DEDICATION

For all the named and unnamed family members of victims who have testified before Sri Lanka’s various Commissions of Inquiry throughout the past decades in the hope of redress and recognition of the pain that they have suffered.....

And who still remain in hope.
Acknowledgements

The Civil & Political Rights Programme of the Law & Society Trust (LST) wishes to thank the team of lawyers and human rights practitioners who made this effort possible in tumultuous times. While some have preferred to remain anonymous, we place our appreciation on record to human rights lawyer Lisa Kois for her contribution to the contents of this publication and to Attorney-at-law Dinushika Dissanayake for her dedication in proof reading and meticulously updating the document.

LST acknowledges the financial assistance provided by CORDAID and HIVOS and in particular, is grateful to Ms Frederique Drumpt and Ms Artien Utrecht for their constant encouragement in this regard.
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<tbody>
<tr>
<td>AC</td>
<td>Appeal Cases [a United Kingdom publication of law reports]</td>
</tr>
<tr>
<td>AG</td>
<td>Attorney General [the chief legal officer of the State and the Head of the Attorney General’s Department of Sri Lanka]</td>
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<tr>
<td>AHRC</td>
<td>Asian Human Rights Commission</td>
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<tr>
<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>A-L</td>
<td>Advanced Level Examination</td>
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<tr>
<td>ALR</td>
<td>Appellate Law Recorder [a Sri Lankan publication of law reports]</td>
</tr>
<tr>
<td>ASP</td>
<td>Assistant Superintendent of Police [upper-rank officers having wide range of powers]</td>
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<tr>
<td>B-C Pact</td>
<td>Bandaranaike-Chelvanayakam Pact</td>
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<tr>
<td>CA</td>
<td>Court of Appeal</td>
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<tr>
<td>CAM</td>
<td>Court of Appeal Minutes</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CC</td>
<td>Constitutional Council</td>
</tr>
<tr>
<td>CCP Act</td>
<td>Code of Criminal Procedure Act, No. 15 of 1979 (as amended) [a statute]</td>
</tr>
<tr>
<td>CCPR</td>
<td>Committee on Civil and Political Rights</td>
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<tr>
<td>CLW</td>
<td>Ceylon Law Weekly</td>
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<tr>
<td>CHRD</td>
<td>Centre for Human Rights and Development</td>
</tr>
<tr>
<td>CID</td>
<td>Criminal Investigation Division [of the Sri Lanka Police Department]</td>
</tr>
<tr>
<td>CJC Act</td>
<td>Criminal Justice Commission Act [a statute]</td>
</tr>
<tr>
<td>CO</td>
<td>Concluding Observations</td>
</tr>
<tr>
<td>COI Act</td>
<td>Commissions of Inquiry Act [a statute]</td>
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</tbody>
</table>
CGR Ceylon Government Railways
CRM Civil Rights Movement
CSU Counter Subversive Unit
CTB Ceylon Transport Board
DDC District Development Council
DIG Deputy Inspector General [of Police]
DIU Disappearances Investigation Unit CGR
DNA Deoxyribonucleic Acid
DPP Director of Public Prosecutions
DSCPB Decisions of the Supreme Court on Parliamentary Bills
DSG Deputy Solicitor General
EMPPR Emergency (Miscellaneous Provisions and Powers) Regulation No 1. of 2005 as contained in Gazette No 1405/14
EPRLF Eelam People’s Revolutionary Liberation Front
EROS Eelam Revolutionary Organization of Students
FP Federal Party
FR Fundamental Rights
FRD Fundamental Rights Decisions
GOSL Government of Sri Lanka
HC High Court [of the Provinces in Sri Lanka]
HCA Habeas Corpus Application
HCM High Court Minutes
Hon. Honourable
HQI Head Quarters Inspector
HRCSL Human Rights Commission of Sri Lanka
HRTF Human Rights Task Force
IATR International Association of Tamil Research
<table>
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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>IBA [HRI]</td>
<td>International Bar Association [Human Rights Institute]</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>IGP</td>
<td>Inspector General of Police</td>
</tr>
<tr>
<td>IIGEP</td>
<td>International Independent Group of Eminent Persons</td>
</tr>
<tr>
<td>INFORM</td>
<td>Sri Lanka Information Monitors</td>
</tr>
<tr>
<td>IPKF</td>
<td>Indian Peace Keeping Force</td>
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<tr>
<td>JOC</td>
<td>Joint Operations Command</td>
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<tr>
<td>JSAB</td>
<td>Judicial Services Advisory Board</td>
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<tr>
<td>JSC</td>
<td>Judicial Service Commission</td>
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<tr>
<td>JSDB</td>
<td>Judicial Services Disciplinary Board</td>
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<tr>
<td>JVP</td>
<td>Janatha Vimukthi Peramuna</td>
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<tr>
<td>LST</td>
<td>Law &amp; Society Trust</td>
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<tr>
<td>Lt. Col.</td>
<td>Lieutenant Colonel of Army</td>
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<tr>
<td>Lt. General</td>
<td>Lieutenant General of Army</td>
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<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
</tr>
<tr>
<td>MC</td>
<td>Magistrate Court</td>
</tr>
<tr>
<td>MIRJE</td>
<td>Movement for Inter-Racial Justice (ditto) and Equality</td>
</tr>
<tr>
<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>MPU</td>
<td>Missing Persons Unit</td>
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<td>MSF</td>
<td>Medecins Sans Frontieres</td>
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<tr>
<td>NLR</td>
<td>New Law Reports [a Sri Lankan publication of law reports]</td>
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<tr>
<td>NPC</td>
<td>National Police Commission</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>NSSP</td>
<td>Nava Sama Samaja Party</td>
</tr>
<tr>
<td>OIC</td>
<td>Officer-in-Charge</td>
</tr>
<tr>
<td>O Level</td>
<td>Ordinary Level Examination</td>
</tr>
<tr>
<td>P.C.</td>
<td>President’s Counsel</td>
</tr>
<tr>
<td>PCIIARP</td>
<td>Presidential Commissions of Inquiry into the Involuntary Removal of Persons</td>
</tr>
<tr>
<td>PLOTE</td>
<td>People’s Liberation Organization of Tamil Eelam</td>
</tr>
<tr>
<td>PSO</td>
<td>Public Security Ordinance, No. 25 of 1947 (as amended) [a statute]</td>
</tr>
<tr>
<td>PTA</td>
<td>Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (as amended) [a statute]</td>
</tr>
<tr>
<td>QC</td>
<td>Queen’s Counsel</td>
</tr>
<tr>
<td>RCT</td>
<td>Rehabilitation and Research Centre for Torture Victims</td>
</tr>
<tr>
<td>RI</td>
<td>Rigorous Imprisonment</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court [of Sri Lanka]</td>
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<tr>
<td>SCM</td>
<td>Supreme Court Minutes</td>
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<tr>
<td>SC (FR) No.</td>
<td>Supreme Court Fundamental Rights Application Number</td>
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<tr>
<td>SC Ref No.</td>
<td>Supreme Court Reference Number</td>
</tr>
<tr>
<td>SC (Spl.) L.A. No.</td>
<td>Supreme Court Special Leave Application Number</td>
</tr>
<tr>
<td>SD No.</td>
<td>Supreme Court Determination Number</td>
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<tr>
<td>SLFP</td>
<td>Sri Lanka Freedom Party</td>
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<tr>
<td>SLMC</td>
<td>Sri Lanka Muslim Congress</td>
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<tr>
<td>SLRC</td>
<td>Sri Lanka Rupavahini Corporation</td>
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<tr>
<td>SPCI Law</td>
<td>Special Presidential Commissions of Inquiry Law No. 7 of 1978 (as amended) [a statute]</td>
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<tr>
<td>Sri LR</td>
<td>Sri Lanka Law Reports [a Sri Lankan publication]</td>
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of law reports]

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>SSP</td>
<td>Senior Superintendent of Police [upper rank officers having wide range of powers]</td>
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<td>TAB</td>
<td>Trial-at-Bar</td>
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<tr>
<td>TELO</td>
<td>Tamil Eelam Liberation Organization</td>
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<tr>
<td>TUF</td>
<td>Tamil United Front</td>
</tr>
<tr>
<td>TULF</td>
<td>Tamil United Liberation Front</td>
</tr>
<tr>
<td>TULF</td>
<td>Tamil United Liberation Front</td>
</tr>
<tr>
<td>TYL</td>
<td>Tamil Youth League</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Committee</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Childern’s Fund</td>
</tr>
<tr>
<td>UNP</td>
<td>United National Party</td>
</tr>
<tr>
<td>UNWG</td>
<td>United Nations Working Group</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
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<tr>
<td>UTHR</td>
<td>University Teachers for Human Rights</td>
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Preface

Sri Lanka has constituted Commissions of Inquiry during past decades as instruments to investigate and prevent human rights abuses. However, whether these Commissions of Inquiry established by successive political regimes in Sri Lanka ever visualized justice, truth and reconciliation for victims as core objectives of their work, is a pertinent question. The failure to investigate un-inquired cases, the lack of public faith in the commission proceedings, the reluctance of victims to look to the law and Commission processes for relief all point to the fact that Commissions of Inquiry in Sri Lanka have been more political exercises than genuine attempts to reconcile a traumatized nation.

To many observers and advocates of human rights in Sri Lanka, the lack of political will in terms of implementing the recommendations of Commissions of Inquiry has been a foregone conclusion. Presidential commissions of inquiry have become part of the impunity apparatus; an expedient mechanism to divert unwanted attention by providing a veneer of accountability. Despite the obvious failure of prior commissions to lead to prosecutions and to necessary legal and institutional reform, commissions have been mostly supported by civil society, (and prominent members of civil society who agree to sit on such commissions), as if commissions of inquiry represent a meaningful approach to accountability.

As a reference tool, this publication does not provide analyses of the prior commissions or their reports. Nonetheless, certain lessons and trends are revealed. An examination of the reports of commissions of inquiry from 1963 to 2002 reveals that Sri Lanka’s numerous Presidential Commissions of Inquiry into rights violations have been created to fulfill multiple stated and unstated objectives. The purpose of most commissions – the creation of a fact-finding or truth seeking body that will promote justice for a past injustice or past injustices – has rarely, if ever, been fulfilled. The Commissions, in some cases, have facilitated the granting of compensation. They have rarely led to prosecutions and have failed to counter impunity. They have failed to deter further grave violations of human rights.
Nonetheless, commissions have served some important, albeit limited, fact-finding functions. In some cases, the reports do provide official, publicly available, records of incidents and events that have otherwise tended to be officially obscured, erased and/or manipulated. The reports of the 1994 Zonal Disappearances Commissions – with lists of names of the disappeared that run into the thousands – provide one such example, albeit a complicated one. For example, some reports also provide names and addresses of those who testified before the Commissions, thus creating or exacerbating security concerns for those people. No longer in print, the reports received very little publicity or circulation by the Government and were not provided to the families of the disappeared who testified before the commissions.

What becomes obvious when examining the reports of the commissions as well as the reports of other mechanisms of inquiry is that the work of these bodies is overwhelmingly ad hoc in nature. Appointed with little forethought about substance and process, with scant reference to the work of prior commissions, and overwhelmingly with insufficient funding, facilities and independence, these mechanisms are left to determine the ways and means of fulfilling their mandates, most of which are overbroad and egregiously time-limited. Further, the mechanisms have been driven by the personality or personalities of their members. Take, for example, the three 1994 Zonal Commissions on Disappearances, all of which had the same mandate, save the geographic focus, but all of which had vastly different procedures.

The way forward is none too clear at this juncture. The success enjoyed by some community initiated truth commissions and commissions of inquiry in other countries provides an alternative avenue for some type of reconciliatory mechanism to be set up which will in fact enable reparation and reconciliation in some form for those seeking justice in Sri Lanka. However, these processes too are fraught with difficulty in a context where the basic securing of Rule of Law norms in constitutional and legal processes is singularly absent.

It is hoped that this publication will aid serious and deliberative thinking on these matters.

Civil & Political Rights Programme of the Law & Society Trust
Overview

This publication provides two kinds of information on prior commissions of inquiry. Part 1 comprises summaries of the reports of fourteen commissions of inquiry and two special mechanisms established in Sri Lanka during 1963-2002. In summarizing the reports of the commissions, we have endeavoured to use the words of prior commissions, themselves, and excerpts from commission reports. Parts 2 and 3 provide compilations of the publicly accessible recommendations of the prior commissions. Except for small grammatical corrections and thematic reorganization of the recommendations, we have tried to reproduce, verbatim, the recommendations of the commissions.

We have attempted to present the information in this publication in such a way that it provides a map of the findings and recommendations of prior commissions, and reveals some obvious truths about commission results.

This work seeks to demystify the history of prior commissions of inquiry relating to various issues of human rights in Sri Lanka by providing factual information about prior commissions, their findings and their recommendations during 1963-2002. All of the information in this publication is available in the reports of the commissions\(^1\). As such, this publication is not intended to serve as a substitute to the original texts of the reports. Nor is it intended to provide an analytical critique of the findings of these bodies.\(^2\) However, it does seek to fill a gap in available resources by serving as a reference guide to the reports and recommendations of the commissions and providing a consolidated overview of those findings and recommendations.

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\(^1\) The full reports of all the commissions considered in this publication are available at The Law & Society Trust, No 3 Kynsey Terrace, Colombo 8.

It comprises summaries of the final reports of fourteen prior commissions of inquiry, appointed under the Commission of Inquiry Act No. 17 of 1948, as well as two special mechanisms of inquiry into disappearances.

The commissions under consideration examine an assassination of a former prime minister (Commission to Inquire into the Assassination of S.W.R.D. Bandaranaike); ethnic violence (Commission of Inquiry into Incidents which Took Place between 13th August and 15th September, 1977 and Presidential Truth Commission on Ethnic Violence [1981 – 1984]); an incident of reprisal killings (Presidential Commission of Inquiry into the Kokkadicholai Incident), the establishment of and violations at an unofficial place of detention (the Commission of Inquiry into Unlawful Detention and Torture at the Batalanda Housing Scheme); a massacre at a government rehabilitation centre (Commission of Inquiry into the Massacre at Bindunuwewa Rehabilitation Centre), and disappearances (Presidential Commissions of Inquiry into Involuntary Removals of Persons and the three zonal Commissions and the All-Island Commission of Inquiry into the Involuntary Removal or Disappearances of Persons). The two special mechanisms – the Board of Investigation established under the Ministry of Defence and the Committee established under the Human Rights Commission of Sri Lanka – also inquired into disappearances.

Sri Lanka has seen a more recent Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights which

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3 On 2 November 2006, President Mahinda Rajapakse created “The Commission of Inquiry Appointed to Investigate and Inquire into Serious Violations of Human Rights which are alleged to have arisen in Sri Lanka since 1st August 2005” (the Commission). The Commission was specifically mandated to investigate and inquire into sixteen alleged cases of serious human rights violations, and was created in response to growing national and international pressure on the Rajapakse government to investigate the rise, in both frequency and severity, of human rights violations during the relevant years. Although the call had been for an international inquiry, the President settled on a local commission of inquiry and an international observer body, the International Independent Group of Eminent Persons (IIGEP), who was invited to serve by the President of Sri Lanka. The functioning of the Commission and the IIGEP were fraught with controversy. See Final Statement of
was established by President Mahinda Rajapakse in 2006. The Report of this Commission has not been published to date.\(^3\)

By providing a compilation of information about prior commissions, this publication seeks to provide important historical background and context to better understand commissions of inquiry into human rights violations in Sri Lanka.

Insofar as Sri Lanka is concerned, the public and victims of serious human rights abuses have been given little reason to repose their faith in national commissions, appointed more to placate the international community than to seek answers and promote reconciliation. The possibility of putting community based initiatives for reconciliation in place provides hope for those who aspire to heal the wounds of war ravaged victims. The opportunities for post war Sri Lanka are tremendous, if the political will and spirit of truth and reconciliation commissions were to be recognised.

We hope that this publication will be useful for this most essential healing process in bringing about a better understanding of the failures of the past.

PART 1
REPORTS OF THE COMMISSIONS
EXECUTIVE SUMMARIES

This Part provides an introduction to the work of commissions of inquiry in Sri Lanka. Included are summaries of fourteen commissions of inquiry on various issues of human rights, and two special mechanisms on disappearances. The summaries of the commissions have been organized chronologically, beginning with the 1963 Commission to Inquire into the Death of Prime Minister S.W.R.D. Bandaranaike and ending with the 2001 Presidential Truth Commission on Ethnic Violence (1981 - 1984). Following the summaries of the commissions, are summaries of two special mechanisms on disappearances, the 1996 Ministry of Defense Board of Investigation into Disappearances and the National Human Rights Commission’s 2002 Committee on Disappearances. As revealed by the dominance, in this list, of disappearance commissions and mechanisms to probe such incidents, disappearances have been a persistent topic of inquiry by commissions on inquiry in Sri Lanka. As such, these mechanisms are of particular relevance in determining the effect and/or utility of such inquiries, particularly at a time when disappearances and political killings have become, once again, all too commonplace in Sri Lanka.

1. REPORT OF THE COMMISSION TO INQUIRE INTO THE DEATH OF PRIME MINISTER S.W.R.D. BANDARANAIKE

WARRANT NO. : G.-G. O. No. N. 101/63
DATE APPT’D : 28th June 1963
BY : William Gopallawa, Governor-General of Sri Lanka
COMPRISING: Thusew Samuel Fernando, Judge of the Supreme Court of Ceylon
Adel Younis, Judge of the Court of Cassation, United Arab Republic
G.C. Mills-Odoi, Judge of the Court of Appeal, Ghana

Assisted By:

Mr. J.R.M. Perera, Crown Counsel (Secretary)
Mr. A.C. Alles, Solicitor General
Mr. R.S. Wanasundera, Department of the Attorney General
Mr. R.I. Obeysekera, Department of the Attorney General

MANDATE: A very narrow and specific mandate, which included ten questions to determine whether there was a wider political plot to assassinate S.W.R.D. Bandaranaike.

REPORT TITLE: Report to His Excellency the Governor-General by the Commission Appointed in Terms of the Commissions of Inquiry Act to Inquire into and Report on Certain Matters Connected with the Assassination of the Late Prime Minister Solomon West Ridgeway Dias Bandaranaike

DATED: March, 1965

CONTENTS: 61 page Report. Part I presents an overview of the Commission’s mandate, procedures, historical context and findings. Part II examines the responsibility, in turn, of six individuals.
BRIEF STATEMENT OF FACTS:

During the final years of the Prime Minister’s life, there had been a growing factional struggle within his party, the Sri Lanka Freedom Party (SLFP), and “a number of influential persons within the government were suspected of murder and complicity in the murder.”4 It is against this backdrop that the Commission was appointed to inquire into whether there was a wider political plot to assassinate the Prime Minister.

This Commission is noteworthy as one of the few commissions appointed to inquire into a political assassination under the Commission of Inquiry Act of 1948. Two of the three commissioners were from outside of Sri Lanka.

The Commission was appointed four years after the assassination of the late Prime Minister, and long after the prosecutions of six persons on charges of murder and conspiracy had been successfully concluded. Thus the Commission’s report provides a unique perspective on balancing parallel, and possibly competing, processes – i.e., judicial proceedings and commissions of inquiry.

SUMMARY OF FINDINGS:

In answering the question as to whether any organized body of persons was directly or indirectly involved in the plot, which in the view of the Commission was “the most important and far-reaching”5 question of the Terms of Reference from which all other questions derived, the Commission answered in the negative.

Interestingly, the Commission was constituted after prosecutions had been concluded by the State and sentences passed. Commissioners

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were cognizant of the dilemma presented by this situation, and thus
the inquiry did not encompass the persons already tried by Court,
whether convicted or acquitted. “It could not have been otherwise. It
was unreasonable to have expected the Commission of Inquiry to re-
examine the questions which had been finally decided by an order of
the highest judicial authority of the Country.”6 It therefore proceeded
on the case “as finally established in the Court proceedings as a
fixed basis.”7 With regard to the individuals acquitted by Court, the
Commission was of the view that “as they had both faced a long inquiry
followed by a long trial in a criminal court, we [the Commission] felt
that they should be permitted to enjoy the results of the verdict they
were able to obtain in the Court proceedings and that they should not
be vexed a second time at our inquiry.”8

The Commission envisaged serious consequences stemming from any
adverse findings. The Report states that, “the functions that devolve on us
by our present Commission are substantially not dissimilar to those that
devolve on a Court or other judicial tribunal. For that reason and also on
account of the circumstance that the consequence of adverse findings by
us can be serious or damaging to individuals, we decided to adhere, so far
as practicable, to procedure obtaining in a Court of Justice.”9

SUMMARY OF RECOMMENDATIONS:

The Report does not include any specific recommendations apart from
the recommendation that the law on contempt be amended in relation
to its application to Commissions of Inquiry.10

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10. “…we think it necessary, in order to enable [commissioners] to perform their functions
efficiently and with independence and so better secure the public interest, to extend the
definition of contempt against or in disrespect of the authority of the Commission to certain
other acts or omissions….” Bandaranaike Report, p. 5.

WARRANT NO. : P.O. No. N. 143/77
DATE APPT’D : 9th November 1977
BY : William Gopallawa, President of Sri Lanka

COMPRISING : Miliani Claude Sansoni, former Chief Justice of Sri Lanka

MANDATE : (1) To ascertain the circumstances and causes that led to, and the nature and particulars of, the incidents which took place in the Island between the 13th day of August, 1977 and the 15th day of September, 1977, and resulting in –

(a) death or injury to persons;
(b) the destruction or damage of property belonging to, or in the possession of, or any State Institution or the State;
(c) the robbery or theft of any such property:

(2) Whether any person or body of persons or any organization, or any person or persons connected with such organization-

(a) committed or conspired to commit;
(b) aided or abetted in or conspired to aid or abet in the commission of;
(c) in any manner assisted, encouraged, or were concerned in or conspired to assist or encourage the commission of, any of the acts referred to in paragraph (1); and
(3) To recommend such measures as may be necessary –

(a) to rehabilitate or assist in any other manner the persons affected by such acts; and

(b) to ensure the safety of the public and to prevent the recurrence of such incidents.


DATED : July 1980

CONTENTS : 311 page Report, of which 278 pages comprise findings, including historical backdrop for the incidents, and 33 pages comprise appendices, including names of witnesses, appearances marked by counsel, and organizations that provided information.

BRIEF STATEMENT OF FACTS:

The Commission was appointed to inquire into the communal violence of August – September, 1977 that erupted subsequent to the July 1977 elections which brought the United National Party (UNP), led by then-Prime Minister J.R. Jayawardene, into power in an unprecedented landslide victory in which they received a five-sixths majority. In these same elections the Tamil United Liberation Front (TULF) won the majority of seats in the Northern Province, thereby becoming the main opposition in Parliament.

The August 1977 violence marked the first major outbreak of communal violence since that of 1958\(^\text{11}\) and came on the heels of post-election

violence by the UNP and their allies against supporters of the defeated opposition. The communal violence of 1977 began in Jaffna and spread throughout the island. Through both acts and omissions, State actors were widely implicated in the violence. There were reports of police attacks on Tamils, as well as police inaction as Sinhalese mobs targeted Tamils for violence. The majority of the victims were Hill-country Tamils. The then Prime Minister, J.R. Jayawardene, failed to immediately declare a State of emergency or a curfew to stem the violence.

At the insistence of the Leader of the Opposition, A. Amirthalingam, a Commission of Inquiry was constituted by Prime Minister J.R. Jayawardene (under the hand of President William Gopallawa). Mr. M.C. Sansoni, a former Chief Justice of Sri Lanka, was appointed as the Commissioner to the one-man commission popularly known as the Sansoni Commission.

SUMMARY OF FINDINGS:

The Sansoni Report provides “strong direct and indirect evidence of the State’s blatant complicity in the communal violence.”12 Although strong on evidence, the Commission’s conclusions are weak. Despite the fact that the Commission was charged with inquiring into both causes and responsibility, the report fails to substantially address responsibility. In fact, the chapter of the report addressing responsibility13 is only one page long.

13. Section (2) of the mandate, to which the one page Chapter IV of the report is dedicated, states:

  Whether any person or body of persons or any organization, or any person or persons connected with such organization-

  (a) committed or conspired to commit;
  (b) aided or abetted in or conspired to aid or abet in the commission of;
  (c) in any manner assisted, encouraged, or were concerned in or conspired to assist or encourage the commission of, any of the acts referred to in paragraph (1)
In examining events, Sansoni was careful, even where the facts demanded it, to avoid any implication that would point to serious culpability on the part of the State,”¹⁴ despite the fact that he “could easily have answered the question in his mandate about who was responsible for the communal violence of 1977.¹⁵

Although Sansoni picked through the evidence and chose, in some cases, to ignore or minimize the significance of some evidence, the Report nonetheless presents a clear picture – albeit at times muddled – that the violence “was organized by the Police at the behest of their new political bosses – the UNP.”¹⁶

The facts, however, are obscured by the politics. The findings reflect the premise that the Tamil political leadership was to blame for the violence committed against the Tamil people. Sansoni devotes the first two chapters of the report, a total of eighty two pages, to establishing the culpability of the TULF leadership. “[T]he communal violence was retaliation for a section of the Tamil leadership asking for a separate state and fostering a militant movement.”¹⁷ This sentiment is repeated throughout the report and recommendations.

I want to make it quite clear, that what is objectionable and worthy of condemnation in the speeches from which I have quoted, is the expression of views which encourage and instigate the use of violence and weapons in the bid to obtain a separate state. So far as the population of the whole Island is concerned, the claim to a separate state is unpopular and will be resisted by the majority community.¹⁸

¹⁴. Hoole, 21.
¹⁵. Hoole, 34.
¹⁶. Hoole, 34.
¹⁷. Hoole, 21.
¹⁸. Sansoni Report, p. 54
The Commission’s perspective mirrored that of the State, as reflected in the Prime Minister’s Parliamentary speech of 18 August 1977, which was two days after the violence began in Jaffna and as it was spreading throughout the island.

[W]e are still one nation [and] this Government is elected to govern the whole Island… The vast majority of the people in this country … become restive when they hear such remarks as that a separate state is to be formed …

Whatever it is, when statements of that type are said and the newspapers carry them throughout the island, and when you say you are not violent but that violence may be used in time to come, what do you think the other people in Sri Lanka would do? How will they react? ‘If you want to fight let there be a fight; if it is peace, let there be peace!’

Although Jayewardene goes on to claim that these are not his words, and that “the people of Sri Lanka will say that…,” he closes with the following warning.

But I say, be careful of the words that you use… Such words can inflame people of other nationalities. And what has happened can happen in a greater degree if such words are used by responsible leaders.…

As pointed out by Rajan Hoole, this premise is flawed in two respects, namely that the majority of the victims of the 1977 violence were hill-country Tamils, whose leadership under Mr. S. Thondaman rejected separatism, and that the prior episode of violence against Tamils in 1958 occurred without any violence or call for separatism by the Tamil minority or their leadership.

The Sansoni Report examines the evidence carefully, if not always consistently, and documents emerging patterns and practices of the State, particularly in regard to their handling of the Tamil minority.

*Although Sansoni did not say so, what he has recorded strongly suggests connivance between the security services and the mob similar to the Welikade prison massacre of July 1983.*

Thus the Sansoni Report is an important historical document that foreshadows the communal violence to come and provides insight into that violence and the State’s responsibility for that violence.

**SUMMARY OF RECOMMENDATIONS:**

The emphasis of the recommendations is on promoting unity and providing compensation rather than on accountability and punishment.

*It must be noted that promotions of some of the responsible parties were given at the same time that the Sansoni Commission was sitting. “Even as the Sansoni Commission was sitting, Jayewardene made Ana Seneviratne the Police Chief (IGP). Also under Jayewardene, A.S. Seneviratne became DIG (Metropolitan) and SSP Ronnie Gunasinghe who earned notoriety for political killings was his immediate subordinate.”*

*Many of the Report’s recommendations have been taken from non-governmental sources such as the Tamil Rehabilitation Organisation and the All Ceylon Buddhist Congress, with a suggestion that such recommendations be considered by the Government.*

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21. Hoole, 33..
22. Hoole, 37. A few police officers were mentioned by Sansoni as bearing responsibility but no action, either disciplinary or prosecutorial, was taken against them.
23. Hoole, 35.
3. PRESIDENTIAL COMMISSION OF INQUIRY INTO THE KOKKADICHOLAI INCIDENT

WARRANT NO. : P.O. No. PPA/6/N/174/91
DATE APPT’D : 18th June 1991
BY : Ranasinghe Premadasa, President of Sri Lanka
COMPRISING : Kappina Degiri Oswald Stanley Mendis Seneviratne
             Sivanathan Selliah
             Dr. Abdul Majeed Mohamed Sahabdeen
Assisted by:
             Mr. L.M.K. Arulanandam, State Counsel, Attorney-General Department
MANDATE : To inquire into and obtain information and in respect of the circumstances relating to:

(1) the explosion of device buried under the surface of the road between 12 noon and 1.30 p.m. of 12th June, 1991 on the Kokkadicholai – Manmuni Ferry Road, in Batticaloa District in consequence of which two soldiers were killed and a third seriously injured,

(2) the deaths of 67 civilian inhabitants of the villages of Mahiladitivu, Mudhaaikuda, and Munaikadu, in the Batticaloa District, and the destruction of property in the said villages,
And Report On –

(a) whether there is any connection between the two incidents,

(b) whether any incidents in paragraph (2) above resulted from any action taken by any members of the armed forces, and if so whether it was a result of:

(i) military action taken against those who occasioned, or were suspected of having assisted the causing of the explosion referred to in paragraph (1) above, or were suspected of harbouring those so responsible; or

(ii) military action in excess of the needs of the situation of taking action against those who occasioned, or were suspected of having assisted the causing of the explosion referred to in paragraph (1) above, or were suspected harbouring those so responsible;

(iii) deliberate retaliatory action taken against those who were suspected of having assisted in the causing of the explosion referred to in paragraph (1) above, or were suspected of harbouring those so responsible,

(iv) deliberate retaliatory action taken against persons not in anyway connected with causing of the explosion referred to in paragraph (1) above, or suspected of harbouring those so responsible,
(c) whether any action if any, against any members of Armed Forces, should be under Military Law or normal Civil Law,

(d) whether the incidents in paragraph (2) above resulted from any action taken by persons other than any members of the Armed Forces, and if so, by whom such action had been taken,

(e) what compensation would suffice to make reparation for any financial loss suffered by any civilian inhabitants in the villages of Mahiladitivu, Mudhaikuda, and Munaikadu, in the Batticaloa District, as a consequence of the incidents referred to in paragraph (2) above,

(f) what steps should be taken to prevent the recurrence of any such similar incident.

REPORT TITLE : Final Report of the Presidential Commission of Inquiry into the Kokkadicholai Incident

DATED : 9th March 1992

CONTENTS : 40 page Final Report, of which 7 pages are findings and 33 pages are schedules and annexures, to be read with the interim report, which addresses certain aspects of the mandate.

BRIEF STATEMENT OF FACTS:

On 12th June 1991 a landmine explosion killed two government soldiers and wounded another in the area of Kokkadicholai in Batticaloa District.

Later that day, attacks of three villages by government soldiers left at least sixty seven Tamil civilians dead, and another fifty six missing and presumed dead. In addition to the killings, women were raped, civilians were beaten and property was destroyed. Seventeen youth were taken to the crater left by the landmine explosion and reportedly shot and burned in the crater.25

Six days after the incident, a Commission of Inquiry was appointed to inquire into the two incidents.

SUMMARY OF FINDINGS:

The Commission’s findings in the Kokkadicholai incident were published in an interim report and a final report. According to the final report, the interim report addressed paragraphs (a), (b) and (d) of the mandate – namely whether the two incidents were linked and whether government forces were responsible. The final report dealt with paragraphs (c), (e) and (f) of the warrant – prosecution, compensation and prevention respectively.26 Most of the seven-page report and many of the schedules and annexures are devoted to the issue of compensation.

A criticism of the Commission has been that “the terms of reference limited the scope of the inquiry, and the commissioners failed to use the full extent of their powers, thus failing to obtain all the information necessary to the inquiry.”27


SUMMARY OF RECOMMENDATIONS:

Although the Commission found that the conduct of the soldiers “comes under Civil Law—Penal Law offences under the Penal Code,” it goes on to recommend that “the Army should make its own investigations and that action be taken under the Military Law against the Army men who committed these crimes.”

Recommendations for exact amounts of compensation to be given to particular classes of victims and dependents are set out in the final report.

As to steps that could be taken to prevent such happenings from taking place in the future, the Commission limits itself to a vague recommendation that “the Members of the Armed forces be given intensive instructions and the Army men be trained not to indulge in, or execute extra-military or non-military acts of this kind.”

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28. Kokkadicholai Report, p. 6. Reportedly, “[t]he case was turned over to the military for investigation, and in early August 1992 the government reported that soldiers involved in the Kokkadicholai massacre faced possible court-martial. On October 28, the commander, Lieutenant H.I.S. Kudaligama, was found guilty of ‘allowing his soldiers to use their weapons’ in the massacre and allowing them to dispose of the bodies. The nineteen soldiers implicated were acquitted, reportedly for lack of evidence. Informed sources told Asia Watch that the military command was reluctant to pursue the prosecution of soldiers in this case because Sri Lankan troops were already so demoralized by the deaths in August of General Denzil Kobbekaduwa, head of military operations in the north, and eight other senior officers whose vehicle detonated an LTTE land mine in northern Sri Lanka.” Human Rights Watch, http://www.hrw.org/reports/1993/WR93/Asw-10.htm. Nonetheless, the Officer-in-Charge was reportedly convicted on the lesser charges of failing to control his troops and disposing of bodies illegally. Nissan, Elizabeth “Impunity”, State of Human Rights 1994, Law & Society Trust, 1995, p.106 at 113.

29. Compensation is set forth according to the following categories: (1) compensation payable to the dependants of those killed and burnt in the crater; (2) compensation payable to the survivors of those killed in the house and mill premises of Kumaranayagam; (3) compensation payable to civilians whose houses were completely burnt by the soldiers; (4) compensation payable to the civilians whose houses were partly damaged or burnt and whose possessions were stolen; (5) compensation payable to those seriously injured by the soldiers; and (6) compensation payable to the owner of the tractor borrowed by the soldiers, which was blown up as a result of the explosion. Kokkadicholai Report, p. 1.

30. Kokkadicholai Report, p. 6
4. SRI LANKA’S COMMISSIONS OF INQUIRY INTO INVOLUNTARY REMOVALS AND DISAPPEARANCES: PRECEDENTS


It has been reported that the first commission of inquiry into “disappearances,” though not named as such, was created under President Premadasa in January 1991. The Commission of Inquiry into Involuntary Removals of Persons was followed by two others, also appointed by President Premadasa, in 1992 and 1993. Despite the fact that the first Commission was created just after the Bheeshanaya (or Reign of Terror), during which tens of thousands of people disappeared in Sri Lanka, it and its two successor commissions were not mandated to inquire into past acts. Instead, their mandates were to inquire into acts – so called involuntary removals – that had not

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31. The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 644/27 of January 11, 1991. According to the Schedule A, the Commission was to inquire into allegations “that persons are being involuntarily removed from their places of residence by persons unknown” and report on the following:

(i) any complaints of such alleged removal, and/or the subsequent lack of information of the whereabouts of the person or persons so removed;
(ii) the evidence available to establish the truth of such allegations;
(iii) the present whereabouts of the person or persons so removed;
(iv) the identity of the person or persons or groups responsible;
(v) the evidence available to establish the truth of such allegations;
(vi) the steps law to be taken against such persons responsible;
(vii) whether such illegal acts took place by reason of any lack of legal provision in the present laws relating to law enforcement;
(viii) the remedial measures necessary to prevent the future occurrence of such illegal activity.


32. Rather than extending the term of the mandate, which was time limited and confined to the twelve months following the date of the warrant, each year the Commission was given a new warrant to consider complaints of disappearances for another twelve months, for which they had seventeen months to do so.
yet occurred, thus suggesting that the creation of the Commissions was pretense. The effect was to render the Commissions ineffectual from the moment of their inception. In fact subsequently, in 1993, their warrants were revoked, thereby obfuscating their very existence. Reportedly, however, the Commission(s) “had submitted reports on at least one hundred and forty two cases of disappearance to successive presidents between January 1991 and the end of 1994. In some cases at least, the reports are believed to contain evidence implicating individual officers in perpetrating disappearances.”

4.2 PRESIDENTIAL COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVALS: PRESIDENT WIJETUNGA (1993)

After President Premadasa was assassinated on May 1, 1993, the then Prime Minister, D.B. Wijetunga, assumed power as President of Sri Lanka. Subsequently, on August 23, 1993, President Wijetunga revoked the warrants of the three prior Commissions of Inquiry and appointed another Commission into Involuntary Removals of Persons. The mandate of this Commission was in respect of past involuntary removals – those occurring during the period of two of

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34. The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 784/1 of September 13, 1993. The Commission appointed by Wijetunga was mandated to inquire into the following:

Schedule “A”

(i) whether such illegal acts took place by reason of any lack of legal provision in the present laws relating to law enforcement;

(ii) the remedial measures necessary to prevent the future occurrence of such illegal activity.

Schedule “B”

(i) any complaints of such alleged removals, and/or the subsequent lack of information of the whereabouts of the person or persons so removed;

(ii) the credibility of such complaint;

(iii) your recommendation as to whether or not further investigations into such complaints are warranted for the purpose of the institution of legal proceedings.
Premadasa’s three Commissions – and was comprised of all of the prior commissioners except the Chairman.

Although the mandate was to inquire into past involuntary removals, the mandate was limited to the period 1991 – 1993\textsuperscript{35} and thus failed to cover the period during which large scale disappearances had occurred (1987 – 1990). This raised serious and continuing questions of intent and suggested that the UNP regime, under which the violations had occurred, lacked the political will to inquire into rights violations committed during its reign.

Although both Premadasa’s Commissions and Wijetunga’s Commission looked at the same time period, albeit from the different perspectives of ongoing violations versus past violations, substantive elements of the mandates were different. Reportedly, Premadasa’s Commissions were “criticized for employing slow procedures.”\textsuperscript{36} The mandate of Wijetunga’s Commission was less rigorous, calling for the Commission to inquire into “the credibility” of complaints\textsuperscript{37} as opposed to “the evidence available to establish the truth of such allegations”\textsuperscript{38}; and calling for the Commission’s “recommendation as to whether or not further investigations into such complaints are warranted for the purpose of the institution of legal proceedings”\textsuperscript{39} instead of “the identity of the person or persons or groups responsible”\textsuperscript{40} and “the steps at law to be taken against such persons responsible.”\textsuperscript{41}

\textsuperscript{35} The Commission was called upon “to inquire into and obtain information and report in respect of the period commencing 11th January, 1991 until twenty-four months following upon the date hereof…” Exactly two years prior, on January 11, 1991 President Premadasa signed the Warrant creating the first Commission on Involuntary Removals.


\textsuperscript{37} Schedule ’B’, ii, Extraordinary Gazette No. 784/1 \textit{ibid}.


\textsuperscript{39} Schedule ‘B’, iii, Extraordinary Gazette No. 784/1 \textit{ibid}.

\textsuperscript{40} Schedule ‘A’, iv, Extraordinary Gazette No. 751/1.

\textsuperscript{41} Schedule ‘A’, vi, Extraordinary Gazette No. 751/1.
The differences in the mandate may stem from the difference between a body established to monitor ongoing violations and a body established to inquire into past violations. The changes may also have been intended to speed the work of the commission. According to Amnesty International, there was a “marked increase in the number of reports on individual cases submitted to the President [after the change in mandate]. For instance, whereas in the first two years of its existence [under Premadasa’s warrant], the PCIIRP had only concluded investigations into eleven cases, in its third year [under Wijetunga’s warrant] it concluded investigation into another twenty nine cases; in its fourth year it concluded investigations into approximately one hundred and forty cases.”

4.3 THE QUESTION OF “INVolUNTARY REMOVALS”

Premadasa’s Commissions coined the term “involuntary removals” and established a precedent for future commissions to follow. There is no definition of what constitutes an “involuntary removal” in the warrants that created the commissions and the term has no legal meaning. In the mandates of both Premadasa’s Commissions and Wijetunga’s Commission the term “involuntary removal” seems to relate to a particular phenomenon, which was “persons who [were] involuntarily removed from their places of residence by persons unknown.”


43. In addition to Premadasa’s Commissions and Wijetunga’s Commission, the four disappearances commissions have maintained this terminology: Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern & Eastern Provinces (1994); Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces (1994); Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces (1995); Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons (All Island) (1998).

Nonetheless, it is not clear why the drafters of the mandates chose to use a term with no precise legal definition.

Amnesty International, however, “understands the term “removals” to refer to abduction by non-state actors.”45 This understanding is not shared by the various commissions on involuntary removals and disappearances. Overwhelmingly, involuntary removal is used as a euphemism for or as a synonym of “abduction.” Employing terminology that had relevance and meaning under the Penal Code may have enabled subsequent prosecutions, as the evidence collected by the commissions would have related more directly to the elements of a crime. Perhaps, however, the use of such terms was intended to distinguish the work of commissions of inquiry from judicial proceedings and avoid any confusion that there were penal consequences linked to such commissions’ work. The fact is that commissions of inquiry into disappearances and other rights violations have been employed overwhelmingly not as a means to a prosecutorial end, but as a substitute for meaningful legal action.

4.4 REPORTS AND RECOMMENDATIONS

There are no publicly accessible reports of the Premadasa or Wijetunga Commissions.

5. SRI LANKA’S COMMISSIONS OF INQUIRY INTO IN VOLUNTARY REMOVALS AND DISAPPEARANCES: THE THREE ZONAL COMMISSIONS

Chandrika Bandaranaike Kumaratunga and her People's Alliance were voted into power in 1994 on a platform of human rights, peace and democracy, which included a promise to address past violations of human rights. Soon after assuming power, the new government began the process of creating three geographically distinct commissions (commonly referred to as “zonal commissions”) to investigate involuntary removals and disappearances alleged to have taken place from 1988. The geographic breakdown of the three Commissions was as follows: (1) Central, North Western, North Central and Uva Provinces (hereinafter “Central Commission”); (2) Northern & Eastern Provinces (hereinafter “North East Commission”); (3) Western, Southern and Sabaragamuwa Provinces (hereinafter “Southern Commission”). The Commissions were appointed in November 1994 and commenced sitting in 1995.

5.1 MANDATE

But for the geographic jurisdiction of each Commission, the mandates of the three were the same.

…to inquire into and report on the following matters:

(a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the [Central, North Western, North Central and Uva Provinces/ Northern & Eastern Provinces/Western Province, Southern Province and the Sabaragamuwa 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 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 disappeared (sic);

and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant…. 46

5.1.1 Limitations of The Commissions’ Mandates - Concerns about Political Will

Limitations built into the Commissions’ mandates raise questions about the intent, seriousness and capacity of the Government to address past violations of human rights and counter the prevailing climate of impunity. According to the then Minister of Justice, Constitutional Affairs and External Trade, G.L. Peiris:

[t]he government owes a duty to the parents and kith and kin to help them to ascertain the fate of their loved ones and offer some compensatory relief to lighten their misery… [but] it is not possible for us to embark on a futile and impossible task of apportioning blame.47

46. See Mandates of the Commissions for the Central Zone, P.O. No. SP/6/N/191/94, 30 March 1995 (Final Report, Appendix 1, p. 7) and Southern Province, P.O. SP/6/N/192/94, 13 November 1994 (Final Report, Annexure A, p. 179), and a restatement of the mandate for the Commission for the North and East (Final Report, p. 1).

However, when the President was asked the following question two days later, “Over the last few weeks there has been a spate of exhumations from mass graves from the time of the JVP uprising five years ago. Do you think it is a good idea to rake up the past in this way?” the President responded:

Quite definitely yes. Because all civilized societies use punishment as the major method of prevention. And I think this kind of horrendous happenings have to be exposed even if we have to exhume, every one of them should be investigated, the culprits should be found if possible, and punished.48

When placed side by side, these quotes speak to a fundamental flaw underpinning the creation and functioning of the Commissions, which was the absence of unequivocal political will to systematically address the structures, policies and practices that gave rise to the gross and persistent violations of human rights during that time. This was further evidenced by the lack of process in the creation of the Commissions. The government did not avail itself of the experience or support of local and international actors who could have contributed substantially to the elaboration of the mandate and procedures of the Commission(s) to ensure that they conformed to international standards and that they resulted in a rigorous and systematic process and concrete results. Instead, process, standards and results were undermined by a problematic mandate and defective institutional arrangements.

5.1.2 The Commissions were Originally Given Four Months to Conclude their Work

The Commissions were originally given only four months to conduct their inquiries. Thus the Commissions were dependent on the President to continuously extend the mandates, which may have undermined

the Commissions’ independence. The mandates were extended eight times, after which the Commissions were asked to conclude their work. Subsequently, another Commission, the All Island Commission, was appointed to investigate the remaining cases.

5.1.3 The Timeframe Under Review was Insufficient to Address Patterns and Practices

The timeframe under review by the Commissions was 1988 onwards which failed to adequately cover the period during which disappearances emerged as a pattern of the State.

While the rate at which disappearances were committed undoubtedly soared in the years from 1988 to 1990, they began to be committed as a pattern in 1984 in the context of the armed conflict in the North and East... From 1984 to mid-1987 AI documented over 680 disappearances in the custody of security forces in the North and East. In 1987 as a whole it recorded 134 cases, 12 of which were committed in the South.49

Amnesty International called on the government to extend the mandate of the commissions to include cases reported since 1984 as it “believ[ed] that the investigation of “disappearances” in this earlier period may provide crucial evidence of the emergence of the practice of “disappearing” people, subsequently adopted by the security in Sri Lanka on a vast scale.”50

5.1.4 The Timeframe Under Review Covered Both Past and Present Violations

Although the mandate specified that it covered the period commencing on January 1, 1988, it did not specify an end date for complaints. Thus, the mandate did not confine the Commissions’ work to past violations. In some cases, particularly the North East Commission, the Commissions were examining past violations under the prior Government, while simultaneously looking into ongoing violations in a deteriorating political and human rights situation under the current Government.

After the PA Government’s peace efforts collapsed in 1995, disappearances and extrajudicial killings began again. In Colombo, bodies of young Tamil men appeared in Bolgoda Lake with clear signs that they had been tortured and extra-judicially executed. After the Government captured Jaffna from the LTTE in 1995, disappearances emerged there. Reports varied from three hundred to six hundred and forty eight disappearances in Jaffna in the period between 1995 and 1997.51 Disappearances were also reported from the East. During this time, Amnesty International recorded the highest number of disappearances since the peak of the Bheeshanaya in 1990.52

Thus, on one hand was an escalation of the armed conflict and an increase in human rights violations, including disappearances, while on the other hand, three Commissions of Inquiry into Disappearances held their sittings and considered, among other things, prevention of the very abuses that were being committed almost daily, by many of the same actors named in the inquiries of the Commissions. This raised practical challenges for the North East Commission, which recorded complaints of disappearances as late as 1995, but could not hold sittings in some areas due to the prevailing security situation.

Unlike other Commissions this Commission had to investigate disappearances in areas of Military operations. The Commission had to either cancel several sittings or postpone them due to the unsettled conditions caused by the ground situation…. In fact we were advised by the President’s office on 10.12.96 not to go to Jaffna to hold inquiries as conditions were not conducive for holding public inquiries.53

It must be noted that the advise from the President’s office coincided with a sharp increase in the number of cases of disappearances in Jaffna.54

5.1.5 The Establishment of Three Independent Commissions Undermined the Efficacy of The Commissions

The Commissions into Involuntary Removals and Disappearances were created as three independent commissions, each with the same mandate, but covering three geographically distinct areas. The separation of the mandate according to geography and the creation of three independent Commissions resulted in vastly different procedures, findings and recommendations. Although the mandates were the same for all three, there was no unified procedural framework for tackling the mandate. So, for example, the Southern Commission held all of its sittings, with the exception of the Richard de Soysa case, in camera, whereas the other two Commissions only used in camera proceedings when requested by the complainant. Further, two of the three Commissions initially limited the time period for the receipt of complaints to one month and then subsequently extended it. Additionally, two of the


Commissions used standard complaint forms, whereas the other did not. Further, understandings of what constituted an “involuntary removal,” and to a lesser extent a “disappearance,” seemed to differ between the commissions. Both the North East Commission and the Central Commission included names of some of the alleged perpetrators in their reports, whereas the Southern Commission submitted such names to the president under separate confidential cover.

The creation of three independent zonal Commissions led to some confusion about the territorial jurisdiction of the Commissions. Police areas do not always coincide with provincial lines. 

Certain police areas cover parts of the districts falling within our three provinces as well as districts falling outside of our provinces. For example the Embilipitiya Police area is located in Embilipitiya in the Ratnapura district falling within the Sabaragamuwa Province (which falls within our Mandate). But the Embilipitiya Police area covers parts of the Moneragala district in Uva Province (not falling within our jurisdiction). Consequently, if the evidence revealed that the alleged involuntary removal or disappearance had taken place within the territorial limits of the latter we were obliged to rule that the complaint did not fall within the scope of our Mandate.\footnote{Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Sessional Paper No V, September 1997, p. 8.}

It has never been made clear why the government created three distinct Commissions. It may have been the massive number of alleged disappearances under the period of the Commissions’ mandate that led the government to divide the work regionally. If so, the same end could have been achieved through the creation of one Commission with separate sub-commissions. This would have ensured uniform procedures, findings and recommendations that conveyed a more comprehensive truth than any one of the three zonal Commissions could or did.
5.1.6 The Lack of Sufficient and Independent Resources Undermined the Commissions’ Work

The Commissions did not receive sufficient resources to enable them to conduct their work in a thorough and effective manner. Further, they were not given control of their budgets and thus relied on the Presidential Secretariat to provide funds to undertake their work. This raised concerns about independence, as well as concerns about the practicality of working without an adequate and independent budget over which the Commissions had control. The volume of work was very high. The Commissions should not have had to worry about adequate resources, particularly considering the support internationally for a mechanism to investigate the widespread human rights violations of Sri Lanka’s recent past.

5.1.7 The Limitations of the Mandate did not Undermine All Aspects of the Commissions’ Work

Despite the limitations, it must be noted that the Commissions of Inquiry into Involuntary Removals and Disappearances have served vital functions in terms of exposing, in a public manner, the abuses that had been concealed for so many years. Not only did the Commissions attempt to systematically document allegations of disappearances, but also they worked to verify such allegations and gather evidence on the same, including the names of those responsible for the disappearances. The Commissions also helped facilitate the issue of death certificates, the grant of compensation and the provision of services specifically tailored to address the particular needs of family members of the disappeared. Further, both the reports and the recommendations of the Commissions are important records of the time. When read together, the extensive, albeit in some cases ambitious, recommendations of the three Commissions, provide an extraordinarily detailed blue print for addressing past disappearances, preventing future disappearances, and providing relief to victims. According to the Southern Commission:
Justice does not simply mean the punishment of offenders, and therefore, the penal aspect constitutes only a part of the problem. The question of how to "mete out justice to affected persons" should be looked at from a broader perspective. Being a fact-finding Commission, we were able to go beyond the narrow confines of a judicial tribunal to address our minds to the other issues of long-term importance contemplated by the mandate. Disappeared persons have left thousands of dependents—old parents, spouses (some were pregnant at the time of the disappearance), and children—and their economic and emotional rehabilitation is of crucial importance both to their own families and to the stability of society. We have also made several recommendations to Your Excellency regarding measures to prevent the occurrence of such tragic incidents in the future, an issue contemplated by the mandate. These recommendations are our response to the problems revealed by the evidence before us.56

It must, however, be noted, that the State’s failure to implement most of the recommendations of the Commissions have rendered some recommendations redundant. In some cases – in particular remedies for the children of the disappeared such as scholarships, counseling and health services – the time has passed for meaningful implementation since as many as twenty years have passed and children have grown. This is not to say, however, that implementation should not still be pursued. It should. There remain numerous recommendations that remain not only relevant, but also essential, for the rehabilitation and restoration of the lives of the families of the disappeared that have been forever altered by the disappearances.

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5.2 COMMISSION OF INQUIRY INTO THE INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN THE CENTRAL, NORTH WESTERN, NORTH CENTRAL AND UVA PROVINCES

WARRANT NO. : P.O. No. SP/6/N/191/94  
DATE APPT’D : 30 November 1994  
BY : President Chandrika Bandaranaike Kumaratunga  
COMPRISING : Thirunakukkarasu Suntheralingam Esq. (Chair) The other two commissioners listed in the warrant did not sit on the Commission. Marnickam Dutton Jesuratnam Esq. declined the appointment due to ill health and Hitihamy Mudiyanselage Senaratna Banda Madawala Esq. requested to be discharged from Commission from 1 April 1995. Assisted By: M.C.M. Iqbal, Secretary The Commission refers to “an investigation unit of handpicked police personnel” but it is not clear whether and/or when this investigation unit was set up. One of the early recommendations refers to a special team of investigators that should be set up. By Interim Report V, there is reference to a Special Investigating Team that has commenced work. There is no reference in the report to assistance by the Attorney General’s Department.  
MANDATE : to inquire into and report on the following matters:
(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 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 disappeared and to make such recommendations….


DATED : 07.07.1997
BRIEF STATEMENT OF FACTS:

The Commission was one of three zonal Commissions appointed in 1994 to inquire into involuntary removals and disappearances since January 1, 1988.

SUMMARY OF FINDINGS:

Of the fifteen thousand and forty-five complaints received, of which several complaints were received in respect to the same person, six thousand four hundred and forty-three complaints were inquired into and eight thousand six hundred and two complaints were remaining at the conclusion of the Commission. Although the information is disaggregated in terms of the place where the disappearances occurred, no other disaggregated information (ethnicity, gender, age, occupation, etc) is provided.

Although the report includes names of some of those the Commission found to be credibly implicated in involuntary removals/disappearances, the Commission also sent a confidential list under separate cover to the President. According to the Commission:

CONTENTS : Final Report Part I comprised of 5 pages of findings plus appendices (warrant, newspaper notices, gist of findings of interim reports, graphs indicating trends, quantum of disappearances, etc., places where commission held sittings, list of abbreviations) and Part II Annexures of 241 pages (list of complaints inquired into by this commission, list of complaints pending inquiry, list of vehicles involved in removals and/or disappearances, list of the names of owners of such vehicles during the relevant time) to be read with 9 Interim Reports of approximately 2.5 pages each and published as single document.
There appears to be very little progress in implementing the recommendations of the Commission especially with regard to


“SP Luxman Seneviratne (then SSP Kandy division in 1995) was in charge of counter subversive unit that ran torture chamber at St. Sylvester’s College, Kandy.” Interim Reports of the Central Zone, p. 5.

“ASP Karunaratne (SP Badulla in 1995) in charge of torture chamber at Hali Ela Motors in Badulla with SGT Bandara (Badulla), both of whom were attached to the Counter Subversive Unit.” Interim Reports of the Central Zone, p. 9.

“Lt. Mangala Perera was in charge of torture chamber at the community centre in Moneragala and supervised by Upali Samaraweera (provincial council member and nephew of Chief Minister of the Uva Province, Mr. Percy Samaraweera)…” Interim Reports of the Central Zone, p. 9.

“The names of some leading politicians have been mentioned as the persons who had a hand in the removal of some of those who disappeared. Amongst them, the names of Mr. G.D. Mahindasoma, the Chief Minister of the North Central Province, Mr. A. M.S. Adhikari, a Cabinet Minister in the then Government, and Mr. H.G.P. Nelson, MP for Polonnaruwa, stand out. Even the body guard of one of these politicians is alleged to be responsible for some of the removals and disappearances.” Interim Reports of the Central Zone, p. 11.

“…Sgt. Weerasinghe, who was then attached to the Polonnaruwa Police. He is alleged to have removed and killed a person who had not complied with his request to harvest his paddy field for fear of JVP reprisals.” Interim Reports of the Central Zone, p. 11.

“The Chief Minister of the Uva Province is Mr. Percy Samaraweera and the C.M. of the North Central Province is Mr. G.D. Mahindasoma. In the Uva Province Mr. Percy Samaraweera’s nephews Upali Samaraweera and Ravindra Samaraweera and in the North Central Province Mr. Mahindasoma and his bodyguards are linked with several disappearances. Both … belong to the [UNP].” Interim Reports of the Central Zone, p. 12.

“Inspector Police A.M. Keeragala & Inspector of Police J.A.C. Jayasekara were in charge of Polonnaruwa Police Station during the relevant period…. Police Inspector B. Wijesekara was in charge of Welimada Police.” Interim Reports of the Central Zone, p. 12.

“In most of the complaints inquired into at Anamaduwa the name of ASP Indran who is now attached to the Sri Lanka Reserve Headquarters, has surfaced along with others as being responsible for disappearances in that area… There is credible material placed before this Commission indicating that this ASP had threatened some of the witnesses who had given evidence before the Commission. Interim Reports of the Central Zone, p. 20.

“It is therefore recommended that ASP Indran be sent on compulsory leave immediately to prevent him interfering with the witnesses any further, and to enable investigations into complaints where he is involved to commence.” Interim Reports of the Central Zone, p. 21.
the action to be taken against persons against whom credible material indicative of such persons being responsible for the removals and/or disappearances.\textsuperscript{58}

The Commission further notes:

\textit{Most of the complainants do not seem to be interested in receiving compensation, as much as seeing those responsible being punished…. This is particularly so in the case of those complainants who had been involuntarily removed, tortured and released or escaped…. Such persons came before the Commission to give evidence of the persons who had removed and tortured them, braving possible reprisals. Most of them show signs of the effects of trauma. Most of them have been debilitated or incapacitated. They came before this Commission in the hope that their torturers would be brought to book.}\textsuperscript{59}

**SUMMARY OF RECOMMENDATIONS:**

The eleven recommendations summarized in the Commission’s Final Report cover prosecutions of responsible individuals, compensation without discrimination, scholarships for children of the disappeared, issuance of death certificates, relief for those who escaped death, and relief for those whose property was destroyed. Previously, in Interim Report II, it was “recommended that the power to issue warrants of arrest, etc. under section 11(4) of the Special Presidential Commission Law No. 07 of 1978 be given to the Commissions appointed under the Commissions of Inquiry Act probing disappearances.”\textsuperscript{60}

\[\textsuperscript{58}\text{. Interim Reports of the Central Zone, p. 18.}\]
\[\textsuperscript{59}\text{. Interim Reports of the Central Zone, p. 18.}\]
\[\textsuperscript{60}\text{. Interim Reports of the Central Zone, p. 8.}\]
5.3 COMMISSION OF INQUIRY INTO THE INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN THE NORTHERN & EASTERN PROVINCES

WARRANT NO. : P.O. No. SP/6/N/193/94
DATE APPT’D : 30 November 1994
BY : President Chandrika Bandaranaike Kumaratunga

COMPRISING : Krishnapillai Palakidner, Esq., Chairman
Luwisdura Walter Romulus Widyaratne Esq.
Dr. Wedaarachchi Nawalage Wilson

Assisted By:
Mr. SC Manicavasagar, Secretary
Mr. VS Ganeshalingam, Esq., Legal Officer
Mr. A. Punithanayagam, Esq., Legal Officer

There is no reference in the report to assistance by the Attorney General’s Department.

MANDATE : to inquire into and report on the following matters:

(a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the Northern Province and Eastern 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 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;

and to make such recommendations….

REPORT TITLE : Final Report of Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces

DATED : September 1997

CONTENTS : The Final Report of the Commission is broken down into 10 chapters, 8 of which cover the eight districts that fall within the geographic jurisdiction of the Commission (i.e., Trincomalee, Batticaloa, Amparai, Kilinochchi, Mannar, Vavuniya, Mullaitivu, and Jaffna). The Report includes statistical information, as well as short descriptions of some of the cases reported to the Commission. Throughout the Report, those alleged to be responsible for the abuses are named. A list of 48 names of those alleged to be responsible is included as Annexure ‘E’ of the Final Report. Other annexures provide information (mostly lists of names) about particular incidents and copies of communications with relevant authorities.
BRIEF STATEMENT OF FACTS:

The Commission was one of three zonal Commissions appointed in 1994 to inquire into involuntary removals and disappearances since January 1, 1988. Unlike the other two zonal Commissions, the geographic area covered by the North East Commission was an area in an active state of war, which hindered the functioning of the Commission. As noted in the Final Report of the Commission:

Unlike other Commissions this Commission had to investigate disappearances in areas of Military operations. The Commission had to either cancel several sittings or postpone them due to the unsettled conditions caused by the ground situation. On one occasion in Batticaloa, the Commission found shells zooming over the Circuit Bungalow where it stayed and heard the rattle of gun-fire for hours. On this occasion the LTTE attacked the Batticaloa Police Station in the heart of the town. In fact we were advised by the President’s office on 10.12.96 not to go to Jaffna to hold inquiries as conditions were not conducive for holding public inquiries.61

SUMMARY OF FINDINGS:

There is no aggregate analysis of the findings of the Commission in respect to the entire geographic jurisdiction of the Commission. Rather, the findings are framed in terms of the particular district and tend to be very case specific. Thus each district and, to some degree each incident, is isolated. Although patterns of abuse can be seen when reading the report as a whole, there has been little attempt to analyze patterns throughout the Report. Nonetheless, the Commission found that:

According to the evidence recorded, ninety percent of the removals was ascribed to the security forces – Army, Navy,

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Airforce and the Police. LTTE also was responsible for its own share of removals. Other militant groups also are in the picture. The name of some officers come up often in the course of inquiries. Captain Suresh Cassim, Major Suraweera, .................. Richard Pieris of Trinco Police, Captain Munaz, Captain Palitha, Capt. Gunaratne, Major Majeed and Major Mohan of Kommathurai army camp in 1990. Captain GL Perera and Inspector Soyza of Ampara Police…62

The Report does name the names in regard to whom credible evidence existed in regard to their implication in gross human rights violations.63 In an apparent contradiction, however, the Report asserts that “on ex-parte evidence alone, it cannot decide on the guilt of these people. Hence, proper inquiries have to be undertaken and evidence given by the complainants should stand the scrutiny of cross-examination. This is a task we leave for the next Commission.”64

SUMMARY OF RECOMMENDATIONS:

The twelve recommendations set out in the final Report include recommendations on compensation, employment, pensions of deceased, social security, malnutrition among children, and scholarships for higher education. However, the emphasis on recommended action to be taken relates to the war. In addition to recommending protections against arbitrary arrest and detention, the Report speaks to the root causes of violations.

Two problems are facing the country. One is the problem of the youth which took militant form under the JVP. The other is ethnic problem which takes militant form under the LTTE.

63. See Annexure E, List of Officers against whom evidence is available in Files, which lists forty eight cases of disappearances and the names those alleged to be responsible. Final Report, North East Commission, p. 94.
64. Final Report, North East Commission, p. 62.
These two problems unless handled with vision and statemenship will distort all organs of Society and make the Army arbiter in national issues.65

The Commission goes on to state, “Your Excellency has taken the correct decision and especially in the ethnic sphere, Your Excellency’s proposals should be adopted as a basic policy of the land.”66

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66. Considering the year of the report was 1997, it can be assumed that the proposals to which the Commission refers are the 1997 package of constitutional reforms, which included extensive devolution of powers to the regions. Final Report of the North East Commission, p. 63.
5.4 COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN THE WESTERN, SOUTHERN AND SABARAGAMUWA PROVINCES

WARRANT NO. : P.O. No. SP/6/N/192/94
DATE APPT’D : 13 November 1994
BY : President Chandrika Bandaranaike Kumaratunga
COMPRISING : Manouri Kokila Muttetuwegama – Chairperson Prof. S.S.R.B.D.A. Amal Jayawardane, BJP de Almeida Gunaratne

Assisted By:
Wimaladharma Ekanayake, Secretary Mr. Samith de Silva, Senior State Counsel, Attorney General’s Department Mr. Neil Unamboowa, State Counsel, Attorney General’s Department
And a number of independent lawyers

The Commission constituted three units to assist it in its work: Computer Data Base Unit, Legal Unit, and Independent Investigations Unit

MANDATE : to inquire into and report on the following matters:

(a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the Western Province, Southern Province and the Sabaragamuwa 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 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;

and to make such recommendations….

REPORT TITLE:


Dated: September 1997

Contents: The Final Report of the Southern Commission is the most comprehensive report of the three zonal commissions. The Final Report is a detailed 178-page report that combines detailed descriptions of methodology and process, documentation of cases, statistical breakdowns of the findings and a comprehensive analysis, which seeks to thoroughly explore all substantive aspects of the mandate. The Commission is concerned with patterns and practices of abuses and analyzes the material from a number of different angles. The Report provides a general analysis of situation in relation to disappearances in Sri Lanka during the time period in question, with specific examples from districts, a general historical analysis, analysis of responsibility and impunity, legal proceedings, preventive measures, and relief for families, as well analyses of special categories (women, clergy, trade unions, university students, Tamils lost in Colombo), impact on society and on families.

The Report also comprises almost 30 pages of relevant annexures, which includes the warrant, list of special witnesses summoned (organisations and persons), list of HCA cases where the Magistrate has made findings on responsibility, list of detention camps, a note on advisory bureaus in the UK, district wise breakdown of disappearances (1988 – 1990) on a monthly basis, the position taken by the Army in response to the Commission’s inquiry.
regarding certain army camps. Included in Volume I of the Final Report is a 453-page list of the names of the disappeared, names of complainants, addresses of complainants and relationship between the disappeared and complainant.

Volume II of the Report includes the findings of special inquiries into key cases relating to disappearances and killings in the said Provinces. The cases involve abductions and killings where large numbers disappeared during a short time period, as well as a case of the disappearance of a high profile journalist.

BRIEF STATEMENT OF FACTS:

The Commission was one of three zonal Commissions appointed in 1994 to inquire into involuntary removals and disappearances since January 1, 1988.

SUMMARY OF FINDINGS:

The Report of the Southern Commission presents the most detailed documentation of disappearances by the State to date and explores patterns and practices of the State that give rise to disappearances and other grave violations of human rights. It provides a detailed and disaggregated statistical analysis, as well as a comprehensive legal analysis and sociological analyses of the impact of disappearances on certain groups and on society. As directed by its mandate, the Report considers both the past and the future, and contemplates prevention in a holistic framework.

According to the Report, there were eight thousand seven hundred and thirty nine complaints received, of which one hundred and ninety one were from returned detainees and twelve were of physical injury.
Of these, seven thousand seven hundred and sixty one complaints were inquired into and five hundred and forty two remained at the conclusion of the Commission. The Commission found that seven thousand two hundred and thirty nine complaints were proved. Nine thousand seven hundred and forty four witnesses testified before the Commission, including fifty four special witnesses.

The statistical information provided in the Report is disaggregated by province, district, gender, marital status, age, education attainment, occupation, date of disappearance, and time of disappearance. The ethnicity of victims is not included. However, the report does include a section titled “Tamils Lost in Colombo” which found that “[t]he evidence before this Commission is that the issue of the involuntary removal/disappearances in Colombo of persons of Tamil origin should not be subsumed in the phenomenon of involuntary removals/disappearances that occurred in Southern Sri Lanka.”

The Southern Commission was the only zonal commission that did not include in its report names of those it found to be responsible. On the issue of responsibility for the alleged involuntary removals and disappearances and the identification of alleged perpetrators, the Commission held:

[W]e do not have before us the evidence of the person against whom there are allegations. Until further investigations by the investigative authorities are held confidentiality must prevail, both in respect of the nature of the evidence available and in respect of the identity of persons implicated by such evidence. Accordingly we are submitting to Your Excellency under

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separate cover the list of names of individuals in respect of whom there is credible material before this Commission.68

It further states:

In view of the serious nature of the acts revealed by the evidence available to date, Your Commissioners recommend that the investigations by the IGP should be under the supervision of the Attorney General and be referred to the Attorney General for the determination of the appropriate legal proceedings that should ensure.69

Despite this recommendation for supervision by the Attorney General, the Commission found problematic patterns of (non)investigations that implicated both the police and the Attorney General’s Department.

The Distortion of the Investigations to conceal more than to reveal, and mechanically labelling as ‘subversive act’ without investigation, were some of the practices of avoidance used in the rare instances where the authorities could not refrain from semblance of an investigation.70

The Commission cites the case of prominent journalist, Richard de Soyza, as highlighting the ways in which investigations were undermined and distorted.

The case of Richard de Soyza

R, a Journalist, filed reports critical of the government's record on human rights to I.P.S., an international news agency. In February ‘90 R's abduction from his home by an armed gang who came in vehicles in the night was reported both to the local police and the

70. Final Report, Southern Commission, p. 53
Senior Superintendent of the area simultaneous with the incident, and recorded as a disappearance. R's corpse was discovered floating in the sea the next day, with gun-shot injuries through the neck. This series of incidents received wide publicity nationally and internationally. At the inquest the Magistrate ordered the arrest of a senior police officer identified by R's mother to be one of the abductors of her son. The order was not carried out. The reports of investigation filed by police in court instead referred to an anonymous letter received by the police containing a general allegation of a connection of the deceased to an incident of murder of a film star’s girl-friend which was currently a popular sensation. On the day R's mother was due to give evidence on oath and be available for cross-examination by the several lawyers for the defense, the representative of the Attorney General stated that he would not be calling her as witness as her evidence was ‘irrelevant’. The Magistrate accordingly terminated the proceedings. Files at the Attorney General’s Department shows that the AG in August directed the Inspector-General of Police to ‘hold further investigations’. There is no record of further investigations by the police/further directions by the AG.\textsuperscript{71}

Subversion of justice through distortions in investigations was highlighted through an additional three cases – the Dambarella Incident, the Mawarala Incident, and the Dickwella Incident. These cases are described to demonstrate that non-investigation of cases was “not isolated departures-from-practice or ‘excesses.’ \textbf{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} (emphasis original).”\textsuperscript{72}

The unpublished Volume II of the Southern Commission’s Report focuses on some of the key cases relating to disappearances and killings

\textsuperscript{71} Final Report, Southern Commission, p. 53 – 54.

\textsuperscript{72} Final Report, Southern Commission, p. 55.
in the said Provinces. The cases involve abductions and killings where large numbers disappeared during a short time period and a case of disappearance of a high profile journalist. The cases included in Volume II illustrate patterns and practices of the State that enabled widespread human rights violations not only to occur, but also to be met with impunity. These included the complicity of police officers through the recording of wrong information or the masking of information, the inability and unwillingness of the Attorney General’s department to pursue leads and rigorously prosecute cases where evidence was available, and the complicity of senior officers who turned a blind eye to the actions of others. In many of these cases, legal action had been pursued in the form of criminal inquiries and proceedings or Habeas Corpus cases. The Commission, however, was able to reveal many of the facts that had been previously excluded or covered up by revisiting the evidence.

It must be noted that the published Report includes a list of names of the disappeared and complainants. This list includes names of the disappeared, names of the complainants and their relationship to the disappeared, and addresses of complainants. This list raises concerns regarding allegations of threats against complainants who testified before the commission.

SUMMARY OF RECOMMENDATIONS:

The Southern Commission has the most comprehensive set of recommendations of any commission of inquiry under consideration. There is a total of one hundred and forty-five recommendations categorized in eight sections: (1) relief measures; (2) women; (3) legal proceedings; (4) preventative measures; (5) Habeas Corpus applications; (6) emergency regulations; (7) excavation of mass graves; and (8) complaints remaining to be inquired into. The recommendations address a wide range of concerns and, in some cases, seem only tangentially related to the issue of disappearances. Regrettably, the Commission did not prioritize the recommendations to help facilitate implementation of the most urgent recommendations.
6. COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL AND DISAPPEARANCES OF CERTAIN PERSONS (ALL ISLAND)

WARRANT NO. : SP/6/N/214/97 of 30 April 1998
DATE APPT’D : 30 April 1998
BY : President Chandrika Bandaranaike Kumaratunga

COMPRISING : Manouri Kokila Muttetuwegama Esq., Chairperson
Hetti Gamage Dharmadasa Esq. Ponnuchamy Balavadivel Esq.

Assisted By:
Mr. M.C.M. Iqbal – Secretary Mr. PVW de Silva (Ret. Senior Superintendent of Police) – Head of Investigation Unit Ms. Subashini Ramasamy – Head of Computer Unit

There is no reference in the Report to assistance by the Attorney General’s Department.

MANDATE : to inquire into and report on the following matters –

(a) The allegations about the involuntary removal of persons from their residences, or the disappearances of persons from their residences, made to the Commissions of Inquiry appointed under the Commissions of Inquiry Act, and terms of reference of which are published respectively, in Gazettes No. 855/18, 855/19 and 855/20 of January 25, 1995, being allegations in respect of which no investigations have
commenced on the respective dates, appointed by the respective warrants appointing such Commission of Inquiry, for the rendering of the reports of such Commissions of Inquiry;

(b) The evidence available to establish such alleged removals or disappearances;

(c) The present whereabouts of 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 person 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 disappeared;

And to make such recommendations with reference to any of the matters that have been inquired into under the terms of this warrant.\textsuperscript{73}


DATED : March 2001

CONTENTS : The All Island Commission Report comprises two published Volumes, totaling 323 pages, of which Volume I comprises 87 pages of findings and analysis, and 64 pages of annexures, the most relevant of which include lists of individuals for whom specific relief is recommended, relevant circulars regarding relief, correspondences with security forces regarding information on those responsible for disappearances, IGP’s circular regarding retention of information books; public administration’s ruling on who is a terrorist for relief purposes; President’s Directive on Arrests of Persons; and list of returned detainees cases where well founded evidence of abductors is available. Volume II comprises a 157-page list of names of the disappeared, including names of complainants and complainants’ addresses and a 14-page list of complaints of returned detainees inquired into, which includes their addresses. Two other volumes were also submitted. Volume III contains a list of persons against whom credible material indicative of responsibility for disappearances is available, which was handed over to the President under confidential cover. Volume IV is a list of persons whose disappearances have been confirmed by the president commissions.
BRIEF STATEMENT OF FACTS:

The All Island Commission was created to complete the work of the three zonal commissions and inquire into the cases pending from those three commissions. Unlike the zonal commissions, the All Island Commission looked at involuntary removals and disappearances across the entire island and thus its Report presents a more complete picture of the period from 1988 onwards.

SUMMARY OF FINDINGS:

The structure of the Report follows the structure of the mandate and includes chapters on: (1) the mandate; (2) the present whereabouts of disappeared persons; (3) responsibility for the disappearances; (4) legal proceedings regarding those responsible; (5) preventative measures; and (6) recommendations on relief to affected persons. In addition, like the Southern Commission, the All Island Commission Report looks at special issues, including disappearances from the Jaffna district and Eastern Province, border villages, and the evidence of special witnesses. While not as comprehensive as the Southern Commission, the All Island Commission Report examines patterns and practices causing disappearances and includes specific cases illustrative of such patterns and practices.

The Report presents the most coherent and structured findings and analysis of any of the Commissions. This is a result of two factors. First, the island-wide mandate of the Commission enabled it to examine the phenomenon of disappearances more completely. Second, the chairperson and the secretary of the All-Island Commission had been, respectively, the chairperson of the Southern Commission and the secretary of the Central Zone Commission, and thus they had developed experience on issues of both substance and process.

According to the Report, ten thousand one hundred and thirty six complaints were handed over to the Commission from the three zonal
Commissions. After excluding duplicates and complaints that did not come within the mandate, six thousand three hundred and forty five were determined to be for inquiry. Of those, four thousand four hundred and seventy three were inquired into by the Commission. Of the six hundred and fifty four complaints pertaining to returned detainees, the Commission inquired into three hundred and eighty four of them.

Although the Report does not clarify the reason behind the failure to inquire into all complaints, it implies that it was due to non-appearance of the complainants. Significantly, the passage of time and the loss of hope were cited as major factors in non-appearance of complainants.\textsuperscript{74}

Cases inquired into fell into the following categories: bodies were found and identified; credible evidence of detention/seen in detention, evidence of abduction only; no evidence of abduction or detention; those abducted & released; and those alleged to have disappeared but traced subsequently.\textsuperscript{75}

The Commission states that, although bodies were found in a mere six hundred and forty seven cases, “in the given context, the word “disappearance” is only a euphemism for the death caused by extra judicial killings.”\textsuperscript{76}

**SUMMARY OF RECOMMENDATIONS:**

\textit{While the All-Island Commission’s Report does make some suggestions for the importance of establishing in international law}

\textsuperscript{74} Final Report, All Island Commission, p. 5.
\textsuperscript{75} Final Report, All Island Commission, p. 6.
\textsuperscript{76} Final Report, All Island Commission, p. 7.
the liability of non-state armed groups like the LTTE for violations of human rights, the bulk of its recommendations for confronting Sri Lanka’s recent legacy of unaccountable power and violence concern legal reforms to control the excesses of state power."77

The Commission “adopt[s] the recommendations of the earlier Commissions and stress[es] the need for swift action in respect of those recommendations.” Additionally, the Commission makes seventy nine specific recommendations of its own. Many of these recommendations are also recommendations made by prior commissions or variations on the same. The recommendations are organized according to the mandate: (1) present whereabouts; (2) responsibility; (3) legal proceedings; (4) preventive measures; (5) relief measures; and (6) alleged disappearances not within mandate.
7. COMMISSION OF INQUIRY INTO THE ESTABLISHMENT AND MAINTENANCE OF PLACES OF UNLAWFUL DETENTION AND TORTURE CHAMBERS AT THE BATALANDA HOUSING SCHEME

WARRANT NO. : SP/6/N/206/95
DATE APPT’D : 15th December 1995
BY : President Chandrika Bandaranaike Kumaratunga

COMPRISING : Dharmasiri Jayawickrame (Chairman) – High Court Judge
Nimal Edward Dissanayake – High Court Judge
Mr. S.T. Gunawardena, former officer of SLAS – Secretary.

Assisted By:
Mr. R.I. Obeysekere PC, former Crown Counsel and former president of the Human Rights Committee of the Bar Association of Sri Lanka.

Mr. Sarath Jayamanne, State Counsel, representing the Attorney General’s Department.

Mr. Yasantha Kodagoda, State Counsel, representing the Attorney General’s Department.

Investigative Teams:
The Committee had the assistance of two investigative teams.

Led by Senior Superintendent of Police S.C. Pathirana, a team of eleven officers was permanently attached to the Commission.
Led by Deputy Inspector General T.V. Sumanasekera, a CID team of nine officers which had already conducted preliminary investigations into certain aspects covered by the Warrant, continued to investigate into some matters in respect had already been investigated by them.

MANDATE : to inquire and report on the following:

(a) the circumstances relating to the disappearance of Sub Inspector Rohitha Priyadarshana of the Sapugaskanda Police Station… and the persons directly or indirectly responsible…

(b) the circumstances relating to the arrest and subsequent detention of Sub Inspector Ajith Jayasinghe of the Peliyagoda Police Station… and the persons directly or indirectly responsible…

(c) the establishment and maintenance of a place or places of detention at the Batalanda Housing Scheme of the State Fertilizer Manufacturing Corporation and whether … any person or persons were so detained … and were subject to inhuman or degrading treatment or to treatment which constitute an offence under any written law as a result of a conspiracy and the person or persons directly or indirectly responsible for the same;

(d) whether any inquiry or probe into any of the aforesaid matters had been conducted by any officer and whether any person or persons directly or indirectly interfered
in such inquiry or probe and the person or persons responsible for such interference;

(e) whether any officer of any other person was responsible for the commission of any criminal offence under any written law, or the use of undue influence or misuse or abuse of power in relation to any of the aforesaid matters.

REPORT TITLE : Report of the Commission of Inquiry into the Establishment and Maintenance of Places of Unlawful Detention and Torture Chambers at the Batalanda Housing Scheme

DATED : 2000

CONTENTS : 167 page Report, of which 125 pages comprise the main report, which presents a detailed factual accounting of the events and actors in context of the time period under review, the findings as per the mandate and the recommendations, and 42 pages comprise annexures to the Report, including the mandate, lists of witnesses, counsel who appeared for witnesses, documents and productions, etc.

BRIEF STATEMENT OF FACTS:

The Batalanda Housing Scheme was a government housing scheme widely rumored to be an unofficial place of detention, torture and death outside of Colombo during the Reign of Terror (1987 – 1991). A few high ranking UNP politicians, including former Prime Minister Ranil Wickramasinghe, were rumored to be involved in Batalanda.

Upon assuming office in 1994, President Chandrika Kumaratunga constituted a number of Commissions of Inquiry into political
killings and human rights violations, including three Commissions on disappearances and the Batalanda Commission. The time period covered by the warrant for all these commissions is the same, from 1988 to 1990.\textsuperscript{78}

**SUMMARY OF FINDINGS:**

The Commission’s detailed Report arises out of six thousand seven hundred and eighty pages of typed proceedings, contained in twenty eight volumes, and handed over to the President with the report. The Commission’s sittings spanned one hundred and twenty seven days, during which eighty two persons appeared before the Commission and one hundred and twenty six items of productions and documents were produced and marked as evidence by the witnesses.

The Report is significant in that it provides the most well documented and substantiated case against individuals at every level of the state apparatus for human rights violations, including torture, disappearances and extra judicial killings, during the Reign of Terror. The Commission looked at the entire chain of command and, through the evidence presented, found that there was direct and indirect involvement at the highest levels of government.

The Report suggests that the Commission undertook a rigorous fact finding exercise, applying evidentiary standards not dissimilar to that of a court of law. The Commission was able to trace the events with the help of witnesses who had been detained at the same centres and had subsequently been released or escaped.\textsuperscript{79} The Committee took care to ensure that the testimony of witnesses was corroborated before being accepted as credible.


\textsuperscript{79} Three victims who were housed in the Batalanda houses gave evidence before the Commission while two others, a policeman and an ayurvedic doctor, who were taken to the houses to see the tortured inmates, also testified.
The Report presents a concise chapter of findings, which details the specific findings for each component of the mandate. This includes names of those individuals the Commission found to be responsible. The Report includes the names of thirteen police officers found to be directly responsible for torturing and illegally detaining individuals as part of counter subversive activities at the Batalanda Housing Scheme. The Commission named ASP Keerthi Atapattu as directly responsible, and ASP Peiris indirectly responsible, for the disappearance of SI Priyadharshana and indicated a political motive for the disappearance and killing. The Commission found ASP Peiris directly responsible for violating the human rights of SI Jayasinghe. Further, it found Minister Ranil Wickremasinghe indirectly responsible for violations for facilitating the use of the Housing Scheme and found that there was evidence to suggest that the Minister was aware of the illegal activities being carried out at Batalanda and that he tacitly supported those activities. Additionally, the Commission faulted a number of high-ranking officials in the police for not taking action as demanded by law.

SUMMARY OF RECOMMENDATIONS:

The Commission, comprised of two sitting judges of the High Court, was concerned primarily with legal remedies. It recommended prosecutions, disciplinary action, and further investigations of the incidents and individuals found by the Commission to be responsible for those incidents. Additionally, the Commission recommended a code of conduct that would set out the responsibilities and duties of politicians and law enforcement officers and recommended that the Supreme Court be vested with the jurisdiction to deprive persistent violators of human rights of their civic rights.

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80. Batalanda Report, p. 113-123.
8. PRESIDENTIAL COMMISSION OF INQUIRY INTO INCIDENTS THAT TOOK PLACE AT BINDUNUWEWA REHABILITATION CENTRE, BANDARAWELA ON 25 OCTOBER 2000

WARRANT NO. : SP/6/N/221/2001
DATE APPT’D : 8th March 2001
BY : President Chandrika Kumaratunga Bandaranaike
COMPRISING : Mr. P.H.K. Kulatilaka, retired Appeal Court Judge, Commissioner Mr. Edmund Jayasuriya, retired officer of the SLAS, Secretary

Assisted by:
Deputy Solicitor General S. Palitha Fernando, Attorney General’s Department Senior State Counsel S. Gamalath, Attorney General’s Department State Counsel S. Tissera, Attorney General’s Department

MANDATE : to inquire and report on the following matters;

(a) The circumstances that led to the incidents that took place at The Bindunuwewa Rehabilitation Centre on 25.10.2000 in the course of which 27 inmates died and 14 persons were injured.

(b) The administration of the Rehabilitation Centre at Bindunuwewa and the conduct of the Public officers in so far as it is relevant to the said incident.

(c) The person or persons, if any, directly or indirectly responsible, by act or omission for-
1. bringing about the said incidents
2. causing injuries to persons or the death of inmates

(d) The criteria applicable to the admission of persons to rehabilitation centres and the location of such centres

(e) Methods adopted in rehabilitation of persons admitted to such centers

(f) The measures necessary to prevent the recurrence of such incidents and the remedial measures if any, to be taken in this regard, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of the warrant.

REPORT TITLE : Report of the Presidential Commission of Inquiry into Incidents that Took Place at The Bindunuwewa Rehabilitation Centre, Bandarawela, on 25 October 2000

DATED : November 2001 (unpublished Report)

CONTENTS : 242-page Report, of which 207 pages comprise a discussion of various aspects of the mandate, including questions of fact, policy and law, as well as recommendations, and 31 pages comprise appendices including the mandate and lists of witnesses, documents produced, names of inmates, and names of deceased, etc.
BRIEF STATEMENT OF FACTS:

On 25th October 2000, a mob attacked the government-run Bindunuwewa Rehabilitation Centre, unleashing violence that killed twenty seven Tamil inmates and injured fourteen inmates. The inmates were Tamil men and boys, some of who had been detained and others who had surrendered. Communal violence between Sinhalese and Tamils in the area surrounding Bindunuwewa ensued, lasting at least three days.

The Commission was appointed to inquire into the facts and circumstances surrounding the massacre and to address questions related to whether there was any outside influence or “unseen hand” behind the incident and the role played by the police who were armed and on duty at the centre and yet did nothing to stop the massacre.

SUMMARY OF FINDINGS:

The Report is a lengthy presentation of fact, policy, practice and law. The theory and practice of rehabilitation in general, in Sri Lanka, and at the Bindunuwewa Rehabilitation Centre is considered, including the suitability of the location of Bindunuwewa and other rehabilitation centres, the housing of surrendees and detainees in the same premises, the justification for detention and rehabilitation of those who surrender out of fear of recruitment or terrorist activity, the methods of rehabilitation practiced at the centre and the general administration of the Centre.

The Report presents, in detail, the factual accounts of numerous victims, witnesses and alleged perpetrators of the massacre and the events that preceded the massacre, namely the revolt by the inmates on the 24th of October. The Commission reproduces the testimony of witnesses and juxtaposes testimony to present and analyze contradictions in its effort to reach conclusions about what actually happened.
The Report does identify responsible parties. After the revolt by the inmates on the 24th of October, the inmates, themselves, are deemed to be partially responsible for the massacre, as are the administrators of the centre. Heavy criticism is also directed at the police who failed to act even though some sixty armed policemen were present at the scene. The theory of a larger political conspiracy or unseen hand, however, is rejected with no obvious basis.

Despite the detail of the testimonies, the Report nonetheless fails to provide an exhaustive record of the events that occurred at the Bindunuwewa Rehabilitation Centre on the 25th October 2000 and reaches unsubstantiated conclusions about the lack of involvement of outside forces.81 According to one commentator.

*While the Commission report certainly adds much to our knowledge about the massacre and the conditions that led to it... the overall framework it employs to interpret the attack obscures many of the deeper political dynamics at work in the camp and the rehabilitation system and largely depoliticizes the attack itself.* 82

The limitations of the Report to some degree reflect the limitations of the mandate. Rather than providing a focused mandate to thoroughly examine the massacre and assess responsibility, the mandate focuses more broadly on issues of rehabilitation. Thus, the Commission was more concerned with prevention of future incidents than understanding or punishing the crimes committed at Bindunuwewa.

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81. According to Justice Kulatilaka, “I have already placed on the record that this attack was not master-minded or planned by any external forces and that it was not a pre-planned one.” Report of the Presidential Commission of Inquiry into Incidents that Took Place at Bindunuwewa Rehabilitation Centre, Bandarawela, on 25 October 2000 (unpublished), November 2001, p. 197.

SUMMARY OF RECOMMENDATIONS:

Recommendations focus on changes to law, policy and practice related to rehabilitation, including the location and security of rehabilitation centres, the separation of detainees and surrendees and of adults and youth, the limitation of time periods for rehabilitation, staff recruitment and training, and screening of and limitations on those considered for rehabilitation. The Commission recommends prosecution of the responsible parties but does not specifically identify who those parties are. Rather, it recommends disciplinary action be taken against six police officers and that further inquiries be conducted into the conduct of the Officer-in-Charge of the Centre and his assistant.

WARRANT NO. : SP/6/N/223/2001
DATE APPT’D : 23 July 2001
BY : President Chandrika Bandaranaike Kumaratunga

COMPRISING : Suppiah Sharvananda Esq. (Retired CJ) - Chairman
Sathyaloka Sasita Sahabandu Esq., PC - Member
Mohamed Mohamed Zuhair Esq., PC - Member

Assisted By:
S.M.J. Senaratne (Ret. SLAS Officer) – Secretary
A.H.M.D. Nawaz, State Counsel,
Attorney-General’s Department

MANDATE : Inquire and report on the following matters:-
(a) the nature, causes and extent of –
(i) the gross violation of human rights;
and
(ii) the destruction of and damage to
property, committed as part of the
ethnic violence which occurred
during the period commencing
from the beginning of the year
1981 and ending in December
1984, with special reference to the
period of July 1983, including the
circumstances which led to such
violence;
(b) whether any person, group or institution
was directly or indirectly responsible for
such violence;
(c) the nature and extent of the damage, both physical and mental, suffered by the victims of such ethnic violence;

(d) what compensation or solatium should be granted to such victims or to their dependents or heirs;

(e) the institutional, administrative and legislative measures which need to be taken in order to prevent a recurrence of such violations of human rights and destruction or damage of property in the future and to promote national unity and reconciliation among all communities and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant;


DATED : September 2002

CONTENTS : 235 page Report, approximately half of which comprises a description of the historical context, findings and recommendations and half of which is a case-by-case summary of the nature and extent of the damages suffered by the 939 victims listed. Volume II comprises documents that are not for publication, including recommended compensation for victims, record of evidence, and the list of documents and productions.
BRIEF STATEMENT OF FACTS:

The year 1983 stands out in Sri Lanka’s history for its unprecedented levels of State sanctioned communal violence by the Sinhala majority against the Tamil minority. July 1983 – or Black July as it is commonly called – is often cited as the beginning of the war between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam, although many commentators point to earlier dates. The violence, which had been foreshadowed by communal violence in 1958 and 1977 and the attack on the Jaffna Public Library in 1981, forever transformed the nature and identity of Sri Lanka and its people. After almost two decades of silence, the government of Sri Lanka appointed a Presidential Commission of Inquiry – which it called a “Truth Commission” – to inquire into the nature, causes and extent of gross violations of human rights and the destruction of property between January 1981 and December 1984.

SUMMARY OF FINDINGS:

As is evident in the Report, the Commission was a “truth commission” in name only.\(^83\) It was neither designed nor intended to be an actual truth commission, which had, as its fundamental objective, the search for truth. As such, the Report is weak on findings. Instead, the commission devotes a significant portion of its report to excerpts and quotes from

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\(^83\) The Commission did not have, as its primary objective, the search for truth. Further its mandate was limited, both in terms of substance and time. Although extensions were subsequently given, the Commission originally was given a mere six months to submit its report. There was no transparent process that gave rise to the Commission. It was not part of a process of national reconciliation, although the language of reconciliation was used in both the mandate and the report. Although this was the first time a Sri Lankan commission of inquiry was actually named a “truth commission,” the term “truth commission” has been loosely used at times to refer to some of Sri Lanka’s prior commissions of inquiry, namely the disappearances commissions. See, for example, Bulankulame, Indika “The Debates on Truth Commissions: A Retrospective Healing Process?”, Law & Society Trust, 2004. The use of the term is indicative of the term’s currency internationally, and does not adequately reflect the reality of Sri Lanka’s commissions. Never has the requisite forethought and deliberation been devoted to the creation of any of Sri Lanka’s commissions of inquiry. Rather, they have been \textit{ad hoc} and expedient institutional mechanisms that serve practical political ends while, in some cases, also serving important fact-finding, relief and rehabilitation functions.
other sources, including many that speak to the experiences of other countries. Further it endorses recommendations of others and suggests that the State further explore such recommendations rather than providing concrete recommendations of its own. Notably, the Report does refer to the Sansoni Commission and its Report, and quotes from the report.  

The Report is the most comprehensive documentation by the State to date of a period, the early 1980s, that was critical in the unfolding of Sri Lanka’s ethno-national political history. Nonetheless, the Commission’s findings are limited. As pointed out by Suriya Wickremasinghe, Secretary of the Civil Rights Movement of Sri Lanka:

Where the Welikade massacres were concerned for instance [the commission] did hardly any – if any – investigation of its own. It relied on me (CRM) for practically everything (for instance, even the inquest proceedings were supplied to it by us) and seemed more than happy with just our material. What it should have done is taken our material as a starting point and then followed up from there, with all its powers of investigation and summoning witnesses, which we didn't have….  

The Report does not follow the structure of the mandate and does not devote a separate chapter to the question of responsibility. Instead, the substantive findings are structured according to events – the burning of the Jaffna Public Library, July 1983, Sunday 24th July 1983, and ethnic violence at Welikada Prison – in which responsibility generally and in respect to particular individuals is discussed to varying degrees, depending on the information made available to the Commission.

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There is no detailed analysis of State responsibility. Rather than focusing on patterns and practices of the State, the Report includes descriptions of incidents and conclusions regarding responsibility. For example, according to the Report, “[w]e can conclude that on the evidence placed before us, the burning of the library was a wanton criminal act committed by a contingent of policemen…” \(^\text{86}\)

The Report does provide an overview of proximate and deeper causes, which include discriminatory polices and practices of the State and the repeated failure by the State to address Tamil grievances and rectify discrimination.

Notably, however, the Report provides summaries of the nature and extent of the damage suffered by victims of violence. The summaries are one paragraph in length and include the names and addresses of victims, descriptions of the incidents – in some cases with a name(s) of alleged perpetrator(s) – and whether compensation has been requested and/or received. The inclusion of summaries of nine hundred and thirty nine \(^\text{87}\) cases accepted for compensation is a unique feature of the report.

**SUMMARY OF RECOMMENDATIONS:**

The Commission’s main recommendations relate to compensation and to national unity and ethnic reconciliation. There are no specific recommendations regarding prosecution or punishment for past acts or omissions by State actors. Instead, the Commission recommends prosecution of future acts of ethnic violence.

\(^{86}\) Truth Commission Report, p. 27.

\(^{87}\) But see p. 64, Truth Commission Report, “[t]he Commission accepts the claims in 949 cases and is determined to recommend payment of compensation”. 

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10 OTHER MECHANISMS

10.1. MINISTRY OF DEFENCE BOARD OF INVESTIGATION INTO DISAPPEARANCES IN JAFFNA PENINSULA

DATE APPT’D : 05.11.1996

BY : On a directive issued by President Chandrika Bandaranaike in October 1996, the Secretary, Minister of Defence, appointed a Board of Investigation to inquire into complaints of disappearances in the Jaffna Peninsula.

COMPRISING : Mr. E.S. Gunathilake, Additional Secretary Defence – Chair Replaced by Mr Bandula Kulatunga, retired civil servant – Chair (12.96)

The Board included members from the three forces and from the police:

Major General W.A.A. de Silva, General Commanding Officer of the 1st Division of the Army
Rear Admiral H.C.A.C. Tissera, Chief of Staff of the Navy
Air Vice Marshal K.G.A. Peiris, Chief of Staff of the Air Force

Assisted By: Secretary, Officer from the Navy, two Petty Officers, a stenographer and a translator
MANDATE : Examine the written representations that have been made by the complainants and provide them an opportunity to make any further oral representations;

Examine all reports made by the Services and the Police Department on each of these incidents/allegations;

Assess whether proper procedural steps have been taken by the authorities concerned with regard to any incident and identify if any, failure on the part of the investigating officer to discover the true facts;

Assess whether there had been any attempt on the part of any officer or person to refrain from revealing the true position;

Examine whether there had been any avoidable delay in initiating inquiries on receipt of the first information, if so why?

Assess the experience and capability of the Officers who conducted the investigations and as to whether they were properly acquainted with the correct procedure;

Examine the time taken to establish a Prima Facie Case;

Assess any action taken against the Officers, immediately on establishing a Prima Facie case, pending further inquiries;

Examine the corrective action taken by the supervising staff to arrest any further incidents;

Review and comment on the superior Officer’s knowledge and control over the persons under his command;
Can the Board of Investigation account for any person missing or can it identify an officer who is specifically accountable?

Has the inquiry been done to the satisfaction of the aggrieved Party? If not why?

Dissent and reservations expressed by the complainant.

REPORT TITLE : Report of the Board of Investigation into Disappearances in Jaffna Peninsula

DATED : 9 March 1998

CONTENTS : 10 page Report, with approximately 190 pages of annexures, most of which are lists of names of persons, including most significantly, names of those released, names of those disappeared and the complainants, cases were evidence has revealed sufficient information regarding the suspected offender, cases where evidence did not reveal information to pursue further action, and others.

BRIEF STATEMENT OF FACTS:

The Board was appointed after revelations, in 1996, of a sharp rise in disappearances and other rights violations in Jaffna and widespread national and international pressure that ensued. The increase came in the wake of a July 1996 suicide bombing in Jaffna, targeting a visiting Minister, and the Tiger’s successful attack on Mullaitivu Army Base.

SUMMARY OF FINDINGS:

According to the Report, the Government appointed the Board because the “existing procedure of inquiry into these complaints was by the Police or the Military itself against whom these complaints were made” and such procedure was found to be “ineffective and totally
unacceptable.”

However questions persist about the impartiality of the Board appointed by the Ministry of Defence and consisting of personnel from the security forces and police.

Having received a total of two thousand six hundred and twenty one complaints from a wide range of local and international sources, the Board processed the names and addresses of the complaints and determined that on deletion of repetitions the number of actual alleged disappearances was seven hundred and sixty five.

The seven hundred and sixty five cases were categorized into three groups; (1) cases where facts revealed sufficient grounds to pursue investigations against offenders, of which there were twenty five; (2) cases in which there was sufficient information about the incident but where there was insufficient evidence for pursuance of legal action, of which there were one hundred and thirty eight; and (3) cases in which evidence did not reveal information to pursue further inquiry, of which there were two hundred and nineteen.

The Board found that a sudden increase in arrests was triggered by the July 1996 suicide bombing that killed a Minister and the overrunning of the Mullaitivu Army Camp. The Board failed to note, however, that the number of disappearances also rose suddenly at the same time.

The sudden increase in arrests and reported disappearances is

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   The Association for the Defense of the Arrested and Disappeared protested about the list of “disappeared” persons published by the Board. Reportedly, the MOD’s list is comprised mostly of people already released or officially acknowledged to be under arrest. Leaders of the Association said that they believed that the Board was engaged in delayed tactics aimed at diverting international attention away from the issue.
suggestive of a pattern of reprisal killings by members of the armed forces. The Board does not speak to this issue.

SUMMARY OF RECOMMENDATIONS:

Where there was sufficient evidence, cases were referred to the Inspector General of Police (IGP) and commanders of the relevant forces.

The Board requested the service commanders and the IGP “to strictly adhere to the provisions of the Emergency Regulations when arrests are made to ensure accountability”\(^{91}\) and stressed the need for the issuance of receipts to the next of kin upon arrest.

\(^{91}\) MoD Report, p. 3.
10.2. THE COMMITTEE ON DISAPPEARANCES IN THE JAFFNA REGION, HUMAN RIGHTS COMMISSION OF SRI LANKA

DATE APPT’D : 2002, though the date of appointment is not specified in the report.\(^{92}\)

BY : The Human Rights Commission of Sri Lanka under section 11(b) of the HRC Act of 1996.

COMPRISING : Dr. Devanesan Nesiah – Chair
Jezima Ismail - Member
KH Camillus Fernando – Member
Assisted By:
M.C.M. Iqbal – Secretary
Staff of five

MANDATE : To inquire into complaints [the Human Rights Commission] has received regarding disappearances and removal of persons from their residences in Jaffna, Kilinochchi and Vavuniya Districts during the period 1990 to 1998 and report on the following matters.

Whether the persons in the list provided by the Guardians’ Association of those Arrested and Disappeared from the North, The Displaced North Muslims Organization, and the complaints pertaining to this period received by the Regional Office of the Human Rights Commission in Jaffna … have been involuntarily removed or had disappeared from their places of residence during the period mentioned by the complainants;

\(^{92}\) "Devanesan Nesiah appointed to inquire Jaffna disappearances," http://www.tamilnet.com, TamilNet, November 30, 2002 15:20 GMT.
All the circumstances pertaining to the alleged involuntary removals or disappearances;

The present condition and whereabouts of the persons alleged to have been so removed or to have so disappeared;

Reports made by complainants that the missing persons are being held in unidentified prisons & places of detention;

The evidence available for identifying the person or persons responsible for these alleged disappearances and the findings based on such evidence;

The relief, if any, that should be provided to parents spouses and dependents of the persons alleged to have been removed or disappeared;

…

If in the course of its inquiries the committee deals with cases of complainants, particularly women and children who are in severely distressed circumstances and who may be in need of special care and support, the Committee should report such cases to the Commission for special relief.....

REPORT TITLE : Report of the Committee on Disappearances in the Jaffna Region

DATE : October 2003

CONTENTS : 58 page Report, with 148 pages of annexures, including lists of persons whose certificates confirming disappearance had been given, persons alleged to be responsible, persons to whom relief is recommended, extracts from reports of prior commission, relevant circulars, etc.
BRIEF STATEMENT OF FACTS:

After the signing of the Ceasefire Agreement in 2002, the National Human Rights Commission embarked upon “a special effort directed towards the protection and promotion of human rights in the Jaffna region for the strengthening of the ongoing peace process.” As part of this effort, the Commission appointed a Committee to inquire into “disappearances and the removal of persons” during the period 1990 – 1998.

SUMMARY OF FINDINGS:

The Report examines patterns and practices of the State that emerge from the two hundred and eighty one cases into which the Committee inquired. It must be noted, however, that these cases span an eight-year period, during which the situation in the North changed dramatically. Jaffna was controlled by the LTTE from 1990 until 1995 and by the government of Sri Lanka from 1995 onwards.

According to the Committee, “it transpired during our inquiries that many complaints of disappearances from Jaffna and a very high number of disappearances from the North and East are yet to be taken up for investigation” and that “the complaints referred to us constitute only a minor fraction of the total number of disappearances that had occurred….“

The Report examines cases by both State and non-State actors, although the majority of disappearances have been at the hands of State actors. The Committee’s attempts to seek information from both the Army

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93. HRC Committee Report, p. 95.
94. HRC Committee Report, p. 12.
95. Of the two hundred and eighty one cases, two hundred and fifty six were Tamils and twenty five were Muslims. The twenty five Muslims had been taken by the LTTE and subsequently disappeared. Of the two hundred and fifty six Tamils, two had been shot dead, two hundred and forty five had been taken by the Army and then disappeared, five had disappeared without a trace, and three had returned home.
and the LTTE were unsuccessful. Specifically, it had been unable to secure information from the Army about the present whereabouts of thirty seven officers implicated in the disappearances.

Factors contributing to the persistence of disappearances include: the Army’s failure to hand over those they arrest to the police; police complicity, including the deliberate distortion of recorded statements; failure of the police to record statements in the language in which they were made. Other practices included: the blindfolding of victims, night arrests by masked men, blatant disclaiming of responsibility even when numerous witnesses identified the responsible party, and denials to family members of the fact of arrest by army personnel.

SUMMARY OF RECOMMENDATIONS:

The Committee made general recommendations, as well as specific recommendations in regard to those to whom relief should be granted.
PART 2
THE RECOMMENDATIONS OF THE DISAPPEARANCES COMMISSIONS

This Part examines and tabulates the recommendations by the three zonal Commissions of Inquiry into Disappearances (1994) and the 1998 All Island Commission on Disappearances.

It also provides a pointer to the current state of the law as compared against the recommendations and refers to emergency law for that purpose.

The emergency law regime referred to in this Part comprises the Emergency (Miscellaneous Provisions and Powers) Regulation No 1 of 2005 as contained in Gazette No 1405/14, as amended particularly on August 5th 2008 by Gazette No 1561/11 and on May 2nd 2010 by Gazette No 1651/24 as well as the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No 7 of 2006 as contained in Gazette No 1474/5 of 6 December 2006 (as amended).

These Regulations have been promulgated under the Public Security Ordinance, (PSO) No 24 of 1947 (as amended). The Prevention of Terrorism Ordinance (PTA), Act No 48 of 1979 (as amended) will also be referred to.
## INVESTIGATIONS

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
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<tbody>
<tr>
<td></td>
<td>Further investigations of the complaints of returned detainees be done as a matter of urgency.(^{96}) I.1*</td>
<td>All Island, Final (82)**</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>The evidence of returned detainees on the events they witnessed while in custody be recorded.(^{97}) I.2</td>
<td>All Island, Final (82)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>The Human Rights Commission be directed to deal with instances of torture of returned detainees inquired into by this Commission.(^{98}) I.3</td>
<td>All Island, Final (82)</td>
<td>2001</td>
</tr>
</tbody>
</table>

* Referral consistently to Recommendation number in Commission report.

** Referral consistently to page number in Commission report.

96. Recommendations by Amnesty International include; “Ensure that all violations of human rights and international humanitarian law, irrespective of the identity of the perpetrator, are promptly, independently, impartially and thoroughly investigated.” Amnesty International, June 2009, p.49.

97. Not implemented.

98. “For this collaboration to be effective, the Sri Lankan Human Rights Commission (HRC) needs to be supported and strengthened, and its independence must be restored. The following steps are crucial.

- The HRC should be in a position to account for every human rights violation investigated as a crime.
- Restore the HRC’s independence and impartiality, in particular through implementing the 17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka (1978), certified on 3rd October 2001 and its schedule.
- Ensure that the HRC’s work is fully supported financially so as to enable it to investigate human rights violations independently, thoroughly and efficiently.
- Establish a system to provide the relevant authorities with detailed information that they can use to aid them in investigations and prosecutions. Procedures must be established in law to consider the HRC’s recommendations.
In respect of the lists of names of individuals in respect of whom THERE IS CREDIBLE MATERIAL indicative of their responsibility for disappearances of certain persons…

… Your Commissioners recommend that-
* the investigations by the IGP should be under the supervision of the Attorney General, and
* the determination of the appropriate legal proceedings should be by the Attorney General.” II.2

- Establish clearly defined rules for co-operation between the police, the Attorney General’s Office and the HRC in addressing human rights violations, without compromising the latter’s independence. These guidelines must be made available to the public so that the population can understand how complaints are investigated and prosecuted.

“The HRC must vet and supervise its staff at a local level to ensure their professionalism and adherence to human rights principles.” Amnesty International, June 2009, p.49. The Human Rights Commission (HRC) is largely dysfunctional at the time of writing. It was re-constituted in 2006 by the President in the absence of the Constitutional Council. This appointment has been largely criticised as being a violation of the 17th Amendment to the Constitution, and the HRC was downgraded from A to B status in March 2007 by the International Co-ordinating Committee of National Human Rights Institutions. The downgrading was renewed in 2009. The mandate of the HRC lapsed in May 2009 and it has not been reconstituted as at 30/03/2010.
<table>
<thead>
<tr>
<th></th>
<th>The investigations into the persons against whom the Commission had found credible material indicative of their responsibility for disappearances be done by the Inspector General of Police under the overall supervision of the Attorney General. The Attorney General to determine the appropriate legal proceedings to be taken against such persons.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Island, Final (82)</td>
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<tr>
<td></td>
<td>2001</td>
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</table>

It is imperative and accordingly recommended that the Police investigations be done in respect of the recommendations of all the Presidential Commissions with regard to the perpetrators of disappearances of persons and not be done on a case-by-case basis alone. The investigations need be done in such a manner as to give the victims confidence in their impartiality.

All Island Final (15) 1997

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99. Amnesty International makes several recommendations with regard to investigations in this type of situation as follows; “The Police Special Investigations Unit (SIU) should be strengthened and expanded by making it an investigating unit mandated to investigate complaints of gross abuses of human rights on a permanent basis. Members of the SIU should not be assigned to any task other than the investigation of human rights violations. Its resources should be expanded. Consider recommendations made by Sri Lankan legal experts that the work of the SIU should be supervised by officers of the Attorney General’s department, especially assigned for this purpose, and (to avoid further conflicts of interest) holding no other assignments.” Amnesty International, June 2009, p.50.

100. A special unit named the Missing Persons Unit was established in 1998 at the Attorney General’s Department to advise on investigations and to conduct prosecutions in cases of Disappearances. By 1st January, 2000 this Unit had initiated two hundred and thirteen prosecutions in the High Court and seventy nine non-summary inquiries in Magistrate’s Courts. All Island Commission Report, Annexure IV – Particulars of Prosecutions Initiated by Missing Persons’ Unit, p. 98.
The Police investigations be done in respect of the recommendations of all Presidential Commissions on Disappearances with regard to perpetrators of disappearances and not be done on a case by case basis. The investigations be done in such a manner as to give the victims confidence in the impartiality of persons conducting such investigations.

<table>
<thead>
<tr>
<th>Forensic Skills/ Mass Graves</th>
<th>Judicial Medical Officer (JMO) to be trained to detect sexual abuse</th>
<th>Southern, Final (171)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>It would be undesirable to disinter Mass Graves until requisite skills exist.</td>
<td>Southern, Final (178)</td>
<td>1997</td>
</tr>
</tbody>
</table>

101. “In response to the recommendations of the earlier Commissions that the independence of investigations be safeguarded, a Disappearances Investigation Unit (DIU) has been set up under the Deputy Inspector General of Police of the Criminal Investigations Department.” All Island Commission Report, 2001 p. 15.

102. Amnesty International recommends “ensuring effective investigations, due process and swift prosecution of all perpetrators, including those enjoying political influence and high social status;” Amnesty International, June 2009 at p.13.

103. The failure by JMO’s to detect and report sexual abuse persists. In Nandini Herath’s case the victim was shown to the Kandy General Hospital JMO who recorded only two contusions and a fracture, whereas she was a victim of sexual assault and forensic medical evidence submitted seven months after her arrest testified to such assault. It is also documented that forensic medical experts lack the training, equipment and vehicles necessary. see Kishali Pinto-Jayawardena, “The Rule of Law in Decline, Study on Prevalence, Determinants and Causes of Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka,” The Rehabilitation and Research Centre for Torture Victims (RCT), May 2009, Denmark [hereinafter referred to as RCT Study] at p. 126 (Nandini Herath case) and at p. 174.
<table>
<thead>
<tr>
<th>It is necessary to develop training in the requisite skills with the assistance of international agencies such as the UN Human Rights Committee Working Group on Enforced and Involuntary Disappearances. VII.2(i)</th>
<th>Southern, Final (178)</th>
<th>1997</th>
</tr>
</thead>
</table>
| Establish a Human Identification Centre (HRC) to:  
(a) train forensic pathologists and scientists in all aspects of identification.  
(b) provide modern state of the art techniques, including DNA profiling, computerized facial reconstruction and photo comparison, video superimposition and anthropometric analysis. | Southern, Final (178) | 1997 |
| In the meanwhile, information should be collected as to the existence of Mass Graves, and record location/date/agency involved/identity of bodies alleged to be in the said Mass Graves. Accordingly, an appropriate authority for this task be identified. | Southern, Final (178) | 1997 |

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104. Not implemented.
105. Not adhered to.
<table>
<thead>
<tr>
<th>Special Mechanisms</th>
<th>Police investigations by a special unit under the direct supervision of an officer not below the rank of Deputy Inspector General\textsuperscript{106}. III.1</th>
<th>Southern, Final (171)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Investigative Unit</td>
<td>The Disappearances Investigations Unit established in the Criminal Investigation Department of the Police be well equipped and provided with all logistical support necessary for them to perform their duties of proceeding against those responsible, effectively\textsuperscript{107}. III.1</td>
<td>All Island, Final (82)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>The Police records such as information Books, Diet Registers, Movement of Registers and Medical Records be handed over to the Disappearances Investigation Unit of the CID to ensure the safety of such books\textsuperscript{108}. III.3</td>
<td>All Island, Final (83)</td>
<td>2001</td>
</tr>
</tbody>
</table>

\textsuperscript{106} “In response to the recommendations of the earlier Commissions that the independence of investigations be safeguarded, a Disappearances Investigation Unit (DIU) has been set up under the Deputy Inspector General of Police of the Criminal Investigations Department.” All Island Commission Report, 2001, p. 15. Amnesty International has commented on the investigation of human rights violations in Sri Lanka adversely. It makes the following recommendation; “Sri Lanka lacks competent and credible mechanisms for investigating human rights violations. As part of its review, the government should explore the creation of such a mechanism (one suggestion is an Independent Prosecutor’s Office) with a mandate to conduct independent investigations in co-operation with the Human Rights Commission.” Amnesty International, June 2009, p. 49.

\textsuperscript{107} The Disappearances Investigations Unit (hereinafter DIU) suffers from lack of resources and qualified, dedicated core personnel. Its present state of functioning is uncertain.

\textsuperscript{108} Current status of this recommendation is unclear though records have been handed over to the DIU in specific cases.
| General | The Commission feels that on ex-parte evidence alone, it cannot decide on the guilt of these people. Hence, proper inquiries have to be undertaken and evidence given by the complainants should stand the scrutiny of cross-examination. This is a task we leave for the next Commission.109
542 complaints received by this Commission remain to be investigated.110 VIII | NE Final (62) | 1997 |
| Specific Persons | It is therefore recommended that ASP Indran (Anamaduwa then at SL Army Reserve Headquarters) be sent on compulsory leave immediately to prevent him interfering with the witnesses any further, and to enable investigations into complaints where he is involved to commence.111 | Southern, Final (178) | 1997 |

109. The next Commission, the All Island Commission, did not have a mandate to revisit cases that had already been considered by the prior Commissions, see All Island Final, p.1
110. Those complaints were turned over to the All Island Commission, see All Island Final, p.1
111. “The conclusions and recommendations of these Commissions of Inquiry should be made public and easily accessible, along with an official status report on implementation.” Amnesty International, June 2009, p. 48; “Disciplinary control of police officers should not be delegated to the Inspector General of Police. The National Police Commission (NPC) should clearly articulate what types of misconduct or abuse of rights it will investigate and what penalties will result if complaints are proved to be true.” Amnesty International, June 2009, p.50. The National Police Commission which is the independent body created by the 17th Amendment in charge of the appointment, transfer and disciplinary control of police officers is now defunct in the absence of the appointment of the Constitutional Council. Under Article 155J of the Constitution, the NPC was empowered to delegate to the Inspector General of Police the powers of disciplinary control and dismissal of any category of police officer, subject to conditions prescribed by the NPC itself, see RCT Study, p.108. During its second term the NPC delegated disciplinary powers over officers below the rank of Chief Inspector to the IGP. See Kishali Pinto-Jayawardena, *Thoughts on the drowning of one man*, Sunday Times, November 8, 2009, at p. 12. Currently the Secretary to the Ministry of Defence exercises the powers of the NPC in the absence of the constitution of the NPC by the Constitutional Council.
## LEGAL PROCEEDINGS

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutions</td>
<td>The courts must always be the arbiter of criminal liability. [III.2(i)]</td>
<td>Southern, Final (171)</td>
<td>1997</td>
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<tr>
<td></td>
<td>Courts of first instance to be identified wherever possible as most accessible to the petitioner, i.e. the Magistrate’s Court. [V.5.(iv)]</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The High Court’s Jurisdiction of ascertainment of liability be retained. [IV.11(ii)]</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The High Court (or the Court of Appeals as the case may be) to continue to be the ultimate arbiter on the issues of responsibility and compensation. [V.3.(iii)]</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>General Principles</td>
<td>Evidentiary rules must be that of the normal law. [112] However, once detention is established, burden (of proof) to shift to person charged in the absence of an explanation. [III.2(ii)]</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
</tbody>
</table>

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112 Evidentiary rules in respect of the criminal law remain unchanged.
<table>
<thead>
<tr>
<th>Principles of procedural fairness including the right to be represented must prevail.</th>
<th>Southern, Final (171)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Plaint</td>
<td>First complainant or an aggrieved person be given the right to file private plaint.</td>
<td>Southern, Final (174)</td>
</tr>
<tr>
<td></td>
<td>The failure or refusal per se to comply with the rules to be declared acts entailing penal consequences with a right to file a private plaint by the virtual complainant, in the event of the Police failing to institute legal proceedings.</td>
<td>All Island, Final (84)</td>
</tr>
<tr>
<td>Representation</td>
<td>Right of petitioners to be represented by Human Rights Task Force and Prosecution by the Independent Prosecutor.</td>
<td>Southern, Final (175)</td>
</tr>
<tr>
<td>Accountability/ Liability</td>
<td>The principal of accountability in respect of past acts be reaffirmed for the good of society in future</td>
<td>All Island, Final (83)</td>
</tr>
</tbody>
</table>

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113. Section 41 of the Judicature Act No.2 of 1978 (as amended) protects the right to be represented by any person who has or claims to have the right to be heard.

114. Under the Criminal Procedure Code No 15 of 1979 (as amended) an aggrieved person can petition a Magistrate’s Court by way of private plaint. Under section 148(1)a of the Criminal Procedure Code, the plaint may be made by a private person. In the case of Martin Appuhamy v. Sub inspector of Jaffna 64 NLR 43, an objection was raised that it was irregular to file police information with a private plaint. The Court held that police information can be filed with a private plaint and further held that “It make no difference whether the plaint is a private plaint or a police plaint. In either case before a warrant is ordered, the law requires the magistrate to bring his independent mind to bear upon the facts.”. Section 148 of the Criminal Procedure Code deals with the way in which proceedings in the Magistrates Court may be instituted.

115. The Human Rights Task Force was dissolved in 1996, and the Human Rights Commission was created. An office of an Independent Prosecutor has not been created to date.

116. “Although hundreds of other police officers and military personnel have been indicted since 1994 for human rights violations (mainly for torture, abduction or wrongful confinement), there have been only a small number of convictions. To Amnesty International’s knowledge, there have been only three convictions under the Convention Against Torture and other Inhuman and Degrading Punishment Act (The CAT Act). Up to 2007 there had been fewer than 30 convictions for abduction or wrongful confinement (the charges normally associated with enforced disappearances). ” Amnesty International, June 2009 at p.11.
<table>
<thead>
<tr>
<th>No defence of due obedience to be entertained.</th>
<th>Southern, Final (172)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>No defence of due obedience to orders from superiors, be entertained. III.4</td>
<td>All Island, Final (83)</td>
<td>2001</td>
</tr>
<tr>
<td>Chain of command liability to be clarified by the Supreme Court in the exercise of its jurisdiction under Art. 129 of the Constitution.</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
</tbody>
</table>

117. The Emergency Regulations of 2005 by Regulation 73 provides an immunity clause for acts carried out by security personnel under the regulations, or any order given under the regulations. Regulation 73 provides; “No action or other legal proceeding, whether civil or criminal, shall be instituted in any court of law in respect of any matter or thing done in good faith, under any provisions of any emergency regulation or of any order or direction made or given thereunder, except by, or with the written consent of, the Attorney-General”. See also Regulation 19 of Emergency Regulations of 2006 and Sections 9 and 23 of the PSO as well as Section 26 of the PTA.

118. “Sri Lanka should pursue amendments to the Constitution to enshrine the right to life as a constitutional right, to include the crime of enforced disappearances in the penal law, and to reflect the international legal principle of command responsibility in the Criminal Procedure Code.” Amnesty International, June 2009, p.51. The criminal law in Sri Lanka has not recognised Chain of Command responsibility as yet. However ‘when violations take place in normal times, a police officer or prisons officer could be vicariously held liable in terms of constitutional guarantees against torture or other grave human rights violations committed by his or her subordinates’, RCT Study, p.90 para 4. See for example Sriyani Silva v. Iddamalgoda [2003] 2 Sri LR 63, and Wewelage Rani Fernando SC(FR) No.700/2002, SC Minutes 26/07/2004. “…though the Supreme Court has been willing to liberally enforce the doctrine of the vicarious liability of superior officers in regard to abuses committed during ‘normal’ situations … there has been a greater degree of reluctance manifested in regard to applying this concept to army officers to enforce accountability during times of conflict.” RCT Study, p. 89 para 3. In the Embilipitiya Case, a senior army officer was the officer in charge of the army camp where more than fifty school children had been held and tortured. The High Court acquitted the officer on the basis that there was no direct evidence linking him to the crimes. “In Wijesuriya v. the State [1973] 77 NLR 25, the accuser’s commanding officer, Colonel Nugawela who had purportedly issued the directive to the accused to “bump off” any prisoner taken into custody, was not indicted. He was instead taken as a witness for the prosecution and testified to the factual situation that existed on the day in question.” See RCT Study, p. 89 footnote 395. Meanwhile International Law clearly recognises the concept of command responsibility; “International law has clearly laid down the principle that even if a commander does not order his subordinates to commit the unlawful acts, he/she is liable if he knew, or ought to have known, of them and failed to take steps to prevent them”, See RCT Study, p. 89, quoting The Yamashita Trial, IV WCR 35.
Recognise criminal liability of officials with chain-of-command responsibility.  

| Officers with chain of command responsibility who order or tolerate disappearances by those under their command to be made invariably criminally liable. |
| Southern, Final (174) |
| 1997 |

| Prosecutions be not confined to Junior Officers alone. |
| All Island, Final (83) |
| 2001 |

| Attorney-General |
| Where a violation amounts to a criminal offence, Attorney General/Proposed Independent Prosecutor to initiate prosecutions. |
| Southern, Final (177) |
| 1997 |

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119. Not implemented.

120. “Commissions of Inquiry are not replacements for good policing or respect for the rule of law. Bringing perpetrators to account, including high officials in positions of command responsibility, is the only way to break the cycle of impunity.” Amnesty International, June 2009, p. 47.

121. “The old question of impunity remains very much with us. Whether or not each individual Police Sergeant, Police Driver, Army Corporal is prosecuted is hardly indicative; but there are some key figures, and people say: “If those are still free what are you talking to us about Justice.” All Island Commission Report, 2001, quoting INFORM, p. 15.

122. Although no Independent Prosecutor has been appointed, “[a] special unit named the Missing Persons Unit had been established in 1998 at the Attorney General’s Department to advise on investigations and to conduct prosecutions in cases of Disappearances. By 1st January, 2000 this unit had initiated 213 prosecutions in the High Court and 79 non-summary inquiries in Magistrate’s Courts.” All Island Commission Report, 2001, p. 16. “The establishment of this Unit while underlining the special problems of prosecuting cases of disappearances suffers from drawbacks, in that the prosecutor is the Attorney General who invariable is the representative of the State, either as prosecutor or as respondent, in judicial proceedings. In this instance the present arrangement makes the Attorney General the representative of the victim, and prosecutions are conducted on the basis that the crimes where the acts of errant officials. This again highlights a problem of the public perception of a Conflict of Interest, in that the victims are very much affected by the awareness that State Officers are investigating into complaints against Officers of [the] State.” All Island Commission Report, 2001, p. 16. “Fourteen years later, Amnesty International’s conclusion remains the same; if anything it is strengthened by the persistence of new violations of human rights and the continuing absence of political will to prevent or stop such violations, investigate them properly, prosecute those suspected of criminal offences or ensure reparations for victims, in accordance with Sri Lanka’s obligations under international human rights law and international humanitarian law.” Amnesty International, June 2009, at p.11

*Shanthia Patciirana v. DIG (Personnel & Training) and others*, C. A. writ Application No. 1123/2002, C. A. Minutes 09.10.2006
<table>
<thead>
<tr>
<th>Intermediate Steps</th>
<th>Attorney General must cease to represent persons charged of violating the Fundamental Rights of persons.(^\text{123}) VI.5(iii)</th>
<th>Southern, Final (177)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Transfer of persons against whom allegations are made; interdiction after disciplinary inquiry or criminal proceedings commence, or attempts at interference or obstruction of investigation (including threats to lawyers); such attempts at interference also to be a basis for further investigations. III.2(viii)</td>
<td>Southern, Final (172)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Where investigations have commenced against alleged perpetrators, they be transferred out of the area of the alleged incidents under investigation. III.9</td>
<td>All Island, Final (83)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Interdiction from service of such alleged perpetrators to take place following the initiation of criminal and/or disciplinary proceedings(^\text{124}). III.10</td>
<td>All Island, Final (83)</td>
<td>2001</td>
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</tbody>
</table>

\(^\text{123}\) Observed as a matter of practice in the past though some exceptions to this practice have been evidenced in recent times.

\(^\text{124}\) By Writ Application No. 1123/2002 petitioner, Shantha Pathirana, sought a writ of certiorari to quash a circular issued by the DIG Personnel and Training, directing the reinstatement of all officers interdicted following inquiries conducted by the Disappearances Investigation Unit (DIU) and charged in courts, but subsequently bailed out. Here it was held that if criminal proceedings are taken against a public officer he should have been dealt with under, paragraph 27:10 [Chapter XLVIII, Para. 27:10 – Where legal proceedings are taken against a public officer for a criminal offence or bribery or corruption the relevant officer should be forthwith interdicted by the appropriate authority.] of the Establishment Code of Sri Lanka (01st September 1985), and that under this paragraph if legal proceedings are taken against a public officer for a criminal offence it is mandatory for the relevant authority to interdict that officer. (emphasis added) The issue was under which section of the Code the situation in question fell. Chapter XLVIII, Para. 27:8 provides that ‘when a public officer is taken into custody by the Police or any other statutory authority is released from custody he should be reinstated. However, if such reinstatement would obstruct a formal disciplinary inquiry scheduled to be held by the Disciplinary Authority, the accused officer should not be reinstated but interdicted’. Chapter XLVIII, Para. 27:9 provides that ‘when an officer remanded pending legal proceedings against him is released on bail, he should be reinstated in service if the Disciplinary Authority determines that his reinstatement will not adversely affect the interest of the public service….’ If the situation in question did fall under one of the above paragraphs, it appears that the disciplinary authority would have a certain discretion regarding reinstatement. However, the Court was clearly of the opinion that ‘when legal proceedings are taken against a public officer he has to be considered as an officer who has passed the stage of taking into custody and/or remanded pending legal proceedings, therefore he cannot be considered under Chapter XLVIII, Paras. 27:8 or 27:9’. On this basis the circular in question was quashed. Shantha Pathirana v. DIG (Personnel & Training) and Others, C. A. Writ Application No. 1123/2002, C. A. Minutes 09.10.2006
<table>
<thead>
<tr>
<th>General</th>
<th>If any perpetrator is alleged to have attempted to interfere with a witness, threatened lawyers, threatened the prosecutor, or obstructed investigations, such action to be a subject of a further inquiry followed by further punishments and it should also be ground for interdiction.</th>
<th>All Island, Final (83)</th>
<th>2001</th>
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<tr>
<td></td>
<td>III.11</td>
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<tr>
<td>General</td>
<td>This Commission recommends a vigorous prosecution of those responsible for disappearances.</td>
<td>Southern, Final (175)</td>
<td>1997</td>
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<td>V.2(i)</td>
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<tr>
<td>General</td>
<td>Speedy action be taken on findings of Disappearances Commissions.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
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<td></td>
<td>IV.19</td>
<td></td>
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<tr>
<td>General</td>
<td>Steps be taken without delay against miscreants identified by the Commissions of Disappearances.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
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<td>IV.30</td>
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</table>

125. No witness protection law is in place in Sri Lanka. A Witness and Victims of Crime Protection Bill was presented to Parliament in June 2008. It is still pending.

126. According to Comments made by the Government of Sri Lanka on the Concluding Observations of the Committee Against Torture (Sri Lanka, CAT/C/LKA/CO/2/Add.1, 20.02.2007; see also United Nations Committee against Torture, Second Periodic Report, CAT/C/48/Add.2, 06.08.2004), recommendations of the 1994/1998 Disappearances Commissions and the 1996 Board of Investigation into Complaints of Disappearances in the Jaffna Peninsula, had led to prosecutions in the High Court and the Magistrate’s Court in four hundred and thirty two cases with convictions being obtained in twelve cases and acquittals handed down in one hundred and thirty cases.

127. Not implemented.

128. Not implemented.
| Indemnity Act must not cover acts which are grave offences or a violation of rights of persons. | Southern, Final (175) | 1997 |
| Allegations of unjust enrichment be a subject of consideration at a trial against an alleged perpetrator so as to obviate the need for a multiplicity of actions. | All Island, Final (83) | 2001 |

129. According to the Indemnity Act No. 20 of 1982, as amended in 1988, “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 August 1, 1977, to the relevant date (December 1988), 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 so or 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 in the public interest and if any such action or legal proceeding has been instituted in any court of law whether before or after the date of commencement of this Act every such action or legal proceeding shall be deemed to be discharged and made null and void.” No exceptions for grave violations or violations of the rights of persons are made. The Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations 2006 by Regulation 19 provides specific immunity for actions taken under the Regulations by security personnel. Similarly immunity provisions are provided for in Regulation 73 of Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005, Section 26 of the Sri Lanka Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 [Certified on 20 July 1979] and Section 26 of the Public Security Ordinance No.25 of 1947. The International Commission of Jurists (ICJ) have commented as follows on these provisions “These provisions severely limit the accountability of civilian and military authorities exercising emergency powers, provided that the action of the official took place in the course of discharging official duties.”. The ICJ comments “the fact that an official was “in the discharge of his official duties” can never be used as an excuse not to prosecute or to acquit... exceptional circumstances such as political instability or public emergencies do not justify exempting law enforcement or other officials from possible criminal/civil liability for violation of human rights during emergency operations.”, *Briefing paper; Sri Lanka’s Emergency Laws*, International Commission of Jurists, May 2009, p.7, paras 1 and 2.

130. Not implemented.
<table>
<thead>
<tr>
<th><strong>Habeas Corpus</strong></th>
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<tbody>
<tr>
<td>Adverse finding in a <em>Habeas Corpus</em> petitions not to be confined to payment of damages by the State alone but to include disciplinary action against the officers responsible.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td>Respondents be required to deposit the sum of award in court or a secured bond duly hypothecated pending appeal.</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>The obligation to pay the award be available against a respondent’s assets and, if he has died, against his estate.</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>Respondents in <em>Habeas Corpus</em> Petitions to deposit the sum awarded, in Court, pending appeal and the obligation to pay the award be made available against his assets and estate.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td>Publicity to be given to the availability of the remedy of <em>Habeas Corpus</em> and the support services available from the Bar Association of Sri Lanka/Legal Aid Commission/Movement for Development and Democratic Rights and Lawyers for Human Rights and Development.</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
</tbody>
</table>

131. To date, the Court of Appeal has not enforced disciplinary action against officers *per se* although it has directed other officials to consider legal actions. “I also direct the Registrar of this Court to forward copies of the proceedings recorded in the Magistrate’s Court to the Inspector General of Police who is hereby directed to consider the evidence recorded as information of the commission of cognizable offences. He will take necessary steps to conduct proper investigations and to take steps according to law. The Registrar is also directed to forward a copy of the proceedings with this judgment to the Honourable Attorney-General for appropriate action to be taken by him” per S.N. Silva J in *Leeda Violet and Others v. Vidanapathirana, OIC Police Station, Dickwella and Others*, [1994] 3 Sri LR, 377.

132. Although awards tend not to be deposited or secured during appeals, non payment of awards is punishable under contempt of court. *Leeda Violet and Others v. Vidanapathirana, OIC Police Station, Dickwella and Others*, ibid.

133. In *Murin Fernando v. Sugathadasa*, [1997] 1 Sri LR, 281. Yapa J declined to award exemplary costs in relation to one of the respondents because he was dead.

134. Awareness among the general public of the *Habeas Corpus* remedy is low. *Habeas Corpus* has rarely provided a remedy due to extraordinary delays in the administration of justice.
<table>
<thead>
<tr>
<th>Civil Liability</th>
<th>Instructions to commanders in force to co-operate with the Courts. V.5(iii)</th>
<th>Southern, Final (176)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Where any person is found guilty for involuntarily removing or disappearing another, the dependents of the victim be given the right to institute civil proceedings to claim damages on the basis of the order of the Criminal Court notwithstanding the provisions of the Prescription Ordinance.\textsuperscript{135} III.3(iii)</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>A right of the dependents of a disappeared person to institute civil proceedings for the recovery of losses suffered by reason of disappearance be recognized against those found responsible for abduction or wrongful confinement by a Court of Law, where subsequent to such act the disappearance of the victim ensued.\textsuperscript{136} III.13</td>
<td>All Island, Final (83)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Legislative provision be made enabling a petitioner who has obtained a judicial order for compensation on the basis of personal liability in <em>Habeas Corpus</em> and/or fundamental rights applications to recover the same in separate civil proceedings if not paid within a stipulated time. This liability of the perpetrator to be extended to his estate.\textsuperscript{137} III.3.(ii)</td>
<td>Southern Final (172)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\textsuperscript{135} Not implemented.

\textsuperscript{136} Not implemented.

\textsuperscript{137} Not implemented.
<table>
<thead>
<tr>
<th><strong>Amnesty</strong></th>
<th>An amnesty be given to witnesses, including perpetrators who confess to participation in human rights violations and give evidence to the circumstances including the orders received, planning for, etc.(^{138}) III.7</th>
<th>All Island, Final (83)</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amnesty Committee</strong></td>
<td>The nomination of a special committee to advise whether a participant deserves amnesty in view of his full disclosure (inclusive of command structures). Reports of all three Disappearances Commissions to be made available to this committee.(^{139}) III.2(vii) The Human Rights Commission be directed to set up a machinery by way of a Special Committee of Eminent Persons to entartain applications for Amnesty, and record their evidence of human rights violations.(^{140}) III.8</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Legal Assistance</strong></td>
<td>A Legal Advisory (assistance) Bureau be established to entertain, process and institute <em>Habeas Corpus</em> Applications; and in respect of returned detainees.(^{141}) III.3(i)</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Legal Assistance</strong></td>
<td>A Legal Advisory Service Bureau be set up to provide legal assistance to members of families of disappeared persons and in general to deal with and take appropriate action in respect of the problems of affected families.(^{142}) I.12(ii)</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\(^{138}\) Not implemented.  
\(^{139}\) Not implemented.  
\(^{140}\) Not implemented.  
\(^{141}\) Not implemented.  
\(^{142}\) Not implemented.
A state aided legal aid service for petitioners for a writ of *Habeas Corpus* in this category of cases of disappearances would be a public acknowledgement of the breakdown of law and order that enabled such disappearances to be staged with impunity.\(^{143}\) V.1

Contributions from state funds to legal aid organizations. V.5(ii)

Legal aid organizations providing their services to *Habeas Corpus* applicants be made recipients of State Grants. IV.24

| Special Mechanisms | An office of an Independent Prosecutor to be established to institute prosecutions, with legislative safeguards to ensure independence.\(^{144}\) IV. 20  
The Human Rights Commission Act be amended to provide for an Independent Human Rights Prosecutor.  
The Human Rights Commission Act be amended to provide for an Independent Human Rights Prosecutor to conduct prosecutions into complaint of human rights violations in general and disappearances in particular. III.2 | Southern, Final (175)  
Southern, Final (176)  
All Island, Final (85) | 1997  
1997  
2001 |
---|---|---|---|

\(^{143}\) Although no specific legal aid service exists for the purpose of assisting petitioners in *Habeas Corpus* cases relating to disappearances, the state-run Legal Aid Commission does operate a human rights division.

\(^{144}\) Not implemented.
| Relevant police records to be handed over to a Human Rights Prosecutor.\(^{145}\) III.2(v) | Southern, Final (171) | 1997 |
| Special division of the Magistrate’s Court, Colombo to be established to deal with the 330 *Habeas Corpus* Applications still awaiting attention and new notices to go out to petitioners from the Court of Appeal in respect of these applications. IV.11(iii) | Southern, Final (174) | 1997 |
| Special Division of Magistrate’s Court in Colombo to be designated to clear backlog of *Habeas Corpus* Applications.\(^{146}\) IV.21 | All Island, Final (85) | 2001 |
| An *ad hoc* committee be appointed to study and make recommendations in the light of the Judgment of the Inter-American Court of Human Rights in *Aloeboetoe et al v Suriname*.\(^{147}\) III.5 | Southern, Final (172) | 1997 |

\(^{145}\) The Inspector General of Police by Circular No. 1187/95 of 1995 directed all subordinates “to suspend the laid down procedure of destroying…” “…information books, telephone registers, prisoners’ detention registers, and other documents connected with arrest, detention, etc. covering the period 01.01.1988 to date.” All Island Report, 2001, Annex XIV, p. 142. “There appears to be deliberate attempts by some Officers to destroy incriminating documentary evidence against certain police officers.” All Island Report, 2001, p.17-V.

\(^{146}\) “The effectiveness of the remedy of *Habeas Corpus* became questionable however in view of the delay attendant on obtaining relief. A perusal of the break-up of the *Habeas Corpus* applications filed and pending, (vide chart) shows that 2925 cases have been filed between 1988 and 1997. Of those 272 have not been concluded as yet, while most of the applications were disposed of after a lapse of over 5 years. In most of the areas outside of the Eastern Province the facility for *Habeas Corpus* Applications to be filed in the High Court was not availed of. This facility made it easier for petitioners to have access to the Courts to locate abducted persons. However, *Habeas Corpus* applications received by the High Court of Batticaloa appear to have been dealt with more expeditiously, out of 49 filed between 1994 and 1997, 44 have already been disposed of.” All Island Commission Report, 2001, p. 27.

\(^{147}\) This recommendation has not been implemented. In *Aloeboetoe et al v Suriname*, Judgment of September 10, 1993, Inter-Am. Ct. H.R. (Ser. C) No. 15 – the Inter-American Court of Human Rights ordered the Suriname Government to provide various forms of reparation to the families of the boatmen killed by Surinamese soldiers. In addition to awarding compensation for the actual deaths of the victims, the Inter-American Court of Human Rights awarded “moral” compensation to the victims’ parents and also to their successors for emotional suffering endured by the victims before they were killed, the Court saying that: “it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their children.” The Court in *Aloeboetoe further* held that the Suriname Government was under an obligation to provide education to the children of the victims and to enforce this obligation the Court ordered the re-opening of a school at a medical dispensary in the village where the majority of the victims’ families resided.
| General | Legislative package be provided incorporating the aforesaid recommendations and the recommendations with regard to reliefs above as an acknowledgment on the part of Your Excellency’s Government of the trauma experienced by a large number of our society be it the ordinary citizens, members of families of armed services or police, members of families of suspected subversives or members of families of politicians. III.6 | Southern, Final (172) | 1997 |
**PUNITIVE MEASURES**

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to Adhere</td>
<td>Failure to abide by the Regulations to result in a disciplinary inquiry conducted by an inquiring officer from outside the services to which the alleged defaulter belongs. IV.9(i)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
</tbody>
</table>
| Disciplinary Action | Failure or refusal to perform the acts envisaged above (in regulations) per se be declared to be a cognizable offence, and such acts to be followed by prosecution. IV.9(iii)  
The failure or refusal by the Police to record an arrest, detention, and transfer or to record complaints of abduction.148  If followed by an involuntary disappearance, be declared a cognizable offence. IV.14 |
|                  | Disciplinary proceedings be conducted against those officers for breaches of Regulations, with the superiors themselves being made liable for non performance of their duties in this regard. IV.16                                                                                                                               | All Island, Final (84) | 2001 |

148. Regulation 20 (10) imposed a penalty of up to two years imprisonment and a fine by the High Court for the offence of “failure without reasonable cause to issue a document acknowledging the fact of arrest or wilful omission to make an entry in the information book” relating to the arrest of a person under Regulation 20(1). [ER 1995] This is also an offence under ER 2005 which replaced [ER 1995]; Reg. 20(10) “Where any person without reasonable cause fails to issue a document acknowledging the fact of arrest as required by paragraph (9) [i.e. Reg.20(9)] or wilfully omits to make such entry as is referred to in the proviso to that paragraph or to report the fact that the document was not issued and the reasons therefore [sic], he shall be guilty of an offence and upon conviction after trial before the High Court be liable to a term of imprisonment extending to two years and a fine.”
<p>| Consequence for breach of rules by disciplinary inquiry, suspension and/or termination of service. VI.5(i) | Southern, Final (177) | 1997 |
| A finding at a disciplinary inquiry of the violation of the rights of detainee be made liable for suspension or termination from service, loss of promotions. IV.17 | All Island, Final (84) | 2001 |
| The non compliance including a judicial finding to be entered in the officer’s Service Record, and be taken into account with regard to promotions, increments and other features of advancement in service. IV.9(ii) | Southern, Final (174) | 1997 |
| The fact of an award by court against an officer in charge of camp/station which has been found to be responsible should go into his service record and thereby affect career prospects. V.4.(iii) | Southern, Final (176) | 1997 |
| The Service Records of officers to include instances where the Supreme Court has found an officer to have breached fundamental rights of persons and a finding of responsibility in a <em>Habeas Corpus</em> Petition. (Currently this is not done, so rights violations do not affect promotions, etc.) IV.18 | All Island, Final (85) | 2001 |
| Members of these Forces under investigation for involvement in cases of disappearances should be suspended from active duty until disciplinary inquiries are completed. V.2(v) | Southern, Final (175) | 1997 |</p>
<table>
<thead>
<tr>
<th><strong>Human rights records of members of armed forces and the police should be taken into account in the consideration of promotions.</strong>&lt;sup&gt;149&lt;/sup&gt;</th>
<th>Southern, Final (175)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severe disciplinary punishment be meted to government officials who have failed to take adequate measures to prevent disappearances.</strong>&lt;sup&gt;150&lt;/sup&gt;</td>
<td>Southern, Final (175)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Punishment</strong>&lt;br&gt; (a) Imprisonment&lt;br&gt; (b) loss of promotions&lt;br&gt; (c) future promotions and advancement to be affected&lt;br&gt; (d) restitution to complainant where perpetrator has been unjustly enriched at complainants’ expense.&lt;br&gt; (e) compensation to be in addition to punishment – not as a substitute.</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
</tbody>
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<sup>149</sup> “As at present, neither a finding of the Supreme Court that an Officer is in breach of the fundamental rights of a citizen, nor a finding of responsibility against an officer in a Habeas Corpus Application, is entered in his Service record.” All Island Commission Report, 2001, p. 25-5.

<sup>150</sup> Government regulations provide for the conduct of disciplinary proceedings against public servants through the Establishment Code. According to sources who have tracked cases of disappearances from the period, these proceedings have not been utilized in the case of those responsible for disappearances.
**ARREST AND DETENTION**

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>Col &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest</td>
<td>Record of arrests, detentions, and transfer to be maintained simultaneously with the event. IV.1</td>
<td>Southern, Final (173)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>2. Duty to inform - (i) The nearest police station to be immediately informed.(^{151}) (ii) Weekly list to be submitted to the District Secretary by arresting authority with particulars.(^{152}) (iii) The magistrate to be informed of the arrest within 24 hours.(^{153}) (iv) Magistrate to be informed of any change in the place of custody including any transfer out of the Magistrate’s jurisdiction or of a release from custody.(^{154})</td>
<td>Southern, Final (173)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\(^{151}\) In terms of those arrested by an order of the Defence Secretary (Regulation 19 of the 2005 Emergency (Miscellaneous Provisions and Powers) Regulations as amended [“ER 2005”], i.e Preventive Detention) there is no express requirement for the arresting officer to bring the arrest to the notice of the nearest police station. However such persons may not be detained for more than three months and must be produced before a Magistrate not later than thirty days after such arrest (Reg.21(1) ER 2005), [ER 2010]. Though certain changes were effected by Amendment Regulation of August 5th 2008, these changes were done away with by Amendment Regulation of May 2nd 2010. In terms of arrests under Regulation 20, (i.e authorization by the President to search/detain/arrest without warrant any person who is committing, have committed or suspected to be concerned in an offence under the Emergency Regulations), paragraph 2 lays down that a person has to be handed over to the nearest police station within 24 hours. In addition Regulation 20(8) of ER 2005 imposes a duty on an arresting police officer to report the arrest to the Superintendent of Police of the Division or where the arresting officer is a member of the armed forces, to report the arrest to the Commanding Officer in the area within which the arrest was made, within twenty four hours of the arrest. Observance of these safeguards in practice are in doubt.

\(^{152}\) No provision in emergency law.

\(^{153}\) In terms of arrests under Regulation 20, there is no requirement to be brought before a magistrate. In terms of Regulation 19, the detainee must be produced before a Magistrate within thirty days of the arrest. [ER 2005, Regulation 21(1)] Amendment Regulation of May 2nd 2010 brought in a new requirement of notification of arrests to a Magistrate within seventy two hours.

\(^{154}\) No provision in emergency law.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(v) A written record of such information to be maintained at place of detention/Police Station/District Secretary/Magistrate’s Court.(^{155}) <strong>IV.2</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Receipts of arrest – A receipt of the Arrest to be given by arresting officer to a family member or friend of the person arrested/copy of Receipt to be given to detainee(^{156}) <strong>IV.3</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The arresting officer to give a receipt of arrest including the name of the person arrested, date, place and the name and rank of officer arresting to a family member or friend, at the time of arrest. <strong>IV.5</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Specify the situations under which arrests without warrants can be made and whom the arrest can be made by.(^{157}) <strong>VI.2(i)</strong></td>
<td></td>
</tr>
</tbody>
</table>

\(^{155}\) No provision in emergency law for a judicial record of such information be maintained.

\(^{156}\) (i) Regulation 20(9) imposes on the arresting officer a duty to issue to the spouse, father, mother or any other close relative a document acknowledging the fact of arrest. The proviso to this paragraph states however that where it is not possible for an arresting police officer to issue such a document, he must make an entry in the information book giving reasons why it is not possible to issue such documents and in the case of an armed forces arresting officer, he must report to the officer in charge of the police station the reasons why it was not possible to issue the documents, who in turn would enter that information in the information book. [ER 2005] (ii) The form of the document to be specified by the Secretary. [ER 2005, Reg. 20(9)] Refer Presidential Directions to Heads of Armed Forces 1997. The Presidential Directive of 2006 states that the person being arrested should be allowed to make contact with family or friends to inform them of his whereabouts., *Directions issued by His Excellency the President, Commander-in-Charge of the Armed Forces and Minister of Defence, 2006.* [ER 2005]

\(^{157}\) The powers available to and the situations wherein competent officers can make an arrest without warrant remains very broad. According to Regulation 20(1), “Any public officer, any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force or any other person authorized by the President to act under this regulation may…any person who is committing or has committed or whom he has a reasonable ground for suspecting to be concerned in, or to be committing or to have committed an offence under any emergency regulation…” [ER 2005]
<table>
<thead>
<tr>
<th>Arrestee to be informed at the time of arrest of the reasons of arrest.\textsuperscript{158} VI.2(ii)</th>
<th>Southern, Final (176)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reasons be recorded by the arresting authority as soon as practicable.\textsuperscript{159} VI.2(iii)</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>Arrestee and accompanying persons be informed of the identity of the arresting officer.\textsuperscript{160} VI.2(iv)</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>The detainee to be produced before the Magistrate within twenty four hours of the arrest. VI.3(viii)</td>
<td>Southern, Final (177) All Island, Final (84)</td>
<td>1997</td>
</tr>
<tr>
<td>The duty to produce before the magistrate any person arrested within 24 hours be made applicable even during the operation of Emergency Regulations.\textsuperscript{161} IV.4</td>
<td></td>
<td>2001</td>
</tr>
</tbody>
</table>

\textsuperscript{158} President Chandrika Kumaratunga in her capacity of Commander in Charge of the Armed Forces and Minister of Defence directed the heads of armed forces and the police in a set of directions issued on June 21 1997 that reasons for arrest be conveyed to the person arrested. Directions issued by Her Excellency the President, Commander-in-Charge of the Armed Forces and Minister of Defence, July 21, 1997, All Island Report, 2001, Annex XVI, p. 149. President Mahinda Rajapakse issued a directive to heads of the armed forces and the police in a set of directions on 7 July 2006 in which it was laid down that the person to be arrested should be informed of the reason for the arrest. Clause 3 of the Directive, Directions issued by His Excellency the President, Commander-in-Charge of the Armed Forces and Minister of Defence, 2006. http://www.nationalsecurity.lk/fullnews.php?id=5473, Directive issued 7th July 2006 and re circulated by Secretary, Ministry of Defence in April 2007.

\textsuperscript{159} No specific provision addressing the recording of reasons by the arresting authority.

\textsuperscript{160} Although there is no requirement in the Emergency Regulations, see directions issued by the President in June 1997 above and the Presidential Directive of 7 July 2006, which state that the person making the arrest or detention should identify himself by name and rank to the person or relative or friend of the person to be arrested \textit{Ibid.} n.63.

\textsuperscript{161} In cases of arrests under Regulation 20, there is no requirement to produce the detainee before a Magistrate. According to Regulation 21(1), where persons are arrested or detained under Regulation 19, the detainee must be produced before a magistrate within a reasonable time, and in any event not exceeding thirty days after such arrest. [ER 2005]
<table>
<thead>
<tr>
<th>Detention</th>
<th>All Island, Final (84)</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Detention -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) to be at authorized places of detention only.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) A receipt be issued to detainees with particulars of detention.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) A right to communicate with relatives be recognized and be implemented.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iv) Registers of detention to be maintained; including detention at temporary camps.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v) Particulars of detainees held at temporary camps must be entered in the main Army Camp/Police station as well.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

162. The only penalty provided for non compliance in Regulation 20(10) is a penalty of up to two years imprisonment and a fine by the High Court for the offence of failure without reasonable cause to issue a document acknowledging the fact of arrest or wilful omission to make an entry in the information book as the case may be in accordance with Regulation 20(9). [ER 2005]

163. According to Regulations 19(3) and 21(2), detention may be in a place authorized by the Inspector General of Police. [ER 2005], [ER 2010]

164. Regulation 20(9) imposes on the arresting officer a duty to issue to the spouse, father, mother, or any other close relative, a document acknowledging the fact of arrest. The proviso to this paragraph states, however, that where it is not possible for an arresting police officer to issue such a document, he must make an entry in the information book giving reasons why it is not possible to issue such documents and in the case of an armed forces arresting officer, he must report to the officer in charge of the police station the reasons why it was not possible to issue the documents, who in turn would enter that information in the information book. [ER 2005]

165. In relation to both forms of detention, the IGP may, when he considers it expedient to do so, permit visits to and correspondence to such person in such manner and at such time and place as the IGP may from time to time direct. Regulations 19(3)(b) and 21 (2)(b) [ER 2005], [ER 2010]

166. No provision.
|   | (vi) Officers-in-charge of places of detention to send weekly lists to the Pradesheeya Sabha Secretary; Pradesheeya Sabha Secretary to maintain a register of same.\(^{167}\)  
|   | (vii) Aforesaid provisions to be elevated to constitutional rights.\(^{168}\) IV.4  
|   | Detention at an authorized place of detention only. VI.3(i)  
|   | Detention to be only at an authorized place of detention. IV.6  
|   | The reason for the order, and maximum period of detention to be recorded in the Detention Order.\(^{169}\) VI.3(v)  
|   | Detention to be in remand custody from date of charge. VI.3(vi)  
|   | The Secretary to the Ministry of Defence to issue orders for a maximum period of one year and on renewal (if any) be required to state the grounds therefore. VI.3(ix)  
|   | Magistrate be empowered to require the Secretary to provide supplementary information regarding the Detention Order when inquiring into the extension of the Detention Order.\(^{170}\) VI.3(x)  
|   |   |   |   |   |   |   |   |
|   |   | Southern, Final (177)  
|   |   | All Island, Final (84)  
|   |   | 1997  
|   |   | 2001  

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167. No provision.

168. No provision.

169. According to interviews with lawyers monitoring these cases detention orders are not being released to detainees.

170. According to Regulation 19(10), a Magistrate has no right to inquire into the validity of detention orders with reference to power exercised under Regulation 19(1); “An order under paragraph (1) of this regulation shall not be called in question in any court on any ground whatsoever.” [ER 2005]
<table>
<thead>
<tr>
<th>Action</th>
<th>Location</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrates be empowered to require the Defence Secretary to provide supplementary information when seeking an extension of a detention order. IV.28</td>
<td>All Island, Final (85)</td>
<td>1997</td>
</tr>
<tr>
<td>A procedure for records to be maintained. VI.3(xi)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
</tbody>
</table>
| The arrest and detention of person must be notified to the Human Rights Commission/Human Rights Task Force, the local Magistrate and the local administrative service within 24 hours of the arrest including notice of changes in the place of detention.  
Any member of the Armed Forces and the Police Force who makes an arrest or orders a detention must inform the Human Rights Commission of such arrest or detention within 48 hours. IV.1 | Southern, Final (177)         | 1997  |
| The members of the Human Rights Task force should be permitted access to the arrested person. These and other regulations are already in the Statute Book but this will not be much help unless they are properly enforced. | All Island Final (84)         | 2001  |

171. Human Rights Commission Act No. 21 of 1996, Section 28 states that (1) Where a person is arrested or detained under Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security Ordinance (Chapter 40), it shall be the duty of the person making such arrest or order of detention, as the case may be, to forthwith and in any case, not later than forty-eight hours from the time of such arrest or detention, inform the Commission of such arrest or detention as the case may be, and the place at which the person so arrested or detained is being held in custody or detention. Where a person so held in custody or detention is released or transferred to another place of detention it shall be the duty of the person making the order for such release or transfer as the case may be, to inform the Commission of such release or transfer, as the case may be, and in the case of a transfer to inform the Commission of the location of the new place of detention. The 48-hour rule of Section 28 was also confirmed by Directions from the President to Heads of Armed Forces and Police, 1997. FR 2010 also imposes a requirement to notify a Magistrate when preventively detained, within seventy two hours of the detention, new proviso to Regulation 191 (A).
172. Regulation 20(9) imposes on the arresting officer a duty to issue to the spouse, father, mother, or any other close relative, a document acknowledging the fact of arrest. The proviso to this paragraph states however, that where it is not possible for an arresting police officer to issue such a document, he must make an entry in the information book giving reasons why it is not possible to issue such documents and in the case of an armed forces arresting officer, he must report to the officer in charge of the police station the reasons why it was not possible to issue the documents, who in turn would enter that information in the information book. [ER 2005].

173. There is no publicly available comprehensive list of all detained persons. While in the past, the Human Rights Commission did record details of all arrests, sources report that, at present, no such practice is being followed.

174. The Prisons Ordinance No.16 of 1877 as amended in 1952, Section 39 states: (1) Nothing in this Ordinance shall be deemed to abridge or affect the power of a Judge of the Supreme Court, a Judge of the Court of Appeal or a Judge of a High Court to visit any prison at any time and to hold therein any inspection, investigation or inquiry which he may consider necessary., (2) Any Member of Parliament, District Judge or Magistrate may visit any prison, between the hours of 5.30 a.m. and 5.30 p.m. on any day for the purpose of inspecting the general condition of the prison and of the prisoners therein, and may record in the Visitors' book any observations or recommendations which he may think fit to make after such inspection.

175. Thus, although Magistrates do have the right to visit places of detention according to existing law, they are not compelled to do so.
<table>
<thead>
<tr>
<th></th>
<th>The Prison Rules to apply to all detentions.</th>
<th>Southern, Final (173)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Prison Rules to be made applicable to conditions of detention. VI.3(vii)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The Prison Rules be made applicable to all detainees. IV.11</td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Adequate publicity be given to the authorized places of detention. VI.3.(ii)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Adequate publicity be given to the authorized places of detention. IV.7</td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Detainee to be handed over to the prison authorities as soon as possible. VI.3(iii)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Members of armed forces to hand over detainees to the nearest police station. VI.3(iv)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>An arrested person to be promptly handed over to custodial authorities, viz the officer in Charge of a Police Station or the prison authorities. IV.8</td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>A change of the place of detention to be promptly notified to the family of the arrested person. IV.9</td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
</tbody>
</table>

176. Under Regulation 19 and 21, the Prisons Ordinance, with the exception of Chapter IX, applies to those detainees detained in a prison established under the Prisons Ordinance. A proviso however found in both Regulations gives the IGP the discretion to decide, where expedient, which rules under the Prisons Ordinance apply and which do not apply. [ER 2005], [ER 2010].
<table>
<thead>
<tr>
<th>Topic</th>
<th>Recommendation</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>All records, lists and registers to be available for perusal by lawyers, courts, and persons/organizations with a legitimate interest in the information. IV.7</td>
<td></td>
<td>Southern, Final (173)</td>
<td>1997</td>
</tr>
<tr>
<td>The State itself to be seen to be alert to the preservation of the rights of the detainee by way of institution of action against violators. IV.13</td>
<td></td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
<tr>
<td>Unauthorised Camps</td>
<td>Unauthorised detention camps to be dismantled immediately on identification. VI.7(i)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Complaints regarding unauthorized detention camps to be investigated by an independent committee appointed for that purpose. VI.7(ii)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td>Release</td>
<td>Release must be through courts to the families, and family member must sign the record of release. IV.8(i)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The Magistrates’ Courts and the Pradeshiya Sabha Secretary must be informed of release IV.8(ii)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Release from detention to be through Courts or to families. IV.12</td>
<td>All Island, Final (84)</td>
<td>2001</td>
</tr>
<tr>
<td>Emergency Regulations</td>
<td>The utilization of the powers under the state of emergency be minimized. VI.1(i)</td>
<td>Southern, Final (176)</td>
<td>1997</td>
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<tr>
<td>-----------------------</td>
<td>--------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td></td>
<td>The utilization of the powers under the Emergency Regulations be minimized.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>A monthly scrutiny of each Regulation by a committee of members of parliament to take place prior to the debate on the extension of the emergency.</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Parliament to scrutinize each Regulation before promulgation and human rights groups be given the opportunity to make submissions.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Contents of Regulations to be given wide publicity. VI.1(iii)</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Adequate publicity be given to the provisions of the Emergency Regulations. IV.27</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
</tbody>
</table>

177. Amnesty International makes the following recommendation in June 2009; “Revise or repeal any emergency legislation which violates international law and standards and, in particular, provides for or encourages impunity for perpetrators of crimes under international law.” Amnesty International, June 2009, p.51.

178. The debates on Emergency Regulations generally take the form of a general debate on the armed conflict and government policy in relation to the national question, and rarely involve exchanges relating to the subject matter of the Regulations.
<table>
<thead>
<tr>
<th>All the Regulations which are applicable at a given time be made available in one place. VI.1(iv)</th>
<th>Southern, Final (176)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations to be in clear language and drafted under the supervision of the Legal Draftsman. VI.1.(v)</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td>Emergency Regulations must not remove the need for an inquest before the disposal of the bodies of the deceased.(^{179}) VI.6(i)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
<tr>
<td>The bodies of the deceased must be returned to their families.(^{180}) VI.6(ii)</td>
<td>Southern, Final (177)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\(^{179}\) Regulation 55 required the IGP or the DIG, upon being issued a notice of death due to action taken in the course of performance of duties by either police or armed forces personnel, or where a person dies in police or military custody. Regulation 55(b) provided that where the body is found, the IGP or DIG must forthwith report such fact to the magistrate, who in turn shall order that a post mortem examination of the body be held under Regulation 56. [ER 2005]. These Regulations were repealed by ER 2010.

\(^{180}\) According to Regulation 56, “The Magistrate shall upon the receipt of facts by the IGP or DIG under regulation 55 direct the government Medical Officer to hold a post mortem and make order at the conclusion of such post mortem that the dead body be handed over to the DIG for disposal. The DIG in turn can hand over the body to any relation who claims the body subject to conditions or restrictions imposed in consideration of national security or public order, or otherwise authorize the burial or cremation of the dead body in accordance with the steps he may deem necessary in the circumstances. [ER 2005]. This Regulation was repealed by ER 2010.
## LEGAL REFORM

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>CoI &amp; REPORT</td>
<td>Reforms of both the law and the administration of the law, required to enable speed of response. The opportunity to invoke this jurisdiction no sooner a situation of unacknowledged custody arises is the first requisite. V.3.(i)</td>
<td>Southern, Final (175)</td>
<td>1997</td>
</tr>
<tr>
<td>Judicial Reform</td>
<td>Enlargement of the Magistrate’s Court’s Jurisdiction in <em>Habeas Corpus</em> Applications as well as retention of present powers. 181 IV.11(i)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
</tbody>
</table>

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181. Article 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978 vests in the Court of Appeal the jurisdiction to issue writs in the nature of *Habeas Corpus* “provided that it shall be lawful for the Court of Appeal to require the body of such person to be brought up before the most convenient Court of First Instance and to direct the judge of such court to inquire into and report upon the acts of the alleged imprisonment or detention and to make such provision for the interim custody of the body produced as to such court shall seem right; and the Court of Appeal shall upon the receipt of such report, make order to discharge or remand the person so alleged to be imprisoned or detained or otherwise deal with such person according to law, and the Court of First Instance shall conform to, and carry into immediate effect, the order so pronounced or made by the Court of Appeal”. It must be noted that under Article 154 P paragraph 4 introduced by the 13th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka (1978) certified on 14 November 1987, the Provincial High Courts have jurisdiction to “issue according to law, orders in the nature of *Habeas Corpus* in respect of persons illegally detained within the Province…” The original jurisdiction to receive petitions and affidavits and to decide habeas cases remains with the Court of Appeal and the Provincial High Court.
<table>
<thead>
<tr>
<th>Constituent</th>
<th>Text</th>
<th>Source</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Enlargement of the Magistrate Court’s jurisdiction to empower the Magistrate to receive the affidavits of the petitioner and his witnesses, to register the petition and forward to the High Court [or the Court of Appeal as the case may be], plus the empowerment of the Magistrate to entertain the petitioner’s application that he (the Magistrate) visit the place of alleged unacknowledged detention.</td>
<td>Southern, Final (176)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The jurisdiction of Magistrates be enlarged to enable them to receive petitions and affidavits in <em>Habeas Corpus</em> Application, and to visit alleged places of detention, while the High Court to continue with jurisdiction to declare responsibility and compensation.</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td><strong>Constitutional Reform</strong></td>
<td>Article 126(2) of the Constitution be amended to enable petitioners to overcome the problems of delay and <em>locus standi</em>.</td>
<td>Southern, Final (172)</td>
<td>1997</td>
</tr>
</tbody>
</table>

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182. According to Section 39 of the Prisons Ordinance, as amended in 1952: (1) Nothing in this Ordinance shall be deemed to abridge or affect the power of a Judge of the Supreme Court, a Judge of the Court of Appeal or a Judge of a High Court to visit any prison at any time and to hold therein any inspection, investigation or inquiry which he may consider necessary. (2) Any Member of Parliament, District Judge or Magistrate may visit any prison, between the hours of 5.30 a.m. and 5.30 p.m. on any day for the purpose of inspecting the general condition of the prison and of the prisoners therein, and may record in the Visitors' book any observations or recommendations which he may think fit to make after such inspection. Thus, magistrates do have the right to visit the place of detention according to existing law, but are not compelled to do so.

183. According to Article 126(2) of the Constitution, “Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement.”
<table>
<thead>
<tr>
<th><strong>Law Reform</strong></th>
<th>Article 17 and 126 of the Constitution be amended enlarging the scope of <em>locus standi</em> in fundamental Rights applications.(^{184}) III.14</th>
<th>All Island, Final (83)</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Returned detainees be permitted to make applications, despite the lapse of time, in terms of Article 11 and Article 13 of the Constitution, through the Legal Advisory (Assistance) Service Bureau.(^{185}) III.15</td>
<td>All Island, Final (83)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Principle 34 of the UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment be incorporated in the Constitution. IV.18</td>
<td>Southern, Final (175)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Constitutional right to be declared in any person to petition the Supreme Court through Human Rights Task Force (HRTF) regarding unauthorized places of detention.(^{186}) IV.17</td>
<td>Southern, Final (175)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Law Reform</strong></td>
<td>Legislative measures be taken to address the foregoing issues [with regard to relief] if they cannot be dealt with by administrative action. I.12(i)</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\(^{184}\) The Supreme Court however has extended *locus standi* to dependants and lawful heirs of victims of custodial deaths in the cases of *Sriyani Silva v. Iddamalgoda, OIC Paiyagala* [2003] 1 Sri LR 14 and *Lama Hewage Lal, Rani Fernando and Others v. OIC Seeduwa* [2005] 1 Sri LR 140.

\(^{185}\) The Supreme Court used the concept of ‘continuing infringement’ in the case of *Sasanasiritissa Thera and Others v. de Silva and Others* [1989] 2 Sri LR 356, to grant relief to a person who filed a Fundamental Rights petition after one month from the date of the order for arrest had lapsed, although one month had not lapsed from the date of release.

\(^{186}\) Neither the HRTF nor its successor, the National Human Rights Commission have/had standing to petition the Supreme Court. The relevant rules to be prescribed by Court in this respect have not been prescribed.
| | Human Rights Commission to be empowered to deal with complaints against Police/Army personnel. IV. 19 | Southern, Final (175) | 1997 |
| | It is recommended that the power to issue warrants of arrest, etc. under section 11(4) of the Special Presidential Commission Law No. 07 or 1978 be given to the Commissions appointed under the Commissions of Inquiry Act probing disappearances. | Central, Interim 2 (8) | Oct. 1995 |
| | Rape/sexual assault in custody to be recognized as torture; reversal of the burden of proof in cases of custodial sexual abuse; the award of punitive damages following conviction for custodial sexual abuse II.1 | Southern, Final (171) | 1997 |

\(^{187}\) Following previous legislation, Parliament enacted a Registration of Deaths (Temporary Provisions) Act No 17 of 2005 in June 2005. The Act retains, in Section 2(2), the need for the application for death certificate to be furnished to either the Registrar General or the District Registrar of Births and Deaths of the district in which such missing person was last residing. Moreover, Section 3 retains the need for the Grama Niladhari’s report to be from the Grama Niladhari Division in which the person whose death is sought to be registered was last resident or had his permanent residence. As such, displaced families of victims continue to have difficulties procuring necessary certificates. The Act appears to have lapsed in 2008. However, similar legislation is in the process of being drafted at the time of this publication.
## RELIEF AND REHABILITATION

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The recommendations on relief made by earlier Presidential Commissions of Inquiry be endorsed. V.1</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>The schemes of relief recommended to benefit affected families in all parts of the country without exception.188 V.3</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>A tax of 2% be collected by budgetary provision on the line of the Defence Levy to enable implementation of the relief measures recommended. V.5</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
</tbody>
</table>

188. “Overwhelmingly, recommendations [of Sri Lanka’s ad hoc commissions] have not been implemented. This raises serious questions about political will. Does the political will exist to address grave violations of human rights? The answer, when one examines the recommendations and their non-implementation, is a resounding no. Again, the most telling example is the numerous commissions and mechanisms created to inquire into disappearances. Despite these mechanisms, and the hundreds of detailed and far reaching recommendations that have been made repeatedly to successive governments, disappearances have re-emerged as a persistent feature in the post-ceasefire political landscape.”, Law & Society Trust, (LST) unpublished concept paper, Presidential Commissions of Inquiry, Civil and Political Programme of LST, August 2007.
<table>
<thead>
<tr>
<th>Reconciliation</th>
<th>A WALL OF RECONCILIATION be constructed with the names of the disappeared persons as a monument to the Disappeared. ¹⁸⁹ V.4</th>
<th>All Island, Final (86)</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td>The recommendations be acted upon as part of a reparation package to those affected families to help in the process of national healing and reconciliation. V.18</td>
<td>All Island, Final (87)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Expeditious payment of fair &amp; adequate compensation to dependents of disappeared persons within a time frame in all the districts. Such payment should cover dependents of employees of the public sector, corporations and other state-owned institutions. The idea of introducing a new tax similar to the Defence Levy may be considered in order to generate funds for this purpose. ¹⁹⁰ I.1(i)</td>
<td>Southern, Final (169)</td>
<td>1997</td>
</tr>
</tbody>
</table>


¹⁹⁰. Rehabilitation of Persons, Properties and Industries Authority [hereinafter referred to as REPPIA] operates a scheme whereby, once the families of victims are able to obtain a death certificate under the terms of the Registration of Deaths (Temporary Provisions) Acts, these families will be compensated under the Most Affected Persons (MAP) scheme. The MAP’s scheme provides for compensation for death and injuries in the case of terrorist activity and communal disturbance, natural disasters etc with missing persons being subsumed under the
category of ‘death’ after the death certificate has been obtained. REPPIA did at one time operate a separate scheme to pay compensation to families of missing persons, but this has, reportedly, been discontinued. The current MAP scheme provides a maximum of Rs. 50,000 and Rs. 150,000 [to public servants by virtue of Public Administration Circular No.21/85] to be paid to the general public and public servants, respectively. At one time, there was also a concurrent scheme administered by the Rehabilitation and Resettlement Authority of the North (RRAN), whereby compensation paid to dependents of persons killed due to terrorist activities was a maximum of Rs. 100,000 [Cabinet Paper 01/1789/026/006.]

‘The Ministry of Rehabilitation used to pay Rs. 50,000 for a family in the event of the violent death of a breadwinner. This amount was raised to Rs. 100,000 by a cabinet decision of 24th October 2001, based on a paper presented by Douglas Devananda then Minister of Development, Rehabilitation and Reconstruction for the North, and Tamil Affairs, North and East (see Appendix for details). Direction was then given that all GAs in the North-East should comply with it. But a circular was apparently not issued and soon afterwards Devananda ceased to be a Minister. Inquiries made by us revealed that the Jaffna Kacheri has been paying Rs. 100,000 since at least January 2006, after Devananda was back as a minister, but the Tamils in the East were entitled to only Rs. 50,000 and were experiencing almost infinite delays even for this reduced sum. With inflation running at over 10 percent, and now at 20 percent, with the Government printing money to pay for the war, the Rs. 100,000 for death envisaged in 2001 would be worth half that amount today, but how the system has operated tells us a good deal. Though passed by the cabinet, receiving compensation today is largely guided by political patronage. UTHR(J) Information Bulletin No. 45, Date of Release: 27th March 2007, http://www.uthr.org/bulletins/Bul45.htm]. Applications from the North have now been subsumed under REPPIA however. In May 1999 a special “Unit for the Clarification of Cases of Alleged Forced or Involuntary Disappearances”, which has been set up by the Cabinet of Ministers as part of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), started to operate a special computer programme relating to all cases of disappearances submitted by the Working Group to the Government of Sri Lanka. REPPIA was established by an Act of Parliament No.29 of 1987, under the Ministry of Re-settlement and Disaster Relief Services. Its mandate is the rehabilitation and resettlement of persons and properties affected by the war. Writing in 2007 (with regard to the year 2006) Shyamala Gomez states that under the Unified Assistance Scheme of REPPIA, it provides compensation to internally displaced persons of Rs.100,000 to non-government servants and Rs.150,000 to government servants to rebuild their homes. She also states that the North East Housing Reconstruction Scheme(NEHRP) is to reconstruct 46,000 houses in the North and East over a four year period. Housing assistance consists of Rs.110,000 for each family with a monthly income below Rs.2500. See Gomez, Shyamala, Post Tsunami Housing Rights, Sri Lanka State of Human Rights 2007, Law & Society Trust, at p.393.
<table>
<thead>
<tr>
<th>Number</th>
<th>Paragraph</th>
<th>Source</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>191 (g)</td>
<td>The financial constraints of the State had been taken into consideration when recommending relief to those affected. Compensation to be paid in terms of the relevant Circulars of the Rehabilitation Ministry and Public Administration Ministry, without a distinction being made between State officer and member of the Public in respect of such persons disappearance.</td>
<td>Central, Final (14)</td>
<td>1997</td>
</tr>
<tr>
<td>NE Final (63)</td>
<td>As far as compensation is concerned we have to issue a note of caution. Some of these complainants have already obtained compensation through the Ministry of Rehabilitation. Steps have been taken to ensure that there is no double payment.</td>
<td>NE Final (63)</td>
<td>1997</td>
</tr>
<tr>
<td>All Island, Final (86)</td>
<td>The basic compensation to the affected families of disappeared persons, to be paid to all affected families irrespective of categorization as terrorist or not.</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
<tr>
<td>All Island, Final (86)</td>
<td>Any denial of compensation to be only if a Court of Law has declared a disappeared person as a terrorist. The Divisional Secretaries to be informed of this, though it is recommended that even such segregation should cease to operate forthwith.</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
</tbody>
</table>

191. Current position regarding this recommendation remains unclear.

192. “The practice of Sri Lanka since 1994 has been to accord relief to victims irrespective of whether the perpetrator was an armed group of the State.”[All Island Commission Report, p.13, FN. 10] Prior to that time, the Government paid compensation only for victims of “terrorist” activities. At one point of time there had been a cabinet decision requiring that REPPIA ask for a police report accompanying the application for compensation, to the effect that the applicant has not been categorised as a terrorist. Reportedly, however, this is not being followed at present. The Director of Establishments, through letter numbered IV/2/3/09/H (1), has also clarified that no person can be denied compensation for alleged terrorist activity unless s/he has been convicted in a court of law. In all other circumstances compensation must be paid to families of disappeared persons irrespective of alleged links to terrorist activities. Organization of Parents and Family Members of the Disappeared, *et al.*, *A Concise Report about Enforced Disappearances in Sri Lanka submitted to the United Nations Human Rights Commission through the 75th Session of the United Nations Working Group on Enforced Disappearances* (2005).
<table>
<thead>
<tr>
<th>Finding</th>
<th>Action</th>
<th>Location</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>The finding of a Disappearance Commission to be taken as adequate proof for the grant of pensions or other benefits due to affected families of disappeared persons.</td>
<td>All Island, Final (86)</td>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>A realistic time frame be fixed to complete the payment of compensation to all those entitled in every district.</td>
<td>All Island, Final (86)</td>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>A scheme to provide monetary assistance to affected families who had suffered loss and damage to property be initiated. A forum be created to receive complaints of successors of disappeared persons.</td>
<td>Southern, Final (169)</td>
<td>1997</td>
</tr>
</tbody>
</table>

193. Section 8 of the 2005 Registration of Deaths (Temporary Provisions) Act dispenses with the need for a Grama Niladhari report to accompany a Commission certificate. Sec 8 : “(1)Where a Commission appointed under the Commissions of Inquiry Act (Chapter 393) or a Special Presidential Commission of Inquiry established under the Special Presidential Commissions Law, No. 7 of 1978 finds that a person has disappeared or is missing, the next of kin of that person may, apply to the Registrar-General or to the District Registrar of Births and Deaths of the district in which that person was last residing or had his permanent residence, substantially in the Form set out in the Schedule to this Act, to register the death of that person under the Births and Deaths Registration Act (Chapter 110) and to have issued to him, a Certificate of Death in respect of the death of that person. Every such application shall be accompanied by an affidavit of the applicant in terms of section 3 and a certified copy of the findings of the Commission of Inquiry or Special Presidential Commission of Inquiry, as the case may be, relating to the death of such person. (2) Upon receipt of an application under subsection (1), the District Registrar shall, notwithstanding anything to contrary in the preceding provisions of this Act, forthwith send to the Registrar-General a Report under his hand, setting out the particulars of the death required to be registered under the Births and Deaths Registration Act (Chapter 110) as he has been able to ascertain from the application and the accompanying affidavit and finding. (4) Upon receipt of an order under subsection (3) directing him to enter the particulars relating to the relevant death in the Register of Deaths maintained by him under the Births and Deaths Registration Act (Chapter 110), the Registrar shall forthwith enter such particulars in such register and sign the register in the appropriate place.(5) Where the application under subsection (1) is made to the Registrar-General, the provisions of subsections (2) and (5) shall mutatis mutandis (with the necessary changes having been made) apply as if the reference in those sections to the District Registrar is a reference to the Registrar-General..

194. REPPIA also provides compensation for property loss. This is calculated at 1/5th the value of the property up to a maximum of Rs. 100,000.
<table>
<thead>
<tr>
<th></th>
<th>A swift remedy for the homelessness by settling such families on state-owned land, preferably in the area of their residence prior to the displacement, and the provision of financial assistance in the construction of a house.(^{195}) I.2(i)</th>
<th>Southern, Final (169)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The allocation of state land for cultivation – the permit to the land and house to be in the name of the female head of household. I.2(ii)</td>
<td>Southern, Final (169)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>A state-lands alienation scheme to regularize the unauthorized occupation of state lands by members of families of disappeared persons. Those who have been dispossessed be restored to possession of the lands in question or be given alternate lands after due inquiry.(^{196}) I.3(i)</td>
<td>Southern, Final (169)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>A forum be created to receive complaints of successors of disappeared “Ande”(^ {197}) cultivators with a view to restoring to them their rights and a scheme to re-locate affected families of disappeared “Ande” cultivators who have been “constructively dispossessed” in consequence of government projects.(^ {198}) I.3(ii)</td>
<td>Southern, Final (169)</td>
<td>1997</td>
</tr>
</tbody>
</table>

\(^{195}\) Families of the disappeared have not been put down as a special category in housing aid schemes implemented by the National Housing Development Authority (NHDA).

\(^{196}\) Families of disappeared persons do not constitute a special category in land alienation schemes.

\(^{197}\) The Ande system dates back to the times of ancient kingdoms of Sri Lanka, where a tenant cultivated the land which was held or owned by another, and where the tenant paid a part of the proceeds of the crop to the owner. See Pieris, Kamalika, Lands in Medieval Sri Lanka, The Island, available at http://www.island.lk/2008/12/13/satmag3.html, accessed on 14/9/2009.

\(^{198}\) Not implemented.
Though providing relief to those whose property was damaged prior to or after the removal and/or disappearance of a person, does not come within the mandate of this Commission, it is recommended that such damage be assessed, by the Valuation Department and suitable redress be granted to them.199 (k)

| Employment | Subject to consideration of the implication of constitutional provisions, particularly Article 12 of the Constitution, unemployed youth of affected families be considered on a priority basis for recruitment in government employment.200 I.4(i) | Southern, Final (169) | 1997 |
| The relevant Ministries and/or Provincial Ministries to consider applications for transfers by widowed mothers to work at places in close proximity to their homes. I.4(ii) | Southern, Final (169) | 1997 |
| A right to seek reinstatement or compensation in lieu thereof be given to the next of kin (who had been engaged in ascertaining the whereabouts) of disappeared persons whose employment had been terminated on the ground of vacation of post. I.4(iii) | Southern, Final (170) | 1997 |

199. Not implemented.

200. Certain Public Administration Circulars provided at one time for concessionary marks to be given to ‘terrorist-affected families’ when sitting examinations for the recruitment to the public sector. This policy was revoked, however, by PA Circular 28/95 of 29.09.95. The circular states that ‘the concession granted for the families subjected to the loss of lives and property of the victims of terrorism will hereafter be confined to the compensation and other relief granted by the Ministry of Rehabilitation. The provision of relief marks for such families as per Public Administration Circular No. 17/92 will no longer be applicable’. In any event these circulars did not appear to cover families affected by violence not attributable to terrorist activities.
<table>
<thead>
<tr>
<th>Members of affected fisher families be given assistance through existing self-employment schemes and other forms of assistance.(^{201}) I.4(iv)</th>
<th>Southern, Final (170)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>We recommend at least one person in such families who has the minimum qualifications be given employment either in the State Sector or in the Private Sector.</td>
<td>NE Final (64)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Emoluments</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The employers of disappeared persons be required to release employment emoluments lying to the credit of disappeared persons to the heirs on furnishing proof of disappearance. I.6(i)</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
<tr>
<td>Dependants of all public servants, employees of semi-Government bodies, Statutory Corporations, who have disappeared must be paid the salaries of the disappeared till they reach the age of retirement and thereafter they must be entitled for pension. No distinction must be drawn among permanent, pensionable, casual, temporary employees etc.(^{(1)})</td>
<td>NE Final (64)</td>
<td>1997</td>
</tr>
<tr>
<td>Dependent family members who are not caught up in the above category must be brought under an effective and meaningful social security system.(^{(2)})</td>
<td>NE Final (64)</td>
<td>1997</td>
</tr>
<tr>
<td><strong>Bank Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steps to ensure relief for members of affected families in respect of repayment of bank loans.(^{202}) I.6(iii)</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
</tbody>
</table>

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\(^{201}\) Families of the disappeared do not constitute a special category in the Ministry’s schemes.

\(^{202}\) Family members are not provided any relief for loans.
<table>
<thead>
<tr>
<th>Schemes to provide public relief loans to indigent families.</th>
<th>Public Relief</th>
<th>1.7(i)</th>
<th>Southern, Final (170)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>A scheme be arranged to maintain mentally or physically handicapped members of devastated indigent families. 1.7(ii)</td>
<td>Children</td>
<td>Southern, Final (170)</td>
<td>1997</td>
<td></td>
</tr>
<tr>
<td>A scholarship programme be introduced to meet the needs of school children of the families of the disappeared persons. This could be integrated into the many scholarship programmes administered by the Ministry of Education. 1.10(i)</td>
<td>Southern, Final (170)</td>
<td>Central Final (14)</td>
<td>1997</td>
<td></td>
</tr>
<tr>
<td>Children of persons removed and/or disappeared to be awarded scholarships to assist them in their education. (b)</td>
<td>Southern, Final (170)</td>
<td>All Island, Final (86)</td>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>Psychological trauma of children (some were eye-witnesses to the violence practiced on the parents) needs to be addressed. 1.10(ii)</td>
<td>Southern, Final (170)</td>
<td>NE Final (64)</td>
<td>1997</td>
<td></td>
</tr>
<tr>
<td>The Commission was able to identify malnutrition among the children of the disappeared. The existing programme of fight against malnutrition should be extended to them as well.</td>
<td>Southern, Final (171)</td>
<td>Self-empowerment/ Vocational Training</td>
<td>1997</td>
<td></td>
</tr>
</tbody>
</table>

<p>| Assistance/training on home based self employment for women; advice, training and counselling on savings to be provided. II.4 |
|---|---|---|---|---|</p>
<table>
<thead>
<tr>
<th>Identification</th>
<th>Description</th>
<th>Southern, Final (171)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>II.5</td>
<td>Formulation of development plans both at the centre and periphery taking into account the phenomenon of female-headed families.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II.6</td>
<td>The special needs of vocational training, employment and financial assistance of female-headed families to be addressed through the appropriate body, e.g. the National Commission on Women or a Special Committee set up for that purpose.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I.5(i)</td>
<td>Vocational training be provided to members of affected families and they be accommodated within the existing training schemes provided by the government. Where people do not possess minimum qualifications they should be given vocational training at State expense to ensure that one person in the family is employable.</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The formulation of a comprehensive scheme of vocational training for needy members of affected families.</td>
<td>NE Final (64)</td>
<td>1997</td>
</tr>
<tr>
<td>V.11</td>
<td>The divisional secretaries be entrusted the responsibility of identifying and reporting to the Ministry of Public Administration and the Ministry of Rehabilitation, the kind of vocational training needed for affected families.</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Island, Final (87)</td>
<td>2001</td>
</tr>
</tbody>
</table>

203 While there are no specific programmes in place targeting women of families of the disappeared, the Women’s Bureau does have a programme to educate and empower female-headed households in general. These women are provided with the knowledge required for the improvement of the family economy. Special attention is paid to those women who are unable to enter the self-employment field due to various difficulties and they are provided with credit assistance. Apart from this the Bureau conducts poverty reduction programmes for rural women, providing them with training and with credit facilities, Ministry of Child Development and Women’s Empowerment Progress Report 2006.
<table>
<thead>
<tr>
<th>Emotional Rehabilitation</th>
<th>Advice, training and counselling on savings to be provided. I.5(ii)</th>
<th>Southern, Final (170)</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment</td>
<td>A counselling service be set-up for the purpose of emotional rehabilitation of members of affected families. I.9(i)</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Equip the community to assist in emotional rehabilitation. A scheme for the sensitization of personnel attached to the educational, health, rural development and other services be initiated. I.9(ii)</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>The educational and health services to plan out and put in operation a scheme for the sensitization of all their personnel to the need to provide counselling services to members of affected families, with the financial assistance and co-ordination of NGOs. V.12</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
<tr>
<td>Counselling</td>
<td>Counselling services be made available to the victims of sexual abuse both while they are in custody and after they are released. II.3</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
<tr>
<td>Death Certificates</td>
<td>A Public Administration Circular be issued to the district registrars of marriages and deaths regarding their powers to issue death certificates. I.8(ii)</td>
<td>Southern, Final (170)</td>
<td>1997</td>
</tr>
</tbody>
</table>

204. The Ministry of Health established its Mental Health Programme in 2002. The aim of the programme is to move away from merely a psychiatry-oriented approach to that which incorporates a psycho-social approach. This would include trauma counselling. The programme does not target women specifically, or any other particular group.

205. The psycho-social intervention unit of the Ministry of Education does not provide training or sensitisation for trauma intervention, which is what would be required by families of victims. It deals more with providing training/sensitisation for general counselling in schools.
<table>
<thead>
<tr>
<th></th>
<th><strong>Death certificates to be issued to all whose disappearance had been confirmed by the Commission, dispensing with the need for a certificate from the Grama Niladharis.</strong>&lt;sup&gt;206 (i)&lt;/sup&gt;</th>
<th><strong>Central, Final</strong> (14)</th>
<th><strong>1997</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Even though Government had made it possible for them to have a person registered as dead if he had not been seen for over a year, this had not been brought to the notice of the family members of the disappeared. It is recommended that action should be taken at the level of the Divisional Administration, to make this development, well known. Publicity be given to the Registration of Deaths (Temporary Provisions) Act no. 58 of 1998 through the media and Grama Niladharies. &lt;sup&gt;V.15&lt;/sup&gt;</td>
<td><strong>NE Final (64)</strong></td>
<td><strong>1997</strong></td>
</tr>
<tr>
<td><strong>Insurance</strong></td>
<td>Steps to ensure the release of money in bank accounts and moneys due on life insurance policies to the heirs of disappeared persons. &lt;sup&gt;207 (I.6ii)&lt;/sup&gt;</td>
<td><strong>All Island, Final (87)</strong></td>
<td><strong>2001</strong></td>
</tr>
</tbody>
</table>

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<sup>206. Three Registration of Deaths (Temporary Provisions) Acts have been enacted in 1995, 1998 and 2005 respectively. These Acts were enacted to address the practical difficulties impeding the registration of deaths which occurred during the course of the ‘civil disturbances that took place due to terrorist and subversive activities in Sri Lanka’. The 2005 Act provides for an application for a death certificate to be made ‘where any person is reported missing and presumed to be dead as he has not been heard of for a period exceeding one year by those who would naturally have heard of him had he been alive and his disappearance is attributable to any terrorist or subversive activity or civil commotion which has been taking place within Sri Lanka’. While originally the Act of 1995 only provided for certificates to be issued when accompanied by a report from a Grama Niladhar, the 1998 and 2005 Acts add to this by providing for issuance of certificates on the findings of a Commission of Inquiry.</sup>

<sup>207. Once a Death Certificate has been obtained, there is, reportedly, no problem collecting on the insurance.</sup>
<table>
<thead>
<tr>
<th>Special Mechanisms</th>
<th>Where there is evidence of unlawful detention or disappearance, the insurance companies be directed to take cognizance of this fact and not to treat the policy as having lapsed but to give the benefit of the policy to the heirs of the disappeared persons. V.13</th>
<th>All Island, Final (86)</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Where the findings of the Disappearance Commission or a death certificate is issued and where the death or disappearance is prior to due date of premium, the insurance policy be treated as having not lapsed. V.14</td>
<td>All Island, Final (87)</td>
<td>2001</td>
</tr>
<tr>
<td>Advisory Services Bureau</td>
<td>Citizens advisory bureaus to be set up at district level. IV.14</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>An advisory services bureau on the lines of the Citizen’s Advisory Services Bureau set up in London during WWII be set up to assist dependents of disappeared persons in procedures they have to follow to obtain relief etc. V.16</td>
<td>Southern, Final (174) All Island, Final (87)</td>
<td>1997 2001</td>
</tr>
<tr>
<td>Monitoring Committee</td>
<td>A committee be appointed to monitor the implementation of the aforementioned recommendations. I.12(iii)</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
</tbody>
</table>
**RETURNED DETAINEES**

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>Col &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Human Rights Commission should be requested to advise the government “in formulating legislation, administrative directive and procedures” for the protection of the fundamental rights of the Returned Detainees as a category. 208 I.11(i)</td>
<td>Southern, Final (171)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>It is very necessary to provide adequate relief to those who were removed, tortured and escaped death. Many of those persons had suffered both mentally and physically. It is recommended that they be rehabilitated and if necessary referred to Psychiatric Clinics; the assistance of non governmental organisations could be sought in this regard. (j)</td>
<td>Central, Final (14)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>A TRUST for the rehabilitation of persons affected by disappearances be set up under a Board of Trustees and the Inland Revenue Law be amended to remove the ceiling on contributions to charity to qualify for tax exemptions to facilitate contributions to this Trust. V.2</td>
<td>All Island, Final (86)</td>
<td>2001</td>
</tr>
</tbody>
</table>

### SPECIFIC ACTORS/ GROUPS

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forces/ Grama Niladharis</td>
<td>Alternative structures - The elimination of alternative structures of command within the police force and Grama Niladhari system as a prerequisite for prevention. IV.12</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Requisite qualifications for police officers and Grama Niladhari to be identified and all future recruitment and promotions of all officers to be decided on the basis of the qualifications and record of past performance. IV.12(i)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Training programme in investigations for all police officers. IV.12(ii)</td>
<td>Southern, Final (174)</td>
<td>1997</td>
</tr>
<tr>
<td></td>
<td>Security of public figures - Security of public figures to be provided by a special security coordination division of the police, these officers to be subjected to the command and supervision of superior officers in the service and be subjected to periodical transfer. IV. 15</td>
<td>Southern, Final (175)</td>
<td>1997</td>
</tr>
<tr>
<td>Private Army</td>
<td>The possibility of the maintenance of a “Private Army” at State expense be eliminated.IV.31</td>
<td>All Island, Final L(85)</td>
<td>2001</td>
</tr>
</tbody>
</table>
| **Citizen Groups/Civil Society** | Police Lay-Visitors Panel-A system of a police Lay-Visitors Panel for each police area to be set up. IV.13  
A Panel of Lay-Visitors be appointed in each Police area with powers to speak to detainees, check police records, etc. and to make complaints themselves to the HRC. IV.32 | Southern, Final (174)  
All Island, Final (85) | 1997  
2001 |
|---|---|---|---|
| **Women** | Encouragement of active political participation of women. Encouragement of active political participation of women.  
II.7 | Southern, Final (171) | 1997 |

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209. The Women’s Bureau of the Ministry of Women’s Affairs conducts a program on women’s participation in politics. It conducts one day training/awareness programs for women interested in active politics.
### MISCELLANEOUS

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>Col &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Government of Sri Lanka to take up at the relevant International fora the issue of the need for the formulation and promulgation of an International Instrument on the subject of the responsibility of Armed Groups. II.4</td>
<td>All Island, Final (82)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Wide publicity be given to the Reports of Commission of Inquiry into Disappearances, translations of Reports to be made available in Sinhala and Tamil.210 IV.33</td>
<td>All Island, Final (85)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>Your Excellency has taken the correct decision and especially in the ethnic sphere, Your Excellency’s proposals should be adopted as a basic policy of the land.211</td>
<td>NE Final (63)</td>
<td>1997</td>
</tr>
</tbody>
</table>

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210. There was little publicity generated by the government regarding the Reports.

211. The timing of the Report suggests that this recommendation relates to the 1997 proposals for devolution of power, which were not adopted.
### ALLEGED DISAPPEARANCES NOT WITHIN MANDATE

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
<th>CoI &amp; REPORT</th>
<th>YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Attention be paid to inquire into the complaints allegedly not reported to any Commission so far in respect of disappearances which have occurred after 1988.</td>
<td>All Island, Final (87)</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>The HRC Act be amended to enable it to inquire into complaints remaining uninquired as these complaints do not fall within the mandate of this Commission, and any subsequent instances of this nature brought to their notice.</td>
<td>All Island, Final (87)</td>
<td>2001</td>
</tr>
</tbody>
</table>

212. Not implemented

Commissions needed a special mandate from the President to investigate the allegation of over 2000 cases of disappearances, and in the absence of a specific Presidential mandate for the present HRC to proceed, they could not investigate such cases. The HRC further urges that it investigates cases beyond the time limit of one year, and had investigated cases as old as two years where evidence was forthcoming. They state that since the former Commission limited the cases to within one year of the incident, the HRC had now decided to limit the time to three months since evidence was not available for belated inquiries. Meanwhile the Daily News reports that a Committee was appointed by Chairman, HRC in mid 2006 to investigate the 2210 cases which had not been inquired into by the previous commissions, following a Presidential directive to this effect. The Committee comprised K.G. Jayasena, retired District Judge and H.S. Jayasuriya, former Director, Colombo Fraud Investigation Bureau with W. Ekanayake, former Government Agent Colombo as Secretary. The Commission commenced inquiries from November 2006 to July 2007. It is reported that 650 complainants came before the Commission while 113 wrote of their inability to attend and forwarded affidavits instead. 120 of the complaints were with regard to non payment of compensation (compensation calculated as follows; Rs.50,000 for married persons, Rs. 25,000 for persons over 21 and Rs. 15,000 for persons under 21 years). The final report was handed over to Chairman, HRC on 15 October 2007. The Daily News reports that the JVP, LTTE, police and army officers have been found to be responsible while insufficient evidence and departmental changes prevent criminal action being instituted against the latter state officials. Only 29.41% percent of the 2210 cases were investigated. See “Committee to Inquire into disappeared and mission persons”, Daily News, 29 October 2007, available at <http://www.dailynews.lk/2007/10/29/fea20.asp>. Further the HRC has stated that at the end of 2007, the HRC had investigated 2210 cases which they had distributed among investigating officers, having cleared a backlog of 9000 cases from the former Commission. See Visit of Louise Arbour: RCSL clarifies, Daily News, 05 November 2007, available at <http://www.dailynews.lk/2007/11/05/fea20.asp>

Not implemented.
PART 3
RECOMMENDATIONS OF OTHER COMMISSIONS OF INQUIRY

INTRODUCTION

The following is a compilation of the recommendations of six Commissions of Inquiry including: (1) the Commission to Inquire into the Assassination of S.W.R.D. Bandaranaike; (2) the Commission of Inquiry into Incidents which Took Place between 13th August and 15th September, 1977; (3) the Presidential Commission of Inquiry into the Kokkadicholai Incident; (4) the Commission of Inquiry into Unlawful Detention and Torture at the Batalanda Housing Scheme; (5) the Commission of Inquiry into the Massacre at Bindunuwewa Rehabilitation Centre; and (6) Presidential Truth Commission on Ethnic Violence (1981 – 1984).

These six Commissions span three decades; the first was created in 1963, and the last was created in 2001. The commissions address a number of diverse themes and, as such, are more difficult to compare than the recommendations of the disappearance Commissions. Consequently, we have not attempted to merge the recommendations of these six Commissions into one table. Rather, the recommendations of each Commission have been organized in separate tables, within which they have been further grouped thematically.

Despite the distinct nature of each Commission, certain trends emerge, including recommendations calling for accountability through legal or disciplinary procedures. Although such recommendations have been a persistent product of commissions of inquiry, they have failed to impact the enduring culture of impunity.
TABLE OF RECOMMENDATIONS OF OTHER COMMISSIONS OF INQUIRY

REPORT OF THE COMMISSION TO INQUIRE INTO AND REPORT ON ASSASSINATION OF S.W.R.D. BANDARANAIKE, 1965

<table>
<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contempt</td>
<td>We consider it necessary to bring to your Excellency’s notice a deficiency in the legal provisions relevant to the Commissions of Inquiry appointed in terms of the Commissions of Inquiry Act. Section 12 of that Act enumerates the acts and omissions which constitute the offence of contempt against or in disrespect of the authority of the Commission. Particularly in cases where judges are appointed Commissioners under this Act, we think it necessary, in order to enable them to perform their functions efficiently and with independence and so better secure the public interest, to extend the definition of contempt against or in disrespect of the authority of the Commission to certain other acts and omissions. It is hardly necessary for us here to attempt to indicate the limits of the area of such extension. We may, however, take leave to point out that the legislature appears to have contemplated in 1958 an amendment of the law somewhat along the lines we have in mind. We gather that a Bill drafted about that time to amend the Commissions of Inquiry Act was not proceeded with for reasons of which we are unaware. The efficient performance of the work of the Commissions and the public interest alike demand the supplying of the present deficiencies of the relevant law.215</td>
</tr>
</tbody>
</table>

| **Evidence** | As we had not decided to take into account, as against any person whose conduct appeared to us to require examination, any information that could not be reproduced before us in the shape of evidence at our inquiry in the presence of the person or persons who might be affected by such information, the information contained in these anonymous and pseudonymous petitions had to be kept out of consideration in reaching our conclusions.\textsuperscript{216} |
| **Procedure** | There is, of course, an implied statutory provision that natural justice must not be disregarded and an express statutory provision that any person who may be affected by the inquiry undertaken by the Commission is entitled to be represented by legal advisers of his choice. But once these safeguards are observed, there is sufficient elasticity in the permissible procedure to enable the Commissioners to adopt any procedure that is basically fair and just.\textsuperscript{217} |
| | The functions that devolve on us by our present Commission are substantially not dissimilar to those that devolve on a Court or other judicial tribunal. For that reason and also on account of the circumstance that the consequences of adverse findings by us can be serious or damaging to individuals, we decided to adhere, so far as practicable, to procedure obtaining in a Court of Justice.\textsuperscript{218} |

\textsuperscript{216} Commission Report, 1965, p.4.  
\textsuperscript{218} Commission Report, 1965, p.10.
REPORT ON INCIDENTS WHICH TOOK PLACE BETWEEN 13TH AUGUST AND 15TH SEPTEMBER, 1977 (SANSONI REPORT), 1980

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<thead>
<tr>
<th>CATEGORY OF REC</th>
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<tr>
<td>RELIEF/ RECONCILIATION</td>
<td>National Unity</td>
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It [the All Ceylon Buddhist Congress] suggested certain measures to prevent a recurrence of the incidents, some of them being:

1. The establishment of Buddhist and Hindu cultural centres, and a Hindu-Buddhist Museum in the North; and a special Faculty in the Jaffna University for research on Buddhist and Hindu culture.
2. The state should take adequate steps to preserve Buddhist ruins all over the country and to protect Buddhist pilgrims.
3. The state should encourage the printing of books which promote unity between Sinhalese and Tamils.
4. A Unit should be set up by the state to correct wrong information which may jeopardise Hindu-Buddhist relations, to stop all anti-national and divisive activities and propaganda, and to check foreign aid received by liberation movements that aim to damage Hindu-Buddhist unity.
5. The government should set up new industries in Jaffna peninsula, and provide employment and housing for both Sinhalese and Tamils.
6. Facilities should be provided for persons who left Jaffna to return there for re-employment.
I commend these suggestions as worthy of consideration. ²¹⁹

Fr. Caspersz mentioned in his Memorandum certain steps which might be taken to remove the remote and proximate causes which were responsible for the disturbances. I mention some now:

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<td>(1)</td>
<td>The teaching of history, geography, language and religion in school and university should be motivated by the need to unite, without making uniform, the various elements in our richly plural-cultural society.</td>
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<td>(2)</td>
<td>It is essential to teach Tamil to Sinhalese children and vice versa. Much prejudice is due to ignorance of the other’s language and culture. Unity in diversity is achieved by knowledge of them.</td>
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<td>(3)</td>
<td>Both Sinhalese and Tamil must be made compulsory for eligibility to government employment at any level; and certainly English at the tertiary stage of education, and if possible at the primary and secondary stages.</td>
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<td>(4)</td>
<td>Action is necessary to convince people of the Government’s determination to achieve the inter-communal harmony necessary for socio-economic progress. He gave instances [sic] C.G.R. (Ceylon Government Railways) and C.T.B. (Ceylon Transport Board) signs, name boards and announcements which should be in all 3 languages: and ban on the broadcasting of songs that encourage communalism.</td>
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<td>(5)</td>
<td>Efforts are necessary to integrate, without assimilating, the Tamil estate population with the Sinhalese village.</td>
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<th>(6) Economic stagnation and unemployment, especially of the youths between 18 and 25 must be overcome. Action is necessary to make Sinhalese and Tamil youths join hands to ensure a better future.</th>
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<td>(7) Confidence should be created in all, that the law enforcement machinery will act surely and swiftly at the slightest sign of communal disturbance or public hooliganism, or as soon as rumours begin.</td>
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<td>(8) All leaders of communities should join to remove past misunderstandings and build a society where everyone can live without fear or injustice. Harping on communal matters must cease.</td>
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<td>(9) The force of Religion must be used to defeat forces of Evil.</td>
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<td>(10) School children should mix in order to understand each other.²²⁰</td>
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Fr. Bernard, suggesting remedies to prevent a recurrence of communal disturbances, called for the moral education of both Sinhalese and Tamils and others towards genuine non-violence. All religious leaders should take part in that exercise, in order to change the hearts of the people. They should inculcate respect for the rights of others, such as respect for life, respect for sex, respect for property rights.²²¹

**Compensation/Rehabilitation**

I would advise that all these suggestions be considered by the Government [Sansoni].²²²

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Fr. Caspersz dealt with the subject thus:

1. Speedy and well-supervised disbursement of adequate compensation is necessary.
2. Re-settlement of hardworking families in the North-Central and Eastern Provinces will help the country to be self-sufficient.
3. Rehabilitation through settlement should guarantee that the families will be the main beneficiaries of their efforts to produce food and will not be exploited by landlords and others.
4. Where people are still living in insecurity and fear, they should be transferred to more secure places.
5. Persons, whether landlords or other possessors of lands, who were ousted forcibly, should be restored to possession.\textsuperscript{223}

The Federation of Tamil Trade Unions suggested, as measures of rehabilitation of victims of the disturbances, the transfer of Tamil employees to Tamil areas; the provisions of housing facilities in safe places and security arrangements; and the option of retirement for employees who do not want to continue in employment under the Government, with adequate compensation for loss of career.\textsuperscript{224}

The Tamil Refugees Rehabilitation Organisation suggested that, in addition to the above, Tamils who had to leave their land and property in Sinhalese areas and do not wish to return to them, should be given land in other areas where they will have a sense of security. In such cases, it was suggested by the Association of Affected Tamil Officers, the government should buy those lands at market value, as that was the only way to obtain a reasonable price for them.\textsuperscript{225}

Whatever may be the rule in this island under normal conditions, the incidents which occurred during the specified period were of such an extreme nature and so widespread, that an exception should be made as regards the payment of compensation to all those persons who were adversely affected. I suggest full compensation for all losses sustained should be paid to all such persons by the Government.\(^{226}\)

It will be necessary to have the claims made by those who suffered losses carefully investigated by persons who are competent to assess the quantum of compensation which should be paid in each case.\(^{227}\)

Their [victims of the incidents] dependants have suffered by losing the bread-winner under such circumstances; while if he had enjoyed the normal life expectancy they would have been in a much more favourable situation. Such cases should be suitably dealt with, and an enhanced pension be paid to the heirs.\(^{228}\)

I recommend that all persons who suffered damages arising out of the incidents which occurred during the period 13th August, 1977 to 15th September 1977, be paid full compensation to the extent of such damages. Any sums already received from the Government, or payable by reason of insurance policies in their favour, should of course be deducted.\(^{229}\)

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<tr>
<th><strong>ACTORS</strong>&lt;sup&gt;230&lt;/sup&gt;</th>
<th>By long tradition the Ceylon Police, like the British Police, do not as a general practice carry firearms. They have been trained to use them, and are equipped with them when an emergency arises, in order that they may deal with armed criminals and political terrorists. It is a matter for the consideration of the government whether further action is necessary to deal with threats to security in particular areas of the Island, especially when terrorists, who shoot and kill unarmed police officers and run away, are active.&lt;sup&gt;231&lt;/sup&gt;</th>
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<tr>
<td>Police</td>
<td>It is very desirable, if not essential, that police officers should be able to communicate without difficulty with the people in the area where they are stationed. Misunderstandings could be avoided if there is mutual intercourse between the two parties.&lt;sup&gt;232&lt;/sup&gt;</td>
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<td></td>
<td>It should be impressed on all police officers, that when they are in uniform or on duty they cease to be Sinhalese or Tamils or Muslims. They must then under all circumstance act fairly and impartially and fearlessly, heedless of their own race or religion.&lt;sup&gt;233&lt;/sup&gt;</td>
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230. “Perpetrators identified in the report were not prosecuted. Instead, in 1982, Parliament passed the Indemnity Act, No 20 of 1982, which prevented legal action of any kind against any representative or employee of the government for any act, “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...” This Act was further amended in December 1988 to extend the relevant period of indemnity to 16 December 1988.” “Twenty Years of Make Believe – Sri Lanka’s Presidential Commissions of Inquiry” Index: ASA 37/005/2009 Amnesty International, June 2009 at p.10.

231. Commission Report, 1980, p.268; “M.C. Sansoni did acknowledge police failures to protect civilians and to prevent violence, and identified a few police officers who had instigated or participated in violence against Tamils.” Amnesty International, June 2009 at p.9.


Finally, I would recommend that the Police should have sufficient man-power, be equipped with an adequate supply of vehicles, and be given clear instructions which they should always have in mind, so that they may be able to take swift, stern, and sufficient action to suppress an outbreak of violence.  

The lessons to be learned from the facts I have mentioned are that (1) if lawlessness is not immediately nipped in the bud, it can grow fast and spread over a large area; (2) if the law is not enforced both by the police and the Courts with all deliberate speed, it will cease to exercise that essential discipline over the lives of the lawbreakers, which is the guarantee of peace and order in the country.

**Political Leaders**

It is deplorable that, as Mr. Jayasinghe stated, some Members of Parliament aided and abetted or instigated the wrongdoers. The tragedy was heightened by the failure of the Police, who had been warned, to take preventive action at once. There is no place for political violence in a democracy. It should be outlawed and stamped out speedily.

The national interest requires that there should be patriotic collaboration across the party battle lines.

I have no doubt that it is necessary to lay down guidelines, preferably after a meeting between the Government and the T.U.L.F, where the existing areas of conflict can be discussed.

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| Public Service | Dr Balasingham, President of the Affected Tamil Officers’ Association, suggested the decentralization of the public service, with a view to reducing the number of Tamil officers required to serve in Colombo. This would also result in various branches of the public service being moved to the North.  


| OTHER | I have already expressed my views on the cry for Eelam raised by the T.U.L.F. The Ven. Madihe Pannasiha, Fr. Casperz and many other persons have stated that it was the main cause of the disturbances. Therefore, the first measure I would recommend, to prevent a recurrence of the disturbances, is that this claim be abandoned.  

We recommend that the Army should make its own investigations and that action be taken under the Military Law against the Army men who committed these crimes,

(a) taking into consideration that these offences were the result of unrestrained behaviour of the soldiers after the explosion and the death of two soldiers;

(b) that the witnesses from the villages involved were questioned as to whether before this incident there was any harassment by, or bad conduct of, the soldiers. The villagers were unanimous in stating that since the Camp was established at Kokkadicholai about 6 months prior to June, 1991 (viz: in December, 1990), there had been no harassment from the soldiers, and that it appears there had been cordial relations with the soldiers.\textsuperscript{241}

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The incident which is the subject-matter of this Inquiry by our Commission is one which had occurred outside military action as reported to Your Excellency in the Interim Report. We recommend that the members of the Armed forces be given intensive instructions and the Army men be trained not to indulge in, or execute extra-military or non-military acts of this kind. It must be impressed on the members of the Armed forces that indiscipline of this kind perpetrated on the public will be dealt with deterrent punishment.  

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## CATEGORY OF REC INVESTIGATIONS

| Judicial Investigations | We are of the opinion that, in instances such as this [when there is belief that those responsible are Police Officers], it is appropriate to empower Judicial Officers (such as Magistrates) to cause necessary investigations and supervise the same, and forward the investigational findings to the Attorney General, for the consideration of the institution of criminal proceedings. Amongst other investigative powers, the relevant judicial authorities should be empowered to proceed to the relevant venue in which it is suspected that illegal activity is being perpetuated, and examine the same. In this regard, we recommend that, Your Excellency be pleased to appoint a Committee to consider formulating suitable amendments to the Code of Criminal Procedure Act, to implement the recommendations contained herein.\(^\text{243}\) (3) |

## LEGAL PROCEEDINGS

| Prosecutions | We recommend that Your Excellency be pleased to direct the Inspector General of Police to cause comprehensive investigations into all complaints made to the Commission, with the view to instituting criminal proceedings in appropriate Courts of Law, against the relevant suspects. In this regard, Your Excellency maybe pleased to forward to the Inspector General of Police the Report of this Commission, along with the proceedings, the Notes of Investigations and other material pertaining to the investigations conducted by the Police Officers attached to the Commission.\(^\text{244}\) |

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\(^\text{243}\) Commission Report, 1992, p.125- (3). (Reference to number in ( ) hereinafter in the foontnotes is referable to the number of the recommendation in the Commission Report.

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<tr>
<th><strong>PUNITIVE MEASURES</strong></th>
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<td><strong>Disciplinary Action</strong></td>
<td>It is recommended that, Your Excellency be pleased to forward the Report of this Commission along with the proceedings to the relevant Disciplinary Authority and the Inspector General of Police, for the consideration of the institution of necessary disciplinary action against the relevant Police Officers.(^{245})</td>
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<th><strong>LEGAL REFORM</strong></th>
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<td><strong>Supreme Court Jurisdiction</strong></td>
<td>We recommend that the Supreme Court be vested with suitable additional jurisdiction, to impose suitable sanctions in the form of ‘deprivation of civil rights’, on persons who are found to repeatedly violate basic Fundamental Rights of Citizens.(^{246})</td>
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<tr>
<th><strong>ACTORS</strong></th>
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<tr>
<td><strong>Guidelines/ Codes of Conduct</strong></td>
<td>We recommend that Your Excellency be pleased to consider inviting Representatives of the People (such as Members of Parliament) to discuss these matters in detail, and propose a set of guidelines, applicable to politicians and Law Enforcements Officers, in their conduct during extra-ordinary situations, where there is a serious threat to peace and public order. If necessary, suitable amendment, to existing Laws, including the Constitution should be considered. In this process, it is recommended that, people and representatives of all social groups be given an opportunity to express their views.(^{247})</td>
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It would be appropriate that, Representatives of the people consider developing and adopting a ‘Code of Conduct’ for themselves. In the event of a Representative of the people (such as a Member of Parliament or Member of a Provincial Council) being found guilty for having violated the afore-mentioned Code of Conduct, it is recommended that the other Members of the relevant forum be entitled to move for the impeachment of the guilty Member. Upon such impeachment, the relevant Member shall cease to be a Representative for a specific period.\textsuperscript{248}
### REPORT OF THE MASSACRE AT BINDUNUWEWA REHABILITATION CENTRE, 2001

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<thead>
<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION</th>
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<tr>
<td><strong>LEGAL PROCEEDINGS</strong></td>
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<tr>
<td><strong>Prosecutions</strong></td>
<td>... [I]t is incumbent upon the State to apprehend and punish the perpetrators of these crimes committed at Bindunuwewa on 25.10.2000. A confidential cover containing a list of the suspects against whom indictment will be forwarded was produced before the Commission and is annexed to this Report.</td>
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<tr>
<td><strong>PUNITIVE MEASURES</strong></td>
<td></td>
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<tr>
<td><strong>Disciplinary Action</strong></td>
<td>Having considered the totality of evidence led before me, I have come to the conclusion that the conduct of the following officers on 25.10.2000, should be the subject of a disciplinary inquiry, for the reason that their inaction, and attitude at the time of the incident is indefensible. There is ample evidence that they were present at the time of the incident and made no effort either to avert the attack or to disperse the mob and arrest the offenders. 1.A.W.Dayaratne (Assistant Superintendent of Police) 2.R.M.T.K.Jayantha Seneviratne (Chief Inspector) 3.S.J.Karunasena (Inspector of Police) 4.N.G.S.Walpola (Sub Inspector) 5.P.Ratnayake (Sub Inspector) 6.K.W.C.N.Abeynarayana (Sub Inspector)</td>
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249. ‘At the hearing before the Commission, the learned Deputy Solicitor General stated that the Honourable Attorney General, having considered the notes of investigation, has already decided to forward indictment against some suspects’ Commission Report, 2001, p.206 –207 (16).
Ample evidence has been elicited at the inquiry to the effect that the administration was partly responsible for the creation of the situation and as such it is desirable that the conduct of the following officers also is enquired into at such inquiry. 1.Capt.Y.K.Abeyratne former Officer-in-Charge, Bindunuwewa Rehabilitation Centre. 2.Lt.P.Abeyratne Second Officer, Bindunuwewa Rehabilitation Centre.  

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<th>REHABILITATION</th>
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<td><strong>Repeal of Regulation 20 A (1)</strong></td>
<td>Section 20A (1) provides that a person who surrenders &quot;through fear of terrorist activities&quot; be sent for rehabilitation. There is no moral basis to keep a person who surrenders through fear of terrorist activities to be kept under any form of custody whether under the custody of the Commissioner-General of Rehabilitation or otherwise. It could well be an infringement of human rights. Therefore I strongly recommend that this provision in the Regulation be repealed.</td>
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<tr>
<td><strong>Detainees v. Surrendees</strong></td>
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251. ‘In the case of Sinnatamby Rajendran, I have come to the conclusion that there is justification in his posing the question “why am I kept in a Rehabilitation Centre?”’, Commission Report, 2001, p.200 (4).
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<tr>
<th><strong>Ascertaining Identity</strong>&lt;sup&gt;253&lt;/sup&gt;</th>
<th>It is recommended that this Regulation&lt;sup&gt;254&lt;/sup&gt; be amended and appropriate provision made to enable the authorities to make a proper screening for ascertaining their involvements in terrorist activities prior to the recommendation by the Committee. It is also recommended that proper guidelines be made available to the Committee. The Regulation should contain mandatory provisions that the decision be made within a particular time limit. &lt;sup&gt;255&lt;/sup&gt;</th>
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<tr>
<td><strong>Separate Housing</strong>&lt;sup&gt;256&lt;/sup&gt;</td>
<td>It is recommended that detainees and surrendees be separately housed as required by the Regulations. This would enable the authorities to provide security appropriate to each category for the reason that both categories may not require the same degree of security. &lt;sup&gt;257&lt;/sup&gt;</td>
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<sup>253</sup> “In the case of a surrendee, the fact of surrender is the determining factor in considering the suitability for rehabilitation. A statement made by the surrendee to the effect that he voluntarily surrendered and the certification that the surrender was voluntary by the officer or person to whom the surrender was made, qualifies such person for admission to a Rehabilitation Centre. I have discussed in my report the dangers involved in adopting such a procedure.”, p.199.


<sup>256</sup> Commission Report, 2001 “The distinction between the detainees and the surrendees is well recognised by the Emergency Regulations. The Centres where, surrendees are to be rehabilitated are referred to as “Protective accommodation and Rehabilitation Centres” in the Regulation 20C [authors note: also see Regulation 22(3) in the Amendment to Emergency (Misc. Provisions and Powers) Regulation, 12 September 2006.], whereas centres for Rehabilitation of the detainees are referred to as “Youth Development and Training Centres” in the Regulation 20B. However, in practice we find one centre functioning on the lines of both types. This is a clear violation of the provisions made under the said Regulations.”, p.198.

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<th><strong>Time Period</strong>&lt;sup&gt;258&lt;/sup&gt;</th>
<th>It is recommended that when detainees or surrendees are sent to a Rehabilitation Centre they should be made aware of their period of stay in the Centre and their date of release. It is desirable that whenever a detainee or surrendee reaches a particular level of rehabilitation for the Commissioner-General to recommend his or her release even before the specified date. Such provision will certainly have a telling effect on their conduct during their stay in the Rehabilitation Centre. In deciding the period of rehabilitation their civil status also should be taken into consideration.&lt;sup&gt;259&lt;/sup&gt;</th>
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<td><strong>Children</strong></td>
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<tr>
<td>Separation from Adults</td>
<td>In the case of ex-child combatants and children, in order to safeguard their dignity, confidentiality and to provide them with special care and attention, they should be separated from the adults in rehabilitation.&lt;sup&gt;260&lt;/sup&gt;</td>
</tr>
<tr>
<td>Specialised Staff</td>
<td>In addition, the staff working with these children should be selected with care and be given specialised training.&lt;sup&gt;261&lt;/sup&gt;</td>
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<sup>258</sup> “One of the main grievances of the inmates at Bindunuwewa was the uncertainty of their period of rehabilitation. Even the women surrendees at "Meth Sevana" in Gangodawila are unaware of their date of release.”


<sup>260</sup> “It must be borne in mind that Sri Lanka is a signatory to the "Convention of the Rights of the Child" which lays down that "in accordance with their obligations under International Humanitarian Laws in armed conflict State should take all feasible measures to ensure protection, and care of children affected by armed conflict." Commission Report, 2001, p. 201 (6(a)).

<sup>261</sup> Commission Report, 2001, p.201 (6(b)).
<table>
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<th>Location</th>
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| In the selection of a site for such Centres in future, specially due to the war situation in the country, the authorities should not only give consideration to the availability of geographical locational factors but also should take into consideration the all important human factor as well. It is vital that the Centre should be acceptable to the people. This matter has been considered in detail in the chapter titled "Location of the Rehabilitation Centre". In this context it is advisable to call for intelligence reports, surveys, studies and feasibility reports prior to the taking of any decision in the selection of a site.  

On 18.09.2001, the Commission visited "Meth Sevana" Rehabilitation Centre at Gangodawila established for the rehabilitation of LTTE women surrendees, for the purpose of seeing whether the safety of the inmates was adequate location wise. With the war situation still on, this Centre is severely exposed and vulnerable. Hence I strongly recommend that this Centre be moved to a place which would ensure their safety and protection. |


### Security

In view of the experience Sri Lanka had at Bindunuwewa, a well thought out perimeter security is required to prevent the recurrence of any "break in" situations or "break out" situations in a Rehabilitation Centre. Therefore, it is recommended that the perimeter security mechanism adopted in 1971 at Rehabilitation Centres for JVP surrendees be adopted in the Centre where LTTE detainees and surrendees are to be housed. Namely, to fix double barbed wire fences 5 to 6 feet apart with the middle section secured with criss-crossed barbed wire at ground level. Perimeter fences should be guarded from outside at chosen points by armed personnel. They should have clear instructions not to allow any outsider to get near the fence. Inmates of the camp should have clear instructions that they should not get close to the inner fence. The Gate Room should be established to control all entrances and exits to the Camp. It should be located at a suitable point on the perimeter fence.  

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<th>264. Commission Report, 2001, pp.202-203 (10) “In this regard I have taken into consideration the views expressed by a Senior Deputy Inspector-General of Police and a former Commissioner-General of Prisons. I also took into consideration the current thinking that the inmates should not get the feeling that they are living in an atmosphere of imprisonment.” Commission Report, 2001, p.203 (10).</th>
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It is desirable that a police post be established in the immediate vicinity of the Rehabilitation Camp but not inside the camp. It should be a point from where both the Rehabilitation Centre itself and the outside could be observed. It is advisable to have a staff consisting of at least an OIC, in the rank of Sub-Inspector, 2 Police Sergeants and 24 Police Constables with adequate transport, communication and allied facilities. The OIC and the other men should be hand-picked and be given sufficient training and instructions before they are posted. Standing orders and contingency plans spelling out what is to be done in an emergency should be established for the guidance of the men attached to the police post. Regular visits by supervisory officers to the police post must be made mandatory, for the reason that it would make it possible for any developments within the Rehabilitation Centre or outside be communicated to the authorities concerned for immediate action.  

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<tr>
<th>264. Commission Report, 2001, pp.202-203 (10) “In this regard I have taken into consideration the views expressed by a Senior Deputy Inspector-General of Police and a former Commissioner-General of Prisons. I also took into consideration the current thinking that the inmates should not get the feeling that they are living in an atmosphere of imprisonment.” Commission Report, 2001, p.203 (10).</th>
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I recommend that the surrendees and detainees selected for rehabilitation be housed in buildings made of permanent structures, so that the inmates could live with peace of mind.\(^{266}\)

I also emphasise the need to have a mechanism to gather information in and around the centre and to carry out continuous surveillance so that if any attempts are made to disrupt the Institution, prior knowledge will be available and effective measures could be taken by the authorities to avoid any such calamity.\(^{267}\)

**Social Integration**

It is desirable to have a well thought out plan for follow up action after their release with support at community level to further reintegration with their families and community to prevent them being re-recruited.\(^{268}\)

**ACTORS**

**Staff**

It is further recommended that the staff selection criteria should include not only knowledge and skills in their particular fields but also attitudes. They should be people who have moderate views on the country's ethnic crisis and are willing to treat the inmates as misguided youth who could be rehabilitated and reintegrated to society.\(^{269}\)

\(^{266}\) ‘Walls of the buildings that housed inmates at Bindunuwewa were made of zinc sheets which easily gave into the mob attack from outside. Because the zinc sheets are inflammable the mob was able to set fire to the buildings easily. Had there been walls of a permanent nature the number of casualties and damage caused to the buildings would have been minimised.’ Commission Report, 2001, p.204 (12).


\(^{268}\) Commission Report, 2001, p.201 (5).

\(^{269}\) Commission Report, 2001, p.201 (7).
| Non-governmental Organisations | Evidence also revealed that there are non-governmental organisations whose assistance could be made available to facilitate the welfare of the inmates during the period of their stay at a rehabilitation centre and as well as the post rehabilitation period. The representatives of the UNICEF (United Nations Children’s Fund), in the discussions they had with me, expressed their willingness to provide expertise if necessary. I recommend that these avenues be explored and made use of in the future.\textsuperscript{270} |

\textsuperscript{270}. Commission Report, 2001, p.204 (13).
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<tr>
<th>CATEGORY OF REC</th>
<th>RECOMMENDATION (AS STATED IN REPORT)</th>
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<tr>
<td>INVESTIGATIONS</td>
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| Special Investigative Unit | An Investigation Division of officers with police powers functioning entirely under the direction of the Human Rights Commission to apprehend and prosecute persons holding public office acting in violation of fundamental rights with particular reference to ethnic related discrimination be established with adequate legal powers.  

| The Human Rights Commission, in all cases on its own or upon complaints of unsatisfactory investigations by Police relating to ethnic violations or issues must take over and conduct investigations through its Investigations Division and ensure appropriate action.  

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<tr>
<th>LEGAL PROCEEDINGS</th>
<th>The perpetrators of ethnic violence whether they be members of the public [sic] the police, the armed forces or the public service be prosecuted whenever any ethnic violence occurs in the future. The government must on the occurrence of any ethnic violence in the future forthwith appoint a high level National Committee reflecting as far as possible an equivalent number of persons of all ethnic groups and comprising the attorney-General, Inspector General of Police Service Commanders, Secretaries to the Chairman of Human Rights Commission, the Civil Society and the Media charged with the task of ensuring immediate action on all ethnic related violence. The National Committee must ensure that there is no cover-up of prosecutions.\textsuperscript{273}</th>
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<tr>
<td>RELIEF/RECONCILIATION</td>
<td>The Government must pay full compensation to the victims (or their dependents) on the basis of the Commission’s Recommendations by publicly recognizing the trauma and sufferings the victims had to endure and as a warning to the perpetrators that economic destruction will be fully compensated: and strongly recommend that the government includes legal interest on the determined compensation as from 1983 till payment in full.\textsuperscript{274}</td>
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<tr>
<th><strong>National Unity</strong></th>
<th>The President and the Prime Minister must give leadership to a new era of ethnic reconciliation and national unity.(^{275})</th>
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<tr>
<td></td>
<td>The support and participation of the people of the country in the towns and villages must be obtained and sustained by the country’s leaders for the above purpose.(^{276})</td>
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<td>Legislation similar to the South African, Promotion of National Unity and Reconciliation Act No. 32 of 1995 be enacted to establish the legal framework for sustaining the process of ethnic reconciliation and to provide for the elimination of all forms of racism and ethnic related discriminations.(^{277})</td>
</tr>
<tr>
<td></td>
<td>The leadership, support and cooperation of religious leaders, the civil society, the media, the schools the police and the armed forces be ensured in the process of reconciliation and national unity.(^{278})</td>
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<td></td>
<td>The national unity and ethnic amity be fostered with due regard and recognition for pluralism and diversity.(^{279})</td>
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<td></td>
<td>Truth Commissions be appointed mandating to cover ethnic violence during the post-1948 period and to compensate all victims of ethnic violence and to achieve national unity and ethnic reconciliation.(^{280})</td>
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<th>ACTORS</th>
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<td>Vetting</td>
<td>The establishment of just and fair governance that will eliminate all forms of racism and discrimination be promoted with perpetrators of discrimination losing the right to hold any public office for specified periods of time.(^{281})</td>
</tr>
<tr>
<td>Media</td>
<td>The media be made to recognize that sections from amongst them did contribute to the sustenance of ethnic misgivings and that they have a major responsibility to support and promote national unity and ethnic reconciliation with due regard for pluralism and diversity [sic] advertising on media which fail to promote ethnic reconciliation must be discouraged by the state as well as the private sector.(^{282})</td>
</tr>
</tbody>
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PART 4

COMPARATIVE EXPERIENCES & CONCLUSIONS

Sri Lanka, as a nation, has a history of resorting to Commissions of Inquiry as a primary tool for reconciliation in instances of national trauma and human rights abuses. As is evident from the preceding analysis, these attempts have not always met with success. In fact, the work of each Commission of Inquiry has been handicapped by several issues, ranging from limited mandates to financial constraints.283

Experimenting with Commissions of Inquiry is not novel to Sri Lanka; the experiences globally of Commissions of Inquiry established to investigate gross human rights abuses reveals similar handicaps. For example, the first Latin American truth commission established in 1982-1984 by the then President of Bolivia, President Hernan Siles Zulazo to investigate disappearances between 1967 and 1982 was riddled with limitations. It is reported that the investigations were never concluded conclusively due to a limited mandate, and restricted resources from the Bolivian government led to its early disbandment284. The composition of the Commission itself however recommends itself to other countries adopting similar means to investigate human rights abuses - the Commission was composed of a cross section of society in order to ensure representative investigations.

283. See for example Pinto-Jayawardena, January 2010, supra where it is observed that governments have used commissions of inquiry (COI’s) to ‘expose the abuses of a previous political regime for partisan reasons or, conversely, when they have been appointed to inquire into abuses committed during that same administration, to escape accountability’. This is a commonly known and uncontroversial characteristic of COI’s in Sri Lanka.

The Argentinean Comisión Nacional para la Desaparición de Personas - National Commission on the Disappearances of Persons (CONADEP) is another example of a commission of inquiry but with a more encouraging result. Also known as 'The Sábato Commission' of Argentina, this Commission of Inquiry documented almost nine thousand cases of disappearances and identified three hundred and sixty-five torture and detention camps. As of January 2008, five of nine Juntas brought to trial were found guilty. However, further prosecutions have proved prohibitive due to laws which provide immunity to military officers acting under orders. In a disturbingly similar vein, the Emergency Regulations of Sri Lanka provides an immunity clause for acts carried out by security personnel under the regulations, or any order given under the regulations. No prosecution of either civil or criminal nature can be instituted against such acts of security personnel without the written consent of the Attorney General.

The recommendations of the Sabato Commission included the passing of laws to enable reparations. $3 billion was set aside for this task though actual distribution proved complex due to difficulties in proving detention without trial during the period. The Commission was established in 1983 and its work was concluded within nine months. While its mandate was to collect and document evidence on the disappearances which took place from 1976 to 1983 under the rule of the Junta, its success may be attributable to the fact that it was given access to all government facilities and the Security Forces were ordered to co-operate with the Commission. The political will to at least partially implement the recommendations of the Commission forcibly puts in mind the importance of the support of the regime in power in successful reconciliation. This particular Commission was

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285. Emergency Regulations, Reg. 73 [ER 2005].
286. id.
made up of thirteen commissioners and sixty additional staff. The report given to the President by the Commission included a list of the military staff involved in the human rights abuses investigated under its mandate\textsuperscript{288}.

The Sri Lankan Commissions on Disappearances were faced with several issues in terms of procuring records and information maintained during the period under investigation. One of the recommendations of the All Island Commission on Disappearances for example was that police records be handed over to the Commission of Inquiry, and that the Criminal Investigation Unit be responsible for the safety of such information books and records\textsuperscript{289}. The support system provided to the Argentinean Sabato Commission can be directly linked with its success in terms of fulfilling its mandate.

The Guatemalan \textit{Comisión para el Esclaracimento Histórico}, Commission for Historical Clarification (CHC) had several points of similarity with some of the Sri Lankan Commissions of Inquiry. Established by law to examine human rights abuses during the armed conflict, the mandate of the Commission fell short of mandating it to judge those individuals who were credibly implicated.\textsuperscript{290} The recommendations made by the Commission included formal recognition and apology by the President, a day of remembrance and erection of monuments in memory of the war victims, investigations into the Disappearances and exhumation programs. The 1994/1998 Commissions on Disappearances in Sri Lanka have made similar recommendations, particularly with regard to investigations on

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\textsuperscript{288} The Sri Lankan Disappearances Commissions have also provided lists of individuals against whom credible evidence was available before the Commission. See for example the Northern Final Report, p.62.

\textsuperscript{289} All Island Final, p. 83.

the disappeared\textsuperscript{291} and erection of monuments in memory of the disappeared and the families of the disappeared.\textsuperscript{292}

In terms of implementation of the recommendations of the CHC, a capacity building project was initiated by the International Centre for Transitional Justice on the request of the government of Guatemala.\textsuperscript{293} Its mandate was to review and reform the justice system in order to increase the capacity of the system to prosecute perpetrators. This program was completed in 2004. However on the downside, when the UN Working Group on Disappearances visited Guatemala on the request of the Government in 2006, there were three thousand one hundred and fifty three pending cases of which two thousand eight hundred and ninety six were pending as of January 2008. The Centre for the Study of Violence and Reconciliation reports that as of that date there were no prosecutions of those responsible for the disappearances in Guatemala, with an estimated forty five thousand persons having disappeared during the armed conflict\textsuperscript{294}. This type of impunity is reflected in the failure by successive Governments in Sri Lanka to successfully bring to book perpetrators who have been credibly implicated and publicly named by successive Commissions of Inquiry.

On a more positive note, the Commission on Wartime Relocation and Internment of Civilians established by the United States Congressional Committee on Interior and Insular Affairs in 1980 was relatively successful in achieving successful implementation of its recommendations. Its mandate was to investigate the relocation of 110,000 American citizens between 1942 and 1945. It found that there was no military or security reason for such relocation and exclusion of

\textsuperscript{291} All Island Final, p. 15.
\textsuperscript{292} All Island Final, p. 86.
\textsuperscript{293} CSVR, Guatemala, \textit{ibid} n. 288.
\textsuperscript{294} CSVR, Guatemala, \textit{ibid} n. 288.
Japanese Americans during the war, and that the treatment of Alaskan Aleuts who were relocated to isolated camps under US control was inhumane. The US government acknowledged the injustices caused and passed the Civil Liberties Act in 1988. $1.2 Billion was distributed in addition to formal apology.

South Africa is often held out to be the classic example of a country where an experiment of a truth and reconciliation commission had, in fact, succeeded. The formation of the South African Truth and Reconciliation Commission (TRC) was preceded by a long process of discussion and consultation by all political parties in South Africa in the post-apartheid period. This was borne out by its detailed and carefully thought out composition. The TRC was, in fact, made up of three committees on Human Rights Violations, on Amnesty and on Reparation and Rehabilitation which had specific tasks allotted to them. The Committee on Human Rights Violations was responsible for collecting the stories of victims while the Committee of Amnesty heard evidence on political crimes committed during this period and considered whether amnesty could be granted there was a full confession by the perpetrator. Amnesty meant that they would be pardoned for the crime that they had committed and if they were on trial, the trial would be stopped. The Committee on Reparation and Rehabilitation investigated ways to help people who had suffered. Besides this, it was mandated to recommend the manner in which a culture of human rights could be built in the police force, the prisons and other government institutions. In addition, the TRC itself had an independent investigation unit, made up of lawyers, members of the police force and international experts, which were given powers to question persons and to search and seize documents.

This experiment in national healing was accompanied by an emphasis on its non political objectives. The Commission was established by an Act of Parliament and the Commissioners were individuals whose appointments were agreed upon by all the political parties. Before and during the sittings of the TRC, the South African people were made
aware through public meetings, posters, leaflets and the media, of the purpose of the TRC which was to put together a complete picture of all the serious human rights violations that took place against South Africans between March 1960 and December 1993. It began its work in December 1995 and was mandated to run until December 1997.

Then again, the experiences of the Greensboro Truth Commission of the USA show how community initiatives can also pave the way to successful investigation and at times implementation, of reparation and reconciliation programs. The Greensboro Commission was established in June 2004 as a civil society initiative in North America to investigate racial killings by the Ku Klux Klan and the American Nazi Party in 1979. The Commission undertook documentary research and also conducted 3 two-day public hearings, conducted over two hundred interviews and examined official records. The Commission presented its report to the Greensboro community in 2006, naming those responsible and recommending institutional reforms, formal apologies, restitution methods and a more representative method of selecting jurors. The responsibility of implementing these recommendations has been passed onto more than fifty civic, religious and community groups295.

See also for example the Guatemalan mechanism for reconciliation called Recovery of the Historic Memory (REMHI)296. Established in 1995 and functioning to date, REMHI was established by the Catholic Church. Its mandate was to seek reconciliation and healing as opposed to justice as perceived in the criminal justice sense. Its structure is inspiring; four phases consisting of sensitisation, compilation, dissemination and analysis. Almost seven thousand interviews with


victims were conducted on the thirty six year old civil war which displaced one million persons and took the lives of two hundred thousand. Two days after the publication of the final report, Bishop Gerardi, leader of the REMHI was murdered. Three high ranking military officers and the Bishop’s personal assistant were convicted for the murder.

One of the most controversial Commissions of Inquiry, during the proceedings of which, the deaths of the one judge, two defence lawyers and five other court officials occurred, was the Iraq Special Tribunal (since 2005, the Iraqi Higher Criminal Court (IHCC). Established in December 2003 by law by the Iraqi Governing Council, the IHCC was mandated to investigate war crimes, genocide and crimes against humanity committed since 1968. The IHCC tried and convicted former President of Iraq, Saddam Hussein, who was later executed. The proceedings were criticized by international human rights monitors including Human Rights Watch. Accusations relating to abuse of due process included the application of a lower evidence threshold for conviction than ‘beyond reasonable doubt.’

Some of these experiences are instructive in terms of what reconciliation mechanisms can achieve if properly constituted and effectively executed. However, these histories also illustrate the dangers of summary justice meted out by special tribunals and the furtherance of the trauma of victims that such defective processes of accountability can contribute to.

As much as the imperatives of restorative justice should underlie our thinking in the post war period, Sri Lanka needs to bring about reforms to the criminal justice system, establish a good witness protection system, ensure effective prosecutions of perpetrators of human rights abuses and encourage the functioning of a sensitive and effective judicial and legal system.

These should remain priorities for this country and the people.

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