

University Teachers for Human Rights (Jaffna)

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Official Secrets and Blind Justice

2nd January 2010 – Fourth Anniversary of the Trinco Five Students' Case

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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, 2nd January 2010, is the 4th 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, 24¹, 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 UFPA, 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 UFPA 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.

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'.

¹ <http://www.uthr.org/SpecialReports/spreport24.htm>

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 'betrayal' for letting out an 'official secret' about the killing of surrendees. 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 29th 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 2nd 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 CoI (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 CoI (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 Jayasekera 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 Jayasekera was at the scene before the incident was staged. ASP Serasinghe had been forced to commit perjury in supporting Kapila at the CoI 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, 3rd January. ASP Serasinghe was aware of firing when he inspected the bodies in hospital on the 2nd night itself. As for the grenade planted at the scene to support the Defence Ministry's version, Serasinghe told the CoI 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 Jayasekera appeared before the CoI 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 CoI 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. Nesiah 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 Weerakkody, 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 CoI, 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 24th 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 Sinhalisation 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 CoI. 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 Jayasekera pretended before the CoI that Lt. Weerakody did not exist. The investigating unit too failed to enlighten the CoI.

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 CoI (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 3rd 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 CoI, 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 Jayasekere 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 Jayasekere claimed before the CoI 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 Jayasekere’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 Jayasekere. 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 (3rd) 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, 2nd 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 CoI suggests that he was forced to cover up and was showing his distaste for it every inch of the way. He told the CoI 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 Jayasekera who claimed he was next door to Serasinghe, told the CoI 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 CoI, 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 CoI in June 2008. Mrs. Ismail stuck to the CoI 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 CoI, 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 CoI 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 Jaysekera, 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 Jayasekera 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 10th January 2006, Kapila Jayasekera'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 Jayasekera, 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 Jayasekera 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 Jayasekera. Kapila denied this before the CoI.

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 Jayasekera 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 CoI 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 Jayasekera. 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 CoI 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 4th 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 12th August 2008. The letter full of innuendo, revealed the existence of an indictment, not shown to the defence 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 25th 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 9th 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 31st August 2009, convicted on all three charges by Judge Deepani Wijesundara, for 20 years of rigorous imprisonment.

For the key charge that Tissainayagam 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.