

SRI LANKA: DISAPPEARANCES & THE COLLAPSE OF THE POLICE SYSTEM

*“[S]ystematic practice
of the forced disappearance
of persons constitutes
a crime against humanity.”*

- Inter-American Convention on
Forced Disappearance of Persons

On the Occasion of the 55th Session[1999] of the
United Nations Commission on Human Rights

Sri Lanka:
Disappearances
&
the Collapse of the
Police System

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FOREWORD

Three commissions which investigated the involuntary removals or disappearance of persons have submitted their reports. They looked into more than 16,800 cases. A fourth commission is now investigating into over 10,000 cases.

The only actions that have come as a result so far are the issue of death certificates for over 18,000 persons, granting of the very limited compensation to some affected families and beginning of prosecution of less than 200 cases. Considerable cynicism has spread throughout the country not only about the outcome of these investigations but about the processes and the institutions that are expected to maintain law and order. A widespread belief is that the State is not considering any serious action, as the political establishment does not have the capacity to scrutinise the police system. On the other hand, quite paradoxically, there is also a belief that the police establishment cannot undertake any internal action against individuals or reform of the system due to political interference.

There is an undeniable paralysis of the police system in the country as a result. To make the disappearances possible, the entire police investigation and law enforcement system was displaced, from initial taking of complaints to causing of murder and disposal of bodies by law enforcement officers or with their connivance. This was done far wider in scale than that in any other country in recent decades. For example, the number of deaths and other abuses involved in Chile as shown during the recent case of Augusto Pinochet is about 4,000. Besides in many countries only a section of the law enforcement agency is used for such activities. In Sri Lanka the whole system was used island-wide. The system which was deliberately displaced remains in the displaced state and naturally gets even more decayed over the years.

One very visible effect is that even an activity like holding an election

cannot be held without a shockingly disorderly manner as the recent Wayamber election in January 1999 where the police did not take any significant action in face of huge vote-rigging that shocked even the winners. It is not only a large number of people who had disappeared but a system too had disappeared. Besides this, assassination, a mode dealing with political disputes, has now become a common way of dealing with civil disputes such as that over land. The murder at Hokandara of six persons of a family over a period of 12 hours horrified the whole nation. The question that had been asked over and over again was: "Why did not the neighbours intervene?" The obvious answer was fear. The civil society has lost its confidence in protecting itself as well as in the willingness and the capacity of the law enforcement agencies in providing protection. Fear is further intensified by increase of crimes and failure of criminal investigations into such crimes. The police reaction to crime in many instances is to summarily execute those who are perceived to be hard core criminals. Meanwhile, criminal gangs continue to operate with the connivance of the police.

Reform of the system is an imperative, as the single most threat to the rule of law is police ineffectiveness. However, so long as effective action is not taken to deal with the issue of disappearances in a manner that is convincing to the public, people will not believe that there is a serious attempt at such reforms. The police system is thus caught in a deep dilemma that can only be resolved by the people themselves with the assistance of international agencies such as the United Nations. It is in this sense that the 55th session of the United Nation Human Rights Commission may be a useful occasion to compel the Sri Lankan government to deal with the issue. International intervention is further required to deal with the issue as a crime against humanity, as evident in the facts revealed by the three commissions mentioned above. It is only an international debate that can create a local climate to tackle the collapse of police system in Sri Lanka.

It is hoped that the documents presented here will help promote a discussion on this issue, which is vital to the survival of Sri Lanka as a democracy. The discussion can also contribute to the international debates on disappearances in particular and human rights in general.

Basil Fernando
Executive Director
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I

CAUSING DISAPPEARANCES: A CRIME AGAINST HUMANITY

State-sponsored causing of disappearances may be listed among the worst forms of human rights abuse. However, it is also among the most difficult forms in terms of getting any redress. Experience in a number of countries suggests that it is almost impossible to get any legal redress for mass disappearances caused with State sponsorship. The reason for this difficulty is the precisely that these are sponsored by the State itself. State leaders can claim impunity for actions done as Heads of State. State officers possessing vital evidence concerning events leading to disappearances are protected from any actions arising from their refusal to cooperate in investigations regarding disappearances. There is also no prosecutor empowered to try offences by the leaders of the State and State officers acting on their behalf. Such are the formidable obstacles facing family members of victims of disappearances and others who try to help them. Although the international community has done quite a lot in the past to condemn disappearances, it has hardly done anything to help overcome those iron-like obstacles. Obtaining legal redress for disappearances remains almost

impossible, though the number of disappearances in some countries are just horrendous.

Forms of State Sponsorship

State sponsorship of disappearances takes the following forms:

1. Conspiring to cause disappearances: This means agreeing at a level of policy to engage in such a course of action;
2. Planning a mechanism for achieving this end: This involves making laws (often internal security laws) and lifting legal obstacles. It also involves appointing personnel who are willing to carry out such a programme to positions of power and influence;
3. Preparing the country psychologically for the programme: This involves using sophisticated media and other campaigns. Since the entire population of the country is exposed to these campaigns the people become terrorised and afraid to protest against the programme; they may also be led to accept the legitimacy of terror;
4. Encouraging the rank and file of the police and the military to engage in the programme: This involves both promising immunity and rewards to those who do engage and disapproval of those who oppose or resist the programme;
5. Providing for illegal detention centres and other facilities necessary to carry out the programme;
6. Modifying laws and regulations relating to record-keeping by the police and the military so that no written evidence will be left of any of activities of these agencies relating to disappearances: This can include arrests, detentions and other activities;
7. Changing the laws and regulations relating to the disposal of dead bodies in order to erase any evidence of such burials;
8. Making provision for the involvement of criminal elements to cooperate with the police and the military in carrying out the programme;
9. Supervising the carrying out of the programme: This may include, for

example, daily inquires into how many persons have disappeared in different parts of the country;

10. Removing the judicial power to intervene in the process;
11. Allowing dead bodies to be exhibited in public places in order to create a climate of fear: These places can include roads, rivers and other places; and
12. Making laws granting impunity for acts done during the period in which such a programme is carried out.

The Basic Contradiction

International concern regarding State-sponsored disappearances has increased in recent years. There are many visits by the United Nations Working Group on Enforced or Involuntary Disappearances to countries where such disappearances have happened, and there are many reports recommending prosecutions regarding these cases. However, a review of such recommendations will show that most part they have ignored. And in the context of State sovereignty the U.N. system seems to find it difficult to do anything more than to vent its frustration.

Perhaps, part of the difficulty lies in viewing such disappearances purely as crimes or, more specifically, as individual murders. This means that prosecution has to take place within the framework of criminal law and procedure of a particular jurisdiction. However, the essence of the criminal law is that crimes are primarily offences against the State. The basic contradiction in cases of disappearances is that disappearances are crimes committed by the State. How can crimes committed by the State be tried within a framework defining crime as an offence against the State? If this core contradiction is not resolved, reports which go back and forth between the U.N. rapporteurs and the States concerned may be of very little use, despite the good intentions and effort involved in collecting the data.

The way out of this impasse is to deal with this issue theoretically, which is to consider whether State-sponsored disappearances constitute crimes against humanity. Looking at the process of development in the law since the Nuremberg trials, such a conclusion becomes unavoidable. In fact,

according to the definition given to crimes against humanity, mass disappearances carried out under the sponsorship of a State constitute one of the worst forms of these crimes.

Implications of Treating Disappearances as Crimes Against Humanity

Dealing with disappearances from the point of view of crimes against humanity has the following implications:

1. It is a matter of principle. Facing this as a matter of principle is necessary in setting a broader framework for dealing with disappearances;
2. Condemnation of State-sponsored disappearances as crimes against humanity will have greater international and national implications than dealing it purely as a matter of criminal law and procedure as hitherto;
3. It can help in future developments relating to prosecutions by international tribunals and by special tribunals within the country itself;
4. It can provide the legal basis for special prosecutors - ones who prosecute crimes done by the State as against those who try offences done against the State. These two functions are so different that they may be considered as opposites;
5. It can provide the basis for powers necessary for prosecutors to overcome some of the basic problems relating to the prosecution of State-sponsored crimes. This might include, for example, the power to compel State officers to provide, under oath, information they possess. Their refusal to divulge such evidence would itself then become an offence;
6. It will establish the State's continuous responsibility for crimes done by a particular regime, even after that regime ceases to be in power;
7. It will significantly change the manner in which the United Nations Commission on Human Rights deals with mass disappearances.

(Basil Fernando - Human Rights SOLIDARITY, Vol. 8 Issue 12, December 1998, published by the ASIAN HUMAN RIGHTS COMMISSION).

II

DISAPPEARANCES OF PERSONS AND THE DISAPPEARANCE OF A SYSTEM

The *Final Report of The Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces*¹ (Hereafter the *Commission Report*) among its recommendations mentions the need for a training programme in investigations for all police officers (pp. 80, 174). Besides this, the *Commission Report* recommends that Police-Lay Visitors Panels be instituted for each police area and Citizens Advisory Bureaus for each district level (pp. 80, 174). Obviously these are measures recommended to reverse the consequences of the disturbance caused to the law enforcement machinery by processes, which made large-scale disappearances possible in Sri Lanka. (It must be noted that even politically related disappearances are not past events, as several hundred disappearances have been reported in the country quite recently.)

¹ Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces. (Department of Government Printing, Sri Lanka, September 1997).

In fact, the law enforcement mechanism has collapsed significantly. Extra-judicial killings are no longer phenomena which merely relate to insurgency investigations but have subtly entered into the area of criminal investigations as a whole. In many parts of the country there are complaints of so-called self-defence killings, shooting of fleeing suspects and the like. Complaints about the lack or inadequate investigation of serious crimes have also become common. It is also no exaggeration to state that bribery in criminal cases has reached epidemic levels.

The present situation is a by product of the history of large-scale disappearances, which were achieved through loosening all the hard knots that keep criminal investigations tied to the rule of law and the elementary norms of human decency. The set of Emergency Regulations used at the time removed the limitations from the powers of law enforcement officers. As a result, Sri Lanka to a large degree lost the human resources necessary for law enforcement: i.e., a group of law-abiding law enforcement officers committed to observing an extremely high degree of caution, while also being highly skilful in the detection, prevention, and investigation of crimes. In the past, although the Sri Lankan achievements in developing such a professional group of law enforcement officers had its limits, the country's achievements in this area were considerable. It was these hard-earned habits of professional behaviour that were undermined in order to encourage law enforcement officers to engage in illegal arrests and detention, torture and killings.

The control of the behaviour of law enforcement officers is usually achieved through various forms of supervision in which the departments deal with law enforcement and ultimate supervision rests with the courts. The set of Emergency Regulations used at the time were designed to remove such controls. One such control removed was the judicial supervision of post-mortem inquiries; this then allowed the disposal of bodies without post-mortem inquiries. What logically followed were executions without judicial inquiries. Law enforcement officers thus got the 'freedom' to deal with 'crime' in any way they liked. The Emergency Regulations removed the most fundamental checks necessary to maintain a proper law enforcement mechanism.

Although the removal of controls was easy, effective re-imposition of these controls is not an easy task. It is easy to remove the Emergency Regulations. The chief executive or the legislature does this by means of a simple declaration. However to re-introduce controls to the same officers who have got used to operating without them is no easy task. The behaviour of a good watchdog that had been prevented from tasting blood can never be the same after it has tasted it. In a country that does not make a priority of incurring all the expenses necessary for human resource training and of providing attractive conditions for law enforcement officers, the re-creation of an orderly law enforcement system will remain a formidable task. Nevertheless, the delay in achieving this task poses a continuing threat to the society.

A greater danger is that even the memory of a rational system of law enforcement may be lost. Alleged criminals may be at the mercy of the law enforcement officers. Contract killings may take place with varying degrees of consent on the part of the law enforcement officers. Corruption may become the deciding factor in the treatment of persons who may have to seek recourse to law. Politicians may exploit the situation and politicians themselves may become compromised as a result.

Under these circumstances the *Commission Report's* recommendations for training programmes in investigation for police officers are quite welcome and even laudable. However, such measures are wholly inadequate to deal with the situation now prevalent in the law enforcement machinery, one in which the internal structures of proper supervision have collapsed. Any attempt at finding solutions must begin with realising the enormity of the problem and with understanding that structural issues gone wrong in the law enforcement machinery.

The Social Philosophy on the Basis of which Disappearances were Encouraged: *The Need to Maintain Order, With or Without Law*

The situation of instability and insecurity prevailing in the country during the last three decades, and particularly during the last decade, has given rise to a 'consensus' that order has to be maintained with or without

law. The underlying assumption in this way of thinking is that law itself could be an enemy of order. According to this way of thinking, certain provisions of law restrict the powers of law enforcement officers to deal with disorderly conduct by some persons or groups. This thinking believes that the perceived restrictions need to be removed and that, once freed from such restrictions, the law enforcement officers may return order and stability to society.

This way of thinking is usually regarded as 'realistic.' The maintenance of order through legal means is considered unrealistic for the following among other reasons:

- ❑ Financially speaking the country cannot afford to have a well-functioning law enforcement machinery and must therefore be resigned to have a defective one;
- ❑ Too much insistence on law may discourage law enforcement of officers from carrying out their functions even to the extent that they are doing;
- ❑ As corruption and abuse of power are facts of life in the country it may not be a wise policy to fight too hard against them;
- ❑ As the insistence on law may lead to conflict, it may be necessary to restrict such agencies that insist on observing of the rule of law as the judiciary.

These and similar considerations form the basis for encouraging such practices as killing under some circumstances.

The country now has the lessons gained by the experience of testing the practices ruthlessly launched on the basis of such a social philosophy. Instead of bringing about order these practices have confounded the situation a thousand fold. Ironically, the worsening of the situation may result in reinforcing this same philosophy. It is like the situation of a creditor who gives further credit to a debtor in the hope of regaining his earlier loans

The Recovery of the System

After the Cultural Revolution the Chinese realised that their society's existence had been threatened. The slogan "Rule of Law as against the Rule

of Man” was developed at the time. Since then for over twenty years the Chinese have constantly struggled to rebuild a society based on the rule of law. Despite many setbacks and such cruel incidents such as the Tiananmen Square killings, they have made enormous gains. Even with regard to the Tiananmen Square killings, this killing of about 400 persons evoked tremendous adverse protests, which the disappearances of tens of thousands of persons in Sri Lanka failed to evoke. An impressive attempt to build a system based on law is taking place in that country, despite the difficulties in developing such a system in a vast country with over a billion people.

Addressing the issues of developing the rule of law and of repudiating past practices remains a fundamental challenge to all persons who wish to help the system recover from the damage suffered in its ‘great fall.’ A serious crisis in a system of law enforcement can also bring about the dangerous consequence of changing the mentality among persons who had been beneficiaries of the system. They may shed their loyalty to the system because it has become ineffective. They may adjust their minds to the new situation.

It is only through the efforts of those engaged in various activities relating to social change that could save the situation. Political thinkers, social critics, jurists, judges, journalists, those who deal with moral and ethical matters and organisations including NGOs need to help create a social fabric within which the society can develop.

The Interim Report² from the same Commission on Disappearances contains the following recommendation:

“Finally, we recommend the creation of a ‘Wall of Reconciliation wherein are inscribed the names of all who have disappeared or died in this tragic period of our country’s history’.

“Your Commissioners consider this recommendation to represent every important aspect of national reconciliation. This Memorial Wall which will contain names denoting all sections of the Sri Lankan people, will be a symbol of our essential unity to future generations, a place to which everyone

² Interim Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces. (Department of Government Printing, Sri Lanka, September 1997).

in this country could come and pay respect to those lost to us (p.—)".

This may be useful, as have been such similar monuments in Cambodia as the Genocide Museum (located in a school transformed into a Khmer Rouge interrogation centre) and the Killing Fields (the location where these prisoners were later taken to be executed and buried). Beyond providing an opportunity to pay respect to the dead and preserve their memory, such a wall can act as reminder of the enormous crisis we face as a society and of the need to develop civilised ways to emerge from this situation.

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III

11 February 1999

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A MEMORADUM TO THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES FROM ASIAN LEGAL RESOURCE CENTRE, HONG KONG

In Section II of the document Economic and Social Council Document GENERAL E/CN4/1998/43 (dated 12 January 1998) *Information Concerning Enforced or Involuntary Disappearances in Various Countries Reviewed by the Working Group*, the Sri Lankan situation is discussed from paragraphs 341 to 350.

1. In paragraph 341 the Working Group states: "*The Working Group also wishes to remind the Government of its obligation to investigate all outstanding cases of enforced disappearances and in this respect looks forward to receiving the reports of the three presidential commissions of inquiry.*"

2. The reports of the three Presidential Commissions of Inquiry, [The Commissions on Involuntary Removal or Disappearance of Persons] have been issued to the public and we believe the Working Group to have studied the contents and recommendations of these reports.
3. In paragraph 347, The Working Group states: "*In the reports of the three presidential commissions which investigated past allegations of disappearances, the Government has stated that the perpetrators will be prosecuted.*" It must be noted that the Commissions referred to are fact finding commissions. They can only make recommendations for prosecutions and such recommendations are not necessarily binding. Further, being fact finding inquiries, the three Commissions' inquiries do not amount to criminal investigations. The Commissions did not have the resources to conduct criminal investigations. As far as the personal liability of offenders is concerned, the prosecution of cases requires the conduct of criminal investigations. In the absence of such investigations, the alleged perpetrators may claim that there is no evidence against them. In fact some have already done so. Thus, between the inquiries of the Commissions and the prosecution of offenders there is the need for criminal investigations. So long as there are no such investigations there can be no prosecution with regard to tens of thousands of disappearances. The Working Group needs to pay attention to this real situation. Unfortunately, such awareness and attention are not reflected in paragraph 347 cited above. We annex a submission made by the Asian Human Rights Commission to the continuing Commission of Inquiry into Disappearance of Persons relating to this matter of criminal investigations.

The following comment from one of the Commission Reports is relevant:

"It is unreasonable to expect that the further evidence required for the identification to pin individual liability in the "vertical structures" would be available to the petitioners before us. (E) Only Persons who were within the system itself either decision-makers, participants, or as witnesses to same could provide such evidence. The political dimension of the events in respect of which responsibility is sought to be identified is very clear, however from the few witnesses with personal knowledge of the times who came before the Commission. We have analysed their evidence in the foregoing paragraphs.

The South African Truth and Reconciliation Commission and some Latin American ones have provisions enabling the admission of participation and consequent amnesty, to witnesses who came before the Commission. (page 49) (Emphasis Ours - ALRC)

Finally, on the issue of "Responsibility", a distinction needs to be drawn at all times in the identification of "those responsible" where the State is under the control of a civil government, as in our case, from the situation where the State is in the control of a military regime. Whatever may be said in support of an identification and punishment of a few military leaders in the situation where the state is in the control of a military regime such a limited exercise can never suffice or be condoned in the situation of a state which is under the control of a civil government." (page 49) (Emphasis ours - ALRC).

4. The following findings from the three Commissions are also very relevant for further observations and recommendations the Working Group may make this year:

(a) Total number of inquiries 26,935; Completed 16,800; being investigated 10,135

That the total number of cases inquired into by the Commission amounts to-16,800. Further the continuing Commission, which has mandate up to end of April 1999, has received 10,135 more complaints into which it is investigating now, according to an interim report submitted to the government by the Commission on 31 December 1998.

(b) Systems involvement and a systematic attempt to keep these deaths/disappearances from being recorded:

"A feature that struck us most forcefully in our inquiries was the utmost care that had been taken not only by individual perpetrators but also by the system itself to present these occurrences from being reflected in the official records of the country. Starting with the refusal of the local police to record complaints-which was a general feature in all three provinces, through the blatant use of vehicles without number plates, right up to the refusal it allow the bereaved to take possessions of corpses identified by them let alone obtaining death certificates in respect of them, there is clear evidence of a

systematic attempt to keep these deaths/disappearances from being recorded in the official annals. A nation which takes pride in the fact of having a recorded history of thousands of years should not leave a dark patch." (page xv) "They exemplify a generalised practice, which in its turn warrants the reasonable inference that this practice denotes a generalised direction NOT to investigate such incident." (page 55)

(c) The word "disappearance" is only a euphemism for the death caused by extra-judicial killings: "In the 7761 cases (88.8%) inquired into the bodies of the victims were found only in 1513 (19.4%) cases. Others have disappeared without a trace. However in the given context, the word "disappearance" is only a euphemism for the death caused by extra-judicial killings." (page 27) (d) State responsibility: "Although the recognition of the fact that all crimes are to be condemned should never be lost, it is most important to emphasise the special character of the crimes committed by the state which uses its power to violate the law rather than to uphold it." (page 24) "In all these instances the petitioners were clearly aware that *what had happened went for beyond what could be attributed to a break-down of relations between the particular perpetrators and the victim*. While seeking to identify the person who had been the immediate link in bringing the 'system' into operation against them, they would describe the prevalent situation graphically and in concrete terms." (page 30) "The common features of the narration by thousands of humble petitioners in respect of thousands of abductions and disappearances, bore powerful witness to the fact that what we were looking at was an orchestrated phenomenon and not a series of isolated instances explicable in terms of "excesses" by individual transgressors" (page 32)

(e) Clandestine nature of the operation - and torture:

"A valuable pointer to the fate that befell many of the abducted is to be found in the evidence of the many returned detainees who have come before the Commission whether as petitioners on their own behalf or as witnesses to the fate of others. They constitute a powerful credible body of evidence on:

(i) The serious, often fatal injuries suffered by the prevalent practices of torture by the authorities with the attendant issue of disposal of bodies.

(ii) The transport of detainees to undisclosed destinations in circumstances loudly speaking to the clandestine nature of the journey - Removal of number plates/ affixing of false number plates to the vehicles, use of fire arms, implements for digging old tyres taken along, on these journeys being inconsistent with the object of the journey being a lawful one.

(iii) In some instances "confession" to participation in such "extermination" under duress etc." (page 33)

(f) Age group:

Out of the 16,800 cases recorded in the reports by the three commissions 14.83% are persons below the age of 19; A further 28.05% are below the age of 24. (this does not include the figures from among the 10,135 cases that are being investigated by the continuing commission.)

(g) Number of disappearances caused by state agents:

Out of 7239 cases of disappeared persons, 4858 are by agents of the state/para military groups in collaboration with them.(page 29)

(h) Abduction instead of arrest showed intention for killing:

"That "abduction" rather than "arrest" was the preferred method of operation, is a clear indication that physical elimination of the persons taken-in was not ruled out. Given, additionally the unrecorded nature of the initial abduction and detention the temptation to adopt 'elimination' as a practice was inevitable." (page 32)

"The Elimination of "potential groups" had become a permitted tactic of counter-subversion. The petitioners before us spoke of this from their personal experience.

* "Broilers"

A practice of keeping in unrecorded detention "stocks" of detainees of a certain age-group, who had been taken into custody in combing-out operations or casually off the road/beach was evident in several instances from the evidence of returned detainees. These persons then disappeared without trace after being taken out of the camp generally following on a subversive act that had caused loss of life or damage to property damage or

on the camp being dismantled. Given the practice of 'reprisal killings' sinister significance attached to these disappearances from State custody. Hence the slang of the period :

"Broiler" = an article for consumption." (page 32)

(i) Mutilated bodies at public places:

The evidence of members of the public was that mutilated bodies at public places was a common sight. (page 34)

(j) Mass graves:

Mass Graves came into existence contemporaneously. The inference as to who were the creators is inescapable when the massive logistics entailed, not to mention their proximity to locations under state control, are taken into consideration. (page 34)

"The existence of twelve Mass Graves have been reported to this Commission. They are:

1. The Hokandara Mass Grave
2. The Essella School Mass Grave
3. The Wavulkelle Mass Grave
4. The Walpita Government Farm Mass Grave (2 to 4 are in the Gampaha District)
5. Ambagahakenakanda Mass Grave
6. Bemmulla Mass Grave
7. Kottawakella, Yakkalamulla Mass Grave - Galle District
8. The Dickwella Mass Grave at Heendeliya
9. Diyadawakelle, Deniyaya, Mass Grave
10. Wilpita Akuressa Mass Grave (8 to 10 are in the Matara District)
11. Angkumbura Mass Grave - Matale District
12. Suriyakanda Mass Grava - Monaragala District."(page 117)*

(k) "The political dimension:

Acknowledgement of the political dimension inherent in the scene revealed by the evidence before this Commission, is a necessary response to the trust and confidence reposed in the Commission by the thousands of witnesses who spoke openly placing their hard-earned experience, and perceptions on record.

(i) *The Public Perception: The Public Perception was that the conspicuous spectacle of impunity could not have existed without the complicity of the political leadership. The various allegations before us of the close participation of the local politicians in the exercise, the various allegations of 'informers' who functioned as the channel of mis-information from the politicians to the security Forces, the allegation of 'Lists' of names of political enemies being supplied to the Security Forces for elimination, are all based on this perception. (Emphasis ours - ALRC)*

(ii) *Confirmation by 2 Senior Officials:* This perception of the petitioners has found confirmation in the evidence of two Senior officials of that time, one of the Police the other of the Army, who have given evidence under oath on the role played by politicians of the governing party in the counter-subversion exercise, the practice of the preparation of 'Lists' of names by them, and the issue by them of illegal orders, for execution by the Police and Army respectively

Mr. E. E. B. Perera, Inspector General of Police, 01.08.1988 to 18.11.1993:

When the second insurrection-wave struck the Police Force was dependent on informers. Hence the phenomenon of Members of Parliament who were providing the political direction to the anti-subversive drive being supplied with 'Lists' of names by informers, who in turn passed them over to the Forces and the Police. In 1971, the political authority at District level was required to give support to the Forces. By the second insurrection the Provincial Councils had come into operation. There was an administrative direction that the Deputy Inspector General (DIG) should be subjected to

* Two more mass graves need to be added to this:

13. Mass grave at Chemmani in Jaffna in the North

14. Mass grave at Mamadala - Ambalantota in the South

the control of the political authority usually the Chief Minister, notwithstanding the fact that Police powers had not been developed to the Provincial level under the 13th Amendment.

This confirms the practice of 'Lists', whose source was the local politician. It also clarifies the path by which the Security Forces came to be used in the narrow interests of particular politicians.

Further it makes clear that the police had to put into effect directions that were clearly outside the law.(Emphasis ours-ALRC)

Lt. General Rohan Daluwatta, Commander Sri Lankan Army, has stated

While I was co-ordinating Officer, Ratnapura certain political pressures were brought to bear on me. I was given a list of names with the direction to take them into custody, that they were JVPers. I received the List from a former Minister... When I checked the list with the Police, I came to know that they were SLFPers. I was told, that area could be cleared were I to catch them.

(iii) *The use of the Forces and Police in the Narrow Interests of Politicians.-* This was spoken of by two Inspectors-General of Police in their evidence before us.

Mr. L. D. G. Cyril Herath was IGP December 1985 to 31.07.88. Mr. Herath said:

In the promotion of Udugampola, SP over 15 more senior officers, to the rank of DIG, I saw the portents of the plan to use the Police Force in the narrow interests of politicians. It was clear to me that alternative structures of command were being put in place within the Police force for the purpose. I realised that a system of promotions to this effect was being put into operation.

W. B. Rajaguru-IGP 29.07.95 to-date. Mr. Rajaguru, the present IGP stated:

I am aware that there were specific instances where rapid promotions were given. One was that of Mr. Premadasa Udugampola who was an Inspector of Police in 1977 and had rapid journey through the ranks of A.S.P., S.P., Senior S.P., and became Deputy Inspector General by about 1988 (in 10

years time). At that time it was mentioned that this officer had moved over 180 other officers at different stages.

Among the rank and file there was a degree of disillusion and heart-burn, for there were persons who had become able to move upward quite freely within the police. This disillusion affected discipline.

A specific instance I will give is the Mulkirigala By- election. At this time found that contrary to specific orders made at Head Quarters there were certain police officers moving about the electorate. At this time I was DIG Greater Colombo and Southern Range. I found that Mr. Udugampola, then SSP Gampaha had moved into Mulkirigala electorate on his own, He had brought with him several officers in charge from his division. There were no orders for him or other officers in charge to perform any duties within the electorate. Later, there were many complaints received about bands of police intimidating the public and committing acts of thuggery; and there was evidence that the police had beaten up voters to prevent them from going to vote. (Emphasis ours-ALRC)

My experience is not limited to the day of election, This feature I have described was continued police thuggery. The complaints came from Kirama Weeraketiya, Walasmulla and Middeniya. It was organised and widespread

We have also noted that former Inspector General of Police Mr. E. E. B. Perera in his evidence before the Presidential Commission of Inquiry into Disappearance of persons, unlawful Arrest of Persons and the Operation of Places of Detention at the Batalanda Housing Scheme” had stated that

There were several occasions when we had to put into effect directions that were clearly outside the law. Not just one occasion. It was undoubtedly due to the fact of undue interference by the Executive that Ronnie Gunasinghe was not taken into custody. (Emphasis ours-ALRC)

Some instances¹⁴ of the political control of the structures follow.

- (i) **The Lakshman Perera Case:** Lakshman Perera was a dramatist and poet and Pradeshiya Sabha MP of the Governing Party. Soon after posters appeared in and around Colombo advertising his satirical play termed “WHO IS HE? WHAT IS HE DOING?”, he was abducted from his

home and disappeared. His wife's identification of the abductors is as follows:

I do not see personal enmity to be the cause. This abduction is an indication of the hollow nature of the profession of democracy by the ruling party. We were at the police station very shortly after the abduction, but the police displayed utter indifference.

- (ii) **The Richard de Soya Case:** The case of Richard de Soya Journalist and broadcaster (who was abducted on 18.02.1990. is another instance.)
- (iii) **The Adiruppu Street Case:** A UNP organiser of a Colombo Central area was abducted by an armed gang who came in modern vehicles in the night. The incident, apparently, is a consequence of an intra-UNP leadership struggle. His wife giving evidence before the Commission said:

There was no UNP high-up who didn't know my husband. And yet no one would move in the matter of his abduction and disappearance.

The disappearance from police custody of suspects regarding the assassination of a political leader during this period is a striking instance of the practice under consideration. (Emphasis ours-ALRC)

- (i) **The Disappearance from Police Custody of Suspects Regarding the Assassination of a Political leader: The Vijaya Kumaratunga Case**

Vijaya Kumaratunge, Leader of the SLMP, was assassinated on 16.02.88. Lionel Ranasinghe and Tarzon Weerasinghe were taken into Police custody as the suspected assassin and accomplice respectively. The mother of Lionel Ranasinghe and the sister of Tarzon Weerasinghe, have stated to the Commission that these persons disappeared from Police custody while they were detained at the 4th floor of the CID Headquarters in Colombo. Tarzon Weerasinghe's sister produced to the Commission a letter from the ICRC representative who visited this place of detention had been informed by a co-detainee that this person had disappeared while in the custody of the CID in March 1990.

The Commission was unable to summon the said witness as the ICRC informed the Commission that they are unable to disclose the co-detainee's

identity to the Commission. The CID's position to the IRP had been one of the denial of detention of Tarzon Weerasinghe. The mother of Lionel Weerasinghe stated that she visited her son in the custody of the CID and the last time she visited him was 16.09.89. She was then informed that he was in remand custody. Both petitioners have had no further information about these persons' fate until they read newspaper accounts of the evidence transpiring at the Special Presidential Commission of Inquiry into the assassination of Vijaya Kumaratunga. The finding of the Commission of Inquiry into the assassination of Vijaya Kumaratunga on the disappearance of Lionel Ranasinghe from custody is as follows: The preceding account clearly shows that the conduct of the police regarding the transfer of the suspect from the CID to Homagama, his interrogation for five days at Homagama, the ambush of the police party and the escape of the suspect is laced with falsity at every turn. The evidence of the respective police officers stretches credulity to breaking point and more. That Commission's finding on the disappearance of Tarzon Weerasinghe from custody is as follows:- The evidence is, that Tarzon Weerasinghe was not seen alive after his detention in the CID. It is in evidence before us that no disciplinary inquiry or action of any kind was taken against the errant police officers. The Massacre on the Eve of the Presidential Election 1988 at SLFP Chief Organiser's Residence

NF was the SLFP Chief Organiser for Panadura at the Presidential Election of December 19, 1988. His residence was the centre for nominating polling agents and other campaign work. On December 18, 1988 he secured the release of some of his supporters who had been arrested by the police on the false pretence that they were JVP and returned home around 10.30 a.m. where several members of the party Youth League including the Branch Secretary and the treasurer had assembled. Within minutes the residence was sprayed with bullets. Eight of his supporters had been killed on the spot; another had succumbed to his injuries later. The police had arrived within minutes at his house and given him protection. On the previous morning, December 17, two persons clad in army uniform had called over at his house and had inquired about the state of his security. After requesting for some posters of the SLFP Presidential candidate "to be put up when she wins" They had identified themselves as personnel attached to a temporary army camp at Wadduwe.

NF: Even after such an incident when so many people were killed in my own house the culprits have not been found. There were posters against me by the JVP. But I had no direct threats from them.

My House is situated two or three miles from the police station. But they arrived within a few minutes at my house. When I reflect on all these matters I think the Army was responsible for this incident and that the police also was aware of it. (Emphasis ours-ALRC)

This incident is a clear indication of the political dimension of the use of the structure.

(vi) The Promotion of some Security and police officers found to be in breach of fundamental rights by the Supreme Courts:

When the Supreme Court in a 5-Judge Bench decision found a Viharadhipathi had been prevented from exercising his fundamental rights to "Freedom of Speech and Expression including Publication" by a police officer, the state media announcing the decision that evening announced also that the said police officer had been given a promotion. The incident that had violated the Viharadhipathi's fundamental rights was the seizure of posters objecting to the Referendum, at the time of the Referendum 1982.

The same juxtaposition is discernible in the circumstances of the failure to investigate, prosecute or hold disciplinary inquiry into instances where the courts has found a Forces or Police officer to have acted in breach of a fundamental right or to be responsible in a Habeas Corpus Application.

The inescapable and irresistible inference deducible from the entirety of the proved facts in this case is that in actual fact no such applications for detention orders and detention orders were in existence on the third of September 1988. But that these documents were fabricated later with collusion between the first accused and witness Udugampola for the avowed object and authority on an otherwise illegal arrest, illegal detention and the illegal removal of a mutilated Lyanarachchi to Sapugaskanda so as to mislead and deceive the ultimate deciding authority as to when these injuries were in fact inflicted. (Emphasis ours-ALRC)

The court went on to state, as part of its judgement, as follows:

It is the fervent hope of this court that the Hon. Attorney General the law enforcement Agencies and the executive will in the near future probe and investigate into the issue as to who caused this death, using the varied facts, matters and information disclosed in these court proceedings.

No steps, as directed by court, have been taken to this date. Nor does the service record of Udugampola show that any steps have been taken by way of disciplinary inquiry or any other v. this officer departmentally. By the time the judgement was delivered in the Liyanarachchi case, 18.03.91 Udugampola was Head of the newly established Bureau of Special Operations, on presidential directive.

Case of Sunil of Obeysekerapura

The Case of Sunil of Obeysekerapura: Sunil's abduction and disappearance occurred in the context of the inner party rivalry that occurred at the Colombo Municipal Council Elections 1991. Sunil, a strong UNPer and friend of one 'Malu Nihal' a leader of the local under world-gang, fell out with Malu Nihal as they supported the rival UNP candidates who contested the election. Sunil was abducted by police officers attached to the Bureau of Special Operations. His mother traced him to the office of the BSO.

The Bureau of Special Operations was a special unit of the police established according to its mandate to "fight narcotism" corruption, smuggling and terrorism", with operational jurisdiction island-wide, which was set up in January 1991 on Presidential direction with DIG Premadasa Udugampola as its Head.

There was no allegation that Sunil was engaged in "narcotics, corruption, smuggling or terrorism" when he was abducted by the B. S. O.

All dissent had come to be equated to "subversion".

The petitioners before the Commission perceived this clearly. They said:

My husband let the SLFP hold the General Election meetings in our compound when others wouldn't. They came in a jeep in the night time and

abducted him. My complaint to the Inspector General of Police was referred for inquiry to the same officer, now, Asst. Supdt. of police of the area.

I know the murder of my 18 year old President's Scout son just after his return from an international Scout jamboree was by the Army, at the local politician's behest. The local Army Commandant who ordered, and the local politico who put him up to it, are both equally guilty

When my 3 brothers, one of them the SLFP Branch President and all 3 quite outstanding, were abducted, it wasn't to keep them alive. It was to stifle political discussion.

The then President of the Bar Association of Sri Lanka in his evidence to the Commission brought this out clearly from his analysis of the Lawyers who were abducted or were killed out-right during this period. Lawyers who filed Habeas Corpus applications, who worked with Christian Service Organisations in the Free Trade Zone for the welfare of workers, Lawyers who appeared in Trade Union Matters, in legal aid work, met with the same fate. (Emphasis ours -ALRC)

A large number of lawyers who were handling Habeas Corpus and fundamental rights matters were killed by unidentified gun men. G. L. was handling a large number of Habeas Corpus Cases in respect of persons who had been taken into custody and disappeared. Mr. N. N. of Gampaha had been involved in a large number of Habeas Corpus Cases, but at the date of his killing he was not involved in these. Mr. K. A. who was killed had been involved in a large number of cases in respect of University students who had been taken into custody and could not be traced. He was also active in the Sarvodaya Legal Aid Centre, Mr. S. K. at the time of his death was engaged as a Junior Counsel in a Magistrate Court Case in Theldeniya, where 7 Police Officers of Theldeniya Police were accused on killing a school boy in a demonstration. Prior to the murder of S. K. his clerk and another lawyer's clerk who were eye-witnesses to the shooting of the school boy, had been killed. A delegation of the BASL met H. E. the President of Sri Lanka and requested that the Police and Army personnel should come to an agreement that BASL would be informed with 24 hours of a lawyer being taken into custody. H. E. The President agreed to this. The agreement with the three service Commanders was signed on 21.08.89. On several occasions

lawyers were threatened and taken into custody and subsequently released at my intervention. Mr. G K. who was practicing in Gampaha was not involved in Habeas Corpus matters, but he was involved in Trade Union Work for SEDEC, a Catholic welfare organisation in the Katunayake Free Trade Zone. Mr. B. of the Negombo Bar was helping in the work of the Movements for Inter-Racial Justice and equality (MIRJE) a general feature of the abductions of lawyers was the fact that they were carried out by persons in civil coming in un-marked vehicles. This would be followed by my telephoning the Secretary/Defence who would say: I will ring some People and ring you back; thereafter he would phone to say: Your man is safe.

8. An attitude of considering only one's own human rights as 'Rights' had came into existence

The Secretary Movement for Development and Democratic Rights (MDDR) an umbrella organisation of voluntary organisations who work in the field of political, civil socio-economic and cultural rights, stated in evidence:

At the time terrorism came to be used as a political tool in the North, the state's view was that it could be brought under control by slaughter. The resultant State Terrorism could have only restricted operation in the North. But within the Police and Army and even the Govt. the prevalent view was that killing was an essential tool, and machinery to this purpose, to be put to use at any time whatsoever, was set up by the state. This machinery was set up in a frame-work that couldn't be challenged via the courts. The only legal weapon available against abduction and killings was the writ of Habeas Corpus. If the inquests and investigations requisites under ordinary law operated, the law would not have been reduced to this state of helplessness. Emergency Regulation 55 permitted a burial without an inquest EF55's "message" to the Security Forces was that a human body was no more than that of a dog or other animal. All this took place in the context of an attitude of considering only your own Human Rights as "Rights". (Emphasis ours-ALRC) This was reflected among lawyers also. On one occasion our organisation proposed that as a principle we should oppose all Murder, by whomsoever. Those who opposed this took up the position that what was necessary was

condemnation of killings by state forces and not killings by others. When we showed that this was not only incorrect in principle but was in itself a threat to Human Rights, there were threats to our lives. And as they were in a position to carry them out, these were not idle threats either. (pages 34-42)

“The Minister of State for Defence on the Government’s Policies

Finally it is the responsibility of this Commission to place on record the words in Parliament of the Minister of Defence.

A. On 25.01.90 speaking in Parliament in the debate to extend the Emergency, the Minister stated as follows :

I know that there are abuses black sheep in the Police Department and the Forces, but by and large the Services and the Police are highly disciplined and they have done a good job for all of us - not only for us, but for all of us. I am concerned about the abuses and I am personally following up the action that is being taken against the culprits. I have asked for a list of name of persons in the Army, the Navy, the Air Force and the Police who have been accused of murder, extortion, rape, robbery and connivance with the JVP. I will follow up action until they are punished and put in their places. No, matter who they are, no influence will be tolerated.

We are in the process of cleaning up the local Mafia. That is why we want the Emergency Extended for a little more time to finish up all this also. You cannot do these things under the normal law. (Emphasis ours-ALRC)

It takes a lot of time. By the time my good friends who are lawyers take time to solve these things the match will be over (Interruption). We have finished the first eleven and the second eleven. Now we are tackling the under fourteen fellows.

1. There is no record of follow-up action against any person in any Army, Navy Etc. in respect of the series of acts that constitute a disappearance.
2. “We have finished the first eleven and the second eleven. Now we are tackling the under 14 fellows” is seen to have an almost literal meaning. Not a single leader of the JVP was brought to trial after the arrest of thirteen out of fourteen Members of the Polit Bureau in the period

November-December 1989. None of them are alive.” (Page 42)

(1) The issue of impunity:

The entire chapter of the Commission's report on The Issue of Impunity deserves special and careful consideration. It deals with the threat disappearances pose to democracy.

“No circumstance what so ever whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.i

To the extent that a society or government dismisses the principle of accountability as unnecessary, it under-mines its possibility of becoming a true democracy, in which citizens can feel confident that their rights are firmly protected.ii (page 50)(Emphasis ours- ALRC)

“The Spectacle of Impunity

- ❑ The climate of impunity was so tangible as far as the witnesses before this Commission were concerned that many of them did not even trouble to list its features. This Commission discovered that the features ranged from the most spectacular and sensational to the most mundane disregard for the Rule of Law. These features included the sight of scavenging dogs feeding on mutilated bodies left in piles on the road-side.
- ❑ the sight of ‘tyre-pyres’ with bodies set alight on them, (and still more gruesome wearing ‘necklace’ of a burning tyre leading to the reflection was it a corpse of a living person who had been so garlanded)
- ❑ the sight of vehicles moving around with no number-plates of obviously false ones, without check by traffic police of soldiers manning the many road blocks.
- ❑ the experience-one’s own or of a neighbour, friend or relation-f the violent entry into one’s home at any time of the day or night of heavily armed men who forcibly abducted the males-most particularly the youth taking them in as public a manner as possible, never to return.
- ❑ the knowledge, common to all, that the attempts of the relatives to inform the police would be unsuccessful; that the complaint if recorded it all

would be but of a disappearance only, leaving out all the material particulars disclosed by the complainant.

- ❑ the knowledge that not one jot of attention would be paid in official quarters despite the regular newspaper reports that showed opposition MPs raising the matter of disappearances in Parliament, tabling the lists of the disappeared.
- ❑ the knowledge, worst of all, shared by the whole community, that there would be no official acknowledgement, not one perpetrator punished, even though these were not the acts of a foreign invader.

This was the picture conjured up again and again in the evidence of petitioners before the Commission from all quarters of the South, West and Sabaragamuwa Provinces, though the rates of incidence varied from place to place. From the homogeneous nature of the evidence before us, Your Commissioners are confident that this will be the picture revealed before all three Commissions appointed by Your Excellency. (Emphasis ours - ALRC) (pages 50-51)

Conclusions:

Conclusion 1

Even the above considerations, which are only a small part of the serious matters raised by the three Sri Lankan Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, show an organised attempt on the part of the political leadership of the regime in power at the time to cause the disappearances of tens of thousands of persons through the operations of State officers and those working with them. These thousands of killings were done after arrest or abduction by such persons under a nation-wide network with powers not to keep any records. Most bodies were burnt or disposed of in rivers by the persons working for these agencies. Some of the bodies were exhibited at roadsides. None of these acts can come under legitimate actions of a State in controlling insurgency or engaged in any other lawful activity. All such disappearances caused by such State agents and their collaborators are illegal and violate fundamental norms established by the international conventions. All political decisions to plan, encourage

and promote the carrying out of such disappearances, as well as those decisions to protect culprits, are equally illegal.

From this conclusion it follows:

- ☐ That the Working Group should not condone any act of causing disappearances and should regard and declare them as illegal;
- ☐ That the Working Group should not portray such acts of causing disappearances as legitimate counter-insurgency activities;
- ☐ As there is more information of the nature of these disappearances now available from the reports of the three Sri Lankan Presidential Commissions of Inquiry, that the Working Group may take a stronger position regarding these disappearances than in the past; and
- ☐ That the Working Group should now, on the basis of the evidence available, treat these disappearances as a crime against humanity.

Conclusion 2

Only a very small number of the perpetrators of these tens of thousands of disappearances have been prosecuted, and most cannot be prosecuted until proper criminal investigations are conducted. As the normal criminal investigators are police themselves, were normal procedure followed, in most cases the perpetrators themselves would be the investigators. Such a procedure would scarcely create confidence on the part of the complainants, who are mostly from among the poorest in rural areas of the country according to the Commissions' reports. The three Commissions were fact-finding commissions and did not have the human and other resources to conduct such a vast number of criminal investigations. Therefore, if justice is to be done, the Sri Lankan government must appoint a criminal investigation authority with power and resources to conduct criminal investigations into these cases.

From this conclusion it follows:

- ☐ That the Working Group must state that adequate criminal investigations have not been conducted into these cases; and
- ☐ That the Working Group should recommend that the Sri Lankan government appoint an authority with powers and resources to conduct

criminal investigations into these cases of disappearances.

Conclusion 3

As far as the payment of compensation to the victims is concerned, there is no indication as to whether adequate compensation has been paid and whether norms set out by the Working Group in the past have been followed.

From this conclusion it follows:

That the Working Group should examine the nature of the compensation already paid and make further recommendations in order to bring such payments into line with the relevant norms.

Submitted by:

Basil FERNANDO

Executive Director

Asian Legal Resource Centre

IV

A SUBMISSION TO THE COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN SRI LANKA

1. I am Sri Lankan and a registered attorney-at-law since 1980. I have also been a senior United Nations officer. I am also a writer and a poet.
2. At the moment I am the executive director of the Asian Legal Resource Centre (ALRC), which has general consultative status with the Economic and Social Council of the United Nations, and also the executive director of the Asian Human Rights Commission (AHRC), a regional human rights group based in Hong Kong.
3. I am making these submissions in my personal capacity as a Sri Lankan and officially on behalf of the ALRC and the AHRC.
4. I must, first of all, express my highest regard for your commission and the

other two commissions for your priceless work on the investigation into the disappearances. I and my colleagues have thoroughly studied your reports. As result of the study we decided to start a web-site on disappearances, and its address is <www.disappearances.org>.

5. The ALRC and the AHRC have also made a submission to the United Nations Working Group on Enforced or Involuntary Disappearances requesting that State Sponsored Disappearances as a crime against humanity. These appeals have had widely been publicised in Sri Lanka and else where. They are attached with this submission as annexes, A1 and A2.
6. The particular submissions I wish to make in this instance are: (1) that a considerable number of disappearances recorded by you fall under the category of State-sponsored disappearances; and (2) that the absence of direct evidence of the actual events leading to each disappearance can be remedied.
7. As regard to the issue of political sponsorship of disappearances, findings recorded in the commissions' reports suffice to support that conclusion. Further legal recognition needs to be given to the fact that the 1982 referendum and the subsequent proscription of several political parties have a direct bearing on the events which led to the disappearances. Without any way entering into the arena of partisan politics, it is now possible for us to say that these events have been widely condemned in the country. These historical developments need to be taken into account in assessing the responsibility for the disappearances.
8. It is the issue of evidence that is of primary importance.
9. In the case of disappearances the problem is not one of absence of persons who were direct witnesses to acts leading to disappearances. The problem is that those persons well aware of the facts do not come forward to give evidence.
10. Some of the persons aware of the facts are:
 - (a) All police officers not below the rank of assistant superintendents regarding the authorisation of disposal of bodies granted by each of them under section 55ff of the Emergency Regulations. Such authorisation could have

been granted only on a case-to-case basis. Therefore, each one of the authorizing persons is accountable for each authorisation granted under this regulation. If no such officer has authorised any of the disposal of bodies, such disposal would not fall under the relevant emergency regulations and therefore such disposal of bodies are in complete violation of the law.

- (b) Officers-in-charge of police stations at the relevant time regarding disappearances in their relevant areas. They would have received information regarding all persons killed or disposed of in their police areas. They would be aware of circumstances under which such death or disposal of the body took place.
- (c) All the police officers on duty at various police stations at the time.
- (d) Officers-in-charge and all other officers attached to places of detention other than police stations.
- (e) All others who belonged to the armed forces and were assigned to act as law enforcement officers at the relevant time.
- (f) All members of parliament at the time regarding the disappearances that have taken place in their electorates and the circumstances under which such disappearances have taken place.
- (g) All the village headmen regarding the disappearances which happened in their localities and circumstances under which such disappearances had taken place.

11. Under our law all persons aware of any crime is obliged to divulge such information. This will apply to State officers with much greater force. Thus, all officers mentioned above can be asked to make a statement under oath (by way of an affidavit, for example) of all the information they possess relating to disappearances and the circumstances under which such disappearances took place. Such a request can be made within the existing law. Such a request can be put forward by your commission directly. The request can also be done by the commission through the heads of the police and armed forces.

12. The State officers are under obligation to divulge information relating to


their official duties or any information received in the course of performing such official duties. If any officer claims that such activities relating to disappearances did not fall within official duties, the obligation to divulge them would be greater.

13. Thus, I respectfully submit that the issue of evidence need to be dealt with not as an instance of absence of witnesses but as one where the evidence is deliberately withheld.
14. Your commission in its earlier report had made many valuable suggestions regarding the prosecution of offences. It is respectfully submitted that a very vital problem relating to the prosecution of disappearances is the absence of an investigator into these incidents. Under our criminal procedure it is the police who usually investigate crimes and prosecutions are conducted on the basis of statements recorded by them. The situation greatly differs from the American or even Australian situations where the district prosecutors play a greater role in supervising and guiding the investigations. I have not made any reference to the French practices as they are based on a system which differ greatly from the Sri Lankan system.
15. Any real attempt to prosecute the cases of disappearances must be accompanied by the creation of an office of investigation into the disappearances. Your commission's valuable work has necessarily to be limited to recording of names of persons who have disappeared and the circumstances under which such disappearances had taken place.. Without in any way undervaluing this great work, it may correctly be said that the commission's work does not constitute criminal investigation into the thousands of cases that have come before the three commissions.
16. A suggestion has been made by one of the commissions of the need to appoint a human rights prosecutor. However, the most important issue is not one of prosecution but one of investigations. Without investigations the prosecutions do not have a great chance of success. On the other hand, if proper investigation brings about sufficient evidence, it will be difficult to avoid prosecutions even under the existing prosecution system, which is through the attorney general. It is not a realistic expectation that the department of the attorney general will undertake the investigation

of crimes. As the Sri Lankan practice usually separates the two functions - investigations and prosecutions - the need with regard to disappearances is for an independent investigators' office.

17. An independent investigators' office under proper leadership and with necessary resources is required if the prosecutions for disappearances are to become a reality. Such an office needs to be properly equipped with proper forensic expertise. Such expertise exists in the country, and further assistance may be obtained from outside sources.
18. May I further submit that it is not too late even now to begin such investigations. Modern forensic facilities provide tremendous possibilities for investigations even years after the incidents. The Holocaust investigations took over four decades, and investigations in Chile had taken 25 years and may be even longer. In Argentina it took less time due to the presence of a strong political will to achieve proper investigations and prosecutions. What is of importance is to make a proper beginning of a criminal investigation into all cases of disappearances. As the commissions have identified a large number of cases, the stage has now arrived for do such investigations.
19. I very much hope that your commission will make further recommendations with regard to the following matters:
 - (A) Compelling state officers to divulge information they possess on the all matters relating to disappearances under existing law and/or by making further statutory provisions for the purpose.
 - (B) The appointment an independent authority to conduct criminal investigations into all cases of disappearances.

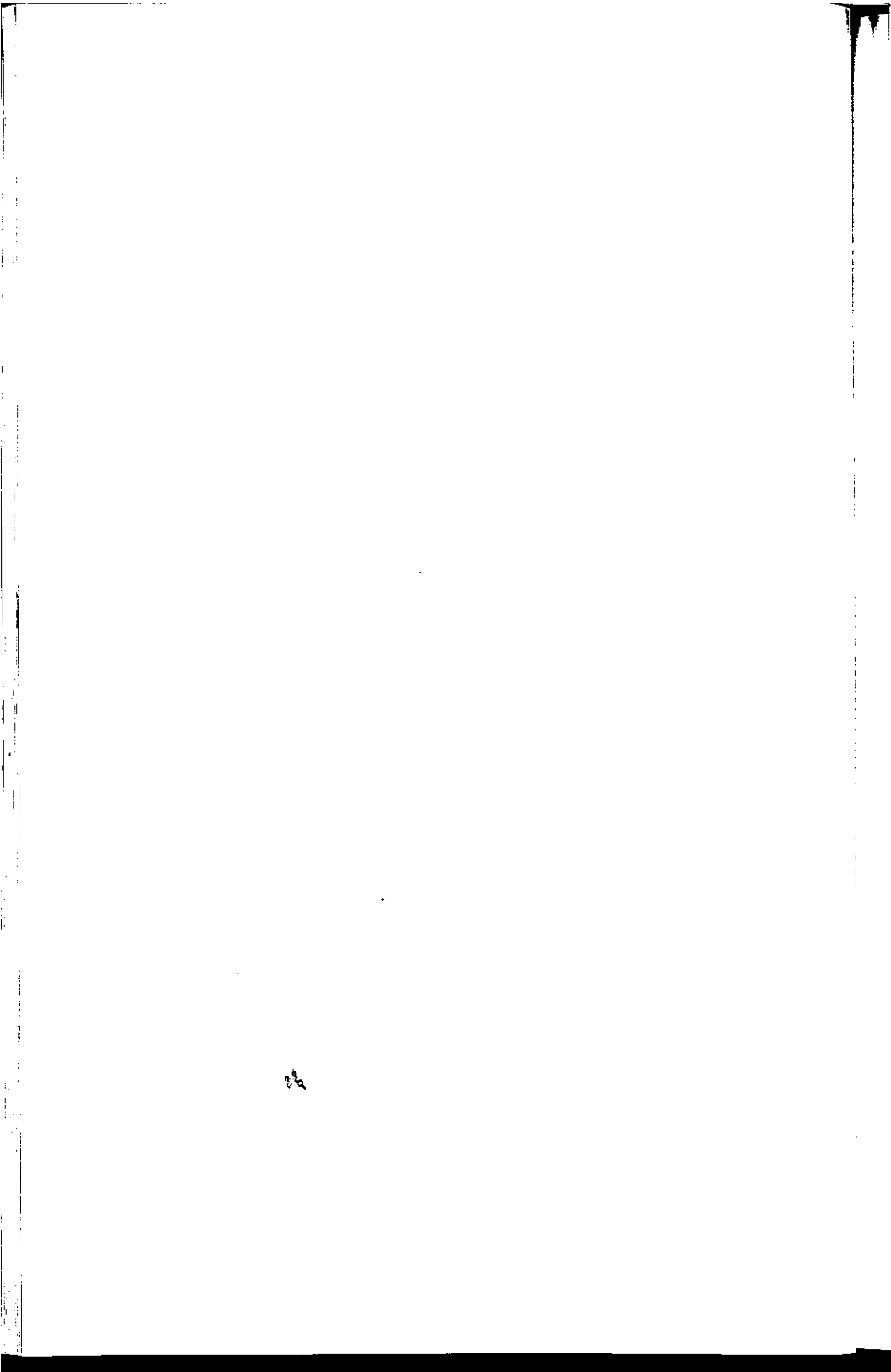
May I thank you for this opportunity to place these submissions.

Thank you. 

Faithfully yours,

Basil Fernando
Executive Director
Asian Legal Resource Centre

4 January 1999
Date of Submission





55TH SESSION ON U.N. COMMISSION
ON HUMAN RIGHTS:
WHAT DIFFERENCE COULD IT
MAKE ON DISAPPEARANCES
ISSUE?

CANARD ON DISAPPEARANCES IN REPORTS OF INTERNATIONAL AGENCIES

Explanations repeated by way of propaganda are often treated as truth even after close inquiries have proved them to be untrue. The view that the disappearances of Sri Lanka (about 26,935 cases according to official records) were resulted in a necessary and unavoidable measure taken by the ruling regime at the time for counter-insurgency is such a view. This view is repeated constantly not only in local records but also in international ones. It is a notwithstanding fact that the three Sri Lankan Presidential Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons, which inquired into 16,800 cases, have come to conclusions to shatter such view.

In brief, the findings of the commissions are:

- ❑ That most of the disappearances were killings that happened after arrests (abductions by State agents and their collaborators);
- ❑ That before being killed those persons abducted were kept in detention centres, interrogated and tortured;
- ❑ That in such arrests and interrogations those persons were killed;
- ❑ That in most cases the bodies were destroyed in order to erase all traces;
- ❑ That some were buried in unmasked mass graves, others disposed of in rivers or burnt at roadsides with tyres in their necks;
- ❑ That legal provisions were made to avoid any form of keeping of records;
- ❑ That the jurisdiction of courts to inquire into the matter was limited by legal provisions;
- ❑ That the highest level of political leaders and decision-makers were involved in making and carrying out the system which caused to these disappearances;
- ❑ That the whole process was systematic and planned; and
- ❑ That about 15 per cent of the total number of disappearances were of persons below 19 years of age.

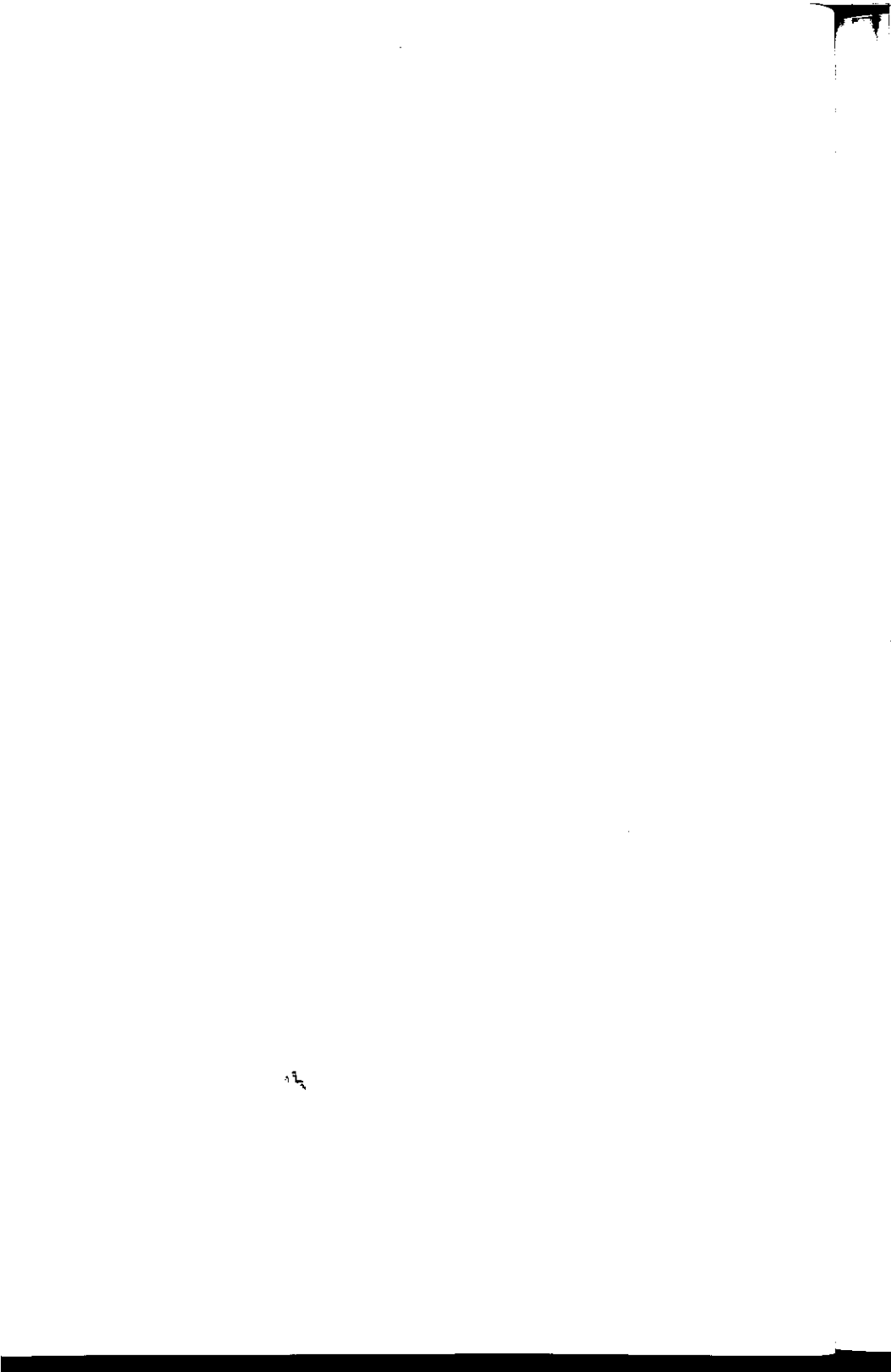
Once it becomes possible for a State to arrest any person, the State loses any right to kill that person except by due process of law. Once disappearances are shown as killings after abduction (preferred way of arrest by the State to avoid records of arrests) as the commissions' reports has done, any form of legitimisation of the State's activity comes to an end. It destroys the claim that the State was in such a danger that it could not have itself except by causing such disappearances.

While the regime at the time could have controlled the Janatha Vimukthi Peramuna (JVP, or People's Liberation Front) without causing the mass disappearances, it has also become clear that there were other plausible reasons to causing such mass killings. The legitimate period of the regime's rule had come to an end in 1982. However, the regime did not hold elections

as due. Instead, it held a referendum asking the people to allow the same parliament to continue another term of six months. The referendum, according to the elections commission's own report, had not been held in a fair manner. If similar things happened in Britain, the United States, India or any country where the electoral process is well established, what might be the results? Surely a mass upsurge is unavoidable in such circumstances. Sri Lanka is a country where electoral process is well established. To remain in power after pursuing such a course of action the regime needed to carry out mass intimidation. This it did by way of mass killings. Mass disappearances were thus not a necessary action of a legitimate government, but a survival tactic of the government which had ended its democratic legitimacy.

Whatever the actual reasons were, the commissions' findings have confirmed what every person in Sri Lanka knows: That after a cruel massacre a false explanation has been spread.

It is time to re-examine all reports including those of international agencies on this matter. Otherwise it will be the perpetrators' view that will prevail as the explanation of these large-scale killings. Such a re-examination can make a significant difference to the outcome at the 55th session of the United Nations Commission on Human Rights that is due to meet soon on this issue.



VI

STATEMENT ON EMBILIPITIYA CASE BRAVE JUDGEMENT IN ONE CASE OF CHILDREN DISAPPEARANCES, THOUSANDS STILL NOT INVESTIGATED OR PROSECUTED

ASIAN HUMAN RIGHTS COMMISSION

The first case of children disappearances has ended in Sri Lanka. The honourable judge found all except two accused guilty and sentenced the seven convicts each to 10 years of imprisonment. This case received tremendous publicity in the country as the crime was very heinous in which 25 persons, including 24 children, were killed and buried inside a military camp for pure personal reasons.

The credit for this court decision goes to an impartial judicial officer who, despite of all difficulties that arose during the long years of trial, upheld the great tradition of the independence of the judiciary. Like judges of the famous Liyanarachi case, the judge in the Embilipitiya case will be remembered

by lovers of the rule of law and democracy in the country. Local and international outrages expressed by many persons and organisations had contributed greatly to bring the case to light and keep alive the spirit of defiance of ugly, inhumane and brutal violations of rights. Parents of the young victims showed enormous courage despite of various forms of blackmail and intimidation which were added to their loss throughout the years. Their choice was not to have personal vengeance against those who caused the losses of their children but to have recourse to the process of law.

The present Sri Lankan government which came with a pledge to bring the perpetrators of disappearances to justice has not fulfilled that promise. The three Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons have completed their fact-finding missions and have made extensive recommendations, which are largely being ignored. There are no criminal investigations into most of the 16,800 cases that the three commissions have reported on. A total of 10,135 cases are looked into by a continuing commission. Meanwhile, disappearances continue to take place. Justice done in this particular case in Embilipitiya is, alas, just a drop in the ocean. It is necessary to remind ourselves of that since otherwise, attempt will be made to forget the colossal amount of violations not even properly investigated on the basis of this one case. Non-investigated cases include thousands of disappearances related to very young persons like the victims of this case.

It is also sad to note that circumstances have changed so badly that outcome of this case appears so much as an exception. In 1962, a group of top leaders of the armed forces planned a coup. They were all arrested, and, after proper investigations were conducted, charged in court. The highest criminal court in the country heard the case and found the accused guilty. Thus, a tradition of impunity did not exist at the time, and the criminal investigation unit did not fear to investigate persons belonging to the armed forces, even if they were of the highest ranks. The impunity now prevailing is new and was in fact consolidated since 1977. The systematic practice of human rights gross violations under direction of political leaders began then. Embilipitiya children were victims of such systematic practice, besides tens of thousand of others.

The court has now found the culprits who have directly caused the disappearances in the case. However, the issue of the responsibility of those who created the systems that made such brutal acts easy remains. The Commissions into the Involuntary Removal or Disappearance of Persons have traced this system in great detail. Their reports contained details of how this system made possible the carrying out of acts from abduction and detention, to torture and killings, to secret disposal of bodies and how mass graves became possible to erasing all evidence. Surely what the commissions' reports have revealed is a grave instance of a crime against humanity. Can such things be forgotten without putting the rule of law and democracy in the country in peril for a long time to come? Is it not the obligation of the international community, including international non-governmental organisations (NGOs), to raise this issue and push for a solution? Should we not also demand that the recommendations of the three commissions be implemented? Of particular importance is to conduct criminal investigations into thousands of cases which have not yet been investigated, as well as investigations into all mass graves.

Will such demand be made during the 55th session of the United Nations Commission on Human Rights that is due to meet soon? Will the Working Group on Enforced or Involuntary Disappearances take up this issue in its report? Will the international NGOs take up the same strongly? We do hope so. The Embilipitiya case has confirmed that the country's judiciary can be relied upon to do justice, if cases are brought before courts as required by law. However, a whole system to prevent cases from reaching courts had been set up by previous regimes. It is this system that needs to be exposed and defeated. The three Sri Lankan commissions on disappearances have done their work on this issue. It is now time to support their findings and see justice be done accordingly.

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VII

A DRAFT

A RESOLUTION RELATING TO DISAPPEARANCES IN SRI LANKA

Considering that the Report of the Working Group on Enforced or Involuntary Disappearances, General E/CN.4/1998, of the Economic and Social Council deals with, among other matters, the cases of disappearances in Sri Lanka,

Considering that according to the said document, General E/CN.4/1998, 12,208 cases of disappearances had been reported to the Working Group since its inception,

Considering that the Working Group undertook two missions to Sri Lanka from 7 to 18th October 1991 and 15 October 1992 and their reports were contained in documents E/cn.4/1992/18/add.1 and E/cn.4/1993/25/add.1,

Considering that three Commissions of Inquiry into Involuntary Removal or Disappearance of Persons in Sri Lanka have completed inquiries into 16,800 cases and submitted reports, and one of the Commissions

continues to inquire into further 10,135 cases,

Considering that at the time the document of General E/CN.4/1998 was submitted, the Working Group had expressed its wish to receive the reports of the said Commissions of Inquiry into Involuntary Removal or Disappearance of Persons,

Considering that the findings of the said Commissions of Inquiry into Involuntary Removal or Disappearance of Persons clearly established that disappearances in this context had meant an euphemism for extra-judicial killings mostly carried out by State officers or their collaborators, that most killings were done after arrests and kidnappings by State agents, that an island-wide network existed to erase all records relating to disappearances and to destroy thousands of dead bodies without a trace, that there was existence of several mass graves, that often prior to death persons had been detained and tortured and that an operation of such large scale had taken place with the knowledge and encouragement of the political leadership of the regime in power at the time,

Considering that acts mentioned above do not constitute legal activities and cannot be justified as legitimate activities of a government and that naming such acts as counter-subversive activities does not alter the illegality of such acts,

Considering that according to the said Commissions of Inquiry into Involuntary Removal or Disappearance of Persons, a very few of the culprits of such acts have been prosecuted and tens of thousands of cases require further criminal investigations if prosecution is to place any time in future,

Considering that no adequate compensations on the basis of norms accepted by the Working Group have not been paid to the victims,

It is recommended that,

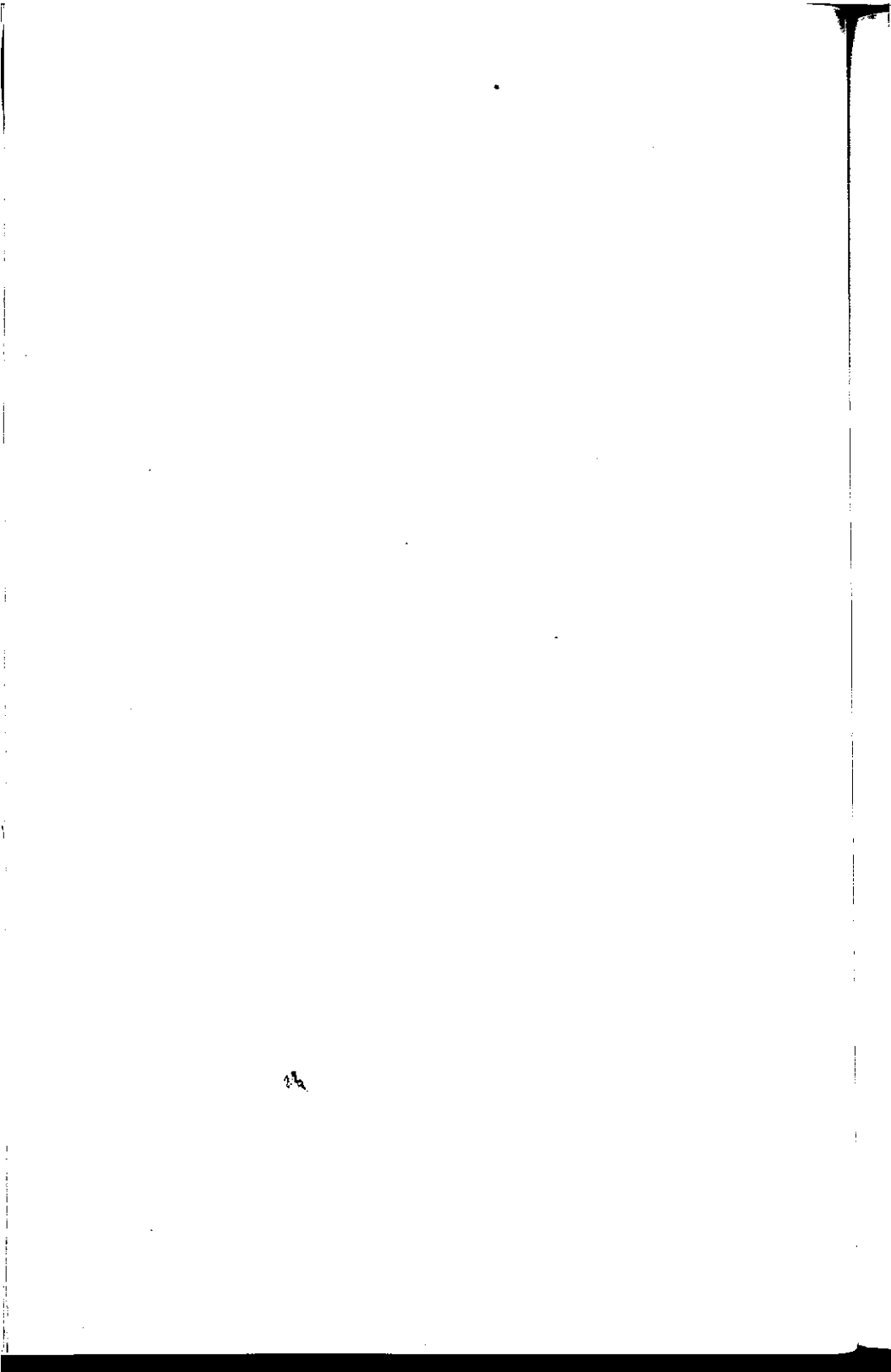
The disappearances mentioned above be treated as a crime against humanity and the political leaders responsible be tried on that basis,

That Sri Lanka be requested to establish a Criminal Investigation Authority with the mandate and resources to investigate these disappearances and prosecute the suspects,

Sri Lanka: Disappearances and the Collapse of the Police System

That the Sri Lankan government be requested to implement the recommendations of the Commissions of Inquiry into Involuntary Removal or Disappearance of Persons and undertake the necessary reforms in law enforcement agencies to stop the continuous occurrence of disappearances,

And that the compensation paid to the victims need to be assessed in terms of the norms acceptable to the Working Group.



VIII

LISTS GIVEN BY POLITICIANS, KILLING OF POLITICAL ENEMIES, ABDUCTION WITH THE VIEW TO KILL AND OTHER MATTERS

The Findings of the Commission of Inquiry into the Involuntary Removal or Disappearances of persons in the Central, North, Western, North Central and Uva Provinces (Interim Report published in September 1997)

On an analysis of the evidence recorded it would appear:-

- (a) That persons have been involuntarily removed either from their homes, at round ups, at check points or at random sites, by police personnel, members of the armed forces or others, not identified.
- (b) In some cases lists of persons appear to have been given by politicians who belong to the United National Party. In most other cases, the evidence reveals that the persons involuntarily removed were either SLFP organizers or active supporters of the SLFP. It seems clear that political opponents of the then regime were eliminated under the guise of crushing the JVP.

The very large number of killings in the Central Zone (which covers four Provinces) points to the fact that the removals and killings were with the knowledge and tacit approval of those in political power at that time.

Attached hereto is a graph indicating the period during which killings and removals were at a peak. The graph establishes that the removals and killings showed a marked increase from the nominations for the Presidential Election in 1988 and continued in that manner until the general elections and thereafter. The security personnel who until then had dealt with the JVP problem in a fair manner were goaded into indiscriminate removals and killings, after an alleged ultimatum purported to have been issued by the JVP, that unless the service personnel deserted their posts, members of their family would be killed. It is probable that this was a ploy adopted by the then government to use the security forces to crush their political opponents.

- (c) In almost every case the persons removed had been taken away on the pretext that they had to be questioned and their statements recorded.
- (d) In most of such cases the Police Stations or the Army Camps of the area had subsequently denied having removed such persons, inspite of some of the witnesses having identified the persons who had participated in such removals.
- (e) In some cases, persons so removed had been seen in custody at Police Stations and at Army Detention Camps, either by the complainants or by other persons whose evidence was made available to the Commission. No entries of arrest or detention appears to have been made in any of the books or registers maintained by the Police or Army - in the case of persons who are said to have disappeared.
- (f) When persons went to the Police Station to complain about the removals they were usually driven away and their complaints were not recorded. In the cases where the complaints had been recorded what was stated by the complainant had been recorded with distortions.
- (g) A surprising feature is that complaints of abductions in most cases had been entered in the Minor Offences Information Book of the Police Station. Abduction with intent to kill is punishable under the Penal Code

with rigorous imprisonment upto 20 years and a fine. The Officers-in-charge of Police Stations concerned and their superiors should be held responsible for this default.

- (h) There had been cases where the Police Headquarters had issued letters denying that certain persons had ever been taken to custody, when there are witnesses who had seen them in custody at the Police Stations.
- (i) Personal rivalries account for the removals and killings in some cases.

Every effort was made by the Commission to put the complainants at ease so as to enable them to give their evidence without any fear. Evidence which might be inadmissible in Civil or Criminal proceedings, had been admitted notwithstanding the provisions of the Evidence Ordinance, (As per Section 7(d) of the Commissions of Inquiry Act.)

The Commission's Mandate is to inquire into and report on the following:-

- (a) Whether any persons have been involuntarily removed or have disappeared from their places of residence in the Central Province, North Western Province, North Central Province and the Uva Province at any time after January 1, 1988;
- (b) The evidence available to establish such alleged removals or disappearances;
- (c) The present whereabouts of the persons alleged to have been so removed, or to have so disappeared;
- (d) Whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
- (e) The legal proceedings that can be taken against the persons held to be so responsible;
- (f) The measures necessary to prevent the occurrence of such alleged activities in the future;
- (g) The relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have so disappeared;

Interim Reports in respect of areas other Kandy and Mahiyangana will be submitted as soon as they are ready. A recommendation in respect of para (e) and (f) above will be submitted with the Commission's final report.

The persons identified by the witnesses as being responsible for the involuntary removals are mentioned in the annexed schedules, in respect of each case.

The Commission has already referred some of the cases where there is credible evidence against persons responsible for the removals and killings to the IGP. In other cases, where persons responsible for involuntary removals have been named, and referred to in the schedule the Commission recommends that an experienced team of investigators be assigned by the IGP, to probe their involvement.

The evidence - (inquiries) also revealed the existance of torture chamber at St. Sylvester's College in Kandy. These premises had been used during this period as a detention camp by the Counter Subversive Unit which came under the control of the then Superintendent of Police Kandy, Luxman Seneviratne, presently SSP Kandy Division. According to the evidence, about 1,000 persons were detained in this camp and systematically tortured before being taken away and killed (Complt. No.CEN/KND/152)

This too should be probed by the same team referred to above.

As a first step, the persons referred to by the witnesses as being responsible for the removal and killings should be transferred out of their present stations to enable the investigations to be conducted without any hindrance.

As regards the relief that is to be provided, this Commission has looked into the two schemes followed by the Ministry of Rehabilitation and Reconstruction. According to one scheme, assistance is given interms of Public Administration Circular No.21/88 of 13th July, 1988, an extract of which is appended.

IX

LAWS THAT MADE LARGE-SCALE MURDER LEGAL

Indemnity Act, No. 20 of 1982

(Certified on 20 May 1982)

An Act to restrict the taking of legal proceedings against certain persons in respect of certain acts and matters done or purported to be done with a view to restoring law and order during the period 1 August 1977 to 31 August 1977, consequent upon the existence of widespread disorder and lawlessness in the country.

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Indemnity Act, No. 20 of 1982.
2. No action or other legal proceeding whatsoever, whether civil or criminal, shall be instituted in any court of law for or on account of or in respect of any act, matter or thing, whether legal or otherwise, done or purported

to be done with a view to restoring law and order during the period 1 August 1977 to 31 August 1977, if done in good faith, by a Minister, Deputy Minister or person holding office under or employed in the service of the Government of Sri Lanka in any capacity whether naval, military, air force, police or civil, or by any person acting in good faith under the authority of a direction of a Minister, Deputy Minister or a person holding office or so employed and done or purported to be done in the execution of his duty or for the enforcement of law and order or for the public safety or otherwise on the public interest and if any such action or legal proceeding has date of commencement of this Act every such action or legal proceeding shall be deemed to be discharged and made null and void.

Indemnity (Amendment) Act, No. 60 of 1988

(Certified on 17 December 1988)

An Act to amend the Indemnity Act, No. 20 of 1982

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as Indemnity (Amendment) Act, No. 60 of 1988.
2. The long title to the Indemnity Act, No. 20 of 1982 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words and figures "to 31 August 1977," of the words "to the relevant date."
3. Section 2 of the principal enactment is hereby amended by the substitution for the words and figures "to 31 August 1977" in that section, of the words "to the relevant date."
4. The following new section is hereby added immediately after section 2 of the principal enactment, and shall have effect as section 3 of that enactment:-

Interpretation

3. For the purposes of this Act "relevant date" means the day preceding the date on which the provisions this section comes into force.

The Public Security Ordinance (Chapter 40)

Regulations made by the President under section 5 of the Public Security Ordinance (Chapter 40).

R. Premadasa

President

Colombo, 20 June 1989

Regulations

Part 1 General

1. These regulations may be cited as the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1989.
2. In any emergency regulation, unless any other definition is expressly provided therein or unless it is otherwise expressly provided therein or the context otherwise requires:-

“Attorney-General” in relation to any emergency regulation, includes the Solicitor-General, Additional Solicitor-General and Deputy Solicitor-General or any Counsel for the State being a Counsel for the State authorised by the Attorney-General in that behalf for the purpose of such regulation.

“competent authority” in relation to any emergency regulation means, unless otherwise provide for in such regulation, any person appointed, by name or by office, by the President to be a competent authority for the purpose of such regulation,

“emergency regulation” means any of these regulations or any other regulation made under the Public Security Ordinance,

“essential service” means any service which is of public utility or essential for national security or preservation of public order or to the life of the community and includes any department or Government or branch thereof and which is specified in the Schedule hereto;

“explosive” has the same meaning as in the Explosives Act;

“gun” shall have the same meaning as in the Firearms Ordinance;

“Inspector-General of Police” shall include any Deputy Inspector-General of Police; “Inspector-General of Police” shall include any Deputy Inspector-General of Police;

“land” includes land covered with water and parts of houses or buildings;

“police officer” means a member of any police force established under the Police Ordinance;

“public officer” shall have the same meaning as in the Constitution;

“requisitioning” means, in relation to any property, the taking possession of the property or requiring the property to be placed at the disposal of the requisitioning authority, and its grammatical variations or cognate expressions shall be construed accordingly.

55FF (1) It shall be lawful for any police officer of a rank not below that of Assistant Superintendent of Police or any other officer or person authorised by him in that behalf, to take all such measures as may be necessary for the taking possession of and the burial or cremation of any dead body, and to determine in his discretion the persons who may be permitted to be present at any assembly for the purpose of or in connection with any such burial or cremation; and any person who is present at any such assembly without the permission of such authorised person or who obstructs such officer or authorised person in the exercise of the powers herein before conferred shall be guilty of an offence.

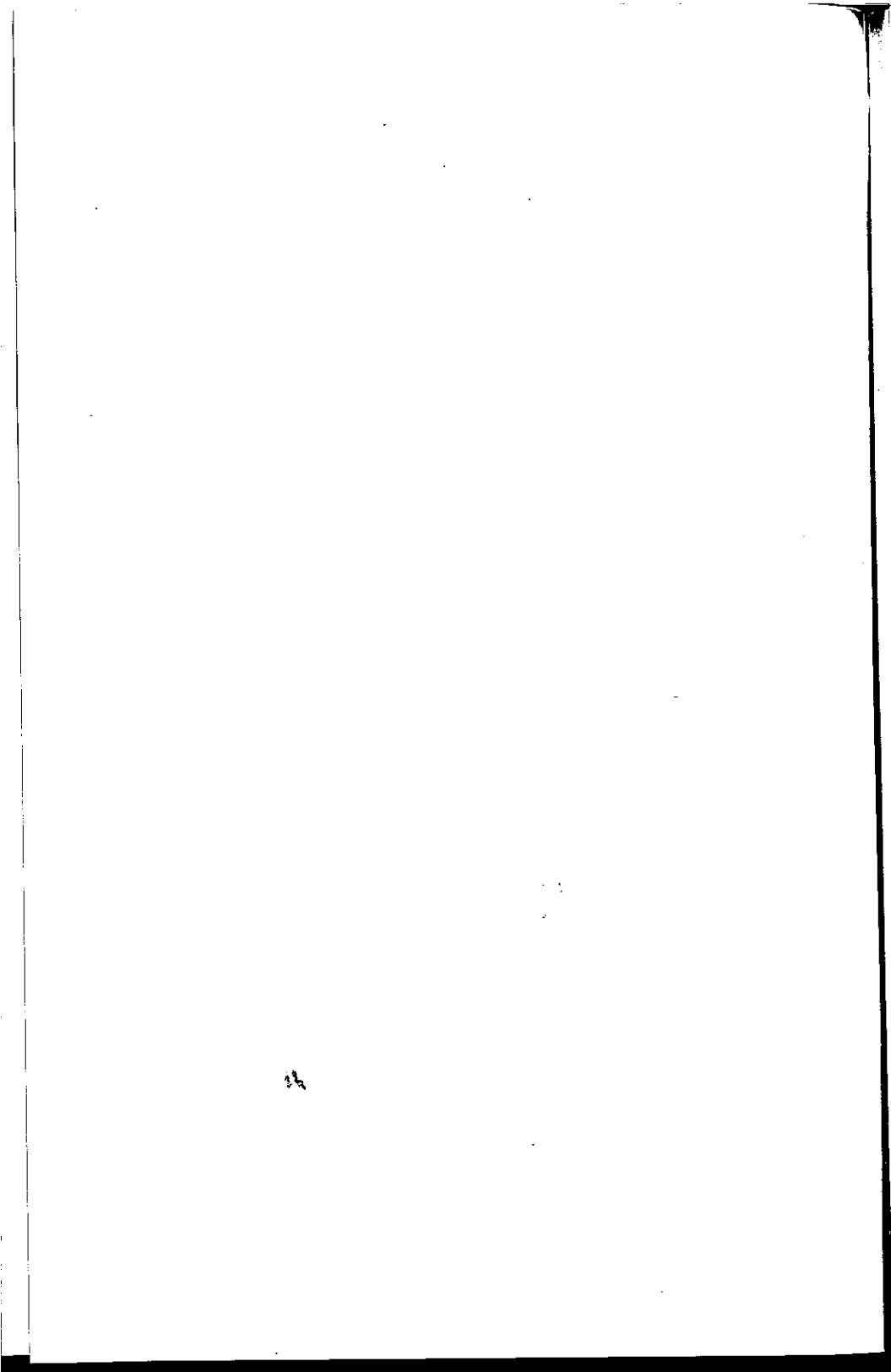
(2) It shall not be necessary for any officer or person taking measures relating to the possession and burial or cremation, of a dead body under this regulation to comply with the other provisions of these regulations and any other written law relating to the inquest of death or to burial or cremation.

55G. Notwithstanding the preceding provisions, where death is caused to any police officer or any member of the armed forces it shall be lawful for the Secretary to the Ministry of Defence:-

- (a) to instruct the Inspector-General of Police or the Commander of the Sri Lanka Army, the Commander of the Sri Lanka Navy or the Commander of the Sri Lanka Air Force, as the case may be, to take all such measures as may be necessary for the cremation or burial of the dead body subject

to national security or for the maintenance or preservation of public order; or

- (b) to direct the Inspector-General of Police to take such steps as are set out in regulation 55 B in respect of such death and accordingly the provisions of regulations 55C, 55D, 55E, 55F and 55FF shall thereupon be applicable.



Visit Cyberspace Graveyard for Disappeared Persons at:

WWW.DISAPPEARANCES.ORG

Map of Sri Lanka Indicating Mass Graves Discovered So Far



**Total Number of
disappearances
in Sri Lanka: 26,877** According to Official Records
Out of this 15% are below the age of 19

**Asian Human Rights Commission (AHRC)
Asian Legal Resource Centre (ALRC)**

19/F., Go-Up Commercial Building,
998 Canton Road, Mongkok, Kln. Hong Kong.

Tel: +(852) 2698 6339 Fax: +(852) 2698 6367 E-mail: ahrchk@ahrchk.org
Web-sites: www.hk.super.net/~ahrchk / www.disappearances.org

