival of Kapila Jayasekera in his conspicuous unmarked pick up. Any effective investigation should have followed this important lead and established his time of arrival.

Another lapse in the investigation concerns the green auto rickshaw from which the grenade was thrown. One of the injured students told the Magistrate that the rickshaw proceeded towards the Fort Frederick. But the personnel who were at the army checkpoint (which the auto rickshaw would have passed) were not produced before the Magistrate. We verified that the auto rickshaw did indeed go into the Fort, which is the Army HQ. Stranger still, the auto

rickshaw had been regularly seen parked near the Police HQ. As the cover-up dragged on, another auto rickshaw driver, Balachandran, was providing information to the victim families on the green auto rickshaw used in the crime. Security forces assassins killed Balachandran in August 2006.

Testimony points to the active complicity of the Navy, Police and Army in this staged execution of 5 students. The evidence speaks loudly about the kind of instructions the Defence Ministry had been issuing commanders on the ground. This was an early manifestation of the profound impunity that has now been granted to terrorise and degrade the Tamil community in the East and particularly Trincomalee. In the course of 2006 it turned the East into a killing field. We believe this was an intentional prelude to enforced Sinhalisation of the area, driven by the demands of an increasingly militant and influential Sinhalese nationalist component of the state.

## **1. The Key Facts of the Crime**

The company included about 9 students who had left Koneswara Hindu College and were either in university, engaged in some other form of higher education, or had just that day received notice of admission to university after the second sitting of the A. Levels. They were having a chat on the sea front. Several had paid their regular visit to Kali Kovil and were having snacks and soft drinks, seated on a concrete ledge at the beginning of Fort Road, facing the beach across the road, with the Gandhi statue behind them. It was the second day of New Year – a day of parties for young persons who had come home and were meeting old friends at the sea front. A Schematic Diagram with main details of the incident indicated and aerial maps of the location with the relevant places marked are sent in a separate file. An unmarked map could be found at

<http://wikimapia.org/#y=8573404&x=81237266&z=16&l=0&m=a&v=2>

At 7.35 PM a green auto rickshaw which came along Dockyard Road southwards did a sharp turn to the left into Fort Road, shied a grenade at the youths and moved towards the Fort passing the army check point at the point where Konesar Road branches off to the Clock Tower from Fort Road (Pansala Checkpoint). We have verified from a witness of good standing that the auto rickshaw went through into Fort Frederick, which is the army headquarters for the District.

The locality in which the incident occurred was under the control of the Navy. One platoon manned the checkpoints at the Urban Council (UC) and at the Martyrs Monument to the Welikade massacre victims on Dockyard Road, facing Cathedral Rd.

The Gandhi statue is 500 ft. (150 m) south of the UC and the Martyrs Monument 250 ft. (75 m) south of the statue. The Navy sealed off these two checkpoints soon after the grenade blast and hardly anyone was allowed to leave.

Five of the students were injured in the grenade explosion. Of the two who were unhurt, Manoharan Ragihar and Yogarajah Hemachandran tried frantically for about 15 minutes to persuade some of the many auto rickshaws and vehicles parked there to get the five injured youths to hospital, but to no avail. The Navy, which was in charge of the area, immediately closed the exit points. Were they simply watching and waiting for something to happen, doing absolutely nothing to help the injured?

Yoganathan Poongulalon, one of the injured survivors who had learnt of his admission to Moratuwa University that day, told the Magistrate from Hospital the day following that the

injured had been pleading for help but no help came. 5 to 10 minutes after the blast he saw 4 or 5 persons coming towards him as though to help. At the same time a jeep came towards him (along Fort Road) and persons came at them shouting in Sinhalese. He could not say whether they were Army, Navy or STF. They pushed four of the injured into the back of the jeep and assaulted them with their guns and hands. Then they pushed them out from the back and shot them on the road. Poongulalon feigned death and survived with gunshot injuries. He placed the time of the shooting at 15 to 20 minutes after the bomb blast. "Later", he said, "*the Jeep left.*" This places the time of the shooting around 7.55 PM as also suggested by further testimony.

Poongulalon's testimony gives the only reference in the Magistrate's record to the green auto rickshaw from which the grenade was thrown at the students. Although many witnessed this, no one came forward to testify. Poongulalon told the Magistrate: "*Normally vehicles pass up and down along the road. A green auto rickshaw going in the direction of the Fort came slowly towards where we were standing. Suddenly a grenade was thrown and fell near my feet. I ran about 10 metres south and fell down injured. The auto rickshaw from which the grenade was thrown went towards the Fort.*"

Very remarkably, there has been no follow up on this important piece of testimony. Officers in charge of the two checkpoints to the north and south of the incident were called upon to testify. After throwing the grenade, the auto rickshaw passed the Pansala army and police checkpoint close to the Fort, which anyone going in must pass. But no person from that point was summoned to testify. We received incontrovertible testimony that the green auto rickshaw went into Fort Frederick, the Army HQ.

A hospital visitor who communicated with Poongulalon told us that after beating them the assailants made as if to go, when a man seated in the jeep barked out an order to kill them. It was then that the shooting started. After one round of shooting, the headlights of the jeep that had come with only the parking lights on were switched on before turning the vehicle. The men noticed two boys seated on the ground ahead at the bend of Dockyard Road and Fort Road. They asked who they were, and then went up to them and shot them dead. These boys were Manoharan Ragihar and Yogarajah Hemachandran. The witness said that the assailants were wearing masks. The jeep then turned and went back along Fort Road.

Pararajasingham Kokularaj, the other injured student, did not tell the Magistrate very much, but told family friends later that he was on the ground when he saw his friend Rohan being shot by the killers. He felt cold in his stomach and passed out.

Dr. Manoharan told the Magistrate's Court on 10<sup>th</sup> January that he heard the bomb blast when he was doing medical reference at his home in St. Mary's Rd., 1000 ft (300m) from the Gandhi statue. He looked at the time on the family clock and it was 7.35 PM. He went over to the Martyr's Monument checkpoint on Dockyard Road in about 10 minutes of the blast, but the navy men did not allow him to proceed further on his motorbike. He rang Ragihar on his cell phone, whose phone was ringing, but there was no answer. He showed this to the naval officer. He was told that he could proceed on foot. He left his bike at home, returned to the Martyrs' Monument seaward (east) of the checkpoint about 250 ft from the scene of the incident. Unable to proceed further as a barrier had been placed and the road was blocked, he stood with persons in commando uniform.

He then saw a wide-bodied jeep with only parking lights on coming from the direction of Koneswaram Temple (Fort Frederick) along Fort Road. After this he heard the sound of

motorcycles approaching. (He clarified to us that these came along Dockyard Road from the direction of the town.) When the shooting began subsequently, he looked at the time on his cell phone and it was 8.15 PM. (He agrees that this time may have been inaccurate and we have good reason to place the time at about 7.55 PM.) The place of the crime was in darkness. The lights had been switched off locally at a post near the Gandhi statue. There were also no lights at the Dockyard Rd. checkpoint. Manoharan saw only the parking lights of the killer vehicle and the flashes from the guns from about 3 to 3 ½ feet above the ground, from two distinct locations, lasting 1 to 1 ½ minutes. He also heard screams for mercy from the victims. The parking lights of the killer vehicle were switched off after the shooting. While Dr. Manoharan insisted that he be allowed to go to the scene of the shooting the security men prevented him. The violence so close to them did not seem to perturb them at all and they went on talking and joking among themselves as though it was simply their duty to hold the ring.

Dr. Manoharan also added later that he had seen SP (Operations) Kapila Jayasekere's ash coloured pick up (without police markings) parked near the Valluvar Monument at the top of Customs Road across the western edge of the Gandhi statue triangle on Dockyard Rd. This was before the shooting began. (There was light in Customs Road that is closed to civilians because of the prison and rubbish is often heaped near the top.) Jayasekere's presence at the scene was confirmed to the Magistrate by two police witnesses, who were vague about the time he arrived and avoid giving the precise context. Manoharan also said that he saw Kapila Jayasekere's vehicle with masked men at the rear of the pick up going towards the hospital after the shooting (he did not speak of Kapila's vehicle in his testimony to the Magistrate).

Dr. Manoharan told the Magistrate that the persons in commando uniform (possibly naval personnel) asked him to wait when he wanted to leave on hearing from a man in uniform, who contacted a colleague on his communication device or cell phone, that 5 civilians had been killed. About 20 to 25 minutes after the shooting he saw a truck like vehicle with masked men in commando uniform accompanying it take off from near the scene of the murder and pass him on the way to the Hospital. The vehicle lights were switched on after passing the checkpoint. This was, he clarified later, after Kapila Jayasekere's vehicle had gone the same way, also after the dead and injured had been transported to hospital.

A further clear indication that there was a significant time gap between the bomb blast and the gun fire came from Ponnuthurai Yogarajah, the father of Hemachandran. He gave the time at which he heard the bomb blast from his home in Customs Rd. at 7.35 to 7.45. He then went out and waited a considerable time for his son. Not seeing him he went to the Old Police Station near the Gandhi statue. He added that someone there told him that he could not go towards the beach and he turned back home. He added that there were no police or army personnel where he was. On his way home he heard about 15 gunshots and he later went to the Hospital. He placed the time interval between the bomb blast and the gunshots at about 15 minutes.

Yogarajah testified on 16<sup>th</sup> January, 6 days after Manoharan, and by then the intimidation of witnesses had become blatant. In fact at the location he described, he had come very close to his son. We learnt independently that Yogarajah had been forced to kneel down by the Navy and was later beaten by masked men who arrived, either STF or Navy, and made to lie on the ground. He actually heard his son's pleas just before the last two were shot and he was the first parent to seek his son in the Hospital.

Another indication of the time of the shooting concerns another of the victims Lohithathasan Rohan, the eldest son of Lohanayaki and her husband Rajendran Lohithathasan, who was expecting admission for civil engineering. Rohan's mother who testified on the 16<sup>th</sup> January did not understandably mention his cell phone, which continued to ring when dialled for some time. The cell phones of all the victims had been removed except Ragihar's. His phone was small in size and it turned up later in the back of his underpants. His gold chain and other possessions had been robbed.

Concerned to find out what was happening, Hemachandran's family called Rohan's cell phone (no. 0776539192). Twice the call was cut off. The third time a stranger's voice spoke in Sinhalese and asked for their names and addresses and said mockingly that Rohan was with them. The conversation lasted about 3 minutes. The family remembers that the clock indicated 7.52 PM while this conversation was going on.

In sum we may place the bomb blast at about 7.35 PM, and the time of the executions (gunshots) at about 7.55 PM and the gap between the two events at around 20 minutes. There is as we shall see, while there is fairly good agreement between the civilian and security forces witnesses on the time of the gunshots, the main gap arises in the time interval between the blast and the gunshots. While the civilian witnesses place this at 15 to 20 minutes, the security forces try to narrow this down to 5 minutes or less.

## 2. Twists in Official Evidence

In their attempt to direct the evidence, the security forces experienced one severe drawback. In the initial briefing of the Magistrate, they suppressed any mention of gunshots. The Acting OIC Inspector Zawahir of the Harbour Police, who was about the last to testify, told the Magistrate that he was about to go to see ASP-1, when at 7.50, 7.51 PM he heard of a bomb blast near the beach on the Motorola receiving set in his vehicle. He conveniently did not hear the blast and knew absolutely nothing about the gunshots. He proceeded to the area 15 minutes later along Post Office Rd., turned right into Dockyard Rd. at the UC roundabout and saw people detained on the left side of the road.

He went to the Gandhi statue and saw persons in commando dress on the alert. He did not know who they were then and did not ask. He saw some injured persons on the ground groaning. He did not know who was dead and who was injured, he treated them all as injured and gave priority to dispatching them to hospital, he said. He sent two injured to hospital in his vehicle about 8.15 PM. Just then another jeep came from Police HQ (he did not say who or by which route it came, however, the UC is the shortest route). He sent three injured (sic) to hospital in that vehicle with some others in jungle (commando) dress helping. When his jeep returned he sent the last two in it.

Zawahir 'found' an unexploded bomb under one of the motorcycles (of the students). He sent word to the bomb disposal team of the Army at the Fort to come and await the Magistrate before defusing the bomb. He sent an officer to inform the Magistrate. He also informed ASP-1 Serasinghe responsible for the area. He then met the ASP and SP Kapila Jayasekera "*who came there*". This was he said about 8.35 to 8.40 PM. (The arrival of ASP-1 is corroborated in the evidence of the police sergeant at UC Junction, but no security witness says when or how Kapila Jayasekera arrived. Manoharan's testimony says that he was there before the gunshots, and apparently directing the operations.)

Magistrate Ramakamalan made his entry at 9.15 PM: "*The OIC Harbour Police informed me that as the result of a bomb blast in his area some have died and others were injured... Was*

*met (at the scene) by SP Jayasekera, ASP Serasinghe and Inspector Zawahir.” The Magistrate left the site at 9.45 PM after instructing Zawahir to secure objects to be produced as evidence. He went to the Hospital at 8.45 the following (3<sup>rd</sup> January) morning to identify the bodies and order post mortems.*

Zawahir in securing productions did not find any empty cartridges. He found such only two days later, well after it was broadcast over the international media that the students had died of gunshot injuries. He told the Court on the 18<sup>th</sup> that he only knew after the JMO’s report on the 3<sup>rd</sup> that the youths had died of gunshot injuries, he had no way of finding out, he said. Contrast this with what other witnesses had to say:

**Dr. Manoharan:** *“[Upon going to the Hospital] I saw my son [Ragihar] on a stretcher. His eyes were wide open and blood was coming out of an ear. There was a gaping hole of 2 to 2 ½ inches at the back of his head.”*

**Subashini Chitravel:** Identified her elder sister Suhirtha Thangathurai (54)’s youngest son Sivananda (20), a first year civil engineering student at Moratuwa University. She said, *“I saw a big wound above his right ear and a small hole under his left ear. I have worked 15 years as acting magistrate. From this experience I can definitely say that these were gun shot injuries.”*

Inspector Zawahir, an experienced police officer in a conflict area saw nothing, heard nothing and asked nothing. He was only following directions from Kapila Jayasekera. The one thing he did not fail to find was the unexploded hand grenade apparently planted with the intention of incriminating the victims. The whole purpose of the Police direction of the case seems to have been to expunge gunshots, bullets and bullet wounds, and make them disappear from the records.

### **3. Making Bullet Injuries Disappear**

When Dr. Manoharan went to the Hospital in search of his son at 9.00 PM, he saw armed men with black masks all over the Hospital -- from the entrance to the car park and then in the corridors. This had nothing to do with protecting the dead or injured from the Tigers. The area was far too Tiger-proof for that. They first prevented him from getting into the hospital. A male nurse who is the son of Salam, known to him, helped him to gain entrance. He saw his son’s body in the mortuary and felt faint. He went out. During this time he was accosted outside the mortuary by a group of three police officers in uniform and 6 or 7 masked men with guns. They told him that the body would be released to him if he signed a declaration that his son had belonged to the LTTE.

There was already talk around the hospital of the security forces insisting that the students had died of bomb blast injuries. Anxious that the State would cover up the crime, Manoharan went back into the mortuary and used his camera phone to take three photographs showing his son’s injuries.

Anxiety about the post mortems was also created by the presence of a Doctor Jagath who was heard making pronouncements that the 5 student victims died of bomb blast injuries. That same night some members of the public, including Subashini Chitravel, got involved in a heated exchange with the hospital authorities. Matters were calmed by an assurance from the Medical Superintendent, Dr. (Mrs.) Gunalan, that she would be present during the post mortem examinations.

Dr. Manoharan was at the Hospital, along with many relatives of the victims, before 8.00 AM the next morning to identify his son before the Magistrate and have the post mortem examination done. Dr. Jagath was also there with some files. Manoharan heard him telling some interns and hospital staff in Sinhalese that the deaths were caused by bomb blast injuries, although the truth was widely known at that time. The Judicial Medical Officer Dr. Gamini Gunatunge also turned up. Gunatunge was a young doctor of 33 years from Gomarankadawela, also in Trincomalee District. He had been doing the JMO's duties in Trincomalee from September 2003 and was well regarded in the Hospital. The post mortems began at 10.15 AM with Shanmugarajah Sajendran. Next was Ragihar's at 10.45 AM. Dr. Manoharan was going in as a parent with a right to be present. But Doctor Jagath told him, albeit politely, to stay outside. Manoharan thought it high handed, but decided against making a scene, since Mrs. Gunalan was present. Dr. Gunatunge followed with the post mortem of Lohitharajah Rohan that same morning.

At 12.00 AM the JMO received instructions for the post mortems of Thangathurai Sivananda and Yogarajah Hemachandran and completed the work by 2.00 PM. When Gunatunge testified in court on 17<sup>th</sup> January, it was the first time he had done so. He made no mention of being assisted by Dr. Jagath. He duly certified the deaths as being due to bullet injuries.

A parent of one of the dead boys visited the two injured, Pararajasingham Kokularaj (20), an automobile engineering student at the Open University in Colombo, and Poongulalon, in the ICU during early February 2006. Poongulalon told the parent that Dr Jagath had called and advised them shortly after admission that they would be treated well if they made a declaration that they belonged to the LTTE, and if not they may not receive proper treatment. He added that some nurses who heard this advised the students to testify to the magistrate, who subsequently took down their statements.

From the 2<sup>nd</sup> night, it had become widely known that the boys died of bullet wounds, and by late morning 3<sup>rd</sup>, it was medically certified for three of the dead and for the two remaining by 2.00 PM. The international media (e.g. BBC) quoting the SLMM reported the fact the same day. Yet the Army Commander for Trincomalee Major General Tissa Jayawardena claimed that very day (3<sup>rd</sup>) that LTTE cadres riding four cycles met with an accident exploding bombs they were carrying to attack a security forces checkpoint 100 metres away, killing six of them. Another live grenade, he said, was found on the road by their bodies.

Was Military Intelligence as poor as Inspector Zawahir's intelligence? The SLMM had in fact seen the bodies the same night (2<sup>nd</sup>) and said that they died of bullet injuries. General Jayawardena also claimed that his troops had subsequently conducted a search operation in the area. Like Zawahir and his men, they too apparently failed to find any empty bullet shells. Dr. Manoharan, who was determined to fight for justice from the very outset, took photographs of the execution site the same night and again the following morning, which clearly showed bullet casings. What was the need for General Jayawardena, like the Navy, to compromise himself in the cause of SP Kapila Jayasekera? Moreover, the green auto rickshaw from which the bomb was thrown went directly into Fort Frederick where he was ensconced. These are decisive links pointing to the arrogance of the Security Forces.

#### **4. The Cover up on Time and the Bullets**

It was remarkable how bullets and gunshots on which the Police and Army had up until then maintained absolute silence suddenly became popular with witnesses from the security forces when they began testifying on the 16<sup>th</sup> of January. The bullets and bullet wounds were no

longer deniable and featured in the post mortem reports and all testimonies of the civilian witnesses.

Dr. Manoharan was the first to testify on 10<sup>th</sup> January and was forthright. Describing what he saw of his son, he said, *“As far as I am concerned, I say that my son died of gun shot injuries. Where the others are concerned, I would say that they very likely died of similar causes. I would also say that it is the Government forces who are responsible for the deaths of all. A bomb went off at the scene of the incident at 7.35 PM. The gun shots I heard and the flashes I saw with my own eyes were at 8.15 PM. All this time the area was ringed and controlled by the security forces. Therefore no one else could have done the deed.”*

Subashini Chitravel (51), Acting Magistrate, testified the same day, and was more guarded: *“I say that my sister’s son was cruelly killed. He had no enemies. He was killed by those who had guns. The security of the region has been entrusted to the government security forces. They must give an answer. In this connection a fair verdict must be given, and those guilty must be punished.”*

The same evening Dr. Manoharan’s house was stoned, there were knocks on his door and he began receiving threatening calls of a crudely racist nature. Subashini Chitravel became largely silent. Despite her involvement in human rights work during the harrowing mid-1980s, she must have sensed this time that the stakes were far too high for her to handle if she was to live in Trincomalee. She actually discouraged others from getting involved. The remaining parents who did not have the same social clout as Manoharan and Subashini became very subdued in their testimony to the Magistrate. None of the hundreds of witnesses present at the beach came forward, though many were initially fired by enthusiasm to see justice done. A retired police officer who witnessed the crime at close quarters and promised to expose the outrage also became silent once the intimidation began. A senior education officer who saw the action at close proximity and gave many details to some of the families is believed to have left the country. The victims’ families themselves became thoroughly isolated.

The security forces began testifying on 16<sup>th</sup> January, all of them but Zawahir now claimed that they heard gunshots, but soon after the bomb blast. They made no attempt to explain where the shots came from or how the youths were killed under the very noses of the security forces that completely dominated the area. They left the death of the students a complete mystery. Zawahir could not do otherwise; he had compromised himself so abjectly from the start to protect his superiors. His position was, ‘did not hear, did not see, did not ask.’ The testimony of these government officers before the law was full-scale perjury.

Their problem was that they had first proclaimed that the deaths were due to bomb blast injuries. This story had been blown. The Press (e.g. Iqbal Athas and D.B.S. Jeyaraj) had already pointed the finger at the STF unit commanded by Inspector Saratchandra (Vas) Perera for the killing. Their presence too had to be explained and matched with the arrival of local police officials on the scene. The danger was that more civilian witnesses might come forward and trash their claims. Hence they also resorted to concerted intimidation and threats to potential witnesses to leave Trincomalee. They succeeded to a large extent leaving Manoharan thoroughly isolated, bearing the brunt of the threats calculated to break his family down.

## **5. Contradictions and Cover Up**

The security forces’ testimony tried to bring the bomb blast close to the time of the gunshots and to fit this with the times of arrival of the STF and other senior officials. Thus the STF unit



ended up claiming it took an absurdly long time to cover the ½ mile to the Gandhi statue, thus ensuring that they were not present at the time of the crime. (According to SI Bulanawewa it took them 15 to 20 minutes to set off, 15-20 minutes to travel the 2500 ft from the Clock Tower to the UC by vehicle and the final 500 ft on foot. The actual movement could not have taken 5 minutes.)

The first to testify were Reserve **Police Sergeant Don Upali Gunawardene** of the Harbour Police and **Ratnapala Soorasinghe**, naval platoon commander in charge of the area, both on 16<sup>th</sup> January. They were both at the UC checkpoint. Sergeant Gunawardene claimed he heard the bomb blast at about 7.50 PM followed by someone shouting for a vehicle, but he could not see any vehicle there to be sent. He immediately (within 5 minutes) informed the Police Information Centre using his communication set that the explosion was from the beach side. He was later, he said, redirecting vehicles coming from town along Dockyard Rd. into Post Office Rd.

Sgt. Gunawardene first saw Inspector Zawahir's police vehicle come past his checkpoint along Post Office Rd., followed by ASP-1's vehicle '*a long while later*'. Importantly, he asserted that no other vehicle passed that way while he was on duty. He said nothing about the Defender jeep in which the STF arrived, which the STF claimed was stopped at the UC checkpoint and parked there. According to Gunawardene's testimony, he did not attempt to go to the site. He could only see along Dockyard Rd. but not the statue, for it was he said dark there. He said he heard gunshots 4 to 5 minutes after the blast, but being the first witness from the State to testify, was nervous about committing himself. Being the season of goodwill to all men, he also heard Chinese crackers about the same time, he said hazily.

The next to testify on the same day was naval platoon or area commander, whom we will refer to as Lieutenant **Ratnapala Soorasinghe (44)**. He was also at UC Junction when he heard the blast between 7.30 and 7.45 PM and gunshots 2 to 3 minutes later. Soorasinghe was in charge of the UC checkpoint, Dockyard Rd. checkpoint (near the Martyrs Monument, facing Cathedral St.), the area behind the Police Quarters and the area adjoining the path along the beach. He informed the local Navy HQ administration section. He was preoccupied with redirecting traffic. He claimed that the scene of the incident was dark. He also claimed that he did not attempt to communicate with others in the platoon under him who were engaged at the sentry point near the Martyrs' Monument on the other side of the Gandhi statue because the platoon had only one communication set and that was with him.

Dr. Manoharan saw those near the Monument freely talking to their colleagues elsewhere using cell phones and Soorasinghe failed to mention that he had sealed off the exits from the beachfront, which would have required communicating with the others. An object of this claim was to pretend that he remained ignorant of what had happened near the Gandhi statue. We will say more on this later.

Platoon commander Soorasinghe said he attempted to go to the scene of crime only after a police vehicle (Inspector Zawahir's presumably) passed his point and went to the statue. He said he went on foot to see his men at the Martyrs' Monument 10 to 12 minutes after the blast, and 5 minutes after the police jeep. While passing the monument he saw some injured persons in civilian dress on the ground.

**A very important claim Soorasinghe makes is that he saw only one vehicle there, the police vehicle, and only policemen in uniform. He saw no one in commando dress. This contradicts Zawahir's testimony two days later that there were men in commando**

**dress when they arrived and also more importantly the STF inspector Vas Perera's claim the next day that his men (in commando dress) were the first to get there.** After going to the Martyrs' monument Soorasinghe testified that he found his men flat alert on the ground in firing position. Again, this contradicts Dr. Manoharan's testimony. Dr. Manoharan found them chatting on the cell phones, and listening to music as though nothing had happened. Also Soorasinghe alleged that he could not see what was happening at the Gandhi statue because *Alari* trees along the road supposedly blocked his view. But according to other eyewitnesses, the trees were virtually leafless.

The first witness the following day (17<sup>th</sup>) was **Sub-Inspector Ananda Bulanawewa**, feeling extremely uncomfortable. Like Zawahir he too was in the category of 'did not want to know and did not want to ask'. SP Kapila Jayasekere assigned Bulanawewa to the STF party and was on that occasion with the 12 under Inspector Vas Perera, wearing police uniform. A significant point in his testimony is that the unit was at the Clock Tower from 10.00 AM to 1.00 PM, at Anuradhapura Junction from 1.00 PM to 6.50 PM and were brought back to the Clock Tower for the last hour of their duty from 7.00 PM to 8.00 PM, within easy access to the Gandhi statue. **We were told independently that individual policemen were going around the area tipping off people they knew not to go out after 6.00 PM on that fatal day.**

Bulanawewa heard the bomb blast at 7.45 to 7.50 PM and gunshots 1 or 2 minutes later. He says he then heard on his police communication set that the bomb blast came from the direction of the Old Police Station. Vas Perera decided to proceed there with all his men in the Land Rover jeep assigned to them, but Bulanawewa did not know why. When they set off it was 8.05 to 8.10 PM.

Continuing, Bulanawewa said that they were stopped at the checkpoint at UC junction and were not allowed to proceed. There were one or two policemen there and some men in commando dress, and like Inspector Zawahir he could not say who they were (Police, Army or Navy). (Vas Perera had no difficulty in identifying them as navy – according to the arrangements there were only police and navy at that point.) Bulanawewa does not know why they were stopped and had no occasion to ask. Vas Perera left him in the vehicle with 3 of the STF men and proceeded to the Gandhi statue on foot.

When Vas Perera went, Bulanawewa saw a vehicle with police markings pass the UC junction 1 or 2 minutes later, presumably Zawahir's, and stopping near the Gandhi statue. After about 5 minutes he decided to walk up and join the policemen who came, but the 3 STF men stayed behind. He then observed a second vehicle with police markings coming towards them along Fort Road. He saw injured persons being loaded into the two police jeeps with Vas Perera's men helping. It never occurred to him to bring up his vehicle and help the injured. He saw men in commando uniform there (other than the STF) but did not know who they were. He did not know why he decided to go to the Gandhi statue.

In fact Bulanawewa claimed not to have known anyone there. He significantly did not mention the presence of SP Kapila Jayasekere who had assigned him to Vas Perera, although he claims to have left the scene with Vas and his men. It was left to Vas Perera to tell us about Kapila's presence for his own excellent reasons.

**Inspector Vas Perera** of the STF testified next. He claimed that he heard the bomb blast at 7.45 to 7.50 PM, left the Clock Tower shortly afterwards driving most of the way, and was first to reach the Gandhi statue at 8.20 PM. It is difficult to believe that this elite force of commandos modelled after the British SAS, known for speed and flexibility, took 30 minutes

to travel the ½ mile that a casual walker could have covered in less than 10 minutes. Nothing in his account is believable except his meeting Kapila Jayasekera at the scene. What Vas Perera did by flexing the time was to put on the record that he and his men arrived on the scene well after 7.55 PM when the gunshots were heard, as the victims' party had already testified. **We will see that there is partial truth in Perera's times, except that he spoke only of his second journey to the scene of crime and concealed the first.**

According to Vas Perera, he heard from Bulanawewa that the police radio had spoken of an explosion in the direction of the Old Police Station and decided to go there to see if his men there were in trouble. This cannot be believed. Vas Perera could have communicated with his men with a regular police set and if not by cell phone, which nearly all security persons now have. In the first place, according to Sergeant Gunawardene he told the Police Information Centre that the explosion was from the beach side. This is what Inspector Zawahir said he heard over the police radio. There was no reason for thinking that something happened at the Old Police Station, 500ft (150 m) inland from the UC where Sgt. Gunawardene was. Moreover, supposedly fearing that his men at the Old Police Station were in trouble, it took him 15 minutes to leave the Clock Tower.

Vas Perera claims that the naval personnel at the UC check point stopped them, but gave no reason. He then claims he proceeded on foot taking eight of his men, found there was no trouble at the Old Police Station and realised that something had happened further ahead and some youths were screaming on the ground. There were 7 youths he said, he saw with the aid of light from the mercury lamp. Vas claims he saw signs of life, but the victims did not ask for help. He asserted that he and his men were the first to be on the scene. He saw some men in commando uniform, but 75 yards from the Gandhi statue. It was then he said that two police vehicles came there, first one from the UC and the other along Fort Road. He said he knew no one whether from Inspector Zawahir's party or from the other vehicle.

This claim is in sharp conflict with naval platoon commander (Lieutenant) Soorasinghe's testimony that when he arrived he saw only one vehicle and uniformed policemen. Neither did he say anything (in his testimony the previous day) about the STF's coming or stopping them at the UC checkpoint.

Towards the end of his testimony Vas Perera drops a brick, "*At that time Kapila Jayasekera came there.*" Vas Perera claimed that his men helped to put two injured into a police vehicle and did not ask the Navy for help. His men engaged themselves in securing the area. They all left for the Police HQ at 8.40 PM to drop SI Bulanawewa, before returning to the Old Police Station.

Before we move on, we will clear up a few points. We have the highest trust in those who gave us information. The testimony of the security forces, while untrustworthy and contradictory in so many crucial aspects, is largely interesting for what each one says to safeguard himself. Yet we would be doubly clear on what our civilian sources have told us.

## **6. Fixing Times, Lights and a note on Presentation of the Evidence**

### **Bomb blast: 7:35**

Poongulalon estimates the time of the bomb blast at 7.25 to 7.30 PM, Subashini Chitravel at 7.40 to 7.45, Yogarajah at 7.35 to 7.45, and naval witnesses Soorasinghe and Prasanna Pathirige at 7.30 to 7.45. We may in keeping with the approximate times given by the civilian witnesses, who were the ones intent on justice, fix the time at 7.35 PM as observed by Dr.

Manoharan on his family clock and his testimony has withstood attempts by the security forces to discredit it. He assures us that this clock gave the time correctly.

Interestingly, all Police and STF witnesses place the time at 7.45 to 7.50 PM and the gunshots soon afterwards. Sergeant Gunawardene said he heard the blast at 7.50 PM and informed Police HQ immediately and Zawahir who claimed he did not hear the blast heard about it on his Motorola at 7.50 or 7.51. We will examine their reasons for this 10-15 minute delay.

### **Shooting: 7:55**

Poongulalon estimated the firing to have been 15 to 20 minutes after the bomb blast, Suhirtha Thangathurai at 10 minutes after and Yogarajah at 15 minutes after. Yogarajah's son told us that they were talking to an STF man who had taken Rohan's phone before the shooting (their home was quite close) and the time observed was 7.52 PM. We may thus fix the time of shooting at 7.55 PM.

Interestingly again, all witnesses from the security forces placed the time of the shooting less than 5 minutes of the blast, which would still place it at around 7.55 PM. We shall see that this need was pressing for the Police and the STF.

### **7. Lights at the Gandhi Statue: Switched off**

Dr. Manoharan who observed the scene from the south found the area of the crime in complete darkness when he came soon after the bomb blast and the area was still dark when he left it after the victims had been moved to hospital. This was also confirmed by the naval officer at that point. We may take it that the lights were switched off on purpose locally either by the Navy or by Kapila Jayasekera's men who were nearby, who had observed the scene closely before the incident.

Police witness Sgt. Gunawardene who was to the north of the scene also said that the area was dark. Inspector Zawahir said that there was one light when he came to the UC junction and when he went near the Gandhi statue he could see the victims very dimly. We checked and were told that there was one streetlight near the UC junction towards the Gandhi statue. This cannot be seen from the Martyrs' Monument to the south. This seems to be the light Zawahir spoke of.

Only the two witnesses from the STF party claim that there were lights at the Gandhi statue. SI Bulanawewa claims that there were lights on the street as Vas Perera advanced towards the Gandhi statue, but the sides were dark. Vas Perera claims specifically that he was able to see by the aid of the mercury lamp at the Gandhi statue. This unlike the one at the UC junction was a powerful light and there would have been no occasion for anyone to claim that it was dark at the Gandhi statue. This too is interesting.

### **8. The Conduct of the Magistrate's Hearings**

The hearings began on 10<sup>th</sup> January and the evidence was led by ASP Mahinda Serasinghe before Magistrate Ramakamalan. Three witnesses testified and both Dr. Manoharan and Acting Magistrate Subashini Chitravel gave powerful testimonies placing the blame squarely on the security forces. That evening the harassment of Manoharan commenced and Subashini opted out.

There was then a break of 5 days and hearings commenced again on 16<sup>th</sup> January, which was when Bulanawewa and Vas Perera testified. This time there were two men from the AG's department. Senior State Counsel Mr. D. Thattawatte led the evidence with Deputy Solicitor General D.P.J. de Livera assisting the court on behalf of the AG. The Police (and STF) faced some glaring problems:

If they accepted that the bomb blast was at 7.35 PM, the delay in the local Police and the STF coming to the rescue would be unconscionable. According to their testimonies they came around 8.10 and 8.20 PM respectively. In claiming the bomb blast occurred at 7.50 and the gunshots immediately afterwards, their conduct appears more plausible. Zawahir had to pretend not to have heard the blast, wait for the STF to come in for the kill and make his entrance after being summoned by his superiors. Vas Perera had of course to do two trips to the Gandhi statue in his share of the drama.

The question of the lights follows similar needs. The lights were switched off locally, in part to make it impossible for witnesses to identify anyone including the various arms of the security forces at the scene. Also the lights being off facilitated the disposal of the victims; in the dark there was little the witnesses could see of the injuries to the victims. The Police and the STF needed to explain why they kept the place in darkness when they could simply have turned the lights on locally as was done after removing the victims. This may be one reason why Vas Perera said the mercury light was on and Bulanawewa said the street was lit. Zawahir did not back this up.

The police investigations were conducted by Zawahir, OIC Crimes, Harbour Police under the direction of DIG Abeygunawardene, SSP Amampola and SP Kapila Jayasekera. Despite the many holes in the evidence of the security forces, and plenty of other evidence inescapably pointing to their culpability, the Attorney General's Department has signally failed to move the case forward. What they were doing remains to be answered.

## **9. Fixing Some Salient Facts**

**The Route Taken by the STF from the Clock Tower to the Scene of Killings:** We have already indicated strongly that the STF vehicle being stopped at the UC is very misleading. In the first instance, Police Sgt. Gunawardene and Naval Lt. Soorasinghe, who were both at the UC checkpoint at the time of the incident, and testified on 16<sup>th</sup> January, said nothing on the arrival of the STF unit at the checkpoint and seemed indeed very reluctant to talk about them. Five minutes after the blast according to Sgt. Gunawardene, someone from the area of the incident shouted for a vehicle to help the victims. If indeed the STF vehicle arrived there before any other, why did he not send it to the aid of the victims? Lt. Soorasinghe walked past the Gandhi statue and asserts that only uniformed policemen (and not the STF in 'jungle dress') were there. We have testimony from persons of standing who were then close to the victims that a naval officer, very likely Soorasinghe, went to the victims after the blast and checked their identity cards, but then went away. We will come to this later.

Moreover neither the police nor navy personnel at the UC checkpoint were preventing police officers or their vehicles from going towards the scene of the incident. Both Inspector Zawahir's vehicle and ASP Serasinghe's vehicles were allowed to pass that way. The STF came in an unmarked police Land Rover and SI Bulanawewa attached to the Trincomalee Police was also present. But Bulanawewa does not know who supposedly stopped them or

why, asked nothing and heard nothing. There was something making the personnel at the UC reluctant to cover-up for the STF.

How did then the STF go to the execution scene? Dr. Manoharan's and Poongulalon's testimonies that were already known spoke of a vehicle (with only parking lights on) coming from the direction of Fort Frederick along Fort Road and stopping at the Gandhi statue prior to the executions. It was eminently possible that despite the intimidation other witnesses too may come forward to support Manoharan and Poongulalon. There were good reasons for SI Bulanawewa and especially Vas Perera to feel very nervous. Naval Lt. Soorasinghe had already undermined their story of being the first to the rescue of the victims.

Both SI Bulanawewa first and then Vas Perera spoke about the vehicle that came along Fort Rd. Bulanawewa only said that it had police markings, but did not know any of those who came. Vas Perera too mentioned its arrival after they had dispatched two victims to hospital in the first jeep, but offered no other information on its purpose or who came. Zawahir only mentioned a vehicle from HQ.

Based on our investigation, we accept Manoharan's and Poongulalon's testimony as factual, and are convinced by the evidence that the STF party played a key role in the executions, and were proximately present when the deed was done. Witnesses on the scene (e.g. Dr. Manoharan) also said that the STF defender vehicle went back along Fort Rd. immediately after carrying out the executions. This is also the import of Poongulalon's testimony to the Magistrate. He said '*then (after the shooting) the jeep left*', although he could not say in which direction. According to other sources, the vehicle went past the Pansala army checkpoint to the Clock Tower along Konesar Rd., made a turn and came back to the UC Junction. It was then that Vas Perera and some of the STF men went back to the scene to be part of "helping the victims."

**It is this last twist that explains how Inspector Vas Perera and his men took, by his own claims, 45 minutes after the blast to get to the Gandhi statue. His testimony actually accounts for his second trip to the Gandhi statue while concealing the first. That too explains how Naval Lt. Soorasinghe said he saw only Zawahir's party at the scene when he went past contrary to Vas Perera's claim that he was the first on the spot. Further indications that Vas Perera actually concealed his first visit to the Gandhi statue and testified about his second visit are to be found in the inconsistencies concerning whether the place was lit or in darkness.**

**Were the Exits from the Scene Sealed by the Navy or Not?** Based on testimony given to us, the Navy which was in charge of the area sealed the exits at the UC Junction and at the Martyr's Monument. The discredited testimonies of Inspector Vas Perera and SI Bulanawewa attempt to throw doubt on this suggesting that the civilians were free to move out and Perera claims that there was no one near the victims and they had all run away. We said in Bulletin No.40 that they had been forced by the Navy to kneel down and an elderly woman who was present when the masked killers arrived had tried to stop the killings. The killers, who were lavish in their abuse, thrust a gun into her mouth and shoved her aside. Poongulalon too testified that the killers were shouting in Sinhalese.

The testimony of Indika Prasanna Hewa Pathirige, the naval NCO in charge of the checkpoint at the Martyrs' Monument suggests that there was no movement through his checkpoint. Pathirige makes the remarkable claim that he did not have a gun and that after the incident they lay down in firing position facing the opposite (Hospital) direction, away from the scene.

He said rather vaguely that people were moving along the beach to the east. The poor man was it seems, as transpires from the testimonies of himself and his superior, placed in charge of a checkpoint without a gun and without a communication set to alert his superiors of any danger.

We verified that the civilians could not have moved along the beach as they would soon have been stopped because it was dangerous and sentries were posted on the sea front in either direction. Poongulalon says that persons nearby and the owner of the cart selling potato chips ran away, as he too tried to, after seeing the bomb thrown from the auto rickshaw, when shrapnel hit him. That does not mean they went far.

Only Inspector Vas Perera and SI Bulanawewa tell us that people were running towards them at the UC Junction. Naval Lt. Soorasinghe is silent on the matter. But Sergeant Gunawardena who was there gives a fairly credible picture. He says that he sensed that there was trouble near the beach when he saw parents and children come running. Later he puts this number at ten!

**The Missing Weapon:** According to testimony in the magistrate's proceedings the personal weapons of the 12 STF men in Vas Perera's party were secured and sent for comparison with bullets recovered from the bodies of the victims. Poor SI Bulanawewa had only a .38 revolver, which too was taken.

Witnesses place the number of security personnel present at 50 or more, about half of them hooded and the rest in uniform (regular or commando). We are now told that the reports of ballistic tests proved negative, and as President Rajapakse himself contended, there is no evidence. Given the signs of premeditation, it is not unlikely that the gun used did not belong to the STF party. But there were also other STF men at the Old Police Station about whose actions that evening there has been absolute silence. Vas Perera's pretence that he could not communicate with them and therefore had to go personally to find out if they were safe and well has been shown to be nonsense.

Poongulalon testified that following the explosion while they were lying helpless, he saw 4 or 5 persons coming towards them as though to help. Then the jeep also came and the rush of persons shouting in Sinhalese. Going by Vas' claim (however discredited) that the STF were the first to get there and all other security personnel were 75 yards away, it is worthwhile checking if some of those first seen by Poongulalon came from the Old Police Station, 500 ft away from the UC. There is little reason to believe that they stayed put watching television.

That it was a coordinated operation of masked STF personnel is also seen from Dr. Manoharan's testimony that as he saw the vehicle with only parking lights on appearing along Fort Road, he also heard the sound of motorcycles coming along Dockyard Rd. from the direction of the UC. Surely, testing just 12 weapons among 50 or more available to the killers at the scene and pretending that there is no evidence is disingenuous to say the least.

A further point worth checking is the claim of Hewa Pathirige, the naval NCO in charge at the Martyrs' monument checkpoint that he had no weapon. He could not have gone for checkpoint duty without a weapon. What became of it?

#### 10. New Information:

About early November 2006, 10 months after his son had been killed and the family had been thoroughly harassed and intimidated, Dr. Manoharan and family were about to leave the

country. **A man who was regularly present at the Gandhi statue, called on Dr. Manoharan, and remarked that it looked as if the case of the students would not get anywhere. He then added that after the STF men had arrived on the scene, he saw Naval Lt. Udawatte Weerakody (of whom there will be more) and another naval officer on a motorcycle ride from the scene of the incident towards the Dockyard Rd. checkpoint where Prasanna Hewa Pathirige was. They returned with three guns instead of the two originally slung on their shoulders and handed one to the STF.**

**From the beginning, civilians who dared not testify had maintained that Udawatte Weerakody, who was well known in Trincomalee, had an intimate role in the executions and that just one gun had been used for all of them.**

### **11. Vas Perera's Dilemma**

Vas Perera was perhaps determined not to take the risks of the entire responsibility for the case. For all the lies in his testimony, he told a crucial truth to buy his insurance. He made it very clear that he was very intimately under the command of SP Kapila Jayasekera. He says almost gratuitously at the beginning of his testimony in court that he, who was an instructor at the STF Training School at Katukurunda, was brought to Trincomalee at the request of SP Kapila Jayasekera – i.e. Jayasekera handpicked him. One wonders what sort of instructions STF trainees are given.

Towards the end of his testimony, having said he helped to put some injured persons at the Gandhi statue into a police jeep, he informs us, "*At that time Kapila Jayasekera came there.*" The sensitive nature of this seemingly casual remark could be seen from that fact that the previous witness, SI Bulanawewa, another of Jayasekera's subordinates who too was present, breathed no hint about Jayasekera being there. He simply denied knowing anyone present except the STF unit he was attached to.

Vas Perera has made it difficult for the State to limit the damage by sacrificing a few of rank inspector and below. It is this that would explain the intensely crude and concerted intimidation of civilian witnesses.

### **12. Kapila's Peregrinations**

Inspector Vas Perera claims he arrived on the scene at 8.20 and left at 8.40 after the injured were dispatched. This suggests the injured were surrounded by the Navy and left screaming for 45 minutes. That was until the STF arrived through the sheer accident of going to the Old Police Station and seeing persons screaming on the ground more than 50 yards away. This is largely fictitious. According to Vas, Kapila arrived about 8.30 PM.

How and when did Kapila really arrive? Had he come after the killings, his presence would not be a matter of embarrassment. After all he was there when the Magistrate arrived at 9.15 PM. Why then did those doing sentry duty at the entry points say nothing about Kapila's arrival, although Inspector Zawahir says that Kapila and ASP-1 came after he dispatched the injured? Sergeant Upali Gunawardene at the UC says a first police vehicle (Zawahir's) was followed by ASP-1. The Sergeant who categorically stated that no other security vehicle came that way while he was on duty, is completely silent about the motorcycle unit that came that way at the time the killer vehicle approached along Fort Road and the STF Defender vehicle which Vas claims was stopped at that point.



Kapila Jayasekere's was a very prominent pick up without police markings carrying commandos at the rear. This cannot be the vehicle with police markings that came along Fort Rd. according to SI Bulanawewa and Vas, after Zawahir had arrived at the scene. Naval NCO Prasanna Hewa Pathirige who was at the Dockyard Rd. checkpoint (lying flat in firing position though he did not have a gun!) vaguely speaks of a vehicle with police markings and police in civils entering the area of the incident 20 to 25 minutes after the blast. In short, all vehicles listed by security witnesses to have come into the area were jeeps having police markings. None fits the description of Kapila's unmarked pick up. There is thus no account in the testimonies of the arrival of Kapila, the senior-most police officer on the scene, although the arrival of ASP-1 had been reported.

We may thus give the highest credit to Dr. Manoharan's testimony that he saw Kapila Jayasekere's vehicle parked near the Valluvar statue across the Gandhi statue on Dockyard Rd. ten minutes after the bomb blast. That was when Manoharan first arrived at the Martyrs' Monument checkpoint on his motorcycle, setting off soon after the blast. He had further confirmation that he correctly identified Kapila's vehicle when it moved towards the Hospital passing him at the same checkpoint after the shooting. The naval men at the point remarked "*Kapila Mahattaya eneva*" (*Kapila boss is coming*).

Thus Dr. Manoharan had seen Kapila's vehicle parked near the scene about 7.45 PM before the shooting. He must have arrived before the green auto rickshaw with the bomb set off the fireworks at 7.35 PM. We have another piece of his movements before the incident.

About 6.30 PM. Police Sergeant Paramasivam was near the bus stand on Dockyard Rd. between the Clock Tower and the UC, closer to the former, buying his dinner. Kapila Jayasekere's pick up stopped on the road near him. The men in the vehicle flashed one of the lights and told him, "*Sergeant Mahattaya, ickmantta yanda*" ("*Sergeant Sir, go away soon*"), indicating that there was going to be trouble. This spot was near the Clock Tower. SI Bulanawewa testified that the STF unit was brought to the Clock Tower from Anuradhapura Junction before 7.00 PM. This suggests Kapila met Vas Perera and his men at the Clock Tower, gave them the final go and positioned himself for a ringside view before summoning the green auto rickshaw. Within the Police there was no doubt that the incident was well planned and who executed it.

Kapila's sponsors fearing that more witnesses may come forward to back Manoharan's incriminating testimony, left him in authority in Trincomalee to enforce silence. They even rewarded him, promoting him to SSP (Crimes and Operations) about June 2006. Later, he was entrusted with the investigations into the massacre of the 17 ACF staff in Mutur on 4<sup>th</sup> or 5<sup>th</sup> August 2006 – another glorious cover up by the State.

We might thus conclude that Kapila on 2<sup>nd</sup> January 2006 was on the spot directing operations. His vehicle had been seen about the place several times that day. Vas Perera told the Magistrate that he was Kapila's hand picked man, following his instructions. The arrival of the motorcycle unit along Dockyard Rd. at the same time that the STF vehicle came along Fort Rd. indicates a co-ordinated operation, beyond the authority of Vas Perera. We also have Poongulalon's testimony that the order to kill came when the assailants were apparently leaving after assaulting them with guns and fists. Given that Kapila was there Vas would hardly have done this without an order from Kapila.

What did Kapila do next? We may infer that Kapila instructed Zawahir (over whom Vas had no authority) to inform the Magistrate that there were casualties from a bomb blast. Kapila

then left for the Hospital or its vicinity passing the Dockyard Rd. checkpoint, as seen by Manoharan before the truck which went that way 20 to 25 minutes after the firing. Kapila, we may infer gave instructions for posting hooded and armed men at the Hospital to ensure a verdict of fatality due to a bomb blast. Kapila then went back to the Gandhi statue to see that the Magistrate gets the correct message.

### **13. The Green Auto Rickshaw and Further Ramifications**

The Appendix gives some of the background against which the killing of the students took place. The victim families were convinced in the immediate aftermath that Weerakody's son in the Navy, Udawatte, allegedly a lieutenant, played a key role in the Students' tragedy. A close link has been drawn between Weerakody Jr. and the green auto rickshaw from which the grenade was thrown at the students. Moreover, Weerakody Jr. has also been linked by civilians to a series of incidents aimed at terrorising the Tamil community in Trincomalee. When by June the case was looking hopeless, a new international interest set things moving raising the possibility of new witnesses coming forward. About early July Weerakody Jnr. became prominent in the Navy's motorcycle unit and his presence where Dr. Manoharan, the main witness so far, lived became frequent.

On 22<sup>nd</sup> July, after a new CID investigation commenced under the urging of the Attorney General, Weerakody, who did not identify himself, with another naval officer calling himself the town commandant, knocked on Dr. Manoharan's door and walked in with their weapons. Until then no security officer had come into his house with weapons. They tried to tell him that there had been a petition complaining about Weerakody and it was all a mistake. Dr. Manoharan asked why they came to him and they must go to the petitioner. There is a further link, which if probed, promises to be fruitful, provided the suspect is arrested and questioned by officers interested in bringing out the truth.

**The Underworld Link to the Green Auto Rickshaw:** The green auto rickshaw from which the bomb was thrown at the students, according to local residents, is connected to Trincomalee's underworld. Persons with contacts in the Police said earlier that the auto rickshaw was owned by a Sinhalese home guard. Civilian sources in Trincomalee are now quite certain that the auto rickshaw No. QA 2178, which used to be parked in Madathady, a border area between Tamil and Sinhalese suburbs, and also in front of the Police Station opposite Orr's Hill, was the one used in the bombing.

The driver, we learn, moves closely with home guards and this vehicle is allegedly used in drug running. He may not have been the same driver involved in the bombing. It would appear that SP Kapila Jayaseskere delegated the task of finding the auto rickshaw to an agent with good contacts in the underworld.

The green auto rickshaw driver is identified as L. Hemachandran of 26 Railway Station Rd., Trincomalee. His mother is Ranjithamalar. Hemachandran was reportedly involved in a police case, accused of murdering his father by pushing him inside a well. He later became involved in a company of Sinhalese squatting in land belonging to a Pillayar Temple. His contacts according to local reports were generally criminals and members of the security forces. The owner sold his fairly new green auto rickshaw and bought another in mid-July 2006 just when the new CID investigation commenced.

It was another auto-rickshaw driver Balachandran (40) who was instrumental in making the connections between the green auto-rickshaw used in the killings, Trincomalee's underworld and the 'naval lieutenant', Udawatte Weerakody. Balachandran, a former member of the

PLOTE had been forward in helping people whenever there was a tragedy for the community. After the killing of the 5 students, he had participated in decorating the streets for the funeral. He had evidently been marked out. He survived an attempt on his life in December-end 2005 soon after the killing of two other auto rickshaw drivers.

Leads supplied by Balachandran, identified the owner of the green auto rickshaw as being frequently in the company of one of 'Lieutenant' Weerakody's brothers. Orr's Hill residents saw this brother regularly talking to the owner seated in the vehicle opposite Orr's Hill, near the Police Station. On 24<sup>th</sup> August 2006, a white van and a green auto-rickshaw went to the house of Balachandran in Madathady. He was taken in the white van and shot dead. Local sources say that the 'Lieutenant' was seen near Balachandran's house before and after the incident.

#### **14. What were the Navy, Police and Army Doing?**

Before moving on to the question of command responsibility, we try to answer questions posed but not answered earlier.

**The Navy:** We know that the Navy closed both exits and made the crowd stay put. Naval Lt. Soorasinghe says that he informed HQ immediately and subsequently walked across to the other end (Martyrs' Monument). What was he doing for the 10-15 minutes before the STF first arrived leaving the injured unattended? Lt. Soorasinghe protested to the Magistrate that he had no authority whatsoever to take measures for the protection of the area and the people (besides checking vehicles).

Perhaps he was correct and did his duty by informing Naval HQ. Then it was incumbent upon the HQ to give him orders and take charge of the situation less than 5 minutes away along Dockyard Rd. We do know that a naval officer, probably Soorasinghe, went to see what had happened after the grenade blast. Iqbal Athas in his *Sunday Times* report of 8<sup>th</sup> January 2006 speaks of a Chief Petty Officer rushing to the scene with some naval men before the STF arrived.

An eyewitness at the scene, a deputy director of education who knew Sinhalese, said that navy men with a communication set came over and checked the identities of the victims and communicated with HQ by radio. They knew Dr. Manoharan as someone to whom they went for medical treatment and identified Ragihar as his son. Sivananda was also perhaps identified as the nephew of Actg. Magistrate Subashini Chitravel. When HQ found out the situation and very likely realising that some of the students were from influential families, asked Soorasinghe (probably) to let them go.

The naval men then moved off abruptly as the STF killers arrived. One of them shoved Ragihar, hinting at him to run away. Ragihar fell on the ground and sat there with Hemachandran. The killers did not at first see the two. The conduct of the naval men thus suggests a prearranged drama. They stayed, according to Vas Perera, 75 metres away and Soorasinghe, unbelievably, could not see what happened to the boys!

**The Army:** What directly incriminates the Army of complicity is the fact that the green auto rickshaw from which the grenade was thrown went along Fort Road into the Army HQ. This we have verified from several sources including from the security forces. The auto rickshaw has been identified as one frequently parked near the Police Station. Moreover, the Trinco Army Commander Major General Tissa Jayawardena's statement was transparently a pack of

lies, well after the truth was public. These facts point to the Army too being party to the conspiracy.

**Unanswered Calls to the Police:** Soon after the bomb blast several citizens telephoned the Trincomalee Police HQ. Not one telephone was answered. We have verified this in the case of two callers who were leading citizens of the city. The rough picture is that the DIG has 4 telephones, one of them mobile, the SSP 3, one of them mobile, the HQI at least 2 and two other general lines for the station. The situation resembles the violence unleashed on Tamils on 12<sup>th</sup> April 2006, when again the telephones of all the security services went unanswered. Subashini Chitravel says in her statement that (unable to get through) she had to go personally to the Police HQ, who avoided the issue by directing her to the Harbour Police.

## 15. The Question of Command Responsibility

What makes the crime of pivotal importance in checking the State's role in human rights abuses is the singular and very blatant high level of complicity between three arms of the security forces in jointly descending to such a brutal crime against young unarmed boys. It is the key to getting to the root of the spate of violations that began with the assassination of Joseph Pararajasingham MP during the 2005 Christmas midnight mass at St. Mary's Cathedral, Batticaloa. This was the first instance within a month of the installation of the new government where there was coordinated action among different arms of the security forces to carry out the vigilante execution of a helpless man. There was a high level of security activity around the Cathedral, but once the Mass began, the area was almost deserted of security personnel.

We have argued along with many observers in Trincomalee that this level of complicity of different security arms could not have come about without the active connivance of the Defence Ministry. This has tragically been the spirit animating military operations from April leading to the bombing, shelling and displacement of thousands of civilians and the gruesome atrocities in Allaipiddy, Vankalai and against the ACF staff in Muttur. Not one person has been punished or held to account for any one atrocity among many in the span of a year. This again is the strongest indication that the cover up begins at the top.

It utterly debases, discredits and indeed potentially dismembers a nation state when its citizens have to flee by the thousands to a neighbouring country to be able to express freely the harrowing experience to which their government subjected them. The progress of the 5 Students' case shows a similar trend.

Fortunately we have other informed sources to back our charge against the Defence Ministry. The defence column of the *Sunday Times* of 8<sup>th</sup> January 2006 indicated that the STF unit was sent to Trincomalee on the orders of Defence Advisor HMGB Kotakadeniya who is also Treasurer of the extremist Jathika Hela Urumaya (JHU). It added that he '*is reported to have called upon the police commandos to act tough against terrorist elements*'. The column also said that this deployment took place without the knowledge of Defence Secretary Gotabhaya Rajapakse who was visiting India with his president brother.

The defence column of the *Sunday Times* of 15<sup>th</sup> January quoted Kotakadeniya refuting the charge that the STF unit was deployed without Defence Secretary Rajapakse's concurrence. He said that the deployment was in response to demands by Sinhalese residents in Trincomalee and to strengthen security in the strategic city, and had the concurrence of the Defence Secretary. The Defence Secretary declined to comment.

We could infer quite positively from the incidents described that the Defence Secretary had directly or indirectly told the Army and Navy to cooperate with any plan of violence designed for the STF by SP (Operations), now SSP, Kapila Jayasekere. Kotakadeniya had no authority over the Army and Navy. Kapila and DIG Trincomalee, Abeygunawardene, were former STF men. The Navy's complicity has already been discussed.

The Army HQ at Fort Frederick accommodating the green auto rickshaw involved in the bomb throwing is not a casual matter. As evident in the *Sunday Times* defence columns of 8<sup>th</sup> and 15<sup>th</sup> January 2006, defence officials were feeding the Press with stories that the STF unit in Trincomalee was some kind of a rogue operation that other service commanders knew nothing of. The facts of complicity and unanswered telephone calls, contradict this as stories meant to get the Defence Secretary off the hook.

We must also keep in mind the facts of the cover up: the virtual invasion of the Hospital by masked commandos, the attempts to meddle with the post mortem, and official statements claiming fatalities due to a grenade blast well after the truth was out.

The facts speak loud. The year 2006 saw state sponsored killer groups and mounting violations against minorities, including a number of killings of Tamil MPs, community leaders, spokesmen and even women. Promises were repeatedly made, but not in one instance was any action taken. Kapila Jayasekere, Vas Perera and Udawatte Weerakody against whom it should be possible to pin criminal charges if witnesses feel free to testify, are but small fry. By allowing them free to continue their menace, more have been killed including at least one witness and hundreds more have fled Trincomalee.

The violence we confront is ideologically motivated – '*Me Rata Sinhala Rata*' (*This Land is Sinhalese Land*) – and prosecuting a few small fry whom the State may be willing to sacrifice is not going to make a significant impact. It is important to fix command responsibility and press for measures to be taken whereby these persons and their ilk can no longer cause harm to ordinary citizens from the minorities. Without so doing the commission of inquiry, which includes some of the most suitable local persons along with reputed international observers, would become another meaningless exercise and a lost opportunity.

## **16. A Recapitulation of Events in the Five Students' case**

From what has been discussed above, we may place the events as follows:

### **7.35 PM:**

SP Kapila Jayasekere at the location after seeing the STF Unit at the Clock Tower, having parked his vehicle near the Valluvar Monument opposite the Gandhi statue, when the grenade is thrown at the students from the green auto rickshaw, which proceeds into the Army HQ (Fort Frederick) passing the Pansala army checkpoint. The Navy closes off the area. A naval party probably led by Lt. Soorasinghe inspects the five injured students and the two trying to help them, informs Naval HQ, and withdraws as the STF Unit in the Defender with only parking lights on approaches along Fort Rd. Lights at the beach front switched off after the blast either by the Navy or Kapila's men.

### **7.45 – 7.55 PM:**

The STF Unit led by Vas Perera assaults the injured, is supplied with a gun probably from one of the naval personnel nearby that is used to shoot the students. The Defender lights are

switched on prior to turning and the headlights flash on the two uninjured students sitting on the ground away from the rest. They too are shot dead. The Defender with the STF men turns and returns along Fort Rd.

### **About 8.10 PM:**

Inspector Zawahir's police party arrives on the scene. Naval Lt. Soorasinghe joins them in the very dim light from the street lamp near the UC.

### **8.10-8.30 PM:**

Vas Perera's STF party, which went down Fort Rd. and did a turn at the Clock Tower comes back along Dockyard Rd., parks the vehicle at the UC and returns to the scene at the Gandhi statue. The dead and injured are dispatched to the Hospital. ASP-1 arrives. Kapila Jaysekere crosses the road to the Gandhi statue and joins ASP-1 and Vas Perera.

## **Appendix**

### **What Lay Behind the Crime?**

A strong hint of what motivated those behind the crime and its attempted cover up is contained in the threatening letters received by victims' families demanding that they quit Trincomalee. A warning letter in the Tamil script written in colloquial Tamil often used by Sinhalese read:

*"...We shot your five sons because they are supporters of the Tigers who are attempting to link our Eastern Province with the North. This land (the East) belongs to the Sinhalese. All Tigers, Tiger supporters and besides Tamil loyalists (pattalarkal) will soon be evicted or killed."* The letter warned them against giving any further evidence against the accused and concluded, *"This is our sole kingdom, our earth...Meka ape rata, Sinhala rata (This is our kingdom, a Sinhalese kingdom)"*. The last was Sinhalese, but in the Tamil script. The circumstances leave no doubt that this organised intimidation was coming from within the security forces. Dr. Manoharan's home was in an area under tight Navy control. The knocks on his door, callers who came to intimidate or to throw stones on his roof from the very day he testified in court could hardly have done this without the knowledge of the Navy.

We are convinced that this reflected the growing domination of the Defence Ministry by Sinhalese extremists brought to the fore under the Rajapakse presidency. The agenda implied is an old one – Sinhalisation of the East. It was first pursued less obtrusively through state-sponsored colonisation schemes and became very violent in the mid-1980s. The security forces and armed home guards were used in the whole scale depopulation of Tamil villages in the Trincomalee District and the south of the Mullaitivu District. The Indo-Lanka Accord of 1987 brought a temporary check to this agenda.

With the resumption of war in 1990, there were severe attacks on Tamils by the security forces, but subsequently Trincomalee settled down to a stalemate. Tamil elements had launched reprisals against Sinhalese when the Indian Army arrived in 1987, but in 1990 the local Sinhalese civilians largely kept aloof from violence against Tamils. After 1990 both communities avoided overt violence against one another. They knew they had to live together and business relations between the two communities flourished. The Sinhalese extremists backed by some Buddhist monks and Colombo-based parties like the JHU could arouse emotions during a crisis but otherwise remained on the sidelines. Meanwhile one could quite

safely say most Sinhalese Mudalalis (businessmen) in Trincomalee, developed also business ties with the LTTE.

The underlying rationale of both communities was to live and let live despite the overall flux of events being outside their control. Unless one appreciates this, one would tend to cast events and persons like Weerakody in black and white, which would play into the hands of nationalist demonology.

**The CFA and cracks in the Stalemate – Pongu Thamil vs Pongu Buddhism:** With the signing of the CFA in 2002 which allowed the LTTE into Trincomalee town for ‘political work’, many Tamils were as wary of the outcome as the Sinhalese. Apart from its free resort to child conscription and murder of political opponents, the LTTE started the unruly phenomenon of Pongu Thamil rallies. Prabhakaran’s image was carried on a temple chariot as the latest addition to the pantheon of deities with devotees ceremonially rolling behind in the hot sand. Then there were Vanni’s court jesters – the so-called TNA MPs – whose attendance was enforced; giving the Nazi-like salute behind visages that reflected fear rather than devotion. To the more perceptive Tamils, *“Pongu Thamil jesters made Trincomalee stink.”*

Unruliness invites unruliness. Pongu Thamil also gave opportunity for the Sinhalese-Buddhist extremists who had lain on the sidelines to work their mischief. They had their supporters in the armed forces and also the political establishment. It was now easy to arouse fears among the Sinhalese that the Tamils were going to join the LTTE and throw them out of Trincomalee. They too were determined to stir things up to create a situation where they could resume their stalled agenda of *‘me rata Sinhala rata’*.

**Buddha Statue and Strange Ironies:** The Sinhalese extremist reaction to Pongu Thamil came in the form of an overnight illegal erection of a Buddha statue on the sea front near the Trincomalee fish market on 15<sup>th</sup> May 2005. The Buddha statue is said to be one among a dozen gifted to Sri Lanka, in the hope that they would become symbols of peace and moderation. A crane released for the purpose by the Navy facilitated the erection. The proliferation of Buddha statues as symbols of conquest has been a cause of constant irritation among the Tamils in Trincomalee and the LTTE instigated violent protests where bombs were thrown.

Saner counsels among the Tamils advised against the protest, arguing that if simply ignored, the Buddha statue would go away. Its location was right next to the fish market and a bar. No orthodox monk would officiate in such a place. Removing the fish market and the bar to keep the statue in place would have run up against powerful Sinhalese business interests in Trincomalee.

The Attorney General commenced legal proceedings to remove all unauthorised religious structures, which would have been the best solution. But the Chief Justice thought otherwise and advised the AG to desist. The statue stayed, surrounded by barbed wire with an army guard, bemusing customers of the fish market and devotees of Bacchus at the bar. Pongu Buddhism won the round. A few weeks later a foreign reporter struck by the irony attempted to take a photograph. An alarmed soldier guarding the statue beat him up and a senior officer had to be called in. Although the Sri Lankan constitution enjoins the State to foster Buddhism, the Chief Justice in his wisdom thought it not proper that it should do so with dignity. The Sri Lankan state showed its religious devotion to be at the sham level of Pongu Thamil. The uneasy CFA stalemate was moving towards a break.

**Trincomalee's Underworld Connections and the LTTE's Exit:** Given a large presence of the security forces, Trincomalee had a thriving underworld in drugs and porn. Along with these there were strong incentives for doing business with the LTTE, by then a powerful multinational. Insights into these connections surfaced in the the killing of Lt. Col. Tuan Rizwi Meedin of Military Intelligence at the end of October 2005 in Kiribathgoda, near Colombo, after being called by Ice Manjula, a businessman in the fish trade, and a contact from Trincomalee. Press reports also spoke of Ice Manjula's influence within the Trincomalee Police. A sub-inspector who once arrested him was fined in a fundamental rights case and later transferred out. Manjula is also reported to have had police accomplices who helped him to sell fuel to the LTTE. Such stories about Sinhalese businessmen are not uncommon in Trincomalee.

The underworld is one in which various persons fished for intelligence, profit or both. Its activities were for the most part indemnified from police interference. The LTTE too was one of the players. But from July 2005 this status quo (tolerated as long as the LTTE killed only Tamil opponents) was changing after it killed SP Charlie Wijewardene in Jaffna, Lakshman Kadirgamar and by December began open attacks on security personnel. By September the LTTE had pulled out its open presence from political offices in government-controlled areas. But in all such instances it left its networks intact, particularly in the underworld. But those who earlier cooperated it would have been forced chameleon-like, to assume new dispositions when the security forces themselves unleashed their killer groups from December 2005.

**The Murder of Albert Hendric Weerakody:** Like many Sinhalese who moved to the East as colonists, artisans or government employees, Weerakody came to Trincomalee as an employee of the Ports Authority and in time built up his own businesses and prospered. Gunmen, suspected to be the LTTE, shot him dead near his home on 24<sup>th</sup> December. But we find the reasons for his killing in circulation among Tamils for the most part misleading. The story in Tamil circles was that the LTTE killed him because he was anti-Tamil and was involved in violence against Tamils in the mid-1980s. But we got a different picture when we spoke to Tamils who had spent their lifetime in Trincomalee, knew and did business with the Weerakodys and Baby Tyre Mudalalis.

The fact is that Weerakody lived on Orr's Hill, a Tamil neighbourhood, and moved with Tamils. The family spoke Tamil and one of his sons married a Tamil girl. He was reputedly was unpopular with many Sinhalese as a moneylender of notable severity regarding repayment. Other Tamils in Orr's Hill said that when the security forces killed and vandalised Tamil premises in the mid-1980s, Weerakody had also been involved in burning and looting, but they say in mitigation that, at such times, it is the security forces in Trincomalee that expect and urge the Sinhalese to commit patriotic crimes. But so far no one from the area has told us that he was involved in murder.

Another prominent Sinhalese, also a businessman killed by the LTTE was Baby Tyre Mudalali. Again similar justifications followed his murder. He too was accused of arson against Tamils in the mid-1980s. A Tamil who knew him told us, "*He completely came out of it and had good relations with Tamils.*" Weerakody may not have been a nice man, but he was manageable.

Weerakody's killing provoked considerable anger among security circles. To them Weerakody was a symbol of the Sinhalese dominance they were trying to secure, although his actual role may have been severely nuanced. The STF unit that had been dispatched to Trincomalee the



day before the murder, arrived promptly in masks, cordoned off the area and searched it. At the funeral where Tamil neighbours were present, Weerakody's wife is said to have demanded that her husband's body should not be taken for interment until 10 Tamils are killed in revenge. But after some delay the body was taken away. The following day two Tamil auto rickshaw drivers were taken on hire and killed outside town. On 28<sup>th</sup> December an off duty soldier was killed at his home just outside town in an LTTE grenade attack.

Tamils in Trincomalee believe this to be the backdrop to the staged killing of the students in one terrifying act of revenge to teach the Tamils a lesson. A precedent was the bombing of the Tamil music festival in early 2000, very likely by elements close to the security forces.

## **Appendix III**

### **University Teachers for Human Rights (Jaffna)**

#### **Sri Lanka**

#### **UTHR(J)**

#### **Special Report No. 35**

**Date of Release: 2<sup>nd</sup> January 2010**

### **Official Secrets and Blind Justice**

#### **2<sup>nd</sup> January 2010 – Fourth Anniversary of the Trinco Five Students' Case**

##### **Contents:**

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2. The Five Students' Case
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4. The Green Auto-Rickshaw
5. From a Security Forces officer at Pansala Checkpoint:
6. Lieutenant Udawatte Weerakody
7. Weerakody and Missing Gun
8. A Babel of Official Versions
9. The Navy's role – What was Lt. Weerakody doing?
10. Times of Security Officials that Do Not Add Up
11. Planned at the Highest Level
12. Whimsical Justice and a Stunted State

## **1. The Burgeoning Political Costs of Impunity**

The end of the war, despite the huge cost in human misery among combatants and civilians, ushered in hopes of the fruits of peace. These are however marred by virulent divisions jostling behind a culture of impunity. The latter long antedate's the present regime, to which both leading players contributed in equal measure. Yet, the country has a chance to move forward if the leaders are prepared to think beyond the short term power grab. It is imperative

that those who care for the future generations pay close attention to arresting the present trend.

Our history is one where emergent armed groups, frequently infected by the authoritarian and fascist tendencies of their nationalist peers, have repeatedly been decimated by indiscriminate state terror. The political culture remains ugly, despite the rulers' rhetorical commitment to democracy and the rule of law as a legitimising ritual.

In this context, it is important to clarify the purpose of the present report. Today, 2<sup>nd</sup> January 2010, is the 4<sup>th</sup> Anniversary of the exhibition killing of five students in Trincomalee. We have dealt with salient facts concerning this and the ACF case in several reports in the hope that proper investigations would be effected and justice done (Special Reports 20, 24<sup>3</sup>, 27, 30 & 33).

Against the magnitude of the present humanitarian task, our perseverance in these two cases may seem disproportionate. Impunity under the present government which in 2006, before the fall of Sampoor, was a tiny river, in the subsequent war swelled into a deluge of misery. Rather than miss the wood for the trees, we are among those who see the persistence of same menace behind the flux; of state structures immersed in impunity, waiting beneath a surface of temporary calm to break out into unrestrained barbarity. This has been our experience since 1977, in the North as well as the South.

Our documentation of these cases has clearly shown the top echelons of the State to have been complicit in terrible crimes and in covering them up, thus reinforcing the culture of impunity. Had the Government been in earnest in finding out the truth relating to the killing of the five students, they would have set a precedent for arresting the progress of impunity. But the government went on to advance a flood of extrajudicial killings as state policy, and now feels that because it worked in the short term, questioning the means used is irrelevant.

In this manner, several agile political commentators among the Sinhalese with a liberal trademark, are again failing the people, as did their Tamil counterparts during the rise of LTTE power. It is easy to dismiss the Sinhalese nationalist intellectuals, whose support for impunity against the minorities is patently crass. However many 'liberal' professionals, who undermined the independence of commissions by their servility to political power, have done far greater harm to the nation than individuals involved directly in human rights abuses. The latter's harm might heal, but the former by seeking to satisfy their masters' ill-considered whims, breed hatred, intolerance and polarise society further. Those affected are left in despair of having a human face to turn to.

The LTTE was militarily defeated, and the Tamils were forced to adopt tactical positions and hope for change, but have not been given a chance to work with other communities towards real reconciliation and accountability. The Old Left that has increasingly become impotent by failing miserably in pushing for any reform within the UFP, have become passive onlookers. They have allowed themselves to be used merely in ceremonial public relations roles, while the small groups of Sinhalese hegemonic ideologues in the UFP exploit every opportunity to advance their ultimately ruinous agenda. It is time for the Old Left to formulate a much more effective role in shaping the future of the country.

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<sup>3</sup> <http://www.uthr.org/SpecialReports/spreport24.htm>

The current election campaign shows the danger very clearly. The present the regime saw the war victory as means to consolidate power. A desperate opposition, crediting General Fonseka as the chief author of the victory, sees in him its one hope for 'regime change'. The virulent campaign rhetoric reveals the desperation of both sides. One side uses state power to undermine democratic fair play. In the other, political discourse is being narrowed, simply to defend Sarath Fonseka.

More disturbing from the country's standpoint is that real issues such as state reform, devolution and reconciliation have given way to an election campaign turning on bashing the other side as traitors. Fonseka, according to the Government became a 'traitor' or 'betrayer' for letting out an 'official secret' about the killing of surrendeeds. The JVP, which supports Fonseka is no less an expert in the 'traitor' game.

Where this could take us is evident when one compares Minister Samarasinghe's '*greatest ever betrayal... ever made in the history of this country*', with Mrs. Sirimavo Bandaranaike's attack on the government of President J.R. Jayewardene, over the latter signing the Indo-Lanka Accord in July 1987, which provided for political accommodation with the minorities. Mrs. Bandaranaike's words were, "*The darkest period of our long and eventful history was enacted on 29<sup>th</sup> July...our sovereignty was written away in one fell blow and our land was ceded to India.*"

The SLFP-MEP's strategy of throwing treachery at the Jayewardene government, soon backfired, as they quickly lost control to the JVP's homicidal frenzy. The contradictions and conflicts in Sinhalese society tied to denying political rights to the minorities, with associated character weaknesses, played out tragically. Few came out looking good or patriotic (see *Arrogance of Power*).

The JVP which never apologised for its past, has allied with the UNP which deployed state terror to crush it. It has evinced little interest in state reform, but focuses only on changing the presidential system. It never demanded accountability from the state when it came to issues related to ethnic minorities. The JVP's use of the rhetoric of patriotism to dismiss any allegation of the state's culpability in the North-East, has found close affinity with Sarath Fonseka post 1980s JVP insurgency.

Throwing names of traitor and betrayer is a dangerous game. The LTTE used it for decades and the end was predictable. The theme 'official secret' in relation to Fonseka's indiscretion was introduced by lawyer and presidential confidante Gomin Dayasiri. It was he who went far in ensuring that the truth about the ACF killings remained an official secret, by getting one of the commissioners who did not play ball at the inquiry sacked and then by obtaining signed letters from the victim families exonerating the Government (see Special Report No.33).

There can be no reconciliation in this country unless the truth is faced about systemic violence and the violence of rebellion from which all sections have been victims at different times. It is in this spirit that we pursue the ACF and Five Students cases.

In the same manner the Tamils too need to face the truth about the LTTE interlude. Failure would leave everyone wearing masks, not allowing the community to rediscover a healthy future. Those who emotionally and financially supported the LTTE's fascism and criminality are trying to reinvent themselves as human rights activists. Their target is exclusively the Sri Lankan state, under the illusion that the West would come to their aid. Against this duplicity, the State has found it easy to mobilise the victims, flotsam or 'traitors' of the LTTE era as model democrats on a leash. The earlier the Tamils cut themselves off from expatriate

nationalism, face the truth and deal with Muslims and Hill Country Tamils without ill-founded arrogance, the better.

## **2. The Five Students' Case**

In Special Report No.24, we argued that it was a planned outrage committed by members of the STF team, and executed by SSP Kapila Jayasekera. On 2<sup>nd</sup> January 2006 when a large holiday crowd was at the Trincomalee sea front, men coming in a green auto-rickshaw shied a grenade about 7.30 PM and drove along the Fort Road, past Pansala (Buddhist shrine) checkpoint and entered Fort Frederick, the Army HQ. A few minutes later, STF men under Inspector VAS (Vas) Perera, who had been stationed near the Clock Tower, drove to the sea front, past the same Pansala checkpoint, beat up and shot dead five students, leaving two injured. In the discussion below we augment the discussion in our earlier report with facts obtained from the proceedings at the Commission of Inquiry and additional information gathered by us.

## **3. SSP Kapila Jayasekera's advance presence at the scene and his claim he arrived at 8.20 PM:**

*From our Special Report No.24 (SpR 24): Dr. Manoharan who was at home heard the bomb blast at 7.30 PM and was at the navy checkpoint south of the Gandhi statue where his son was among the group caught up in the blast by 7.45 PM. Before the shooting began he saw SP (Operations) Kapila Jayasekera's ash coloured pick up (without police markings) parked near the Valluvar Monument at the top of Customs Road across the western edge of the Gandhi statue triangle on Dockyard Rd.*

This indicates that Kapila Jayasekera who was promoted SSP seven months later, was already at the scene before the green auto-rickshaw came along and threw the bomb at the group of boys. This is because the Navy soon afterwards sealed off the area and Kapila Jayasekera's vehicle was within the sealed area. This was further evidence that he was directing the operation. It was important for him to break this testimony from Dr. Manoharan. Although many others there could have testified to this, under the prevailing terror only Dr. Manoharan dared to speak.

Unfortunately for Kapila, his claim before the Col (11-14 Aug.08) of arriving at the scene in his unmarked pick up at 8.20 PM had not been corroborated at the inquest by Sergeant Upali Gunawardene who was at the UC junction, which Kapila claimed to have passed. The sergeant had told the inquest in January 2006 that the first vehicle to pass him after the explosion was Acting OIC Zawahir's jeep. He was very specific that *"a long time after the OIC's jeep passed us, ASP-1's vehicle passed that way. Apart from that no other officers involved in security duties passed that way."*

To get over this, Kapila Jayasekera told the Col (11 Aug.08) that he had picked up ASP-1 (Serasinghe) and both arrived in Kapila's unmarked pick-up at 8.20 PM. This creates a problem in that the Sergeant would not have identified Kapila's pick-up as the ASP's vehicle. We made further inquiries on this point.

The ASP Serasinghe's vehicle is a very distinct blackish blue Land Cruiser (not a van) with registration number 64-1064. (It was later being used by retired SSP Mahinda Battewela.)

Kapila Jayasekere was using a grey pick-up with registration number 250-0069. The Police in Trincomalee had another green pick-up (Reg. No. 250-9636). There is no possibility of any confusion at the checkpoint, since we also verified that the ASP came in his blackish-blue Land Cruiser and not in a pick-up as Kapila claimed.

This would have sufficed to confirm Dr. Manoharan's testimony that Kapila Jayasekere was at the scene before the incident was staged. ASP Serasinghe had been forced to commit perjury in supporting Kapila at the Col by saying that he arrived in his company at 8.20 PM. The people in Trincomalee we consulted swore by Serasinghe that he is a 'genuine man' who would never stoop to such crimes. This also tells us a good deal about the Commission and how it was being manipulated from behind the scenes.

For Serasinghe to commit perjury on such a grave matter, he must have received orders from the very top. He perjured only on this point but the rest of his testimony given in early 2008 gives the lie to the cover up launched by the Defence Ministry soon after the incident. Contrary to its claim that the victims were members of the LTTE who died because of an accidental explosion of a grenade they were carrying to attack the security forces, Serasinghe was aware upon reaching the scene that guns had been fired and there was a bullet mark on the road. He had instructed Inspector Zawahir to investigate an explosion as well as firing. Zawahir, who was pushing the cover up story of injury by bomb explosion, claimed he was aware of bullet injuries only after the post mortems the next day, 3<sup>rd</sup> January. ASP Serasinghe was aware of firing when he inspected the bodies in hospital on the 2<sup>nd</sup> night itself. As for the grenade planted at the scene to support the Defence Ministry's version, Serasinghe told the Col that he had observed that the grenade was foreign and not locally made and **he had not come across anyone other than the police or the armed forces using these grenades.**

Thus in early 2008 the hearings were going quite well, but when Kapila Jayasekere appeared before the Col in August 2008, his claim of having come to the scene with ASP Serasinghe was not even challenged, as it easily could have been.

For one thing the police investigation unit the Col was given failed to report on such an elementary fact as the vehicle used by ASP Serasinghe to get to the scene, which any interested person in Trincomalee could have found out.

Secondly, the IIGEP left in April 2008 and soon afterwards, Dr. D. Nesiya was kicked out of the Commission in June 2008. Even before this, video conferencing of witnesses who had fled abroad was stopped on the order of the President. Conditions for resumption – that Sri Lankan embassies abroad be involved in the conferencing – were contrary to international norms and unacceptable to persons who had fled the country because of state terrorism.

Once this break came, the commissioners got the message. If they were to stick their necks out they would suffer the same agony, fear from being watched and harassment through stories planted in the Press that Dr. Nesiya had to suffer. Thus in August 2008, Kapila got away easily with his clumsy and puerile lies that could easily have been broken. By October 2008, three more commissioners had resigned.

## 4. The Green Auto-Rickshaw

*“Another lapse in the investigation concerns the green auto rickshaw from which the grenade was thrown. One of the injured students told the Magistrate that the rickshaw proceeded towards the Fort Frederick. But the personnel who were at the army checkpoint (which the auto rickshaw would have passed) were not produced before the Magistrate. We verified that the auto rickshaw did indeed go into the Fort, which is the Army HQ. Stranger still, the auto rickshaw had been regularly seen parked near the Police HQ. As the cover-up dragged on, another auto rickshaw driver, Balachandran, was providing information to the victim families on the green auto rickshaw used in the crime. Security forces assassins killed Balachandran in August 2006.” (Sp.R 24)*

Further, from information we received the green auto-rickshaw reg. no. QA 2178 used to be parked in front of the Police Station. The usual driver Hemachandran had underworld connections and one of the sons of Weerakody, a Sinhalese businessman killed by the LTTE nine days before the incident in late December 2005, used to be seen talking to Hemachandran.

Questioned before the Col, Kapila Jayasekera, who was placed in charge of the investigation until the CID took over, seemed entirely oblivious of the importance of the auto-rickshaw even though the Commission knew of its role from at least two witnesses and its passage past the Pansala (Buddhist Temple) checkpoint just outside Fort Frederick. Kapila’s answer was, *“I made investigations through the OIC and obtained statements from those manning the check points. They didn’t know”*

In fact after getting information about the green auto-rickshaw from witnesses to the incident, we double checked by getting through to persons at the checkpoint. They confirmed that the auto-rickshaw passed them and went into Fort Frederick – Army HQ.

## **5. From a Security Forces officer at Pansala Checkpoint:**

In rechecking the facts, we were recently given the following version of events by an officer who was at Pansala checkpoint which contradicted Kapila’s claim above. Soon after the bomb explosion, he saw the green auto-rickshaw coming past his checkpoint. He rushed to the scene of the explosion and saw naval personnel apparently trying to help the injured. Then the STF men came in a vehicle and did the killing. He saw Kapila Jayasekera’s vehicle there but did not see Kapila himself. He thought Kapila may have come later and possibly was not involved. The officer said that at the first police inquiry, he adopted an *‘I know nothing’* stance.

The impression the officer had of the Navy’s role doesn’t conflict with what other witnesses have said. The naval personnel did go up to the victims, checked their identities, radioed HQ and pulled back as the STF vehicle arrived. The STF personnel involved in the killing were, however, under the direct command of Kapila J.

## **6. Lieutenant Udawatte Weerakody**

Balachandran, another auto-rickshaw driver who was giving information to the victim families about the green auto-rickshaw, was abducted from his home in the afternoon of 24<sup>th</sup> August 2006, killed and dumped. The person who directed this operation has been identified by the people of the area as naval lieutenant Udawatte Weerakody. The latter who, after his father was killed by the LTTE, as we have learnt from other victims of standing, acted as a henchman of a Sinhalese group in Trincomalee with a Sinhalese agenda, and has been

responsible for several murders in this cause (e.g. Thurairajah Mayuran, Special Report No.22).

As we reported earlier, several witnesses had told Dr. Manoharan, the father of the victim Ragihar, that Lt. Weerakody was at the scene at the time of the incident and was a key player in the massacre.

Kapila Jayasekere at the Commission denied having heard the name Udawatte Weerakody and did not carry out any investigation in relation to him. He also denied having heard of UW's father's murder.

However, Weerakody is featured in statements from early police investigations into the killings given to the Col. One statement cites three soldiers who were then on duty receiving calls from a person who identified himself as Lieutenant Weerakody. They were told by Weerakody that there had been a bomb blast and to be alert. The three who reported these communications were Sisira Dissanaikie of the Sri Lanka National Guard, Kelum Kumara, an army private who was behind army quarters and a Private Samarakoon who was near the fish market.

The statements by the army personnel were signed below by Kapila Jayasekere. It did not strike Kapila to obtain a statement from Lt. Weerakody, who appeared to know what was going on at the scene. And the name Weerakody completely slipped out of his mind. A Police sergeant told Dr. Manoharan that the entire show had been planned between Weerakody and Kapila Jayasekere.

## **7. Weerakody and Missing Gun**

*“About early November 2006, 10 months after his son had been killed and the family had been thoroughly harassed and intimidated, Dr. Manoharan and family were about to leave the country. A man who was regularly present at the Gandhi statue, called on Dr. Manoharan, and told him casually that after the STF men had arrived on the scene, he saw Naval Lt. Udawatte Weerakody and another naval officer on a motorcycle ride from the scene of the incident towards the Dockyard Rd. checkpoint where Prasanna Hewa Pathirige was. They returned with three guns instead of the two originally slung on their shoulders and handed one to the STF after which the students were shot and killed.” (SpR 24)*

Dr. Manoharan who was present at the same checkpoint had also seen this but did not then know the rider of the motorcycle that had been moving between the Gandhi statue and the checkpoint to be Udawatte Weerakody. He recognised the man only when he walked into his house with the naval town commandant in July 2006.

Petty Officer Hewa Pathirige was one of the four naval personnel on duty at the Dockyard Rd. checkpoint about 60 yards south of the incident. He had told the Magistrate's inquiry that he was without his gun and upon hearing the bomb blast all four of them mindful of their security had lain flat on the ground. As for his missing gun he told the Commission that because he was to check vehicles during his six hour duty (2.00 PM to 8.00 PM), he came without it. He claimed he had left it behind in his personal locker given for his belongings. Even if this unusual claim of going on duty without the personal weapon is true, one finds it strange that the place of storage for a weapon while the owner is away for six hours could be a private locker rather than the armoury. An ex-army officer confirmed that this is against regulations.



We pointed out that of the 50 or so guns of security personnel at the scene only a small fraction were tested and the commission proceedings confirm this. The evidence from the security forces here is very contradictory. SSP Kapila Jayasekere and Inspector Zawahir maintain that they had no knowledge that day of guns being fired during the incident, and that although the area was searched the same night with a searchlight no bullet remains were found. ASP Serasinghe maintains he saw a bullet mark on the ground and the same night was aware of guns having been used upon seeing the victims' bodies in hospital. He said that he had asked Zawahir to investigate firearms use.

Permanent OIC Harbour Police (Zawahir's superior) claimed that he discovered bullet casings at the scene the next day. But the Government Analyst has said that these were fired from seven different guns. Dr. Manoharan who witnessed the gun flashes from bullets (at least 17) being fired over several minutes with the barrel pointing down, is convinced that only one weapon was used – the one apparently taken from the naval man and used by the executioner. We also note that the scene was not protected – a deliberate omission?

On the same night Dr. Manoharan who was intent on justice for his son was able to locate bullet remains with his bare eyes in the normal street lighting and capture them on his cell-phone camera. The Police searched the area soon after the incident with a powerful searchlight and must have found the bullet casings, although they denied finding any. Under these circumstances it is doubtful if the casings from seven different guns found the next day by OIC Harbour Police pertain to the weapon(s) used. The planting of the grenade of South Korean make, further discredits the police investigation.

## 8. A Babel of Official Versions

*“Soon after the bomb explosion at 7.30 PM, an eyewitness at the scene, a deputy director of education who knew Sinhalese, said that navy men with a communication set came over and checked the identities of the victims and communicated with HQ by radio. They knew Dr. Manoharan as someone to whom they went for medical treatment and identified Ragihar as his son. Sivananda was also perhaps identified as the nephew of Actg. Magistrate Subashini Chitravel. When HQ found out the situation and very likely realising that some of the students were from influential families, asked Soorasinghe (probably) to let them go.*

*“The naval men then moved off abruptly as the STF killers arrived. One of them shoved Ragihar, hinting at him to run away. Ragihar fell on the ground and sat there with Hemachandran. The killers did not at first see the two. The conduct of the naval men thus suggests a prearranged drama. They stayed, according to Vas Perera, 75 metres away and Soorasinghe, unbelievably, could not see what happened to the boys!” (SpR 24)*

Yet the naval officers on the scene pretended that they were unconnected with the incident. Their testimonies before the Commission try to give an impression of total indifference and as though they did not know or want to know the consequences of a bomb blast and gun shots before their very eyes. They were, as said above, part of a prearranged drama. Claims of indifference suggest real guilt.

Contrary to claims of their, including the officer without a gun, hugging the ground in firing position, Dr. Manoharan found them standing, joking and exchanging messages on cell phones. New evidence before the Commission helps us to say something more about Lt. Weerakody's role. Kapila Jayasekere pretended before the Col that Lt. Weerakody did not

exist. The investigating unit too failed to enlighten the Col.

Although ASP Mahinda Serasinghe was questioned in January or February 2008, some of the commissioners felt that questioning Kapila Jayasekera at length early on and alarming him would be dangerous for other witnesses. As a matter of strategy, they postponed questioning him. He appeared in August before a commission that was by then sanitized.

Able Seaman R.M.A. Pushpakumara who was at the scene, told the Col (22 Feb.08) the same story as other naval men on the scene that he was 150 metres from the bomb explosion and went down flat into firing position. Even when they heard gunfire they claim not to have bothered to find out. Their duty was over at 8.00 PM. Their pick-up vehicle came and it was then they came to know that some people were hurt. Another officer Hewa Pathige too answered in this indifferent vein. It was only while they were going away, he claimed, Petty Officer Soorasena told them, *"There has been a bomb explosion, no details are known, you have no problem, so go to sleep."* Counsel Ranjith Abeysooriya responded, *"I have nothing more to ask this person. It is like hitting my head against the rock of Gibraltar."*

More informative is the statement Pushpakumara gave the Police Officer Razik the day after the incident on 3<sup>rd</sup> January 2006. He said in the statement that he was at the university canteen, barely 25 yards from where the bomb exploded. He lay flat on the ground and went to the Dockyard Rd. checkpoint close by to the south. He then saw the arrival of the Police and the STF, when a group hiding near the beach, whom he surmised were the LTTE, opened fire. He said *"it could be believed that the bomb that was brought there to attack the Security forces exploded in their own hands"*. At the Col, he denied saying this and supposed he signed the statement without reading it.

We see how different groups in the security forces were trying to cover up without knowing fully what other groups were saying. Kapila Jayasekera and Inspector Zawahir who were covering each other were trying to pass off the deaths as due to a bomb the students were carrying. They also tried to suppress evidence of shooting. ASP Serasinghe and Magistrate Ramakamalan learnt from inspection soon afterwards that some or all the students had died due to gun shot injury.

Kapila Jayasekera claimed before the Col that though he arrived at the scene at 8.20 PM, and stayed a full 50 minutes until the Magistrate had left, but learnt very little about the incident, and did not know that guns had been used. Asked by a counsel, *"If you were not serving any purpose why were you there for 50 minutes?"*, he answered, *"For security purposes"*. However, about 20 minutes after the shooting Dr. Manoharan had seen Kapila Jayasekera's vehicle go past him at the Dockyard Rd. checkpoint towards the Hospital. He later found Kapila's vehicle in Hospital and masked armed men in camouflage uniforms deployed in the hospital premises and its corridors. Dr. Manoharan was accosted outside the mortuary by a group of three police officers in uniform and six or seven masked men with guns. They told him that the body would be released to him if he signed a declaration that his son had belonged to the LTTE. This, the families refused.

This was evidently a madcap plan on which Zawahir was working along with Kapila Jayasekera. It required widespread intimidation. Next morning Zawahir tried to isolate Dr. Manoharan, from the other parents by telling him at Trincomalee Hospital at 7.00 AM on the morning after the killings, *"My son learnt table tennis from your son. I will release your son's body, but why do you want to interest yourself in the others?"*

The Army Commander for Trincomalee Major General Tissa Jayawardena claimed the next

day (3<sup>rd</sup>) that LTTE cadres riding four bicycles met with an accident exploding bombs they were carrying to attack a security forces checkpoint 100 metres away, killing six of them. Another live grenade, he said, was found on the road by their bodies. This was the Kapila – Zawahir version that was by then in tatters.

Adding to the confusion was the BBC Sinhalese Service which the same, 2<sup>nd</sup> January 2006, night, about 2 hours after the incident claimed that some LTTE cadres who had come to attack the security forces at the sea front in Trincomalee were shot dead by the security forces, and a bomb the attackers were carrying had also exploded. Another son who had listened to this told Dr. Manoharan on his return from hospital after seeing Ragihar's body, and obtained a print out of the item. The next morning Dr. Manoharan confronted the BBC Sinhalese correspondent in the Hospital. The latter told him that someone else had given the item for broadcast.

The BBC Sinhalese version was closest to what Able Seaman Pushpakumara said in his statement to the Police the next day. It appears the Navy briefed BBC Sinhala.

## **9. The Navy's role – What was Lt. Weerakody doing?**

We know that soon after the explosion navy personnel who were around blocked the exits, made many of the crowd kneel down, checked the identities of the victims and informed HQ. As the STF killers came they moved off giving a shove to Dr. Manoharan's son Ragihar hinting that he should get away from incipient trouble. They then enjoyed the party from the sidelines. The STF killers shoved the barrel of a gun into the mouth of an elderly lady teacher who tried to stop them killing the boys.

The contradictory versions of the navy men, and their attempt to pretend they knew nothing, points to their being accessories. Most importantly we know that Navy Lieutenant Weerakody was active at the scene of crime and we may surmise that he was giving instructions to the navy personnel. From the authorities' failure to probe the Lt. Weerakody in the statements made to the Police by military personnel on duty in the area, informing them that there has been a bomb blast and to be alert; we may suppose that this Lt. Weerakody is the same as Udawatte Weerakody, who called the army personnel from the scene itself. The purpose of this is also to inform them to stay put and to prevent traffic from entering the area – so as not to interrupt the plan.

## **10. Times of Security Officials that Do Not Add Up**

Zawahir tied himself in knots by a series of contradictions. If a scapegoat were needed in Sri Lanka, it had better be a member of a minority than a Sinhalese. That is how things work. Zawahir's trying to pass off the deaths as due to a bomb blast crashed when the families could not be intimidated. He was quick to discover a planted grenade at the scene, and denied seeing bullet casings that were obvious to Dr. Manoharan. He contradicted instructions given by the ASP to investigate firearm use. He was of course acting as Kapila's hatchet man. It was Kapila who placed masked thugs with arms in the Hospital. Of course everyone was tying themselves up in knots, particularly with times.

From eye witness testimony and cooked up times given by the security forces, we gave the

following sequence: Bomb blast at 7.35 PM, STF killer team arrived 10 minutes later from the Clock Tower along Fort Rd., finished the assault and executions by about 8.00 PM, returned to the Clock Tower along Fort Rd., then drove along Dockyard Rd. and reached the scene of executions again doubling up as a first aid party. To explain this delay, the STF had to shift the time of the bomb blast to 7.50 PM. Even with the shift, it was absurd for them to claim that they took half an hour to travel from the Clock Tower where they were on duty to the scene of crime – a drive of less than two minutes.

Others too had to delay the time of the bomb explosion in order to explain how they reacted to an emergency by arriving at the scene around 8.20 or later. It suggests that many officers in the police force were passively if not actively complicit. We pointed out in our reports that there was knowledge within the Police that the execution had been planned, and some police officials had tipped off Tamil friends to be cautious on that day. Thus for example ASP Serasinghe's testimony before the Col suggests that he was forced to cover up and was showing his distaste for it every inch of the way. He told the Col that he heard the bomb blast 3 to 4 minutes before he got a phone message (that means before 7.40 PM), but also again said that he was informed at 8.20 PM.

Kapila Jayasekere who claimed he was next door to Serasinghe, told the Col that he did not hear any noise and was also informed by the Police at 8.20 PM. It suggests that ASP Serasinghe did in fact hear the bomb blast at 7.35 PM, knew what he dreaded had taken place and that he should not go immediately as it was the show of people higher up.

Inspector Zawahir who was quite close at the Harbour Police Station too claims he did not hear the blast but was informed through his Motorola set at 7.50 PM – a good 15 minutes after the blast, and it absurdly took him a further half an hour to inform the ASP of the atrocity in his patch. Zawahir's travel time to the scene was half an hour. **In fact, those who checked travel times of the actors found that none of them should have taken more than three to five minutes. Theirs were times stretched to accommodate the STF's triple excursion between the Clock Tower and the scene of crime.**

Under examination at the Col, Zawahir broke down and agreed to tell the whole truth. The Commission appointed one of its members, Mrs. Jezima Ismail, to take a statement from him. She delayed and that was enough for Zawahir's superiors to turn him round with threats and promises. The opportunity was missed. It seemed to those involved in the Commission's workings at that time, that the Defence Ministry might sacrifice Zawahir to protect Kapila. That too was not needed after softening up the Col in June 2008. Mrs. Ismail stuck to the Col until the President wound it up in mid-2009. Later in the year, the President appointed her, along with former Attorney General C.R. de Silva, who was used to undermine the Col, to a committee to study the US State Dept. report on alleged human rights abuses during the latter part of the war.

## **11. Planned at the Highest Level**

As to the spirit in which the investigation was conducted, CID officer Vithanage Perera told the Col that on 4<sup>th</sup> January 2006, two days after the incident, he was at the scene of crime and the place had not been marked off nor secured. He saw a large number of police officers in conference and recollected the names of high ranking officers DIG Balasuriya, DIG Rohan

Abeywardene, DIG Asoka Wijetileka, SSP Kapila Jaysekere, and ASP Wimal Samarasekera. What was the result of this high-powered interest?

Instead of a professional investigation, we saw continuing intimidation of witnesses, beginning with Kapila Jayasekere stationing masked, uniformed thugs in hospital to get declarations from the parents that their dead children were LTTE. When Dr. Manoharan returned home from the Magistrate's Court after testifying on 10<sup>th</sup> January 2006, Kapila Jayasekere's vehicle with masked security men inside was parked outside his house for three hours. The same night, stones were thrown on his roof. Anonymous Sinhalese persons called at his home threateningly. Victim families received threats by mail from anonymous Sinhalese groups claiming that the land was theirs, demanding the victim families leave Trincomalee.

Kapila Jayasekere, Zawahir and Lt. Weerakody remained at large in Trincomalee. Witness Balachandran who identified the green auto-rickshaw used was killed in August 2006 by the same gang. DIG Abeywardene, a former STF man like Kapila Jayasekere and Vas Perera, the leader of the killer team, was then in charge of the Police in Trincomalee. Such an elaborate crime would not have taken place without his involvement. After all many policemen knew that the show had been planned. We also heard from a police source, that late on the night of the incident, a meeting was held under DIG Abeywardene to discuss plans for a cover up. We need not doubt what was discussed when the senior police officers met at the scene of crime two days later.

However those lower down had reason to be nervous as to who would be sacrificed if the truth came out. Vas Perera, who had been OIC STF at Karaitivu, felt nervous at the magistrate's hearing in January 2006. He placed it on record as a means of buying insurance that he was brought to Trincomalee as a handpicked man of Kapila Jayasekere. Kapila denied this before the Col.

A few months later Trincomalee had a new high ranking police officer who had known Doctor Manoharan's family in Hatton. The new officer told Manoharan in a friendly exchange that his son's case would not move far and, despite the CID investigation, had already been filed away into obscurity. Manoharan told him, "*Then you can investigate it.*" The officer replied that he cannot do anything unless there is a presidential order to reopen it.

DIG Abeywardene and Kapila Jayasekere remained at Trincomalee. We pointed out in Special Report No.30 that the ACF killings of 17 aid workers could not have taken place without the active connivance of these two officers. As though not knowing when a joke goes too far, on the testimony before the Col of Sarath Wimalaratne who was sub-inspector of police in Mutur, the Police had created a war crimes unit, and the ACF killings were placed under this unit. Like the crucial initial investigation in the Five Students' case, the ACF case too was placed under Kapila Jayasekere. As before he was ably assisted by Zawahir to silence witnesses and tag the ACF killings as a war crime by the LTTE.

We pointed out that the exhibition killing of the five students was carried out in the wake of President Rajapakse being elected president and subsequent provocations by the LTTE. The latter included the killing of several Sinhalese businessmen in Trincomalee, among the last being Lt. Udawatte Weerakody's father Albert Hendric Weerakody. The new government was backed by Sinhalese extremists that included former DIG and JHU member HMGB Kotakadeniya, who was appointed adviser to the Defence Ministry on police matters. Persons of such a political persuasion make no distinction between the Tamil people and the LTTE.

He told the *Sunday Times* defence columnist (15 Jan.06) that the STF team was sent to Trincomalee just before Christmas 2005, with the approval of Defence Secretary Gotabhaya Rajapakse.

Judging by events there is hardly any doubt that the attack on the students in a public place was conceived as teaching the Tamils a lesson. The Sinhalese extremist overtones are evident in the threats claiming that Trincomalee belonged to the Sinhalese. If not the details, the general form of the atrocity was planned at the highest level. In Weerakody, there was a person motivated by revenge. The plan was executed at local level by Kapila Jayasekera and Udawatte Weerakody being on the scene, with the former instructing the Police and STF and the latter, the naval personnel. It shows through in testimonies before the Col and those of witnesses whose testimonies were shut out.

Another pointer to the Defence Ministry's role is the close cooperation between the Army, Navy, Police and STF in executing this crime. This could hardly have happened without instructions from the Defence Secretary. This was also the period when intelligence men under the Defence Ministry executed Tamil nationalist MP Joseph Pararajasingham during mid-night Christmas Mass in Batticaloa. The viciousness and brutality shown in the killing of five innocent students was a precursor of the nature of the war that followed. No claim by the Government merits complacent acceptance, without the most careful scrutiny.

## **12. Whimsical Justice and a Stunted State**

Despite the evidence being strong and the State having failed miserably in its cover up attempt, the Five Student's case did not go beyond the Trincomalee Magistrate's Court. Delay, obstruction and intimidation ensured that the evidence remained inadequate. Many witnesses fled the country because of intimidation. Those who remain dare not speak and would immediately face police or paramilitary harassment if they showed signs of wanting to.

The IIGEP made considerable progress in locating witnesses who fled the country and arranged for them to testify before the Commission of Inquiry through video conferencing. That too was stopped on orders from the President in mid-2008 citing some inane technicality about sovereignty. The commissioners whose remit it was to seek out the truth did not protest. The Commission was also unwilling to accept evidence collected by the IIGEP in the form of affidavits and video testimonies.

The Commission did submit a report to the President. Even this report based on controlled evidence has remained with the President, another official secret. It was a crime with literally hundreds of witnesses. Most of them remain in Trincomalee, but dare not speak. Regrettably, several Western countries, India and Japan that supported the IIGEP, tamely allowed these cases to drop once the Government precipitated the IIGEP's withdrawal in April 2008. This was accomplished by placing several obstacles in the way, starting with a police investigation unit hand picked by the President's office and saddling the ACF inquiry with official counsel leading the evidence.

A proper investigation unit would have easily cleared up such matters as Kapila Jayasekera's presence at the scene, the dispute about the widely witnessed green auto-rickshaw and the mystery about Navy Lieutenant Udawatte Weerakody who appeared in early police

statements and then vanished into thin air.

In the ACF case, which we dealt with in Special Report No.33, the police investigation unit actively intimidated witnesses and destroyed evidence. That alone ensured that the Commission was forced to grope in the dark.

In the ACF case we argued that the JMO sent on political instructions misled the case by determining the time of the incident as during the early hours of 4<sup>th</sup> August 2006, rather than late afternoon as stated by eye-witnesses. The record of calls made on the cell phones of the victims which the Police should have obtained was not given to the Commission. We now know for certain that one of the victims spoke to the family about 4.30 PM on the fatal day, which must have been just before the executions of ACF staff.

Unfortunately the countries that supported the IIGEP have become so disconnected after giving hopes to the families of victims that those who remain in the country are in even greater danger than if they had not got involved. Even worse, members of families who face danger or harassment, receive no sympathetic consideration at Western embassies.

While protecting witnesses by giving them asylum is essential in the short term, if things are to change for the better in Lanka, its people would have to shoulder greater responsibility in protecting victims and challenging their Government. We are happy to state that there are still networks of committed people from all communities who do what they could, under constant fear for their own lives. To have an impact it needs to be something significantly bigger.

The extent to which the executive interferes in the administration of justice is a matter of deep concern, ultimately to all citizens of Lanka. It has made a parody of the system of justice in Lanka. The Tissainayagam case is an instructive example. In the Commission of Inquiry the President's office was directly involved in subverting the evidence and in intimidation of witnesses. In the Tissainayagam case, the President appears to have dictated the judicial conviction of 20 years RI on non-existent evidence. Even in the Embilipitiya case of the disappearance of 32 schoolboys, those convicted received only 10 years RI. And Tissainayagam probably never handled a lethal weapon.

We have evidence that the President himself was directly involved in pushing for Tissainayagam's prosecution even though AG's department held that the case was weak. When the people clearly see the stupid and arbitrary use of laws and their enforcement machinery, the State's backers, as in this instance, take cover behind the empty pretext that it was a court decision and must therefore be respected.

Tissainayagam was arrested in March 2008, but not on any charge. The TID began rifling his writings to frame charges and found things of this kind: "*Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel, with the hope of driving out the people of Vaharai and depopulating it. As this story is being written, Vaharai is being subject to intense shelling and aerial bombardment.*"

The passage referred to the military offensive in the East during the latter part of 2006, with which many observers agreed and is an inference based on the reality at that time. It was in a journal publicly sold though it interested the Police more than a year later. The passage was quoted by state official Rajiva Wijesinghe in a letter to HRW on 12<sup>th</sup> August 2008. The letter

full of innuendo, revealed the existence of an indictment, not shown to the defense for several more days.

The AG's Dept. was apparently having enormous trouble in framing the charges even under the PTA, which were finally read out in court on 25<sup>th</sup> August 2008. Two charges were to do with inciting communal disharmony/ violence and 'bringing the government into disrepute'. The third was to do with collecting money from non-governmental organisations for publishing a magazine.

On 9<sup>th</sup> September 2008, these charges were modified. 'Bringing the government into disrepute' was dropped from the first two as it was found not to represent a crime. 'Non-governmental organisations' was dropped from the third charge. This indecision on what the accused was guilty of, should have prompted any self-respecting judge to throw out the case. But it was heard and Tissanayagam was on 31<sup>st</sup> August 2009, convicted on all three charges by Judge Deepani Wijesundara, for 20 years of rigorous imprisonment.

For the key charge that Tissanayagam obtained money from terrorist sources (for a magazine, whose line was in its one-sidedness, as distinct from untruth, congenial to Tamil nationalist propaganda), the Judge relied selectively on the minority opinion of Justice Mark Fernando, in a case, against those of Justices Wigneswaran and Ismail, on the admissibility of alleged confessions to police officers (Kishali Pinto Jayawardena in *Sunday Times* 13 Sept.09 <http://www.sundaytimes.lk/090913/Columns/focus.html> ).

President Rajapakse got his conviction at the price of bringing the law and the judiciary into further disrepute. As to the warped nature of Sri Lankan justice, one would be surprised how many killers used by those in power are running scared that they would meet the same fate as Moratu Saman. Saman who was used in killing Kumar Ponnambalam in January 2000, was in turn killed in 2003, when, knowing that he was a liability, sought protection in spilling the beans. These killings, like that of Raviraj MP and Editor Lasantha Wickrematunge, would never be investigated even as the truth is widely known. A corrupt, authoritarian and conflict-prone state such as this is a danger to all its citizens. Chauvinism attempts to place a gloss on it, but it doesn't last.

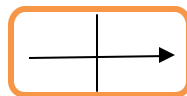
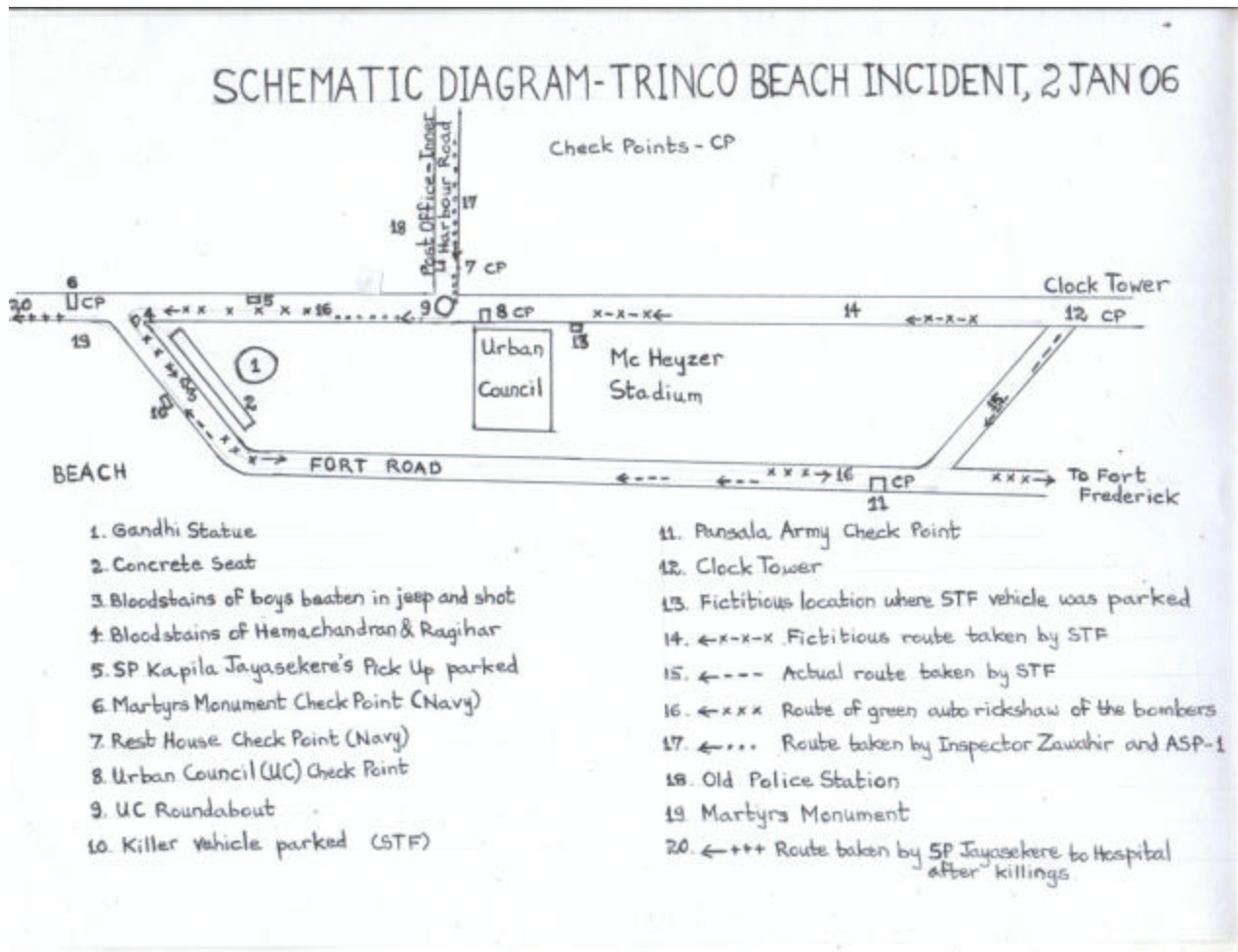
Whoever wins the presidential election, this disfigured state would continue to haunt us. Justice for grave violations must be continually sought, both for the victims and for the larger purpose of reform.



## Appendix IV

### Crime Scene:

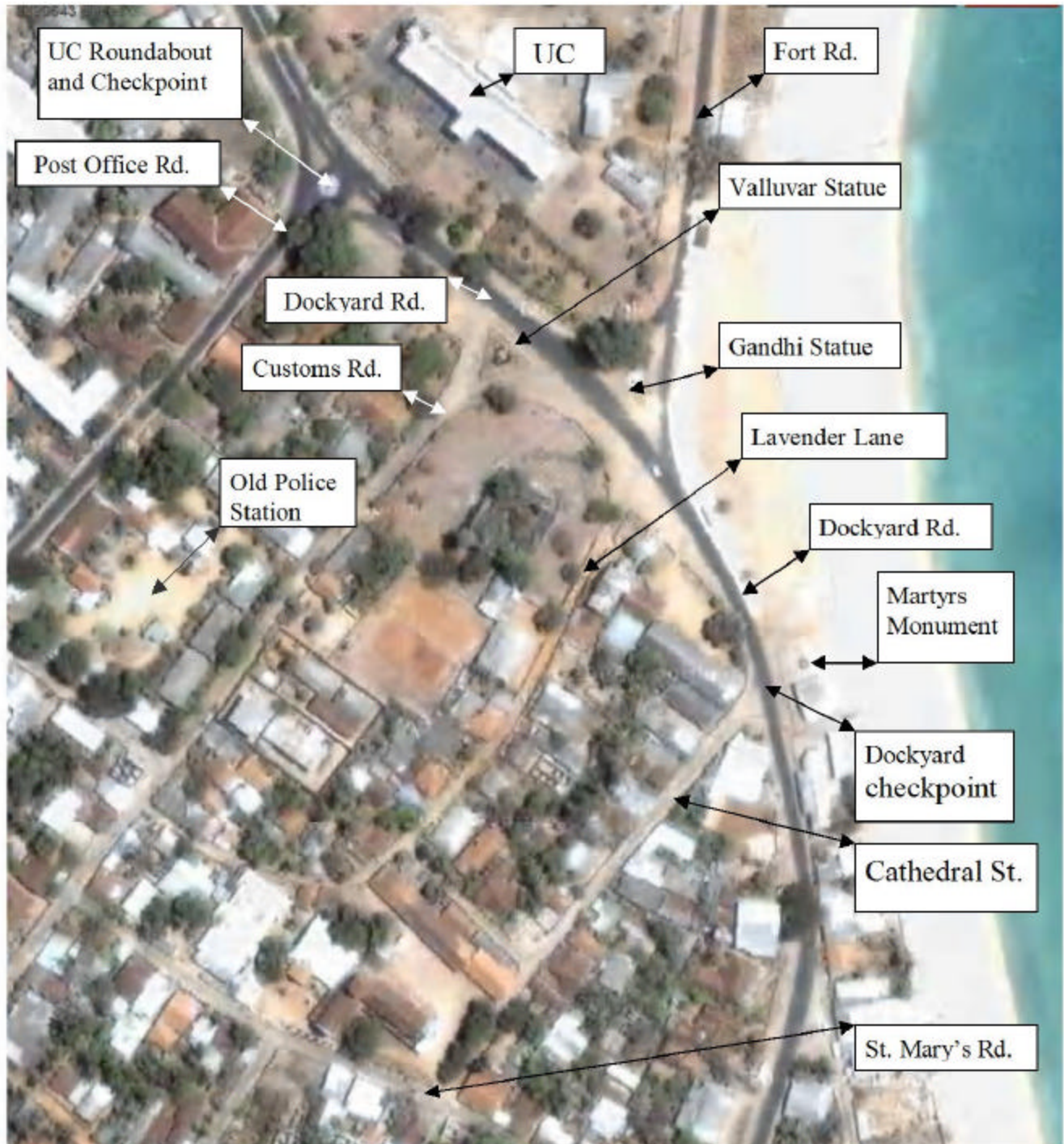
From UTHR(J) Special Report No. 24 (April 19, 2007).



North (directional arrow added)

## Scene of Incident and Environs

From UTHR(J) Special Report No. 24 (April 19, 2007).



**-Notes-**



Site of the Trincomalee Execution, 45<sup>th</sup> Day Remembrance, Courtesy: Tamilnet.com

