

CENTRE FOR HUMAN RIGHTS AND DEVELOPMENT (CHRD)

# Legal Aid Programme

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CASES

**Cases taken up during January 31, 2004/ January 10, 2010**

## FUNDAMENTAL RIGHTS APPLICATIONS

**1. Balasubramaniam Vithyaruby FR 182/2009 and Balasubramaniam Karthika FR 181/2009**

Two girls were arrested on suspicion by the Dehiwala Police and were kept outside the cells as they didn't have extra cell for females at the police station. They were asked to be seated on a bench throughout day and night and were asked to sleep on the ground. The parents approached CHRDR, and lawyer Mr. A. Vinayagamoorthy was retained for to appear on behalf of the victims. Fundamental Rights application was filed against the unlawful arrest and thereafter they were released before the case was taken up in Courts. The case is now closed.

**2. Janani Suppramaniam FR/489/09**

She was arrested on suspicion in April when she had come from Kilinochchi to stay at her brother's residence in Ingiriya to follow sewing classes. CHRDR retained lawyers Ms. Vijayarani and Mr. Saravananaraja on behalf of the victim. A bail application was filed and rejected. The case is being carried out at the Magistrate's Court in Ingiriya (B/43532/09). Thereafter CHRDR retained lawyer Mr. A. Vinayagamoorthy to file a Fundamental Rights application at the Supreme Court, Colombo. **An FR application was filed on May 27, 2009. On October 30, 2009 AG department informed that they were ready to release her. She was released on November 17, 2009.**

**3. Sinnvan Stephen Sunthararaj FR/265/09**

Stephen Sinnavan Sunthararaj, Programme Manager of CHRDR was taken into custody by armed forces and handed over to the Kollupitiya Police Station on February 12, 2009. CHRDR retained lawyers Ms. V. Vijayarani and Mr. Puvitharan who filed an Fundamental Rights application was filed on April 2, 2009 and thereafter on May 7, he was released after being produced at the Magistrate's Court, (before the FR application case was taken up in the Supreme Court, Colombo). However, the case cannot be closed due to his abduction soon after his release. **The case was taken up on October 28, 2009 and the judge ordered to take decision to withdraw the case and file a habeas corpus application during the next date which is December 7, 2009. Senior Counsel Mr. B. Thamboo and Ms. V. Vijayarani appeared on behalf of the victim.**

**4. Selvarasa Prakash FR/378/09**

He came from Kilinochchi and stayed with his father at that time he was arrested on suspicion. CHRDR retained lawyers Ms. Vijayarani and Mr. Saravananaraja on behalf of the victim. The case was taken up at the Magistrate's Court (B/43532/09) in Ingiriya. On April 29, 2009 CHRDR lawyers moved for bail application, which was rejected since the Magistrate felt Selvarasa Prakash was an LTTE cadre because he confessed to have obtained training (which is a must for all citizens in Killinochchi). The case was called many times in April, May and June.

Additionally CHRDR retained lawyer Mr. A. Vinayagamoorthy to file a Fundamental Rights application at the Supreme Court, Colombo. On June 27, 2009 FR was filed and thereafter he was released on June 25, 2009.

**5. Yogalingam Jeyakanthan FR/398/09**

Mr. Yogalingam Jeyakanthan was arrested by the Kotahena Police on February 19, 2009 when he had travelled to Colombo from Jaffna to travel abroad. A B report was filed by the Police in which it was stated that he had handed over a vehicle to the LTTE. Mr. Jeyakanthan stated that he was put under severe torture and therefore he had no choice but to give a statement of that nature. Thereafter he was moved to the Boosa detention Centre. Initially CHRD moved for medical report then filed a Fundamental Rights application with the support of Counsel Mr. A. Vinayagamoorthy, he was later released by police due to Court action.

**6. Thushishanthan Selverasa FR/216/2007**

Thushishanthan Selverasa 27, son of Valayuthm Selvarasa of Chavakachcheri went to the paddy field in order to feed their cow on May 29, 2007. Thereafter, around 11 am a friend of his informed the father that some personnel had asked him to report to the Pannaiyadikulam Army Camp situated in the Sarasalai junction and accordingly Thushishanthan had reported.

Soon after, the father Valayuthm Selvarasa had rushed to the said Camp and inquired about the whereabouts of his son, but the officers attached to the camp denied any knowledge about his son being asked to report at the camp and instructed him to inquire at the army camp situated at the Post Office Road, Chavakachcheri.

When he went there, they too denied such arrest and asked him to go back and make queries at the Pannaiyadikulam Camp. Once again on May 30, Valayuthm Selvarasa went in search of his son to the Pannaiyadikulam Camp along with the Grama Seveka (Village headmen). Initially the army personnel there told that they had arrested him and later released. However, after a while they said that he was handed over to the Chavakachcheri Police station.

Finally when he went there, he son was found at the police station and the police informed him that Thushishanthan will be taken to Colombo for further investigation. His son informed him that no reason was given for his arrest. It is apt to mention that there was no reason mentioned in the arrest receipt and no information was provided regarding the identities of the officers who arrested his son. As a result fundamental rights guaranteed by Article 13 (1) and 13 (2) of the constitution is violated. Even the receipt given by the Army Officer confirming his arrest did not comply with the emergency regulations and therefore, the arrest is arbitrary and illegal. On May 31, the petitioner visited his son and saw injuries on his face, chest, buttocks and thighs. His son was suffering severely due to the torture inflicted by the Army personnel.

On June 1, he was produced before the Chavakachcheri Magistrate's Court and took him back to the Police Station. It was noted that victim was not able to walk on his own and was supported by two police officers. The Magistrate ordered that the police to produce Thushishanthan for a medical examination by the Judicial Medical Officer.

Although his son was detained at the Police station for three days, no Detention Order was served and therefore his arrest and detention is wrong and the period of detention is excessive. It violates the fundamental rights of Thushishanthan.

On June 2, his son was shifted to the Kakesanthurai Police station. Thereafter on June 5, the army personnel of the Madaththady Army camp informed the petitioner's second son Thushikaran that his brother was once again brought to the Chavakachcheri police station. Soon his brother and mother rushed to the police station and found his son was given saline at the Police station.

On June 6, the father of Thushishanthan visited the police station and found that his son was in abnormal condition and was finding difficult to breathe, he pleaded to take him home since he was put under severe torture and his life was in danger. However, an ambulance arrived and took him. Once again the police had violated the fundamental rights of Article 11 of the Constitution as result of severe degrading human treatment. When the petitioner went to that police station that evening his son was not found there.

On June 8, the father visited the police station and the Inspector of the Chavakachcheri police station informed that his son had escaped from the Kakesanthurai police station. However, the police station which is located in the centre of a high security zone, where there are several defense fences and bunds are built in order to prevent infiltration and thousands of security forces are deployed for effective protection. Apart from it Thushishanthan Selvarasa was last seen in very unstable health condition where he couldn't walk or stand and was taken in an ambulance.

On May 30, a complaint was lodged by his father at the HRC (Human Rights Commission), Jaffna regarding the arrest of his son. On June 8, the petitioner once again lodged a complaint at the HRC regarding the unbelievable story of his son's escape. However, the HRC has no knowledge of such arrest and detention of his son. Once again it violates the HRC Act which states that the arresting officer should inform the arrest within 48 hours to the HRC.

Therefore, CHRD, Jaffna appeared on behalf of Selvarasa Velayutham. Affidavit and counter affidavit was filed in November 27, 2008.

Lawyers Mr. C. J. Weliyamuna, Mr. B. Thamboo and Mr. Suranga Bandara were retained by CHRD. Unfortunately due to partiality of judges the case was dismissed on November 9, 2009.

7. **Krishnasamy Malarnesan SCFR/696/09**

He was an employee of an IT company in Colombo and returned to his hometown in Matala on leave. He attended a birthday function, where he was arrested along with three of his friends, claiming his friends were involved in some terrorist activities. They were detained at the Matala police station. Thereafter, the three friends were released after inquiry but he was kept in detention. Later he was taken to his house escorted by police personnel where he was asked to take small piece of paper under his personnel computer monitor, during which a photo was taken. He identified that paper as a map of a transformer location and that particular map was used during the inquiry of the four of them and wondered how it got there? A calendar with LTTE leader's photo also was alleged to be found at his home, but Malarnesan states he has never seen it before. Later his mother and brothers were forced to sign a letter stating that he was involved in a transformer blast in Matala. After producing before the Magistrate he was sent to the Bogambara prison. CHRDR filed an FR application on behalf of the victim. But indictment was served. So the case was withdrawn

8. **Kanapathipillai Sureshkumar SCFR/682/09**

He is a shop owner in Batticaloa, one day he was asked to report at the Akkaraipattu police station. And when he arrived there he was arrested and transferred to the Terrorist Investigations Department (TID) in Colombo and later to the Colombo Remand Prison (CRP). **Fundamental Rights Application was filed by CHRDR on September 10, 2009. On October 8, 2009 it was given leave to proceed and the next date is November 8, 2009. Mr. K.S. Ratnavale is appearing on behalf of the victim. He was released on January 1, 2010**

9. **Kanapathipillai Dharshini SCFR/714/09**

Kanapathipillai Dharshini 32, arrived in Colombo from Jaffna for her marriage. She married her partner on December 8, 2003 at the Vishnu Temple in Modara. Her husband left to Canada and thereafter, he never returned nor she heard from him. After much discussion between the two families divorce was filed. On March 18, 2008 she was arrested on suspicion in Modara by the STF. They handed her over to TID and then as moved to Boosa. It is apt to mention that she was sent back and forth to TID and Boosa for some time. It was claimed that she had come from Vanni to carry out attacks in Colombo. On July 18, 2009 she was produced before the Colombo Magistrate (Case No. B/2182/08) and is detained at the Welikada Female ward. **CHRDR filed fundamental rights application and the case was called on October 20, 2009 and date was given to mention whether the detainee could be indicted or released.**

**The next date is December 17, 2009. Senior Counsel Mr. A. Vinayagamorthy and Ms. Vijayarani Velu appeared on behalf of the victim.**

**10. Sellaththamby Sivashankar FR/403/09**

In 2009 he traveled to Colombo from Jaffna to travel abroad, he was arrested at the Airport on suspicion due to his trembling hands (a health condition he has been experiencing for sometime). He was released after inquiries. Once again, on April, 24 on his way to the Airport he was arrested on suspicion for the same reason. He was taken to the CID and thereafter transferred to Boosa. Then again he was brought to the remand prison in Welikada. He requested for legal aid from CHRD. **On May 20, 2009 a Fundamental Rights application was filed and supported on July 16, 2009. In July Supreme Court ordered the Attorney General to indict him if he had been involved in any terrorist activities and failing which he must be released before the next date, which is August 28, 2009. Accordingly on August 27, 2009. Senior Counsel Mr. A. Vinayagamoorthy and Ms. Vijayarani Velu appeared on behalf of the victim. The accused was released.**

**11. Prabakaran Deepakar FR564/2009**

He is from Batticaloa and was living in Hatton. He is a plantation laborer and soul bread winner of the family. He was arrested on suspicion and was put under immense physical torture to sign a confession. A case is continuing at the Magistrate's Court (B/44202/09) in Ingiriya. Mr.Saravananaraja and Ms. V.Vijayarani are appearing on behalf of the aggrieved. **CHRD filed fundamental Rights application on was filed on July 27, 2009. Counsel Mr. Vinayagamoorthy was retained for this purpose. When the case was called on September 24, 2009 leave to proceed was given. The state counsel informed that the accused had already given a confession stating his involvement with the LTTE. The next date was informed as December 16, 2009. However, he was released in November 2009.**

**12. Sivagnanam Kaleeban SCFR/665**

He was arrested on May 9, 2009 at the Katunayaka airport while returning home on leave from Qatar and was handed over to TID and later moved to Boosa detention centre. After being produced before the Colombo Magistrate he was detained at the Colombo Remand Prison and a Detention Order was served. In his detention order it was stated that he was trained to remove and fix certain weapons and was under the leadership of 'Thileepan' a LTTE high ranking officer. Senior Counsel Mr. A. Vinayagamoorthy retained and a Fundamental rights application was filed on September 9, 2009 and on September 18, 2009 it received leave to proceed.

The next date was given as December 2, 2009 and it was ordered that if the suspect was involved in any terrorist activities he should be indicted, if not released before the next date. On October 19, 2009 he was released as there were no charges against him.

**13. Arumugam Nagularaj SCFR/666**

A pastor from Mannar was arrested at Saliyapura when he was returning to Mannar from Colombo. He was handed over to TID and then moved to Boosa detention centre. After being produced before the Colombo Magistrate he was moved to Colombo Remand Prison. Senior Counsel Mr. A. Vinayagamoorthy appeared on behalf of the detainee and fundamental rights application was filed on September 10, 2009 and on September 18, 2009 it got leave to proceed. It was ordered that indictment must be filed before the next date if there was any evidence or should be released before the next date which is December 2, 2009. Currently he has been moved to Magazine Prison. Since an indictment was filed the FR application was withdrawn.

**14. Perinpan Sivadharshan, Mohan Jegatheeswaran, Nadarajah Prabahkaran, Muthiah**

They were arrested in Hatton and were served with Detention Order under the charges of distribution of unlawful leaflets. Currently they are detained at the Bogambara prison. CHRD visited them and contact the Hatton police and expressed intention of filing fundamental rights application. They were released prior to filing the application.

**15. Radhakrishnan Ramesh**

He was abducted by the army intelligent unit in Trincomalee. Within minutes of his release he was arrested by the Police. He was severely tortured by the police. After being produced before the Magistrate (B/2454/2008) he was sent to Boosa detention centre thereafter to the Colombo remand prison. CHRD is making preparations to file Fundamental Rights Application on behalf of the victim.

**16. Murugesu Thevaraj SCFR/714**

Mr. Murugesu Thevaraja Mudhali 72, was an administrative manager of an health care NGO. He was arrested on suspicion of providing medicines to the people of Vanni. He was arrested based on the statement given by the doctors who were arrested in Vanni. According to them a health care NGO was providing medicines for the Vanni region despite the fact, the state had banned taking medicines to those areas.

Mr. A. Vinayagamoorthy filed a Fundamental Rights application on September 18, 2009. The case was taken up on October 8, 2009. The state counsel requested time for further investigation. He was in Boosa and later moved Colombo Remand Prison (CRP). It is apt to mention MC Welikala appeared on behalf of the detainee to move for bail stating his age and bad health condition. Bail was declined. However, He was released eventually due to Court action.

## 17. Illegal detention of eight Ratwatta estate workers

1. Nachchen Rajenthiran (FR 557/09)
2. Kaliyappan Manoharan (FR 558/09)
3. Ramanathan Navadheepan (FR 559/09)
4. Muniyandi Balasupiramaniam (FR 561/09)
5. Muthusamy Lavan (FR 560/09)
6. Visvanathan Rameshkumar (FR 562/09)
7. Pathmanathan Pragash (FR 563/09)
8. Veerasamy Sivasupiramaniyam (FR 565/09)

A total of 40 young men from the Ratwatta estate in Ukuwela situated in the Matala district were arrested on August 18, 2008 on suspicion of having links with an LTTE suspect named 'Kannan' who has been living there for some time and suspected to have carried out a series of transformer blasts in Dambulla, Matala and Kandy areas.

They were all arrested by the Kandy Police and were detained at the Kandy and Deldeniya police stations where they were severely tortured demanding them to accept they were behind the bombings which took place in the hill capital and surrounding areas. On December 12, 2008 they were produced before the Matala Magistrate and later some were released and some were sent to the Bogambara Prison. CHRD visited the Bogambara prison on July 7, 2009 interviewed them personally and studied their cases. And thereafter, decided to take up cases on behalf of eight detainees. **Fundamental Rights applications were filed at the Supreme Court, Colombo on behalf of them on August 8, 2009. On September 9, 2009 they case was taken up and given leave to proceed. Senior counsel Mr. A. Vinayagamorthy and Ms. Vijayarani Velu are appearing on behalf of the victims.**

According to the detainees, the LTTE suspect 'Kannan' seem to have been friendly with all the people in the estate and the detainees too were friendly with him and were not aware of his links with the LTTE.

It is apt to mention these prisoners are innocent laboures living in utter poverty. They are the sole breadwinners of the family and currently their families are in a pathetic state without any financial support and their wives are doing odd jobs where they earn a measly income which is hardly enough to provide for the family. Currently some these prisoners are suffering from mental depression.

## MAGISTRATE'S COURT CASES

### **1. Thiagarajan Prabhakaran B537/2008**

He was a UN staff employed at the UN Department of Safety and Security as radio operator in the Vanni region. On February 30, 2008 he was returning to his home town, Batticaloa on leave for his wife's confinement. He was checked at both Omanthai checkpoint and Bus Stand check point and was allowed to go. But, while on his way to Batticaloa the bus he was travelling in was stopped at the Eera Periyakulam bus stand and during checking they found magazines and pistols in his bag.

He was taken to the Eera Periyakulam Police station and underwent severe torture where they used chili powder to certain parts of his body and they pulled out the nails off his fingers and burnt him with cigarette butts. Currently, he is detained at the Anuradhapura prison.

CHRD filed the motion to move for MLR (Medico Legal Report) at the Anuradhapura Magistrate's Court. The case is currently going on.

### **2. Bogambara Prison Detainees (Medico Legal Report B/953/08, B/956/08, B/957/08)**

CHRD retained Counsel Mr. Sivaram to file the motion to move for MLR (Medico Legal Report) at the Matale Magistrate's Court on November 9, 2009 for a nine detainees at the Bogambara prison. Fundamental Rights applications have been filed by CHRD on behalf of all these detainees. The motion is to be filed on behalf of the following, Veerasamy Subramaniam, Kaliyappan Manoharan, Nacchen Rajendiran, Ramanadhan Navadheepan, Krisnasamy Malernesan, Viswanathan Rameshkumar, Mthusamy Lavan, Pathmanathan Prakash, and Muniyandi Balasubramaniam.

### **3. Yogalingam Jeyakanthan B/4259/09**

Mr. Yogalingam Jeyakanthan was arrested by the Kotahena Police and detained at the Kotahena police station on February 19, 2009. Thereafter he was moved to the Boosa Detention Centre. He had traveled to Colombo from Jaffna to travel abroad. B report was filed by the Police in which it was stated that he had handed over a vehicle to the LTTE. Mr. Jeyakanthan stated that he was put under severe torture and therefore he had no choice but to give a statement of that nature. Initially CHRD moved for medical report and on April 23, 2009 the Magistrate's Court, Colombo moved for medical examination where Mr. I V. Vijayarani and Mr. Wanninayake Gunaratne appeared on behalf of the Victim. Soon after, a Fundamental Rights application (FR/398/09) with the support of Counsel Mr. A. Vinayagamoorthy was filed on April 27, 2009. He was later released by police due to Court action.

### **4. Suppramaniam Janani B/43532/09**

She was arrested on suspicion in April when she had come from Kilinochchi to stay at her brother's residence in Ingiriya to follow sewing classes. CHRD retained lawyers Ms. Vijayarani and Mr. Saravananaraja on behalf of the victim. A bail application was filed and

rejected. The case was taken up at the Magistrate's Court in Ingiriya (B/43532/09). Thereafter CHRDR retained lawyer Mr. A. Vinayagamoorthy to file a Fundamental Rights application (FR/489/09) at the Supreme Court, Colombo. An FR application was filed on May 27, 2009. **On October 30, 2009 AG department informed that they were ready to release her and the date for her release is November 17, 2009. She was released earlier than the said date due to Court action.**

**5. Selvarasa Prakash B/43532/09**

He came from Kilinochchi and stayed with his father at that time he was arrested on suspicion. CHRDR retained lawyers Ms. Vijayarani and Mr. Saravanaraja on behalf of the victim. The case was carried out at the Magistrate's Court in Ingiriya. On April 29, 2009 CHRDR lawyers moved for bail application, which was rejected since the Magistrate felt Selvarasa Prakash was an LTTE cadre because he confessed to have obtained training (which is a must for all citizens in Killinochchi). The case was called many times in April, May and June. Additionally CHRDR retained lawyer Mr. A. Vinayagamoorthy to file a Fundamental Rights application (FR/488/09) at the Supreme Court, Colombo on June 25, 2009. On June 27, 2009 he was released.

**6. Prabakaran Deepakar B/44202/09**

He is from Batticaloa and was living in Hatton. He is a plantation laborer and soul bread winner of the family. He was arrested on suspicion and was put under immense physical torture to sign a confession. Bail was moved at the Magistrate's Court (B/44202/09) in Ingiriya. Mr. Saravanaraja and Ms. V.Vijayarani appeared on behalf of the aggrieved. **CHRDR filed fundamental Rights application on was filed on July 27, 2009 (FR564/2009). Counsel Mr. Vinayagamoorthy was retained for this purpose. When the case was called on September 24, 2009 leave to proceed was given. The state counsel informed that the accused had already given a confession stating his involvement with the LTTE. The next date was informed as December 16, 2009. However, he was released in November 2009.**

**7. Paranthaman Prashanthi and Rajanayagam Selvarani AR/595/09**

They traveled from Vavuniya to attend to some embassy work in Colombo. They had dropped in at the Majestic City shopping mall, where they were arrested by the Bambalapitiya Police on suspicion.

The case was taken up at the Magistrate's Court, Mt. Lavinia where Mr.Keerthi Attapattu, Mr.K.S.Ratnavel and V.Vijayarani appeared on behalf of the victim. They were released on April 1, 2009.

**8. Devarasa Jegatheeswaran B/35272/09**

The case was taken up by CHRDR when he was released after 10 years imprisonment at the New Magazine prison. When he was released he had no place to go since all his identification documents were confiscated by the Bambalapitiya police.

Once again he was in danger of being detained since he had no documents and was unable to travel about in Colombo since he was abducted in Vavuniya and brought to Colombo and did not know to travel about in Colombo. CHRDR retained Mr. Saththura Sugathabala and filed a motion on June 16, 2009. On June 17, 2009 the case was called at the Mt. Lavinia Magistrate's Court and the lawyer asked that his identity documents be released. The Court ordered to release the Identity Card to the Bambalapitiya Police.

#### **9. Arrest of Hindu priests**

After a firing incident at Mahiyapiddy, Allaveddy on 30.09.2008, 11 persons including three Hindu priests were arrested and they being detained at the Manipay Police.

On 30.09.2008, 10 people including three Hindu priests were arrested and on 1st October one was arrested by the army from three different Temples of the Valikamam area in the Jaffna district. All were arrested in the temple (some while conducting special pooja for Navarathri) with allegation of possessing weapons in the THER MUDDI of the Temple. Most of the Hindu priests were photographed with army uniform and some bullets placed before them. Some of the arrestees were over the age of 50 and were admitted to the hospital following their arrest due to bad health condition.

Sandilipay Seerani Nagammal Temple (MC Mallakam Case No B465/2008)

Out of the seven suspects arrested five were released.

Kalvayal Pillaiyar Kovil (MC Mallakam Case No B464/2008)

Out of the three suspects arrested two were released.

Alavetti Nagammal Meenachchi Amman Temple (MC Mallakam Case No B467/2008)

Nadaraja Vijeyarasa of Masiyapiddy Sandilipay, 61 years of age, a farmer, married and father of three age 21, 20, and 16, and sole bread winner of the family. He is one of the members of the Trusty board of the Nagammal Meenatchi Amman Temple and he was keeping the keys of the temple. He has not been released.

**Mr. Remedious, CHRDR appeared on behalf of the victims. Out of the 11 arrested seven have been released and the case is continuing for remaining four suspects. The case was taken up on June 2, 2009; it was merely a calling date. Case was postponed to September 29, 2009**

#### **10. Detention of Kanthiah Magenthirarasa / Kathiravelu Gunaratnam / Kandasamy Makeesan B/298/08**

The case was called on January 13, 2003 at the Mallakam Majistrate's Court and all were remanded until January 27, 2009. Thereafter on March 3, 2009 Kathiravelu Gunaratnam was released on bail acceding to the Court of Appeal bail application no 623/08. The

case of the remaining two is continuing. However, eventually, the remaining two detainees were released.

**11. Alagaratnam Susiladevi B/86/09**

She was arrested on February 19, 2009 in her house on suspicion and is currently in the Mallakam Police Station. CHRD is appearing on her behalf and the case is continuing at the Mallakam Magistrate's Court.

**12. Niyala Sivakumar rape case B480/2008**

The case was taken up in November 2008 where the victim was raped by three men. When the case was called on January 9, 2009, the lawyers who appeared for the accused moved for bail since the CHRD lawyer strongly objected they were remanded until January 23, 2009. The case is continuing.

**13. Kaithady Orphanage sexual abuse and rape case**

On receiving a number of complaints that girls between the age group of 7-16 were being sexually abused at an orphanage situated in Kaithady in the Jaffna district, Dr. Daya Somasundaram, Chairman of the Child Protection Committee officially made a complaint to the Magistrate's Court, Jaffna. Immediately the Magistrate's Court ordered the OIC (Officer-In-Charge) of the Chavakachcheri Police Station to inquire into this matter. Acting upon it the OIC raided the orphanage on April 11, 2003 at 11 pm and took into custody Mr. Shakthi Giriwaran, a male care taker of the orphanage. The Kaithady orphanage consists of nearly 30 to 35 male and female children.

The Chavakachcheri Magistrate's Court ordered that all 22 girls of that orphanage must be produced before the Judicial Medical Officer for medical examination and subsequently a medical report should be submitted to the Court. As a result of the examination Ms. Sachinda Mahendran, a 13 year old girl had indications of forced sexual intercourse and abuse.

Mr. Vythilingam Dharmarajan, 67, one of the official in-charge, of the orphanage was alleged to have molested this girl.

After being produced before Court, Mr. V. Dharmarajan was taken into custody for this offence along with two female wardens for aiding and abetting the offender.

The orphanage was sealed on Court Order and the 22 female and 17 male inmates were left on the care of another orphanage.

When the case was taken up on May 5, 2003 before the Magistrate's Court, Chavakachcheri, the Child Protection Officer filed reports and on that basis the remand of the four suspects was extended to May 22, 2003.

When the case was called on that day bail application for the four suspects was filed by the attorney-at-law appearing for them. However, the bail application was rejected. Later the case was called on November 25, 2003 during which, the Attorney General's Department had given orders to release Mr. Shakthi Giriwaran from the case and he was

discharged. On March 18, 2004 the case was called and the two female wardens were discharged from the case.

When the case was called on August 23, 2004, the court was informed that indictment will be served on the main accused, Mr. V. Dharmarajan, and the case will be fixed at the Jaffna High Court. On October 6, 2004 indictment was served on the accused for sexual abuse and the case was fixed for December 16, 2004.

The case was transferred to the High court, Jaffna from Magistrate Court, Chavakachcheri. Judgment was given but the accused appealed the case and therefore, it is in appeal. No date has been given yet.

#### **14. Mylvaganam Nimalarajan murder case BR/423/00**

Mylvaganam Nimalarajan, a journalist and BBC Correspondent was shot dead by unidentified gunmen at his residence around 10.30 pm on October 19, 2000. The family members could not identify the gunmen as it was dark. Nimalarajan's parents and son sustained injuries in the attack. A grenade was thrown into their house by fleeing assailants, which had injured his mother and son. His father was stabbed. Their house is situated in the Jaffna town where a number of security checkpoints are in close proximity.

Since the CID did not forward the report to Magistrate's Court, the Magistrate ordered the CID to submit a report on the murder immediately after a year's lapse. The CID ultimately submitted a report in the Court in 2001. The Magistrate issued a warrant to arrest suspects, based on the evidence produced by the CID in the Court. It was suspected that the EPDP (Eelam People's Democratic Party) could be involved in the murder.

No lawyer was prepared to appear in the case on behalf of the family members of the victim due to fear of repression.

In January 2000, the father of the deceased had approached the CHRDR requesting free legal services to obtain justice.

Subsequently delegates of the organization Reporters Sans Frontiers (Journalists without borders) visited Sri Lanka and held discussions with Attorney General's Department and the Police Department requesting to expedite the case immediately. The delegates also visited the CHRDR requesting to take up the case. Since then, the CHRDR retained lawyers to appear for the aggrieved parties.

Despite many anonymous death threats, N. Kandasamy, Secretary determinedly took up the case. The case has been called since 2001 and the CHRDR retained a lawyer to appear in the Magistrate's Court, Jaffna.

On June 27, 2003, the CID informed the court that two more suspects were to be arrested and they were hunting for them. In the meantime, two suspects in remand filed for bail at the Vavuniya High Court and bail was granted on 25 June 2003. Accordingly they were released on bail with effect from June, 30, 2003.

On 25 July 2003 the Government Analyst's report were submitted to the Court. It was in the favour of the suspects. The CID informed they are on the look out for the suspects and requested the Court more time to trace the two suspects.

At the next hearing the police informed that an EPDP member, Balachandran Udhayabavan was arrested in Trincomalee and was detained at the Magazine Prison, Colombo. On October 30, 2003 the CID filed a report stating they were hunting for another suspect. Also a bail application was filed for the fifth suspect but due to the legal intervention of the CHRD bail was rejected. The next date was fixed for November 11, 2003. On that day the CID informed they were in the look out for more suspects and the next date was fixed for January 20, 2004.

During the period January 2004 to December 2004 the case has been called on January 20; February 24; March 23; April 27, and July 22. On all occasions the CID informed that they were still in search of suspects and requested further dates. On August 19, 2004 Magistrate ordered the CID to do proper investigations and file a charge sheet against suspects.

In 2002, Mr. Remadious, Mr. Vettrivale and Mr. K.S. Ratnavale appeared on behalf of the victim's family.

The Magistrate's Court, Jaffna forwarded the proceedings to the Attorney General's Department for further action. Currently the case is lying in the Attorney General's Department, Colombo and Attorney-at-Law who appeared for the aggrieved party on behalf of the CHRD made representation to AGs Department. No action has been taken during the period under review.

#### **15. Muthiah Yogeswari rape case BR/335/05**

A senior academic staff member of the Arts Faculty of Jaffna University was taken into custody on August 26, 2005 for molesting a 13-year-old Tamil girl, Yogeswary Muthiah, employed as a domestic aide at his residence. Evidence produced in court has revealed that the teenage girl has been molested over 40 times within 6 months by her employer.

Magistrate Ms. Srinithi Nathasegaran of Magistrate's Court, Jaffna ordered the arrest of Mr. K. T. Ganeshalingam and was remanded till September 6, 2005. Since the case was highly sensitive and the suspect was a well known figure in Jaffna many showed reluctance in appearing on behalf of the victim. Therefore, CHRD came forward and retained a lawyer to watch the interest of the victim. A number of high profile lawyers in Jaffna appeared on behalf of the suspect.

When the case came up for trial on September 6, 2005 the Jaffna Magistrate Srinithi Nandasegaram denied bail and postponed the case to September 20, 2005. On that day, once again the judge refused to grant bail and the case was fixed for October 3, 2005. Since the investigation was not complete and intimidation against the witness was possible, bail was denied and the case was postponed to October 14, 2005. On October 14, police filed a report which stated that investigation was complete and there was no objection for bail. As a result the suspect was released under conditional bail.

However, the suspect could not arrange five sureties, which was one of the conditions for granting bail. As a result, he is still remanded in prison.

In 2008 judgment was given but the accused appealed the case and therefore, it is in appeal. No date has been given yet.

#### **16. Punguduthivu rape & murder case**

On December 16, 2005 Ms. Vijekanthan Tharsini was raped and murdered in Punguduthivu. It is alleged that the crime was committed by the Sri Lankan Navy since a cap used by the forces was found near her dead body. A number too was found in the cap. No reference was made by anyone regarding this cap and no attention was given regarding this matter.

The case was taken up at the Kayts Magistrate's Court on February 13, 2006. Defense counsel appointed by the CHRD appeared on behalf of the victim and made reference to the cap found. Thereafter the judge ordered the CID to carry out investigations in this regard and submit a report. The next calling date was fixed for February 27, 2006.

On this day the case was called the CID submitted a report stating that the investigations carried out proved it belonged to an army personnel serving in Batticaloa. The CID asked for permission in order to record a statement from the army personnel and permission was granted. The defense counsel made an application stating the CID to carry out investigations amongst the navy personnel as well. But the application was rejected. The case was postponed to March 20, 2006.

CID filed a further report and made an application to get blood samples from the mother of deceased for a DNA test. The Court granted permission.

In 2008, the case was taken up at the Kayts Magistrate's Court and defense counsel retained by the CHRD appeared on behalf of the victim. The case is pending in Courts.

#### **17. Allaipiddy Massacre case BR/82/06--BR/83/06--BR/84/06**

Thirteen persons, including a four month old infant and a four year old child were brutally killed at Allaipiddy, Kayts, in the night of Saturday May 13, 2006. Eight persons from the same family were killed in the same house at 8 pm. Ten minutes later a shop keeper was shot dead and his wife seriously wounded. A youth aged 24 was shot dead a few yards away.

An elderly man, his wife and their son were killed inside their house. Apart from it a telecommunication shop was bombed. During this moment of utter confusion and turmoil, police or naval officers failed to rush to the scene of incident and take action. Neither did they carry out any immediate investigation. Finally, the police on the orders of the local Magistrate arrived at the scene of incident around 11.45 am the following day. Post-mortem reports revealed that deaths occurred due to gunshot injuries. Observations by the Magistrate revealed that he had to press the police to send an ambulance to take the injured to the hospital. Visiting the scene of incident by police and the Magistrate was a statutory requirement in respect of sudden deaths. But that too was partly stalled by the Navy who refused permission to the police party and the Magistrate to use the road. Later, when they reached Allaipiddy, they saw that the whole village of about 300 families had taken refuge at the Philip Neri's Church, in fear of staying in their homes. Inquest into the deaths was held in the Kayts Magistrate's Court under which jurisdiction the villages of Velanai, Allaipiddy and Puliyanakoodal

are constituted. The inquest was held on May 16, 17, 18, and 19, 2006 before Kayts Magistrate J. Trotsky. At the outset on May 16, a Special CID team headed by Senior Superintendent of Police Mahesh Perera, who were specially flown in from Colombo, stated at the Courts that under the provisions of the Code of Criminal Procedure Act, they are taking over the investigation from the Superintendent of Police, Jaffna who would under normal circumstances would have conducted investigations. On the first day, Inquest into the death of Senthuran of Valanai was taken up. The brother, sister and father of the deceased gave evidence and stated that the assailants all wearing navy uniforms and carrying automatic rifles used by the navy, came looking for Senthuran, approximately at 4 pm. Thereafter they returned again at 9. 30pm and shot the deceased who was sleeping in the 'tobacco hut' in which tobacco crop was stored. On May 18, 2006, the son of the deceased Shanmugalingam, Maheswari Shamugalingam and Reuben testified that his house was situated in front of the residence of his parents.

Around 10 pm he heard firing of automatic weapons and his father screaming in pain. He was prevented by neighbors from going to see his parents, due to fear that he too could be attacked. Ultimately when he arrived at their house, he saw his parents and brothers lying in a pool of blood at 4 pm.

He stated that the navy who were in charge of the security of the area carried out the attack as no one else could move about in the area carrying weapons.

Sellathurai Lilly Malar (58) gave evidence to the effect that she was seated on the portico chatting with her two grand children aged 6 and 8, her husband Sellathurai, uncle Antonimuththu, and helper Navaratnam. She stated that her daughter Annette Esther and her husband Kethesewaran and four month old infant and four year old child were in the hall of the ground floor. The witness's son Amuthadas, daughter Annette Violet, husband Robinson and their two children were upstairs. At that moment three gunmen clad in navy uniforms entered through the gate firing on the ground and in the air. They came in and shot at Anttonimuththu in the forehead, the witnesses said that they could see Antonimuttu falling to the ground with one eye popping out. Next it was her husband who received gun shots and fell to the ground. Navaratnam too was shot and he fell down. The three men walked in with a petroleum lamp that was in the house. Witnesses heard about 15 to 20 gunshots. Thereafter they went upstairs and fired. They left the house leaving the lamp on the table. Witnesses who were shocked and too scared to even cry out went inside and found her daughter, son-in-law and grand children shot dead. Neighbours and priest Fr. Amalraj arrived at the scene and took the injured to hospital. Witness categorically stated that the perpetrators were wearing navy uniforms and carried guns usually used by navy personnel while on patrol.

Anette Violette (28) stated in her evidence that she, her husband Robinson and her brother Amuthadas and two children were upstairs at 8 pm when they heard gunshots. Three persons in navy uniform came upstairs and shot her brother and husband at close range. Her husband died instantly and while leaving one of the assailants discovered

that her brother was still alive and shot him on the head twice. She stated that she identified the gun men as she had seen them a few times while they were on patrol duty. On May 19, 2006 evidence of Sellathurai and Mohanambikai Sivanesan were obtained in the Jaffna General Hospital where they were receiving medical treatment for gunshot injuries. Both testified that assailants were Navy men wearing navy uniforms and were carrying guns that are carried by Navy personnel.

Returning to Magistrate's Court of Kayts, H.P.D.KP Karunanayake, ASP, Kayts testified under oaths that although he wanted to give adequate protection to the people of that area, the police had been advised not to rush to the scene as it may caused security risk. He stated that the dead bodies from the respective places were taken to Jaffna Teaching Hospital under his direction.

Referring to the order made by Court on May 15, 2006 to give protection to those staying in the church, the witness stated that he is awaiting instruction from superior officer.

Liyanegge Upul Shantha, Commanding Officer Navy Camp, Kayts stated that the Villages of Allaipiddi, Puliyanakoodal and Velanai are completely under the control of Sri Lanka Navy. "As soon as I was informed of the incident at 8 pm I directed all my divisions not to go to the scene of incident. Usually we assist the police if we are requested to accompany the police if any incident took place. But on May 13, 2006 I did not receive any such requests from police. Giving protection to public is the responsibility of the police. If the Navy is to ensure protection of the people we must be given vehicles in which our soldiers could be transported. Furthermore 30 meters on either side of the road should be cleared. Until such time it is difficult to grant protection to the public".

The Magistrate returned a verdict of homicide and noted that several witnesses had implicated Navy Personnel. He directed the CID team to investigate further and take steps to hold an identification parade and file a report on June 5, 2006.

CHRD has retained a lawyer on behalf of the victims.

CHRD retained Mr. K.S. Ratnavale, Senior Counsel and M. Remedious attorney-at-law to appear on behalf of the victims' families.

At the inquest into the alleged killing of 13 people at Allaipiddy islet in the Jaffna peninsula, counsel watching the interests of the aggrieved party on behalf of the CHRD moved for a contempt of Court charge against the IGP. Mr. K.S.Ratnavale, Attorney-at-Law making his submissions before the Kayts Magistrate J, Trotsky, said two days after the Magistrate Court Kayts returned a verdict of homicide involving the Navy, IGP Chandra Fernando had issued a press statement that no evidence had been received to the effect that the security forces had been involved in the killings. He said this was a serious lapse on the part of the IGP while a senior police officer in the rank of SSP had been present at the Court hearing when the Court ordered further investigation after giving a verdict of homicide involving Navy personnel.

He said the IGP cannot claim ignorance of this important matter and wanted the IGP charged for the offence of contempt of court for contradicting and making public

statement against the verdict of a Court. Jaffna police inspector Karunatileke sought to file further reports on the progress made in the investigations. The reports had pointed out there were minor inconsistencies of witnesses who testified and also that the evidence of the main witnesses was not corroborated by other witnesses.

He moved for a long date to submit a further report. Objecting to the contents of the reports Counsel Ratnavale said evaluating evidence adduced in Court was entirely a matter for the Magistrate and the Court and said the police had no power or authority to comment on the evidence given in Court. He said no further date could be granted and that an identification parade should be held according to the Criminal Procedure Code. Refusing the police application for a long date, the Magistrate said no date exceeding 15 days could be granted in terms of Section 120 of the code of Criminal Procedure Act.

After judge directing the CID to get advice from IGP to arrest suspects and arrange for identification parade on June 20, 2006, the case was fixed for hearing on July 18, 2006. On that day the CID did not appear in Court due to security threats. The OIC of Kayts police station filed a copy of the report faxed by the CID. They added that statements were recorded from people but there is no up to date information regarding suspects to make any arrests. They requested that if anyone had any information regarding the killings to report it to the Jaffna or Kayts Police. Judge expressed his dissatisfaction of the way the CID was carrying out the investigation.

The case was called on August 31, 2006. But the police nor did the CID appear due to prevailing security situation, therefore the case was postponed to November 30, 2006. Once again no one appeared on the prosecution side on November 30. The case was postponed to January 4, 2007.

It is apt to mention that an important witness in the Alaipddy case, Annette Violet is in the Wannu region and did not succeed in locating her in the prevailing situation. Therefore the case is pending. However, the CID has visited Jaffna office many a times and inquired about her whereabouts from Mr. Remedious.

## DISTRICT COURT CASE

### **1. Kalutara prison riots 4706/MR/01**

There were deliberate clashes between prison authorities and political prisoners in the Kalutara prison on January 6<sup>th</sup> and 7<sup>th</sup>, 2002. Finally this ended up in prison riots and as a result, two Tamil political detainees were massacred by prison authorities (such as prison guards) and 58 other prisoners badly injured and admitted to the Nagoda Hospital, Kalutara, the Colombo National Hospital, and Welikada prison hospital.

The two deceased victims of this incident are Mr. Srikumar and Mr. Jeysuthasan. Soon after the incident various people such as parliamentarians, family members of the victims and human rights activists requested the CHR D to intervene in this matter.

The CHR D took certain measures against such injustice. It summoned two meetings and invited legal personalities and human rights activists to show solidarity in this issue. The first meeting was held on February 13, 2002 at the CHR D office in Colombo. Nearly 30 persons representing their respective organizations were present at this meeting, where it was unanimously decided that a memorandum should be prepared and handed over to the Minister of Justice.

The second meeting was held on February 18, 2002, here 42 representatives of various organizations attended and a memorandum was prepared and approved. Shortly it was handed over to the Minister of Justice and the National Human Rights Commission. The CHR D took up this matter in parliament through parliamentarian Mr. Joseph Pararajasingham during the debate on the extending emergency. Subsequently it was permanently registered on the Hansard.

When the magisterial inquiry was held into the death of the prisoners at the Magistrate's Court, Kalutara, the CHR D retained a lawyer to watch the interest of the victims. At the conclusion of the inquiry, the Magistrate sent the proceedings to the Attorney General's Department for further action against the perpetrators.

Apart from it, the CHR D filed a civil case in the District Court, Kalutara to obtain compensation for families of two victims. Mr. C. Vivekanandhan, attorney-at-law filed a case in the District Court, Kalutara. Case Nos. 4705/01 & 4706/0.

Kalutara District Court ordered to grant compensation of Rs. 650,000 to the victims. This was considered a landmark event in the present context. However, the Attorney General's Department appealed against the judgment of the district court. The case has not yet been taken up. CHR D retained lawyers Mr.C.V.Viweganathan and Mr. R.Raguraj to appear on behalf of the victims' families.

## HIGH COURT CASES

### **1. Kumarapuram Massacre HCEP/1959/02 – HC/133/08**

On February 11, 1996, innocent Tamil civilians were brutally massacred at the village of Kumarapuram, by army personnel stationed at army camp in Dehiwatte and Kilivetti. While 24 were confirmed dead, another 28 were badly wounded.

The dead included six women, five men and 13 children. Out of the women dead, there was a nine months pregnant mother. Tharmadurai Thanalakshmi, a 16 year old girl was forcibly taken into an abandoned building; and she was killed after being raped. The body of the raped victim was recovered by villagers the following morning.

Following the incident, a number of legal actions were taken to obtain justice. The case was taken up at the following Courts.

1. Muthur Magistrate's Court

2. Trincomalee High Court Once the non summary inquiry concluded in the Muthur Magistrate's Court on September 16, 1998, the case proceedings were forwarded to the Attorney General's Department for indictment. After a long judicial delay, once again the case was heard at the Trincomalee High Court on February 14, 2005 and was postponed to June 14, 2005. Unavailability of productions was the reason given for postponement. Once again the case was called on June 14, 2005 at the Trincomalee High Court and was fixed for trial, which commenced on September 8, 2005. Once more the case was postponed to the following year. The CHRD will continue to retain a lawyer to watch the interest of the victims.

On October 16, 2008 Order was given by Trincomalee High Court to transfer the case to the Anuradhapura court. Next date was October 5, 2009 and it was merely a calling date. The case is currently pending. However, CHRD is continuing to watch the interest of the victims. Mr. K.S. Ratnavale is appearing on behalf of the victims since 2002.

### **2. Thambalagamam Massacre**

Eight innocent Tamil civilians were arrested in their homes by police and home guards attached to the Pudukudiyiruppu and Pokkuruni Police Post. Later they were deliberately brutally massacred. The bodies were found in the compound of the Pokkuruni Police Post. Autopsy and postmortem was carried out on February 3, 1998. An identification parade took place between February 11, 1998 to February 17, 1998, following the pressure from human rights groups and political parties. Forty-one police officers and home guards were identified by witnesses, as those responsible for the massacre.

Subsequent to the identification parade various legal interventions took place. This case was heard at the Trincomalee Magistrate's Court, Trincomalee High Court, Court of Appeal, Colombo and currently at the Anuradhapura High Court.

Suspects filed a petition for the transfer of case from Trincomalee High Court to Anuradhapura High Court.

The Court of Appeal granted the request and on October 22, 2006 the case was transferred from Trincomalee High Court to Anuradhapura High court now the case is heard at the Anuradhapura High Court. Later it was send to the Attorney General's Department. The case is pending.

CHRD will continue to retain lawyer Mr. K.S.Ratnavale to watch the interest of the victims.

### 3. Mirisuvil Mass Grave BR/139/01 – HC/1092/02

On December 19 2000, nine civilians including a three year old child in the Jaffna district disappeared from their homes in Mirisuvil in the Thenmaradchy area. The eight men obtained permission from the Sri Lankan Army to visit their homes and see their properties as they were displaced to Vadamaradchy area. Later it was reported that they were missing.

On December 24, 2000 one of the missing, Mr. Maheshwaran escaped from army custody with severe wounds and injury all over his body as a result of torture and gave information about details of remaining eight. On his evidence, soon after, a mass grave was discovered and corpses of the eight men were found during exhumation which took place on December 25, 2000. This case was taken up at the Chavakachcheri Magistrate's Court on the same day and subsequently 14 army personnel were taken into custody.

Later the case was transferred to the Anuradhapura Magistrate's Court at the request of the suspects to the Attorney General's Department for transfer of cases due to fear of any harm to their lives. Subsequently it was taken up on July 22, 2002 and November 29, 2002 at the Anuradhapura Magistrate's Court. Later the Chief Justice appointed a trial-at-bar at the High Court, Colombo and nominated three judges for trial at bar. They were Justice Sarath Ambepitiya, Justice S.I. Immam and Justice Kumar Ekaratne. The CHRD retained lawyers to hear the case at trial-at-bar. The trial-at-bar commenced on November 27, 2002 at the High Court Colombo. While five were indicted, the rest were released on bail. Attorneys-at-law Mr. D. W. Abeykoon PC, Mr. K.D.C. Kumarage, Mr. K.S. Ratnavel and Mr. M. Remedious appeared for the aggrieved party. The next date for trial was fixed on January 29, 2003. Trials were held at the High Court, Colombo from January to July 2003. Later a legal issue cropped up whether confession made to a military police is admissible in a Court. The judges ordered the defense counsel to go to Supreme Court on this matter and take a decision. Thereafter the case was postponed till March 16, 2004. The Special Bench of the Supreme Court comprising five judges dismissed petitions of appeal challenging admissibility of confession. In the meantime two judges of the bench were removed and a new bench was constituted which comprised Justice Sarath Ambepitiya, Justice Upali Abeyratne and Justice Sisira de Approva. The new date for trial to commence was fixed for November 4, 2004. When trials resumed on November 4, 2004, the case was ordered to be continued from the point it ended during the last date. Later Justice Sarath Ambepitiya ordered the trial to continue from the point it ended on November 22, 2004. Regrettably, Justice Sarath Ambepitiya was shot dead and the Chief Justice had to appoint a new judge and the case was fixed for December 16, 2004.

But when the case was taken up on that day a new judge was not appointed and the case was postponed to January 19, 2005. Mr.K.S.Ratnavel and Mr.K.Shanmugalingam have been retained by CHRD to appear on behalf of the aggrieved party.

**Trial at bar is going on in the High Court of Colombo but beginning of this year this case was stopped temporarily. In September 2008, the new date for the next hearing was informed the CHRD lawyer. On November 11, 2008 the case was taken up before the three judges in the Colombo High Court. The case was later taken up on March 16, 2009, as the State Counsel was not ready for trial the date was fixed to October 7, 2009. On this day calling and trial was postponed to December 17, 2009 and since the state**

counsel was not ready as usual so the date was postponed to the following year March 12, 2010.

**4. Dehiwala Railway Station bomb blast case HC/9429/99**

In July 1996, there was a bomb blast at the Railway Station, Dehiwala. In this connection, seven persons were arrested and indicted under the PTA. They are,

1. Anthoneypillai Robert Maxillan
2. Savarimuthu Loganathan
3. Thirumakal Maxilan
4. Sinnappu Selvarajah
5. Yogarajah Arokiyarajah
6. Prathaban
7. Suppiah Sritharan

The sixth accused, Mr. Prathaban was released soon after the inquiry. The remaining six were indicted on 1708 charges. Indictment was served in 1998 and trial commenced on August, 18, 1998 at the Colombo High Court. The Case No. is 9429/98.

Since then the case had dragged on till 2002 owing to calling dates and thereafter hearing commenced. In January 2003, the senior counsel ordered the case to be transferred to the Welikade Prison Courts and from October 10, 2003 the case was heard there. Later on June 1, 2004 the case was transferred to the High Court.

The CHR D retained lawyers to defend suspects who were indicted in this case. The fifth accused, Mr. Yogarajah Arokiyarajah requested the CHR D to retain a Senior Counsel to defend him at the High Court. The CHR D retained Mr. G. Jeyakumar, a senior counsel to defend in his case. On November 11, 2003, Mr. Arokiyarajah was acquitted of charges and released.

Subsequently three detainees Robert Maxillan, Thirumakal, wife of Mr. Maxillan and S. Selvarajah and Suppiah Sritharan applied for legal services. The CHR D retained Mr. G. Jeyakumar, senior counsel in this case.

During the trial on December 16, 2008 ASP was not present and it was postponed to January 20, 2009. On that day the ASP was once again absent in Court and the date was given for February 2, 2009. Since the State Counsel was not ready to conduct the trial, the date was moved to February 10, 2009. Trial conducted on that day Court moved for medical treatment of Mrs. R. Thirumakal.

**And also the trial of the 2<sup>nd</sup> Accused was conducted and the next date was February 13, 2009. Thereafter it was postponed to March 6, 2009.**

**On that day the translator gave evidence. On March 4, 2009 the translator was cross-examined by our Mr. K.S.Ratnavale. The accused was cross examined once again on May 26, 2009. The next date was given as July 9, 2009. On that day trial of one of witnesses against Thirumakal took place. Thereafter the case was postponed to September. On September it was merely a calling date and the case was postponed to October. On October 15, 16, & 19 the first witness of the third accused was cross examined. When the case was taken up on 18.11.2009 and 19.11.2009. Correction of proceedings was taken up and ordered for written submission for the second accused. On 18.12.2009 written submission on behalf of the second accused was submitted. Evidence led for voire enquiry**

*It is apt to mention that the remaining accused in the case are now requesting CHR D's legal services.*

*Thirumakal Maxilan is a mother of a child and her husband is also an accused in the same case. When the couple was arrested, she was pregnant. Thirumakal delivered her child while in custody. After several years, the child was released on humanitarian grounds and she is looked after by her grandparents.*

**5. Town Hall bomb blast HC/891/02**

Mr. Ragupathy Sharma and his wife Vasanthi Ragupathy Sharma were arrested by the officials of the terrorist investigation division on February 9, 2000 at his temple residence. Later he was implicated in the Town hall bomb blast case. Currently, Ms. Ragupathy Sharma is detained at the Welikade Female Prison; where as Mr. Ragupathy Sahrma is detained at the Kalutara Priosn. Their children are looked after by a Hindu Orphanage in Batticaloa.

**At present, the case against Mr. and Mrs. Sharma is heard at the High Court, Colombo. The CHRD has retained lawyer Mr. G. Jeyakumar to provide legal services to Mr. Ragupathy Sharma. Their two children are taken care of by the Ramakrishnan Mission orphanage in Batticaloa. Due to prolonged detention Ms. Vasanthi Ragupathy Sharma's health condition is deteriorating gradually more.**

**On June 9, 2008 as well as June 26 and 27, 2008 Senior Superintendent of Police was cross examined. On July 2, 2008 the cross examination concluded and date was fixed for trial. On July 24 and 25, 2008 1<sup>st</sup> and 2<sup>nd</sup> accuseds were cross examined. On August 14, 2008 corrections were made in the proceedings of July 25, 2008.**

**On October 29, 2008 Counsel Mr. Srikantha appearing on behalf of 1<sup>st</sup> and 2<sup>nd</sup> accuseds was not present so the trial re fixed for December 5, 2008, it was merely a calling date. On January 30, 2009 matter of 3<sup>rd</sup> accused was taken up and was to be continued on February 25, 2009 however, he was absent on that day and it was postponed to March 4, 2009 as he was absent on that dy as well. Further trial was held for the 2<sup>nd</sup> accused on March 5, 2009. Cross examination was taken up by the prosecuting counsel.**

**March 25 and 26, 2009 further trial was held. And on May 5, 2009 cross examination was carried out by the prosecuting counsel and the next date was fixed for June 6, 2009 where the trial of the 3<sup>rd</sup> and 2<sup>nd</sup> accused took place. Thereafter the case was postponed to October 23, 2009. It was merely a calling date and later it was postponed to 2010.**

**6. Mannar torture and rape case MC/20265/01 -- HCV/REV/131 -- HCA/53/2006**

On March 19, 2001 two Tamil women, Mrs. Sivamani Sinnathamby and Mrs. Vijikala Nanadakumar, were arrested in Mannar by naval officers and taken into custody. While in custody both were raped and tortured by police officers.

At the time of the incident the case was very sensitive and drew the attention of the international community. A state of emergency was in position at that time. Mannar district was considered a highly militarized zone. The CHRD has taken up this case in various stages. First when the case was taken up at the Magistrate's Court, Mannar on April 9, 2001 the CHRD retained lawyers to watch the interest of victims. On that day, an identification parade in the Magistrate's Court, Mannar, was held. Thereafter Attorney General's Department indicted the suspects under the Torture Act which was transferred to the Anuradhapura High Court.

Also non summary inquiry is held at the Magistrate's Court, Anuradhapura. The CHRDR filed a fundamental rights application in the Supreme Court and Court gave leave to proceed on May 14, 2001. The CHRDR retained lawyers in all three cases, on behalf of victims.

During the identification parade three police officers and two navy personnel were identified by the victims and later further nine police personnel were identified. The Magistrate ordered that all 14 suspects be remanded till May 24, 2001.

On September 19, 2003 the case was brought before the Supreme Court. During which the Attorney General's Department informed that while some of the respondents in this case will be charged for rape at the Anuradhapura Magistrate's Court; some would be indicted under the Torture Act in the High Court, Anuradhapura. The next Supreme Court hearing was fixed for December 16, 2003. Thereafter, the next date was fixed for February 3, 2004.

On February, 3, 2004 the case was called at the Supreme Court, Colombo, during which it was informed that charge sheet for non summary proceeding for rape has been filed at the Anuradhapura Magistrate's Court against the 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> respondents. Two of the respondents were acquitted earlier and a case was filed under the Torture Act against the remaining respondents.

#### Non Summary Inquiry, at the Magistrate's Court Anuradhapura

On June 18, 2004 this case as taken up before the Magistrate's Court, Anuradhapura for non summary inquiry. It was merely a calling date. Again, this case was taken up on August 20, 2004 and thereafter, on October 8, 2004. On both dates suspects did not appear in Court. As a result the case was postponed to November 9, 2004.

#### Fundamental Rights Case at the Supreme Court, Colombo

On May 25, 2004 the case was heard at the Supreme Court. On that day it was informed that some of the accused were charged under the Torture Act and the case would be filed at the High Court, Anuradhapura.

The hearing of the Fundamental Rights Application was postponed to September 13, 2004 and thereafter postponed to December 16, 2004, due to the absence of defense counsel.

On December 16, 2004 the case was taken up for hearing and the defense counsel appeared on behalf of the 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents. He made an application stating that there were connected criminal cases pending against the respondents, at the Anuradhapura Magistrate's Court and argued that in case of any liability determined by the Supreme Court against 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents, then, it could be considered prejudicial to other cases. He requested to postpone this case till the conclusion of the non summary inquiry at the Anuradhapura Magistrate's Court. The Supreme Court Judges agreed and fixed the next date to June 17, 2005.

**In 2008 case was stopped on stay order by the Court of Appeal. On December 12, 2008 which was the next date witness did not appear and the next date was given for date was given as February 16, 2009. On that day it was stated that there was difficulty in finding the witness as she was in Vanni and the volatile situation there. Therefore the case was dismissed with the ground of reopening. At present the case is temporarily closed.**

## **7. Kanapathipillai Sivaharan detention**

Mr. Kanapathipillai Sivaharan was arrested by police in Trincomalee on November 3, 2001 and was detained for 25 days. Thereafter he was handed over to TID on November 29, 2001. The medical report confirmed that he was severely tortured in the hands of the police as well as at Terrorist Investigations Department (TID). On March 7, 2002 he was produced before the Chief Magistrate's Court of Colombo and remanded indefinitely. He was later indicted in seven cases in the Vavuniya High Court. All cases were based on confession. As the confession was rejected on the basis of the medical report, he had been acquitted from all seven cases. In the meantime three other charges were served on the accused in the Jaffna High court and these cases too were based on the same confession. CHRD took up the case on behalf of the detainee.

On October 20, 2005 all three cases were taken up in order to fix a trial date. The defense counsel made an application that the confession had already been rejected by the Vavuniya High Court. Thereafter the judge ordered to give a copy of the order to the State Counsel to consider the withdrawal of these indictments. During the given period the case was called on January 31, 2006. The State Counsel rejected one confession and stated to carry on with the other confessions. The case was fixed for trial on May 22, 2006. On this day the case was postponed to July 12, 2006 and trial date was fixed for September 18, 2006. Since the Judge, State Counsel witnesses and accused were absent on that day, it was postponed to October 23, 2006.

Once again the case was postponed to November 17, 2006 due to the absence of witnesses and the accused. On November 17, witnesses and the accused were absent and the case was fixed for trial on March 2, 2007.

Mr. K. Sivaharan was produced before the Chief Magistrate's Court of Colombo and remanded indefinitely. He was later indicted in seven cases in the Vavuniya High Court. All cases were based on confession. As the confession was rejected on the basis of the medical report, he had been acquitted from all seven cases.

In the meantime three other charges were served on the accused in the Jaffna High court and these cases too were based on the same confession. CHRD took up the case on behalf of the detainee. The case is continuing.

## **8. Detention of Sivarasa Nathan HC/1166/08**

Mr. Sivarasa Nathan was arrested on suspicion. On January 7, 2009 the case was taken for trial and some of the witnesses were present but CHRD lawyer was unable to precede the trial as translation of the IBs was not ready.

It was already ordered by the Court to the Registrar to provide the translation. State Counsel called the case to be removed from the trial list and be called once the translations were ready.

CHRD lawyer objected and under took the responsibility of translating the document by him. Finally it was fixed for trial on February 9, 2009. On that day witnesses were not present at the Court and the trial was re-fixed for March 2, 2009. Once again, they were not present on the given date and it was postponed.

When the case was called on March 31, 2009 the State Counsel was informed the Court that the file was sent to the AG's Department for translation but Mr. Remedious informed it was already informed to the Court that the document will be translated by him and therefore the trial date was fixed for May 18, 2009. On that day the translation were not ready and therefore, the case was postponed to June 1, 2009.

**9. Detention of Ganeshamoorthy Jeyarooban HC/1170/08**

The case was taken for trial and some of the witnesses were present but CHRD lawyer was unable to precede the trial as translation of the IBs was not ready. It was already ordered by the Court to the Registrar to provide the translation. State Counsel called the case to be removed from the trial list and be called once the translations were ready. CHRD lawyer objected and under took the responsibility of translating the document by him.

Finally it was fixed for trial on March 2, 2009. Once again, they were not present on the given date and it was postponed to May 5, 2009. On that day the translations were not ready and it was postponed to June 5, 2009.

**10. Detention of Thurairajah Nihal Dunstan HC/906/2005**

He was arrested in Jaffna in 2002 March; thereafter he was released on bail in October. Then again he was indicted in High Court, Jaffna and remanded in May 2005. He approached CHRD for legal assistance. CHRD has taken up the case and is continuing.

**11. Murugadhas Devaruban HC/1185/2005**

He was arrested by army personnel in Chavakachchery on December 26, 2005 and handed over to the Kankesanthurai Police. Thereafter he was transferred to TID Colombo and presently he is in Magazine prison. CHRD is appearing on behalf of the victim. The case is continuing.

**12. Perinpan Gangatharan (HC/4443/2008)**

He was travelling to Hatton from Batticaloa. At the Colombo bus stand he was arrested stating the he was trying plant a bomb at the Colombo bus stand. He has been indicted (HC/4443/2008) and charged under Offensive Weapons Act. CHRD will take up his case.

**13. Mariyathas Neris Anasti Nanthasuya HC/1146/08**

The case is taking place in the Jaffna High Court. Mr. Remedious of CHRD Jaffna is appearing on behalf of the victim. He was arrested in 2008. The case is continuing

#### **14. Habeas corpus applications**

In 2004, CHRDR filed 45 habeas corpus cases at the Jaffna High Court on behalf of the disappeared in Navatkuli, Kaithady, Ariyalai, Pasaiyoor, Gurunagar of Jaffna peninsula. This was an outcome of a fact finding mission consisting of CHRDR lawyers and OPFMD members that visited Jaffna in 2003, where 160 applications from families of the 'disappeared' during 1996/1997 were received. All 45 cases were granted leave to proceed at the Jaffna and Chavakachchery High Court.

It is apt to mention in 2007 the Magistrate of the Chavakachcheri Magistrate's Court stated that there was substantial evidence to prove security forces were behind many enforced disappearances which took place in 1996 in the Jaffna Peninsula.

During the given period the 45 habeas corpus the cases were transferred to the Anuradhapura High Court from the Jaffna High Court due to request made by the respondents.

Initially first 23 cases were taken up and it is apt to mention, although transferring of cases proved advantageous for the respondents, families of the disappeared showed much interest and traveled to Anuradhapura despite the prevailing security situation. As only one respondent turned up for the hearing, the judge ordered to send notice to the others.

Thereafter, remaining (24-45) cases were taken up and notices were sent to all the respondents. The phenomenal factor was that each case was given special attention and taken up individually. The cases are progressing well.

A total of 22 cases were taken up on May 6, 2009 and remaining cases were taken up June 3, 2009 at the Anuradhapura High Court. Since the petitioners didn't turn up. Judge ordered notices to be sent to them.

Currently preparation work is being carried out for the appeal case to commence all 45 cases in the Jaffna High Court. Dr. Ranjith Fernando is being retained for this purpose.

## CRIMINAL APPEAL CASES

### **1. Francis Ranjan Kirusnasamy CA231/2005**

He was arrested by the Mannar police in 1998 for shooting a police sub inspector there in 1996 (who escaped with injuries). He was identified through a questionable identification parade. It is apt to mention Mr. Ranjan had left the country to India in 1996. Thereafter, the police had raided his home and taken a album of his (which he is unable to prove); he was identified following this raid and the credibility of this identification parade doubtful.

He was tortured severely, where he was burnt with cigarette butts. He was sentenced to 12 years imprisonment and soon after he appealed his case in 2005.

In July 20, 2009 CHRD took up his case and retained senior counsel Dr. Ranjith Fernando for this purpose. When the case was taken up on October 5, 2009 in the Criminal Court No. 107 where Mr. Livera was the state counsel and justice Abrew was the judge, the prison authorities did not produce him in courts. Judge under the impression that he is detained at the Kalutara prison asked to send notice to the Kalutara prison authorities. But later CHRD lawyer was asked to confirm his current detention place and notice was sent to produce him before the courts and the next date was given as October 12, 2009.

On that day Dr. Ranjith Fernando explained that the accused was arrested in 1998 and was convicted in 2005 for sentence of 12 years. Therefore the victim had already spent 11 years in prison and according to the prison calculation, appealed the judge to reduce his sentence considering his remand period.

The State Counsel objected to counting the remand period stating that it was a PTA case and he shot a sub inspector, so it is a crime deserving 20 years sentence, but he has been sentenced to 12 years alone.

Judgment was passed that the sentence period should be counted from the date of conviction. The case was closed.

### **2. Lucas Fernando CA/225/2005**

Mr. Lucas Fenando, from Valachchennai, Batticaloa, was living with his uncle in Colombo. He was arrested on December 21, 1998 in Kandy on suspicion of placing a bomb in a transformer. On January 11, 2005 the accused had been convicted and sentenced to 10 years rigorous imprisonment. He appealed soon after he approached CHRD for legal assistance. When the case was taken up on July 7, 2009, Senior Counsel Dr. Ranjith Fernando stated that the accused has not previous conviction and the maximum sentence that could have been imposed is 20 years. He also reminded that Lucas is in remand prison since 1999 for period of 6 years.

The State Counsel says he has no objection for reducing the sentence appropriately. Considering all the facts the judgment was passed as sentence period being reduced from 10 years to seven years from the date of conviction.

It was ordered to send a copy of this order to the Prison Authorities. The case concluded. Mr. Lucas Fernando has been released.

**3. Central Bank bomb blast CA/199/2002**

V. Partheepan came from Jaffna Kankesanthurai to travel abroad when he was arrested on January 31, 1996 following the Central Bank bomb blast. He had gone out to the communication centre to make a call to his aunty, where he was arrested along with K.Sivakumar by the Police in the Maliban Street, Pettah. The Pettah Police transferred them to TID indicted and thereafter they were convicted and were given 20 years life imprisonment, they appealed and the case is going on. The case was fixed for May 7, 2009 so he requested CHRD's legal services.

The two accused Mr. V. Parthipan and Mr. K. Sivakumar were produced in Court (Criminal Court No.107) on October 5, 2009, when the case was called. However, since a written submission regarding a confession was unavailable in the case briefs the case was postponed to March 23, 2010. Senior Counsel Dr. Ranjith Fernando is appearing behalf of the victim.