

Paper 2

Mass Graves in the Tamil Homeland

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2.1 OVERVIEW

Amnesty International reported in Nov., 1997 that approximately 600 people from the northern Jaffna peninsula in custody of the security forces in 1996 had disappeared.¹ In 1998, a Sri Lankan soldier stated in a Colombo court that he had helped to bury up to 400 bodies of Tamil civilians in a mass grave at Chemmani outside of Jaffna city in the months following the Sri Lankan Army's (SLA) 1996 takeover of the Jaffna peninsula. Since this credible allegation a year ago there has been no ordered approach to the investigation of the mass grave. The soldier has not even been taken to the area to identify the site, his physical safety has not been assured and the site has not been protected from tampering.

Sri Lankan Government (SLG) efforts to investigate the soldier's allegations can best be described as damage control, rather than a systematic effort to punish an abuse. This is almost expected of the SLG for the following reasons:

- If it is determined that the bodies of Tamil civilians who disappeared in 1996 in the custody of security forces lie in a mass grave

¹ "Sri Lanka: The Continuing Spectre of 'Disappearances,'" Nov. 27, 1997, (ASA 37/27/97).

at Chemmani, the centers of power in Sri Lanka will be implicated. The very army officers who had direct responsibility for the Chemmani checkpoint at the time of the burials, Brig. Sri Lal Weerasooriya, and under him, Brig. Janaka Perera², have been promoted this year to Commander of the Army and Deputy Chief of Staff, respectively.

- The culpability could well rise to the level of President Kumaratunge, who is also Minister of Defense.
- A full investigation under neutral, international auspices would completely undermine the SLG's claims that its actions in fighting the LTTE benefit the Tamils and the nation as a whole. It would expose the genocidal nature of these actions, which have, in fact, so devastated the Tamil population of Sri Lanka.
- A full investigation of Chemmani under neutral, international auspices would increase the pressure for the investigation and prosecution of other war crimes which have been

² *Yukthiya*, July 12, 1998.

committed against the Tamil population. Chemmani is not the only mass grave which begs for excavation. Others such as Navalady and Saththurukkondaan are sprinkled throughout the North-East.

The SLG and the SLA have every motivation to make exhumation of the graves at Chemmani and elsewhere a whitewash. This is the reason that, for a credible exhumation of the graves to take place, neutral international experts must be involved during the entire process, otherwise serious questions will be raised about the conclusions drawn from the excavations.

Prosecution of those guilty of these war crimes needs to take place following exhumations of the mass graves. Prosecution is even more problematic because it is rare for a sitting government to vigorously prosecute crimes of this magnitude committed during its time in power by the country's military officials who are involved in an on-going war. Successful prosecution of high level officials has almost always been either by a subsequent regime or an outside power. Requests by the relatives of the victims for an international tribunal to hear the Chemmani case have not yet received the sanction of the international community, as they have in the countries of the former Yugoslavia and Rwanda.

In Bosnia, Croatia, Rwanda, and now, Kosovo the international community has demonstrated that it will not stand by and allow war crimes and crimes against humanity to go unpunished. UN General Secretary Kofi Annan recently stated that sovereignty is not inviolable when crimes against humanity are in question.³ The world must bring its concern to bear on the crimes which have been committed, and continue to be committed, in Sri Lanka.

³ *The New York Times*, April 8, 1999.

Without a credible exhumation and prosecution of the perpetrators the mass graves in north-eastern Sri Lanka will continue to symbolize the Sinhalese domination of the Tamils using any means necessary, including the slaughter of civilians. Those who eliminate Tamil opposition to this domination do so with impunity, indeed they are even rewarded with promotions.

This paper will begin with a general discussion of genocide in Sri Lanka. It will next turn to an in depth history of Chemmani and conclude with a listing of other mass graves which require immediate attention.

2.2 GENOCIDE

There are several means a larger group uses to weaken or eliminate a smaller group which inhabits territory the larger group claims as its own. I will discuss four: discrimination; ethnic cleansing and its partner, colonization; mass graves and mass killing; and genocide, in ascending order of criminality. Rarely does each category occur in isolation, and the crime of genocide usually includes the previous crimes, as it has in Sri Lanka.

Discrimination Even the President Kumaratunga admitted, during her 1994 election campaign, that Tamils have been the objects of routine and pervasive discrimination.

Ethnic Cleansing and Colonization State-sponsored colonization of Sinhalese in the North and East, the areas of Tamil majority, has been taking place since independence in 1948. This colonization has frequently been accompanied by 'ethnic cleansing,' the term now used to describe the driving away by force of one ethnic, racial, linguistic or national group so that another can

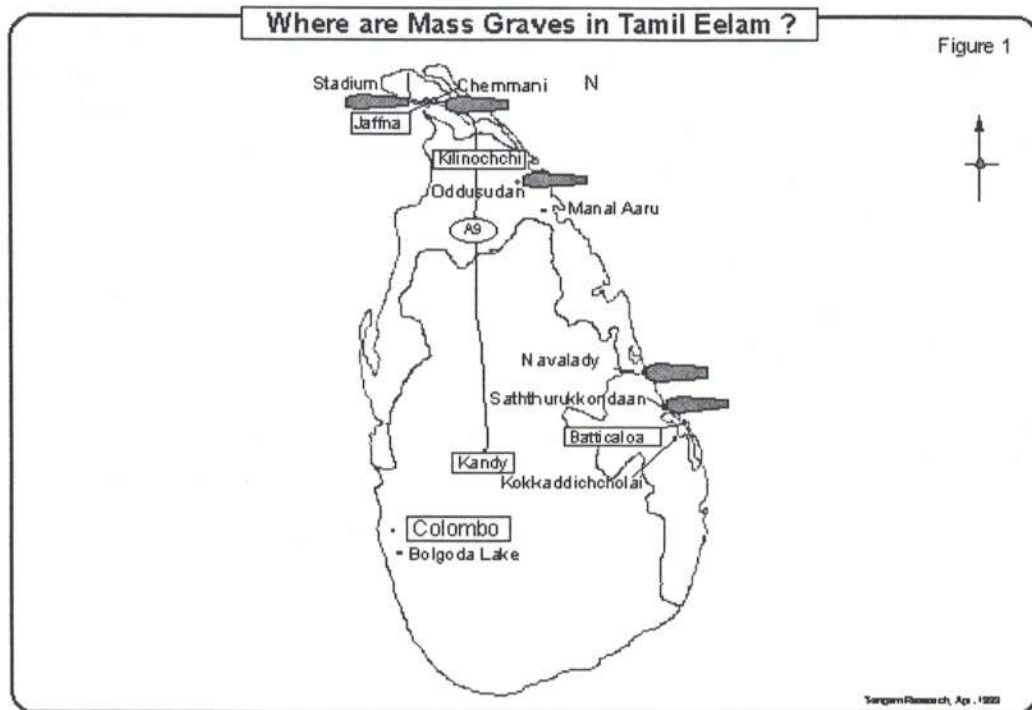


Figure 2.1: Where are Mass Graves in Sri Lanka?

take its land. Such processes are familiar to us from recent events in Bosnia and Kosovo. In Sri Lanka, the two hot spots of ethnic cleansing at the moment are around Trincomalee, the eastern harbor city where Sinhalese settlers aided by the SLA are disputing numerous areas with the indigenous Tamils, and around the Palaly AFB on the Jaffna peninsula where Tamil families, have been dispossessed and there is talk of Sinhalese settlers being moved in.

The most notorious and violent case of ethnic cleansing was the settlement in 1984 of the 42 village area of the southeastern Vanni called Manal Aru, now called by the Sinhalese name of Weli Oya.⁴ This settlement was preceded by forcing Tamil villagers from their homes beginning in the late 1970s. The officer in charge of Chemmani at the time of the mass burials there, Brig. Janaka Perera, was deeply involved in this operation and even had a town named after him, Janakapura, which means 'Janaka Town.'

Ethnic cleansing in Sri Lanka has been a more insidious process than what we are seeing this spring in Kosovo, but the effects are just as dramatic. Out of a population of 3 million Tamils, one million live as internal refugees, another 500,000 have moved abroad, 100,000 are refugees in India and 1,500 are in detention without trial in Sri Lankan prisons. Large numbers of Sinhalese have been moved into traditionally Tamil areas by the State.⁵

⁴ "Is 'Jaya Sikurui' Raising Weli Oya Spectre Again?", *The Island*, 1 June, 1997. See also Manogaran in this volume.

⁵ "Colonization and Politics: Political Use of Space in Sri Lanka's Ethnic Conflict" in Chelvadurai Manogaran and Brian Pfaffenberger, *Sri Lankan Tamils: Ethnicity and Identity*, Boulder, CO, Westview Press, 1994.

Mass killings Mass killings have also occurred in Sri Lanka, beginning with the pogrom against Moors in 1915, continuing with the pogroms against Tamils in 1956, 1977, 1981 and 1983. Over 2,000 Tamils were killed in 1983 alone. Since the war broke out, the East has been the scene of a particularly large number of killings, with at least 9,000 being killed between 1990 and 1993 alone, with many incidents in which whole villages were attacked and the inhabitants slaughtered. Dr. Patricia Lawrence has observed that in many of the killings and massacres the perpetrators considered their impunity so complete that they did not even bother to bury their victims to hide the evidence.⁶ An MP from the East who tried to bring the massacres to the attention of the world in the early 1990s was threatened by a key military official for tarnishing the image of the Sri Lankan military.

After the Tamil forces (LTTE) took over most areas of the north in 1990 and then most areas of the East in 1996, mass killing on the ground became difficult. The SLA indulged instead in the large scale and long term shelling of inhabited areas, a war crime, from their remaining military bases and from the surrounding seas. This shelling of areas not under government control has probably killed more civilians during the conflict than any other atrocity. Shelling of civilian areas continues routinely in both the North and East. When the SLA re-takes an area, their direct killing of Tamil civilians begins again and I will discuss this in detail below.

Genocide Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as "... any of the following acts committed with intent to destroy, in

⁶ Patricia Lawrence, unpublished manuscript, 1999.

whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”

All three of these crimes are being routinely committed against the Tamil population and have been extensively documented. For example, killing by disappearance, extra-judicial execution, fighting in areas of civilian habitation, and shelling of civilian areas are a regular occurrence. Torture, indiscriminate and repeated arrest and lengthy detentions cause serious bodily and mental harm. The economic embargo of large areas of the North-East inflicts conditions of life calculated to bring about the physical destruction of the Tamils.

The effects of genocide on the Tamil population are readily apparent. At least 50,000 civilians have directly perished in the conflict, while many more have died because of the 9 year old embargo of food and medicine from malnutrition, disease and lack of mobility and even more have been physically or mentally disabled from the strife. Over half the population is currently living away from their homes, mostly in miserable circumstances. All industry, a good portion of the agriculture, the majority of the homes, schools, government buildings, places of worship and commerce have been destroyed or severely damaged in the last 15 years. Tamils even outside the war zone face restrictions on movement, harassment and discrimination. The physical, cultural and economic basis of Tamil civilization has been decimated.

The Physicians for Human Rights and other NGOs consider the situation in Kosovo ‘genocidal’ based on many of the same factors. They

state, “Milosevic and his forces are clearly destroying at least a part of this ethnic group by forcibly driving almost half of its population out of Kosovo, by targeted killings of community leaders, by the execution of Kosovar men, and boys, and the whole-scale demolition of homes, villages, cultural and religious sites,” and continue, “Our government is legally required by the Genocide Convention to prevent, suppress, and punish the crime of genocide.”⁷

Lutz Oette in his discussion of the genocide of the Tamils agrees that the link between the intent of the State to destroy the Tamils, in whole or in part, must be established for genocide to have occurred. He establishes this intent for the pogroms before the war and goes on to say: “The enactment of the PTA and several ERs,⁸ the repeated indemnity granted to security forces concerning allegations of arbitrary killings, disappearances, torture and rape and the imposition of the economic embargo in 1991, indicate that the governments of Mr. Jayawardene and of Mr. R. Premadasa from 1988–1994 have encouraged acts of genocide The systematic pattern of the acts described above [in pages 39–46 of his booklet] suggests that they were employed as government policy. This policy was effectively targeted against the Tamil people as such, even though its motive might have been to eliminate the LTTE. Thus the largely indiscriminate targeting of the Tamils as a group was accepted as the outcome of such a policy. There is therefore sufficient evidence of intent to implicate members of the government The same consid-

⁷Statement on Genocide in Kosovo, National Public Radio Editorial, April 8, 1999 by Holly Burkhalter of Physicians for Human Rights. Available at www.phrusa.org

⁸Prevention of Terrorism Act and several Emergency Regulations.

erations apply to the government of Chandrika Bandaranaike Kumaratunga. Although she has publicly proclaimed her commitment to human rights and thus discouraged acts of genocide, she and the members of her government might incur criminal responsibility for the death of Tamil civilians caused by the economic blockade and acts of genocide committed by members of the security forces, in particular in the course of the war which has been launched by her government." Lutz concludes his section on 'Charges of Genocide' with "Numerous acts of genocide have been committed in Sri Lanka that went unpunished. They were committed by Sinhalese civilians, members of the security forces and members of successive governments. Likewise, there have been cases of public and direct incitement to genocide by MPs and others that went unpunished. At the time of writing [March, 1998] acts of genocide continue to be committed in the course of the war in the north and east."⁹

With regard to mass graves, note that Oette asserts that allowing indemnity to the security forces for atrocities committed implicates the government in encouraging acts of genocide. Western governments are arguing that Serbian military and political officials who do not prevent the ethnic cleansing of Kosovo may be liable to prosecution by the International War Crimes Tribunal.

Heads of State whose military or police commit atrocities are now being held responsible. Gen. Pinochet of Chile may well stand trial in Spain for genocide and the The current president of the former Yugoslavia, Milosevic, has been charged with crimes against humanity com-

mitted by his military during his term of office. The indictment says that the military forces of Serbia and Yugoslavia "acting at the direction, with the encouragement, or with the support of Slobodan Milosevic" have committed acts resulting "in the forced deportation of approximately 740,000 Kosovo Albanians." Acts of shelling, intimidation, random shooting, systematic humiliation and destruction are described.¹⁰

More directly, the Bosnian Serb military commander, Gen. Ratko Mladic and Maj. Gen. Radislav Krstic have been indicted for war crimes. Gen. Mladic was present during the killing of 4,000–7,000 Muslim men at Srebrenica in 1995. Gen. Krstic is believed to have been acting under Mladic's "direct orders when he led the attack on Srebrenica and has been indicted for genocide because of his direct personal involvement in the commission of these crimes" as well as his "command responsibility."¹¹

Similar questions about 'direct personal involvement' and 'command responsibility' must be raised in prosecuting those responsible for the killing of civilians after the attack on Jaffna, those responsible for the deaths of people buried at the stadium in Jaffna and those responsible for the massacres in Navalady, Saththurukkon-daan and Kokkaddichcholai in Batticaloa. The killings of Tamils over the years have been on a large enough scale that it is impossible to attribute them only to the actions of low level soldiers acting without orders. Responsibility for atrocities against Tamils must be carried to levels which the international community now considers appropriate.

Nadesan Satyendra states that the genocidal

⁹Lutz Oette, *The International Crime of Genocide: The Case of the Tamil People of Sri Lanka*. Tamil Information Center, London; March, 1998; p.52–54.

¹⁰*The New York Times*, "Warrants Served for Serbs Leader and Four Assistants," 28 May, 1999.

¹¹*The New York Times*, "Bosnian Serb General is Arrested in Genocide Case", 2 December 1998.

intent of the Sri Lanka government is proved by: “(1) the ‘broad front, steamrolling’ attack launched on the Jaffna peninsula; (2) the deliberation with which the Sri Lanka security forces have killed Tamil non-combatants, shelled densely populated Tamil villages, destroyed Tamil homes and cultivable land, bombed Tamil schools, cultural archives and places of worship, and blocked the supply of essential food and medicine to the Tamil homeland; (3) the persistent and frequent breaches by Sri Lankan authorities of the laws and regulations relating to arrest and detention and the unprecedented number of ‘disappearances’; (4) the systematic use of torture and rape as instruments of state terrorism; (5) the use of Tamil civilians as human mine detectors and as forced labor; (6) the murder of Tamil political prisoners whilst in the custody of Sri Lankan authorities; (7) the imposition of a press censorship which went beyond any needs of national security; (8) by calculated resort to disinformation and war mongering; (9) the public pronouncements of President Kumaratunga and her ministers, together with the ‘victory’ ceremony on establishing Sinhala rule of Jaffna; and (10) the failure of President Chandrika Kumaratunga and her government to condemn the gross and systematic violations of humanitarian law by the forces under their command and the impunity afforded to the offenders.”¹²

Conditions for Genocide Prof. Leo Kuper in his book *Prevention of Genocide* identifies the following features of domestic genocide: (1) inequality of participation, (2) growing polarization in the form of communal or territorial separation, (3) a history of conflict expressed in the crystallization of historic memories and in hos-

tile and dehumanizing perceptions of the other group, (4) the effect of which is total identities based on race, nationality, ethnicity or religion.¹³ In *International Action against Genocide* Kuper adds, among others, (i) The crime is committed mostly by governments, though not exclusively by them, (ii) It is a phenomenon of plural societies, i.e., societies characterized by deep and pervasive cleavages between ethnic racial and/or religious groups, (iii) Many of the highly destructive conflicts involve struggles for greater autonomy or for secession, and arise from the denial of the right to self-determination.¹⁴ We can see that all these structural elements of a genocidal situation are present in Sri Lanka.

I. L. Horowitz identifies genocide as “a fundamental mechanism for the unification of the national state,”¹⁵ certainly an issue in Sri Lanka where the current conflict is over the structure of the state and the distribution of power within that state, with the Sinhalese not willing to share the power and the spoils of the state with other groups and completely unwilling, just like Milosevic, Habibie of Indonesia and Jiang of China, to recognize the Tamil’s right to self-determination.

Thus the evidence of war crimes, including genocide, in Sri Lanka is quite strong. However, atrocities against the Tamils have not received the attention that those in other countries have for several reasons, most notably the reluctance of the regional super-power, India, to raise the issue. One gains some sensitivity about their reluctance with the recent fall of the Indian government, which is tangentially related to events in Sri Lanka. Other reasons for the lower profile

¹²www.tamilnation.org, “Genocide 1995–1998.”

¹³Yale University Press, 1985, p.200.

¹⁴Minority Rights Group, 1982, p.7.

¹⁵I. L. Horowitz, *Genocide, State Power and Mass Murder*, 1976, p. 79–18.

of the Tamil issue include the successful maintenance of a news blockade around Tamil areas, and the strategic interests of the West. The news blockade has even prevented the Sinhalese people from being fully aware of the genocidal conditions prevailing in the Tamil areas.

When the LTTE raised the issue of alleviating some of the genocidal conditions affecting the Tamils during the 1995 peace talks, especially the embargo on Tamil areas and the lack of freedom of movement of Tamils, the SLG complained that the LTTE did not want to talk about a political solution.

2.3 INVASION OF JAFFNA

In the winter and spring of 1995/1996 the SLA invaded the Jaffna Peninsula after 5 years of de facto LTTE control. The peninsula's population centers were under military control by the end of May, 1996. Hundreds of thousands people fled the assault. These internal refugees have been slowly returning ever since because of the harsh conditions elsewhere. After May, the SLA turned to consolidation of its conquests, with a rhetoric of 'hearts and minds,' but a reality of bunds, checkpoints and disappearances.

Tamils began disappearing almost immediately after the SLA took control. The bodies of people arrested by the military were regularly found dumped by the sides of the area's roads.¹⁶ News of disappearances started to come out of Jaffna in the fall of 1996. In a telephone conversation, the US State Department's human rights officer for South Asia said that an LTTE press release of 15 March, 1997, which quoted the Colombo-based Center for Human Dignity figure of 676 disappeared,¹⁷ was 'conservative.'

¹⁶THCR Background Report, 'The Chemmani Mass Graves.' Available at www.tamilrights.org

¹⁷Of which 271 were government officials and 26 stu-

He said that the government used a figure of 723 disappearances. It sounded like he would not be surprised if the real figure was even higher.¹⁸ He said the next question was what had happened to all these people and, if they had all been killed, it was 'horrifying.'

Amnesty International said that, of the up to 600 Jaffna Tamils who disappeared in Sri Lankan military custody, "nearly all have died as a result of torture or been deliberately killed in detention."¹⁹ Further, "it had found reliable evidence suggesting that bodies ... may have been disposed of in lavatory pits, disused wells and shallow graves."²⁰

In the Report of the UN Special Rapporteur on Disappearances and Extra-judicial Killings, Mr. Bacre Waly N'diaya, following his 1997 visit to Sri Lanka, comments, "There is every likelihood that the current delays of the investigation [of the 1996 Jaffna disappearances] may be due to the Emergency Regulation Act and the Prevention of Terrorism Act laws and the powers of the Minister to hamper the investigation. The delays of the investigation by the Human Rights Commission may be due to the interference by the State and the Deputy Minister of Defense who is directing the military operations in the North and East. The investigation has taken a back seat to the military offensive in order not to demoralize the forces and not to complicate matters by investigating the commanding officers of the current operations."²¹

dents. *The Sri Lanka Monitor*, July, 1998.

¹⁸Dr. Sathananthan states that 1,500 people disappeared on the Jaffna peninsula in 1996 and 1997, *Hot Spring*, Nov. 1998, p.31.

¹⁹ASA 37/27/97, 21 November 1997.

²⁰ASA 37/18/98, 3 August 1998.

²¹Released March, 1998, document E/CN.4/1998/68. Visit was 24 August to 5 September 1997.

The 5 member Bandula Kulatunge committee, composed of senior military and police officers was appointed in mid-1997 to probe the disappearances. The committee submitted its report in April, 1998 in which it identified those responsible for 25 disappearances. The report remains unpublished and no action has followed.²² The military and police are culpable in the disappearances and are incapable of admitting their own guilt or punishing the perpetrators because the disappearances were a cornerstone of the military policy of pacifying the peninsula.

2.4 KRISHANTHI

As Prof. Oberst pointed out concerning the East,²³ most killings there have been of rural, low caste people, which he attributes to caste prejudice. It is always easier to kill those with little power and few contacts, which Krishanthi's case demonstrates.

On 7 September, 1996, at the height of the disappearances, a school girl in the 12th grade at a prestigious girls' school in Jaffna, Krishanthi Kumarasamy, going home after her 'A' level chemistry exam and the funeral of a classmate who had been hit by an army truck, was arrested at the Kaithady checkpoint in broad daylight in front of several witnesses, raped by 11 men and killed at Chemmani, an army camp in a SE suburb of Jaffna. Krishanthi's mother, a retired school principal, her 16 year old brother and a male neighbor went to look for her and disappeared also. The SLA denied ever arresting the four, as they frequently do for people who 'dis-

²² *The Sri Lanka Monitor*, July, 1998, www.gn.apc.org/refugeecounciluk

²³ Robert C. Oberst, "Hell in a Faraway Place: The Silent War Against the Batticaloa Tamils, 1990-1997," a paper presented at the South Asia Conference, Madison, Wisconsin, Oct., 1998.

appear.' Amnesty International issued an Urgent Action Appeal²⁴ on 20 September 1996. A Colombo newspaper, the *Virakesari*, published the story and Batticaloa MP Mr. Joseph Pararajasingam raised the matter in Parliament on September 16.

Apparently a boy noticed the remains in shallow graves within the army camp in mid-October and the SLA notified the only remaining sister, who lives in Colombo. The bodies were taken to Colombo at her insistence. The SLA imposed the condition that the bodies be cremated within 24 hours.

A case was filed on Krishanthi's behalf and 9 low level soldiers were prosecuted. President Kumaratunga took an interest in the case and decreed a trial-at-bar, rather than a trial by jury, which assured an expedited procedure. In late spring of 1998 well informed sources thought there was little hope of winning the case because of the lack of forensic evidence.

In July, 1998, five soldiers and a policeman were found guilty and sentenced to death. During the *a locutus* one of those sentenced, Lance Corporal Rajapakse, said that he had personally been involved in the burial of Tamil civilians killed by other Sri Lankan troops and said bodies had been brought to Chemmani, a waterlogged stretch of wasteland a few kilometers from Jaffna, for burial. He said, "there are 300 to 400 bodies on this land" [where Krishanthi's and the other three bodies were discovered]. He also said "Almost every evening, dead bodies were brought there and the soldiers were asked to bury them."²⁵ Rajapakse's statements were corroborated by another accused in the case, Jayatilleke.

According to the UTHR(J), "What we reliably

²⁴ UA 222/96.

²⁵ ASA 37/17/98, 3 July, 1998.

understand was the context in which Krishanthi's murder took place on 7th September, 1996. Pungankulam army camp was a main camp east of Jaffna City that controlled Chemmani point where the murder took place. Persons detained over a large area were first brought to Pungankulam camp, where a decision was taken what to do with them. Many were then sent to the Intelligence Camp in Ariyalai East, which is quite near Chemmani, the whole comprising a largely uninhabited area. Here the prisoners were tortured, and we are yet to hear of survivors. On regular occasions the men at Chemmani point would be alerted during the night. The naked corpses of detainees tortured and killed at the Intelligence Camp were then taken to Chemmani in a vehicle, for the men at the point to assist in burial."²⁶

2.5 CHEMMANI

Within 10 days of Rajapakse's statements in court, *Yukthiya*, a Sinhalese language newspaper, printed a map showing the location of the burials and reported "There is absolutely no way that so many civilians could have been killed and buried without the knowledge of these officers [Operation Riveresa senior commanders in Jaffna]."²⁷ In July, the Human Rights Commission initiated investigations concerning the mass grave and on July 22 the Ministry of Defense issued a statement indicating that the police Criminal Investigation Dept.(CID) had been directed to investigate Rajapakse's allegation.²⁸ The CID recorded a statement from Rajapakse and announced that he would be taken to Chemmani to identify the location of the graves in early Au-

gust. This has not yet occurred, however. Taking Rajapakse to Jaffna is the obvious first step in the process of prosecuting the criminals who killed and buried civilians in these graves. When this did not happen, suspicions of a cover-up were raised that have not since been dispelled. Rajapakse was assaulted in jail, presumably in attempt to get him to retract his allegations, and ended up hospitalized.²⁹ There are fears that Rajapakse will be executed before he can point out the locations of the graves.

The Chemmani area has been shut to civilians since 1995.³⁰ Those responsible for the war crimes are in charge of the evidence. Since Rajapakse's allegations, the Tamil Center for Human Rights in London says that smoke has been seen rising from the area and the sounds of heavy machinery moving around have been heard.³¹ The Asian Human Rights Commission in Hong Kong expressed concern that the army may destroy the evidence.³² The Sri Lankan Human Rights Commission (HRC) has expressed concern that the site was being tampered with.³³ This fear is not unfounded considering that Serbian activities have destroyed much of the evidence of the slaughter at Srebrenica.³⁴

Pressure developed from the outside world on the SLG to do an investigation of such an obvious allegation of abuses by the security forces. Amnesty International "appealed to the Attorney General to ensure that the investigations of the site, including any exhumation was impartially and independently conducted in such a way that any evidence collected was admissi-

²⁶UTHR(J) report no. 12, 28 April, 1999 quoted in *The Island* 12 May, 1999.

²⁷Translated and reported in TamilNet, 13 July 1998.

²⁸US State Dept. Sri Lanka Country Report on Human Rights Practices for 1998, p.4.

²⁹Agence-France Presse, 23 August 1998.

³⁰BBC, March 5, 1999.

³¹www.tamilrights.org.

³²AHRC SL/UA980825

³³TamilNet, 31 July, 1999.

³⁴*The New York Times*, April 4, 1999.

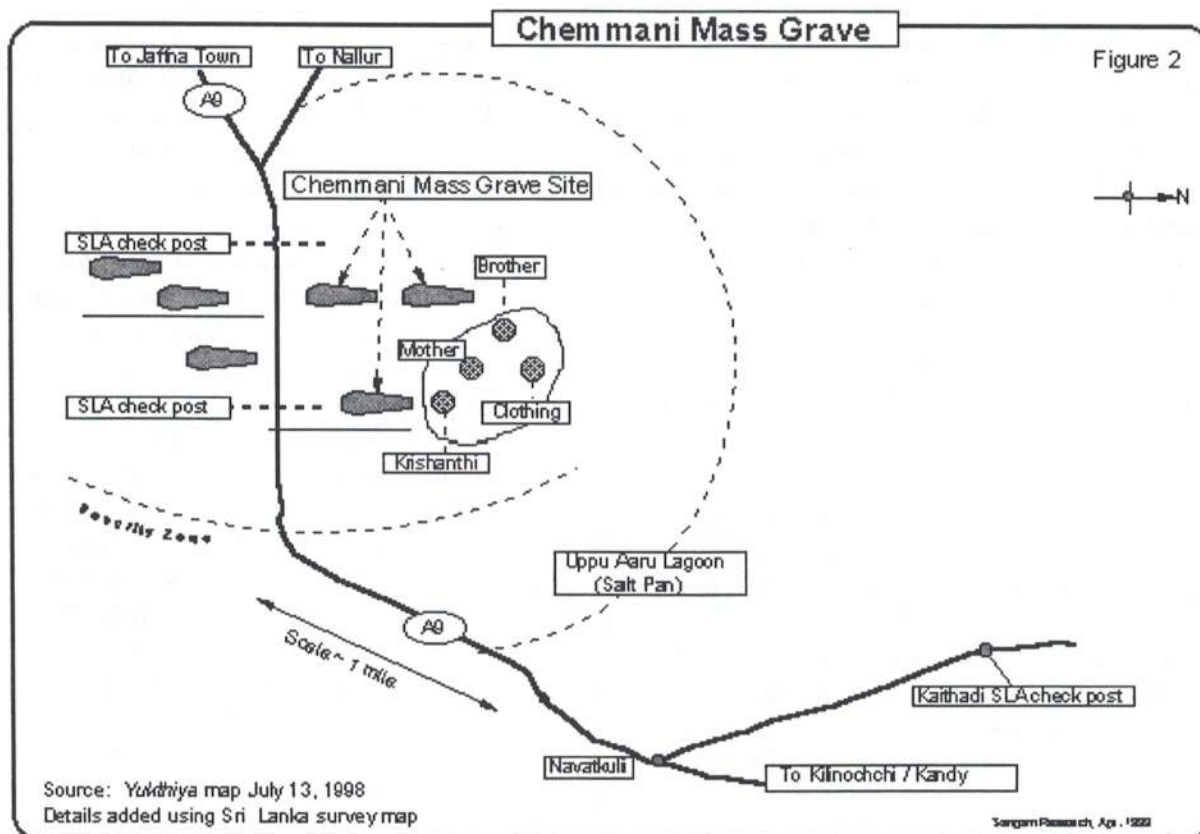


Figure 2.2: Chemmani Mass Graves

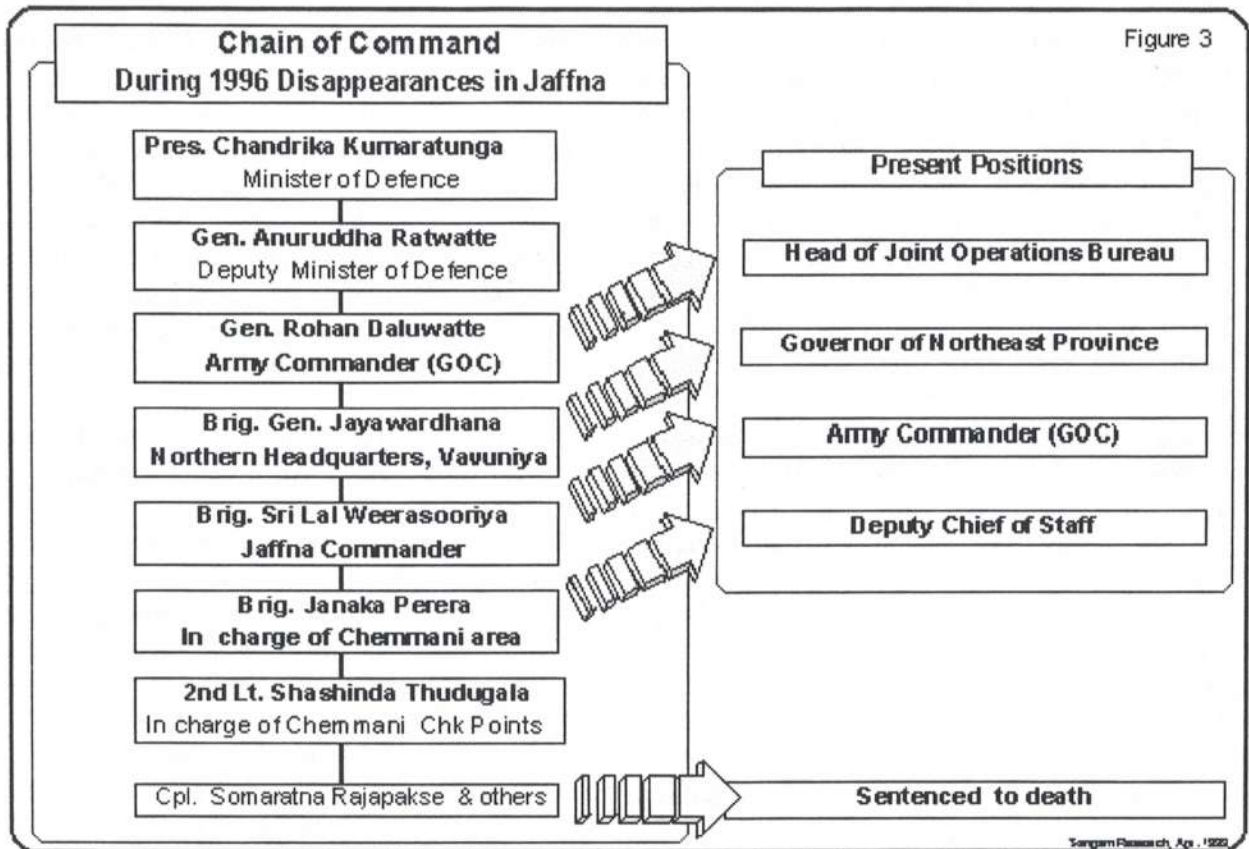


Figure 2.3: Chain of Command during 1996 Disappearances in Jaffna

ble in court. It suggests the government invite international forensic experts with specific experience of excavating and examining *in situ* relevant to the specific type of exhumation required at Chemmani . . . [and] urges that . . . forensic experts with experience in the exhumation of bodies in such conditions be invited to assist local experts in the exhumations” because “It is the experience of leading forensic experts around the world that the exhumation of bodies piled on top of each other in restricted places . . . is one of the most complex forms of exhumations to carry out. The same report appealed to the Attorney General to ensure that . . . all necessary steps are taken to safeguard the area suspected of containing the mass graves, including by ensuring round-the-clock Security.”³⁵

The Human Rights Commission requested forensic assistance from the UNHCHR, which was promptly granted,³⁶ although there was concern about payment. The SLG has not yet given permission for this assistance to be rendered. Foreign Minister Kadirgamar, however, did say in September, when questioned in New York at the Asia Society, that a forensic team was being assembled and the investigation would begin shortly.³⁷

A letter was sent by the Jaffna-based Guardians of Missing Persons Association to High Commissioner Mary Robinson signed by 10,000 people urging excavation of Chemmani.³⁸ Parents and relatives of missing persons, notably

the President of the Guardian Association, filed *habeus corpus* petitions in the Jaffna courts in the fall.³⁹

The US State Dept. Report on Human Rights in 1998 mentions that “The Government has been slow to investigate this claim [of a mass grave at Chemmani].” George Pickart, Special Advisor to the Assistant Secretary for South Asia visited the site of Chemmani in late August, 1998.⁴⁰ He reportedly remarked that “This is not going to change anything [in US-Sri Lanka relations].” He probably meant that the US does not intend to use its influence to choke off World Bank and IMF money as the US did this winter to force the release of the Bosnian Croat, Dario Kordic, to the International War Crimes Tribunal.⁴¹

In February 1999 the Sri Lankan Foreign Ministry announced that the Jaffna magistrate had authorized the excavation of the site to start on March 5. The local magistrate, Judge Ekanathan, sharply rebutted this statement, saying he had only authorized a hearing,⁴² and also complained of the SLA ‘protection’ he was being given. The LTTE’s Jaffna political section leader wrote a letter shortly thereafter in which he said, “The local courts in Jaffna are handling the inquiries into the Chemmani graves. The government is not going to give justice to the people of Jaffna,” and ordered the closure of all local courts.⁴³ The SLG tried to use this closure as an excuse to explain further delay in exhumation of the remains. All aspects are not clear to outsiders, but the most likely interpretation is that the LTTE wants an International

³⁵ ASA 37/18/98, 3 Aug 1998.

³⁶ AFP, 2 Sept, 1998.

³⁷ The HRC does not seem to be actively involved in the Chemmani case currently. In fact, not much has been heard of them since 2 of their Jaffna staffers who were investigating disappearances were transferred out of Jaffna in August, according to TamilNet, 29 August 1998.

³⁸ AFP, 28 Sept., 1998.

³⁹ TamilNet, 20 Sept., 1998.

⁴⁰ *The Sunday Times*, Sept.1, 1998.

⁴¹ *The New York Times*, April 12, 1999.

⁴² TamilNet, 18 February 1999; BBC, 18 February 1999.

⁴³ *Tamil Guardian*, 13 March, 1999.

War Crimes Tribunal to try the case. It has no faith that local courts are capable of withstanding pressure from the SLA. The Jaffna courts have been limping along due to the continuing tussle over legitimacy and power in the North between the SLA and the LTTE. The SLA is trying to install a civilian administration to make it appear the North is not under military rule, and the LTTE is contesting the establishment of a 'Vichy' regime.

An Additional Magistrate for Jaffna, N. Arulsagan, was appointed and flown from Colombo to supervise taking of soil samples to determine if the Chemmani site had been disturbed. The CID had requested permission for excavation to begin, but Arulsagan would only authorize soil samples.⁴⁴ The operation was criticized because Rajapakse had not identified areas to be tested. Instead, samples were taken from close to a main road where all passersby could have seen bodies being buried.⁴⁵ In any case, analysis of the soil samples determined the site had been tampered with. At the presentation of the soil samples in Colombo before the Additional Magistrate at the beginning of April, he set the date of June 15 for taking Rajapakse to Jaffna, with the exhumation to begin the following day. The attorney who appeared on behalf of the victims told a reporter that he would not appear in future hearings as there had been no involvement of foreign experts. There was also some concern expressed by both the judge and this attorney that the venue of the case had been shifted to Colombo.⁴⁶

⁴⁴ *The Sunday Times*, 7 March, 1999.

⁴⁵ *Uthayan* quoted in TamilNet, 6 March, 1999. *Uthayan* said the whole affair could be seen as a political stunt by the SLG for the forthcoming provincial council elections.

⁴⁶ TamilNet, April 1, 1999, www.tamilnet.com

2.6 OTHER MASS GRAVES

1. **Jaffna Disappeared** If 300–400 civilians are buried at Chemmani, where are the rest of the many hundreds who have disappeared since the military takeover of Jaffna in 1995? The Tamil Centre of Human Rights has received reports that “bodies of a large number of Tamil Civilians who ‘disappeared’ in Sri Lankan military custody may have been buried in the Vasavilan and nearby Punnalaikadduvan areas [along the Palaly-Jaffna road].”⁴⁷
2. **Stadium Graves** On March 26 of this year, municipal workers digging in the currently named Duriappa Stadium in Jaffna discovered human bodies in what had been a cesspit. So far 25 bodies have been unearthed, including that of at least one child, one woman and one person who had had his hands tied. The excavation so far has been carried out under the supervision of Magistrate Ekanathan by the Judicial Medical Officer, with the presence of the SLA, police officers and officials from one or more Tamil ex-militant groups. The bodies have been placed in plastic bags and flown to Colombo for analysis.

The excavation of the site was started in a tearing hurry, which raised questions as to who was scared of what. The Judicial Medical Officer has now concluded that he has little experience in the unearthing of bodies piled on top of each other, which as Amnesty has pointed out, is one of the most complex forms of exhumation,⁴⁸ and has

⁴⁷ THCR Press Release, 06B/1998, 29 August, 1998 So far nothing has been done to investigate these reports.

⁴⁸ ASA/37/18/98, 3 August, 1998.

called for expert help in exhuming what is turning out to be an extensive grave.⁴⁹ The experts he will be relying on, however, are Sinhalese, which raises questions of propriety when allegations of genocide have been raised. In addition, the bodies dug up are being sent to Colombo for analysis, which is like sending bodies from Kosovo to Belgrade and expecting a neutral judgment.

The bodies dug up from the stadium could be from 2 to 10 years old, with the most guesses between 1989 and 1991. If true, this would make the IPKF the most likely perpetrator as they used the stadium for holding suspects. Depending on the final determination of the age of the grave, any party to the conflict may be implicated. It will be very uncomfortable for the SLG if either the IPKF, given the SLG's current friendly relations with India, or the SLA are found to be the culprits of this war crime.

Dating such a recent grave is difficult to do through chemical analysis. A precise date must, therefore, be determined by the context in which each skeleton is found. Associated objects and soil layers are of the utmost importance. Skilled and motivated excavation and complete protection of the site from tampering are key in dating this mass grave.

3. **Oddusudan** There are reports that 600 men disappeared just after the SLA capture of the Oddusudan area of eastern Vanni in early December, 1998.⁵⁰ Where will we find them buried in a few years? The Tamil civilians who were in the areas of the western

Vanni captured by the SLA this spring were "terrified," according to the observation of visiting journalists. One can imagine that they are terrified of being 'disappeared' in large numbers.

4. **Graves in East** The most numerous massacres and killings of individual Tamils have occurred in the East. An analysis of data collected by the Batticaloa Peace Committee shows that 3,400 people were killed in the district by security forces or paramilitary groups between 1990 and 1993.⁵¹ Tamil MPs claim that another 6,000 were killed in Ampara district during the same period.⁵² *Thinakkural* stated that 13,000 people disappeared in the East between 1990 and 1997.⁵³ The most notable instances, all unpunished, are:

- In Kokkaddichcholai on 2 January, 1987 more than 80 Tamil civilians were killed by the Special Task Force, while another 152 are killed at almost the same location in January, 1991. The nineteen soldiers convicted in the latter massacre were allowed to return to service.⁵⁴
- On 5 September 1990, 158 refugees housed at the Eastern University campus in Vantharumoolai were taken away by soldiers of Brigadier Karunatileke and never seen again. Karunatileke served in Jaffna in command of an area adjacent to that

⁴⁹TamilNet, 18 April, 1998.

⁵⁰*The Sri Lanka Monitor*, December, 1998.

⁵¹Robert Oberst, *op.cit.*

⁵²Taraki, *The Sunday Times*, 28 March, 1999.

⁵³31 March, 1998.

⁵⁴M. Trawick, "Lessons from Kokkaddichcholai," in this volume.

of Brig. Janaka Perera at the time of the Chemmani burials. Joseph Pararajasingam, MP, recently stated in Parliament that it is suspected that these refugees were massacred and buried at Navalady, near Valachenai.

- On 9 September 1990, 184 villagers, mostly women and children, from around the Saththurukkondaan Army Camp near Eravur were rounded up and never seen again, although there are reports that they were killed and burned and/or buried in the camp. Mr. Pararajasingam told Parliament on April 20, 1999 that it is the duty of the government to investigate the mass grave sites at Saththurukkondaan and Navalady.⁵⁵
- Under the current government there have been massacres at Kumarapuram and the 4th Mile Post Colony in Ampara.

5. **Bolgoda Lake Bodies** In 1995 23 bodies of Tamil youth were found floating in a lake and other waterways near Colombo. Several members of the SL Special Forces were prosecuted, but the case has been dismissed by the judge because three times the Attorney General did not appear in court with the accused, who are currently serving at the front. This is an obvious case of the SLG being unwilling, as may well be the case with Chemmani, to prosecute current members of the security forces for abuses against Tamils.

⁵⁵Taraki, *op.cit.*; Dr. Patricia Lawrence, unpublished manuscript, 1999; TamilNet, "Investigate eastern graves - TULF MP," April 20, 1999.

2.7 INTERNATIONAL PRESENCE NEEDED AT EXHUMATION

To date no international experts have been involved in the exhumation of a mass grave of Tamils to assure an unbiased investigation. Amnesty has said that it will send observers as soon as any full exhumation of the Chemmani site begins, but has not yet received permission from the Sri Lankan government.⁵⁶ Permission for international forensic experts to be present at Chemmani has also not been given.

If the SLG wants to do an impartial, investigation producing evidence that will stand up in court, then it must allow neutral parties to be present during all phases of the exhumation and analysis, including the lab work, to assuage the very strong suspicions that the SLG itself, as mentioned before, has the motivation to whitewash their own armed forces of these war crimes. If neutral parties are not present during the entire process, no one will believe the results or conclusions drawn from the exhumation. This mistrust is deep and based on decades of abuses. No one would expect Serbian geologists and forensic scientists to do a neutral job of excavating mass graves in Kosovo, or would permit a Belgrade lab to study Kosovar soil samples, but exactly this scenario is unfolding in Sri Lanka.

There have been enough mass graves excavated around the world that accepted procedures have been developed. A UN protocol is also available to serve as a guideline. Each grave poses particular challenges, but the work of medico-legal investigation teams is usually divided into five phases:

1. A mapping and surveying team of forensic

⁵⁶BBC, March 5, 1999. ASA 37/13/99, 18 May, 1999.

anthropologists maps the location and size of the mass graves and massacre sites.⁵⁷

2. Forensic archaeologists and forensic anthropologists undertake the exhumation of the graves and the osteological examination of the remains, as well as determine the number of bodies in each grave. During the exhumation process, meticulous removal of small and fragile items, such as teeth, bullets, and personal effects are often critical in the identification of the deceased and the determination of the cause and manner of death. Studies of the delicate remains of plants and insects found in the grave can aid in establishing the time of death.
3. A pathology team conducts autopsies at a nearby site to determine the age, sex, nature of trauma, and cause of death of the deceased. Laboratory specialists examine and test the remains to identify the deceased. These tests may include comparison with ante-mortem (pre-death) data such as dental and medical X-rays, anthropological study of the skeleton, and mitochondrial DNA analysis.
4. A team of investigators collects ante-mortem data on missing individuals and input this data into an ante-mortem database which sorts information to try to identify bodies exhumed from the grave. The collection of ante-mortem data occurs before or concurrently with the exhumations. Information about distinguishing physical characteristics, accounts of how an individual disappeared and blood samples of relatives are collected.

⁵⁷US satellites are being used to identify possible sites of mass graves in Kosovo.

5. Forensic reports, including photographic and video evidence and other evidence collected from the sites, are submitted to the International War Crimes Tribunal.⁵⁸

The quality of the whole process is determined by the skill and motivation of the people involved in the excavation. As the Argentina Anthropology Forensic Team notes, for instance, "In addition, many of the official forensic doctors had themselves been complicit, either by omission or commission, with the crimes of the previous regime. In Argentina, as in most Latin American countries, the forensic experts are part of the police and/or the judicial systems."⁵⁹

The independence from military and political influences of those working on the graves in the Northeast will be a significant issue and will determine the credibility of the results.

At least three sources, as noted above, have raised fears that the Chemmani site has been tampered with since allegations were made in July. If the site has been tampered with, as has occurred in Srebrenica and the Congo, useful information from the site can still be obtained by a motivated excavation.

2.8 CONCLUSION

- The systematic and planned killing of Tamil civilians, destruction of their property and disruption of their civilization by the security forces of the Sri Lankan state are at genocidal levels. The Chemmani mass grave is just a symptom of the the Sinhalese effort to maintain their monopoly on state power.

⁵⁸From the Physicians for Human Rights web site, www.phrusa.org.

⁵⁹Biannual Report 1996-1997, Argentina Forensic Anthropology Team, p. 4.

- The resolving of Krishanthi's case and its link to the Chemmani mass grave occurred through a cascading series of coincidences, rather than through standard and expected procedures for righting injustices. This does not leave the Tamil community with confidence that abuses against them, especially by the security forces, will be punished as they occur.
- No reconciliation between the communities is possible unless those guilty of genocidal abuses against Tamils are prosecuted fairly and neutrally. It is hard to imagine how this can occur within the current judicial system of Sri Lanka.
- To assure that any conclusions reached from excavations at Chemmani and elsewhere are credible, a neutral, international body must be present and actively monitoring all phases of the work, including site selection, excavation, lab work and analysis.

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