

TABLE OF CONTENTS

Background	2
The commissions' mandate	3
Amnesty International's general position on the establishment of the commissions	5
Amnesty International observations and recommendations	6
Interpretation of mandate	6
Why three commissions?	7
A public report	8
Time limits	9
Protection of witnesses	11
Working methods	12
Resources	12
Recommendations for the prevention of future violations	13
Cooperation with other bodies	13
The work of the PCIIRP: learning the lessons	15
Evidence of "disappearances": excavation of mass graves	17
Bringing the perpetrators to justice	19
Compensation, rehabilitation and redress	24

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"Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before a court of law." -

United Nations Working Group on Enforced or Involuntary Disappearances, 1990 report, paragraph 344.

In late November 1994 Sri Lanka's newly-elected President, Chandrika Bandaranaike Kumaratunga, appointed three commissions of inquiry to investigate "disappearances" that had occurred in the country since 1 January 1988. While welcoming the creation of the commissions, Amnesty International calls on the Government of Sri Lanka to strengthen their work in order to ensure that the full truth about past human rights violations is revealed. Amnesty International also stresses the need to re-establish accountability among the security forces by bringing to justice those responsible for past human rights violations, for the sake of the victims and their relatives, and also to prevent such abuses from happening again.

The newly-established commissions have in particular been mandated to investigate "disappearances" which took place in the context of armed conflict between government forces and the *Janatha Vimukthi Peramuna* (JVP), People's Liberation Front in the south in the period from mid-1987 to 1990 and between government forces and the Liberation Tigers of Tamil Eelam (LTTE) in the northeast after June 1990. Amnesty International believes the work of the commissions could be one of the key factors in preventing "disappearances" and extrajudicial executions in Sri Lanka from ever happening again.

The task faced by the commissions and the government is enormous. The truth about the grave human rights violations that have occurred in Sri Lanka over the past 10 years or so must be made known and officially acknowledged; those responsible for human rights violations must be brought to justice; the victims and their relatives must be given adequate redress. Amnesty International believes this process is essential in order to ensure that grave human rights violations such as those that have marked the recent past are never allowed to happen again.

The investigations by the commissions constitute an important first step in the right direction. However, it will be equally important for the government to follow up effectively on the commissions' findings to ensure the process of truth and justice on which it has embarked results in re-establishing accountability among security forces personnel and creating a climate in which human rights are respected.

In the past 10 years or so, tens of thousands of people are believed to have "disappeared" or been extrajudicially executed in Sri Lanka. Prior to the establishment of the commissions of inquiry only a fraction of these had been the subject of official investigations. Even in those few cases where investigations were initiated, there were often serious flaws in the investigative process which were almost always due to the authorities' reluctance to bring those responsible to justice.

Time for truth and justice

A number of these earlier investigations were carried out by the Presidential Commission of Inquiry into the Involuntary Removal of Persons (PCIIRP) established by the former government on 11 January 1991 to investigate "disappearances" that occurred after that date. This document draws on the experiences of the PCIIRP - in particular the lack of follow-up to its findings and recommendations - to illustrate some of Amnesty International's concerns regarding the work of the new commissions. The document is also based on Amnesty International's experience of observing the work of "truth commissions" in many other countries.

Background

The People's Alliance (PA) government took office in August 1994. Its leader, Chandrika Bandaranaike Kumaratunga was sworn in as President after she won presidential elections in November. The election results were widely interpreted as a vote for change after 17 years of rule by the United National Party. Soon after taking office in August 1994, the government announced a number of important steps in the field of human rights, including the investigation of past human rights violations, the bringing to justice of those responsible and the granting of compensation to victims or their relatives.

Amnesty International has welcomed the steps announced by the government and, in a series of communications, has urged relevant officials to ensure that the government would have a fundamentally different human rights policy than previous governments. The organization has called for all the necessary measures to be taken to bring an end to the sense of impunity prevailing among members of the security forces in order to prevent the widespread extrajudicial executions, "disappearances", torture and arbitrary arrests that marked the last 10 years or so from ever happening again.

In late November President Chandrika Bandaranaike Kumaratunga appointed three independent commissions of inquiry to investigate the thousands of "disappearances" and extrajudicial executions which had taken place since 1 January 1988.

An Amnesty International delegation visited Sri Lanka in early February 1995 and met with President Chandrika Bandaranaike Kumaratunga, several members of the government, members of the newly-established commissions, who had just started their work, and members of the PCIIRP and the Human Rights Task Force (HRTF) set up by the former government. The delegation appreciated having this opportunity to seek, among other things, clarification with regard to the mandate and the workings of the commissions.

Prior to the visit, Amnesty International submitted a memorandum to the government. It set out measures to prevent grave human rights violations, including the holding of full and impartial investigations, a review of current security legislation and the strengthening of constitutional and legal protection.

The commissions' mandate

Although the announcement of the establishment of the commissions was made shortly after the new government came to power, the commissions were only appointed at the end of November and started their work in mid-January 1995. Each commission is composed of three commissioners and assigned a specific geographical area of the country.

Amnesty International April 1995AI Index: ASA 37/04/95

Time for truth and justice

The members of the Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in Western, Southern and Sabaragamuwa Provinces are M.K. Muttetuwegama (Chairperson), a lawyer; Professor S.S.B. Don Abeyratne Amal Jayawardene, an associate professor in history and politics at the University of Colombo, and B.J.P. de Almeida Guneratne, a lawyer. The members of the Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Central, North Western, North Central and Uva Provinces are T. Sunderalingam (Chairperson) and H.M. Senaratna Banda Madawala, both retired High Court judges.¹ The members of the Presidential Commission of Inquiry into Involuntary Removal and Disappearances of Persons in the Northern & Eastern Provinces are K. Pakakidnar (Chairperson), a retired judge of the Court of Appeal; L. Walter R. Waidyaratne (retired High Court judge), and Dr W.N. Wilson, senior lecturer in geography at the University of Colombo.²

According to the text of three individual notices published by the commissions in the national newspapers on 15 January 1995, the commissions' mandate is to inquire into and report on the following:

- "- whether any persons have been involuntarily removed or have disappeared from their places of residence in [geographical area allocated to the specific commission as listed above] at any time after 1 January 1988;
- the evidence available to establish such alleged removals or disappearances;
- the present whereabouts of the persons alleged to have been so removed; or to have so disappeared;
- whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
- the legal proceedings that can be taken against the persons held to be so responsible;
- the measures necessary to prevent the occurrence of such alleged activities in the future;
- 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."

The initial notices called for representations from any person or organization by 14 February 1995. Later this deadline was extended to 14 March 1995. The commissions are required to report to the President on their findings and recommendations within four months and have also been instructed to submit regular

¹The commission covering the central part of the country currently only consists of two commissioners although initially three commissioners had been appointed. Amnesty International understands that the vacant position will not be filled.

²In addition, the government has appointed Special Presidential Commissions to investigate a number of prominent assassinations. These commissions, established under the Special Presidential Commission Act, consist of three sitting judges. To date, one such Special Presidential Commission of Inquiry has been established to inquire into the killing of Lieutenant General Denzil Kobbekaduwa and nine other senior army and navy officers in a landmine explosion at Kayts on 8 August 1992. Another one was mandated to look into the assassination on 23 April 1993 and the prior physical attacks on Lalith Athulathmudali, an opposition politician, and the manner in which the assassination and attacks had been investigated. A third Special Presidential Commission is investigating the killing in February 1988 of Vijaya Kumaratunga, an actor and politician and husband of President Chandrika Bandaranaike Kumaratunga.

Time for truth and justice

interim reports.

As of early March 1995, each of the commissions, all of which are based in Colombo, were said to have received around 10,000 complaints. Two of the three commissions were using a questionnaire to gather additional information. Around 10 March 1995, the three commissions each went to specific places in the areas allocated to them to hear evidence from relatives and eye-witnesses in relation to specific cases of "disappearances" brought to their notice. According to the Commissions of Inquiry Act, the enabling legislation under which the three commissions were established, witnesses have the right to ask for their evidence to be recorded *in camera*. The evidence presented to the commissions is being led by a state counsel specifically assigned to the commissions for that task. The commissions are also due to appoint an investigative team although at the time of writing only one of the three commissions had such a team fully in place.

Amnesty International's general position on the establishment of the commissions

Amnesty International welcomes the creation of the commissions, noting that it is of vital importance to clarify the truth about past human rights violations and abuses and to bring to justice those responsible, for the sake of the victims and their relatives, and also to prevent such abuses from happening again. In order to assist the commissions in their task, it has made available a selection of documents published about human rights violations in Sri Lanka in the period under review and on the work of similar commissions in other countries, including Argentina, Chile, El Salvador and Honduras.

Amnesty International believes that thorough, impartial and independent investigations in accordance with the United Nations (UN) Declaration on the Protection of All Persons from Enforced Disappearance and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions are one of the main means of combating "disappearances" and extrajudicial executions. The conclusions of an effective investigation, the results of which should be made public in full (unless doing so would jeopardize an ongoing criminal investigation), together with a clear public condemnation of these abuses and the bringing to justice of those responsible, will also help to show that the authorities are determined never to let such grave human rights violations take place again.

However, Amnesty International is concerned that the vagueness of the Sri Lankan commissions' mandate might unduly restrict the scope of the investigations and the procedures it should follow. It is further concerned that the limits imposed on the commissions' scope and functions should not prevent them from fully investigating the massive and systematic violation of human rights in the recent past in Sri Lanka nor prevent the government from effectively following up this important process of uncovering the truth and seeking justice. For this reason, Amnesty International is presenting a series of observations and recommendations to the government and the members of the commissions regarding the criteria which the organization believes are essential to the work of any investigative body entrusted with the task of clarifying past human rights violations and abuses.

Amnesty International observations and recommendations

Interpretation of mandate

Time for truth and justice

When announcing the establishment of the commissions, the Minister of Justice and Constitutional Affairs referred to them as commissions investigating "disappearances" and political killings. However, the mandate of the commissions as outlined above does not explicitly stipulate that extrajudicial executions fall within the scope of the investigations. When Amnesty International met with the commissioners in early February 1995, there appeared to be some uncertainty among them about whether or not extrajudicial executions would be considered to fall within their mandate.

Amnesty International believes that it is impossible to separate the occurrence of "disappearances" from the occurrence of extrajudicial executions in Sri Lanka. For example the fact that, at the height of the counter-insurgency operations in the south the bodies of people abducted at night by plainclothes men in unmarked vehicles were dumped by the side of the road or in fields, mutilated or burned beyond recognition, illustrates how the commissions would have to investigate both violations in order to establish the full truth. The abduction in February 1990 of journalist and broadcaster Richard de Zoysa whose body was found the following day, also demonstrates the need to investigate both types of violations to get to the full truth.

There also appears to be some uncertainty among the members of the commissions as to whether or not the investigation of short-term "disappearances" (that is people who were held in unacknowledged detention for a period of time but who were later "released" or somehow found their way into official custody) would be included in the mandate. Amnesty International believes that the investigation of these cases by the commissions is important because they would be able to provide evidence of the *modus operandi* of the security forces and others responsible for the many "long-term", and as yet unclarified, "disappearances".

The mandate of the commissions refers to "removals" and "disappearances". Amnesty International understands the term "removals" to refer to abductions by non-state agencies. For instance, in the northeast of the country members of the LTTE are known to have abducted people they suspect of being "traitors". Whether or not such abductions would fall within the commissions' mandate was unclear.

Amnesty International also asked the commissioners whether they would draw upon the services of forensic experts if they were presented with evidence of clandestine graves thought to contain bodies of "disappeared" people. The commissioners appeared to be reluctant to initiate exhumations. Amnesty International believes that forensic investigations can be an important tool in the investigation of "disappearances". This belief is based on the experiences of other countries such as Argentina, Bolivia, Brazil, Venezuela, Guatemala, El Salvador, Iraqi Kurdistan and Ethiopia.

In all of the above four areas, Amnesty International delegates also observed a certain lack of consistency between the three commissions in their approach to their mandate. This could present a serious problem for the government when faced with decisions on following the recommendations of the commissions in a fair and consistent manner.

Amnesty International recommends that a mechanism is set up through which the three commissions solve issues involving interpretation of mandate and consistency in methodology.

To Amnesty International's knowledge no such mechanism is in place, although the secretaries of the three commissions meet on a regular basis to "exchange information".

Time for truth and justice

Amnesty International recommends that interim reports by the commissions be used to ensure common standards are being applied.

Why three commissions?

Amnesty International considers that in order to create a climate favourable to respect for human rights in Sri Lanka, the process undertaken by the commissions should have as its fundamental objective the establishment of the **full** truth about the grave human rights violations and abuses that took place in the period under review.

In this context, Amnesty International is concerned about the establishment of three independent commissions rather than one commission with three sub-commissions covering different areas of the country. It fears that the existence of three separate commissions may make it more difficult for the full truth to emerge about the underlying structural, institutional or policy factors which allowed such widespread human rights violations to take place.

To date, Amnesty International has not been able to establish the reason for the government's decision to establish three separate commissions. The sheer numbers of "disappearances" and extrajudicial executions that took place in the period under review may have been a determining factor. However, this issue could have been addressed by the creation of one commission with three (or more) sub-commissions.

In order for a true picture of the scale of human rights violations to be made known, Amnesty International urges the three commissions to produce one consolidated report, including a list of recommendations, which should be given wide publicity.

A public report

The need to make the final report public cannot be stressed enough. José Zalaquett, who later became a member of the Chilean Truth Commission, set up to investigate human rights violations committed in Chile under the former military government, gave the following reasons for making the report public:

"The truth must be *officially proclaimed* and *publicly exposed*. Public knowledge of the truth, following appropriate investigations, is an essential requisite for a policy that covers past human rights abuses because such a policy deals with a problem that affected not only individual victims but society as a whole... Hiding the truth perpetuates the actual suffering and indeed the violation of the rights of the relatives of the victims, when their fate is not known; it keeps deep resentments and it makes national unity and reconciliation more difficult. Moreover, hiding the truth allows the military or other groups or institutions responsible for past abuses to escape the judgment of history and to insist on exculpatory versions of what happened; new recruits will absorb an institutional tradition which has not expunged its most objectionable aspects. All this can only weaken efforts to prevent the recurrence of human rights abuse and to reinforce the rule of law.

"For all these reasons it is not sufficient that well-informed citizens have a reasonably good idea of what really happened. It is not enough either that the mass media or other sources disseminate the truth, however widely. The important thing is that the truth is established in an officially sanctioned way, in a

Time for truth and justice

manner that allows the findings to form part of the historical record of the nation and that establishes an authoritative version of the events, over and above partisan considerations."³

Amnesty International recommends that the final report of the commissions be made public, that widespread publicity be given to it and that it be made widely available throughout the country.

Amnesty International also urges the government to announce the steps it will take in response to the report within a reasonable period of time from its submission to the President.

Time limits

The 1 January 1988 cut-off date

The three commissions of inquiry appointed to investigate "disappearances" and extrajudicial executions are only mandated to investigate cases that took place after 1 January 1988.

Amnesty International is concerned that the hundreds of "disappearances" and extrajudicial killings reported in the years before 1 January 1988 will not be investigated. From 1984 to mid-1987, for instance, Amnesty International documented over 680 "disappearances" in the custody of the Sri Lankan security forces in the northeast. In 1987 alone, it recorded 134 cases, 12 of which took place in areas outside the northeast. Among the seven "disappearances" reported from Hambantota district, for instance, was that of Sathiyapala Wannigama, assistant lecturer at the University of Ruhuna. He was abducted on 13 November 1987 by two policemen from Middeniya police station, who were reportedly accompanied by two officers of the Special Task Force, shortly after he got on a bus near his brother's house at Dabarella.

Amnesty International is concerned that cases like this, where there is often evidence from eye-witnesses who claim to be able to identify those responsible for the arrest, torture in detention resulting in death and the disposal of the bodies of the "disappeared", will not be investigated by the commissions.

Article 13.6 of the UN Declaration on the Protection of All Persons from Enforced Disappearance which was adopted without a vote by the UN General Assembly on 18 December 1992 states that "an investigation...should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified".

Amnesty International was informed by the commissions that they would consider cases of "disappearances" that occurred prior to 1 January 1988 that were reported to them. It is concerned, however, that, if this is so, relatives of **all** the people who "disappeared" prior to January 1988 should be given the opportunity to present evidence before the commissions. Moreover, Amnesty International believes 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 forces in Sri Lanka on a vast scale.

Amnesty International urges the President to formally extend the mandate of the commissions to include cases reported since 1984.

³José Zalaquett, "Confronting Human Rights Violations" in *State Crimes: Punishment or Pardon*, Aspen Institute, 1989, p. 31.
AI Index: ASA 37/04/95 Amnesty International April 1995

Time for truth and justice

Four months to report to the President

When meeting with the commissioners, Amnesty International asked how long they anticipated their work would take. All of them said they expected they would need at least one year to report on their findings.

It is Amnesty International's experience, based on the work of similar commissions in other countries, that it is important to indicate a time limit for commissions to report on their findings. However, it is equally important to make that time limit a realistic one. Laying down a particularly short time limit for reporting, in Amnesty International's experience, makes the work of commissions more vulnerable to changes in political climate. It could also make witnesses more hesitant to come forward as they may have doubts about the process being able to reach its final conclusion.

All commissioners met by Amnesty International stated they did not anticipate any difficulties in obtaining extensions to the four-month deadline.

Amnesty International urges that the time limit imposed on the commissions to complete investigations and submit their report be extended to allow them adequate time to complete their task fully.

Protection of witnesses

Several relatives of "disappeared" people and human rights organizations from all areas of Sri Lanka have expressed concern that many members of the security forces and others allegedly responsible for grave human rights violations in the recent past continue to hold official posts in the same areas where the violations took place and may try to interfere with the investigations. This was a particular concern in relation to the hearings held by the commissions in the areas allocated to them: most notably in the northeast, where concern pertains not only to members of the police but also the army, Home Guards and various armed militant groups.

Amnesty International urges that members of the security forces and others allegedly responsible for grave human rights violations be suspended from any official duties during the investigations.

Both the UN Declaration on the Protection of All Persons from Enforced Disappearance and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provide that persons alleged to have committed these grave human rights violations should be suspended from any official duties during the investigation and removed from any position of control or power, whether direct or indirect. They also state that steps should be taken to ensure that all those involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, violence, threats of violence or any other form of intimidation or reprisal.

To Amnesty International's knowledge, the three commissions under the Commissions of Inquiry Act do

Time for truth and justice

not have the power to order the suspension from duty of members of the security forces allegedly responsible for human rights violations falling within their mandate.

Amnesty International urges the President to consider granting the commissions the power to order the suspension from duty of members of the security forces allegedly responsible for human rights violations falling within their mandate or to introduce a mechanism through which the commissions can effectively ensure the suspension of alleged perpetrators during their investigations.

It also urges the government to ensure that complainants, witnesses, lawyers, members of the commissions and others involved in the investigations are protected from violence, threats of violence or any other form of intimidation or reprisal and to take any additional steps necessary to protect witnesses and guarantee the security, independence and effectiveness of the commission investigating cases in the north and east.

Working methods

At the time of writing, the commissions had started collecting evidence from relatives and eye-witnesses but had not as yet embarked upon the process of conducting inquiries. In other words, they had not called any of the persons named by relatives and eye-witnesses as being responsible for human rights violations to give evidence and had not started the process of consulting official documents, such as registers of detainees.

Although the Commissions of Inquiry Act provides for persons "whose conduct is the subject of inquiry" to give evidence under oath, a previous commission of inquiry, established in 1991 to investigate human rights violations, did not use these powers consistently throughout its inquiry⁴.

Amnesty International recommends that witnesses, including civilian or military officials, whether retired or in active service, should be compelled to cooperate with the commissions and be liable to be held in contempt of the commissions if they refuse to give evidence, except where they are protected by established principles of law such as the right to remain silent and the right not to incriminate oneself.

Amnesty International also recommends that the commissions should be given access to statements, documentary evidence and other information held by the security forces relevant to the cases and situations under investigation. Medical and legal records and existing court files should also be placed at the commissions' disposal.

Resources

The commissions do not have their own budget. They apparently have to rely on the Presidential Secretariat to provide resources and allocate funds for the day-to-day workings of the commissions. At the time of writing, two of the three commissions had not been able to acquire a computer.

Amnesty International urges that the commissions be allocated the human and material resources

⁴See below, page 18 - 20, for more details on the first ever commission of inquiry into reprisal killings at Kokkadichcholai in June 1991.

Time for truth and justice

required to examine thoroughly, effectively and efficiently the volume of evidence and cases brought before them.

Amnesty International believes that the commissions and their investigative teams should have a vehicle at their disposal, have access to ballistic and forensic experts and to experts in the field of classification and handling computerized information.

Recommendations for the prevention of future violations

Amnesty International welcomes the fact that, according to their mandate, the commissions are charged with recommending measures aimed at preventing the recurrence of "disappearances" and extrajudicial executions.

It urges that the final report should include a critical analysis of the factors which have contributed to these grave human rights violations, such as the ineffectiveness of certain institutions and legal mechanisms and make recommendations for their reform.⁵

It would also contribute to this goal if the commissions not only identified those allegedly responsible for carrying out these grave human rights violations, but also established chain of command responsibility and examined the institutional structures, policies or doctrine which allowed such acts to occur. The use of "death squads" in particular should be examined and their link to formal state structures analyzed.

The commissions may also want to consider recommending the establishment of an independent body to follow up the work of the commissions and oversee the implementation of recommendations. In other countries, such as Chile, this has proved to be an effective mechanism.

Cooperation with other bodies

The work of the newly-established commissions overlaps with the work of the Presidential Commission of Inquiry into the Involuntary Removal of Persons (PCIIRP) which was established on 11 January 1991 to investigate "disappearances" that occurred after that date.

Amnesty International understands that the PCIIRP has handed over to the new commissions approximately 5,000 cases of alleged "disappearance" on which it had received complaints but which fell outside its terms of reference, mainly because the "disappearances" had occurred prior to 11 January 1991.

Whereas Amnesty International is encouraged by cooperation between the new commissions and the PCIIRP, it is concerned that those cases that have been fully investigated by the PCIIRP and on which reports have been submitted to the President, should not be re-investigated by the new commissions unless substantial new evidence is brought to their attention. The case reports may however be useful to the new commissions as a source of information.

⁵For an analysis of some of the institutional and legal obstacles to bringing an end to impunity, see *Sri Lanka: When will justice be done?*, AI Index: ASA 37/15/94 issued in July 1994. In addition, Amnesty International has identified the current security legislation as one of the main factors contributing to violations of human rights in Sri Lanka.
Amnesty International April 1995 AI Index: ASA 37/04/95

Time for truth and justice

In principle, the work of the three new commissions could also overlap with the work of a unit established in late 1993 under a senior police officer to examine documentation on computer disk of "disappearance" cases submitted to the government for clarification by the UN Working Group on Enforced or Involuntary Disappearances (WGEID). However, Amnesty International understands that this unit has now been disbanded.

The WGEID in its report of 30 December 1994 said that it had received reports of 11,441 cases of "disappearance" from Sri Lanka, all but three of which had taken place since 1983. The unit established in late 1993 under a senior police officer was reportedly examining documentation on all cases of "disappearance" submitted to the Sri Lankan Government by the WGEID. According to the previous government, this unit would initially examine reported cases which took place between 1983 and January 1991, which were not covered by the PCIIRP. The procedure adopted was to check the names of those who reportedly "disappeared" against lists of people arrested and detained, lists of people reportedly killed by the security forces or who died in custody and in respect of whom inquiries were held under the provisions of the Emergency Regulations, as well as emigration records on those who applied for passports or left the country. Whereas the procedure followed by this unit did not constitute a proper inquiry into the reported "disappearances" as required under international standards, the electronic database set up to check these lists should still be available and could be a useful source of information for the new commissions.

Amnesty International is urging the government to clarify how the work of the commissions will relate to the work of the PCIIRP and is urging the commissions to draw upon the data base set up by the unit established in late 1993.

Collaboration from non-governmental organizations such as HRTF, which has been keeping a list of people reported to have "disappeared" and which, through its regional officers, has had regular access to places of detention could strengthen the work of the commissions. The staff at HRTF's regional offices could be called upon by the commissions to assist them when recording evidence from relatives and eye-witnesses or when visiting places of detention. In addition, cooperation could be sought from local human rights organizations and organizations of relatives of victims who have worked courageously in the past to document cases of "disappearances" and extrajudicial executions and have built up a unique body of knowledge about local patterns of violations.

Amnesty International urges the commissions to consider using the resources of the HRTF and local human rights organizations during their investigations.

The work of the PCIIRP: learning the lessons

The PCIIRP has initiated investigations into cases of "disappearance" reported to it since its establishment by the former government on 11 January 1991.

The mandate of the PCIIRP is similar to the mandate of the newly-established commissions. However, a major difference is that the PCIIRP was never mandated to investigate violations which occurred prior to its establishment.

The former government rejected numerous appeals, from the WGEID, Amnesty International and others,

AI Index: ASA 37/04/95 Amnesty International April 1995

Time for truth and justice

for an extension to the mandate of the commission to encompass "disappearances" committed before that date. It did extend the mandate for a further year in 1992 and 1993. On 23 August 1993, the then President Dingiri Banda Wijetunga extended its mandate for two years. The current mandate is thus due to expire on 22 August 1995. The commission then has three months to submit a final report on its findings to the President. In that final report, it is due to include recommendations for the prevention of "disappearances" and its findings on whether any lack of legal provision contributed to the occurrence of "disappearances".

According to figures provided to Amnesty International, 316⁶ public inquiries had been concluded by early February 1995; investigations into 341 further "disappearances" were continuing at that time. Statistics provided by the commission state that 175 people reported as "disappeared" were traced during their investigations. These 175 cases are not included in the figure of 316 investigations concluded by the PCIIRP. Reports on the findings of the investigations in at least 142 individual cases of "disappearance" have been submitted to consecutive presidents.

In the first two years of its investigations, the PCIIRP was criticised for employing slow procedures. In August 1993, its terms of reference were altered to enable it to investigate cases more speedily. There has been a marked increase in the number of reports on individual cases submitted to the President since. For instance, whereas in the first two years of its existence, the PCIIRP had only concluded investigations into 11 cases, in its third year it concluded investigations into another 29 cases; in its fourth year it concluded investigations into approximately 140 cases.

According to the PCIIRP, the main reasons for the more speedy handling of cases is the change in its mandate in August 1993 and the increased cooperation from the security forces in the latter period.

It has been Amnesty International's concern for some time that despite repeated appeals for the findings of the PCIIRP's investigations in individual cases and for the steps to be taken as a response to case reports submitted to the President to be made public, to date this has not been done. Making public these reports and taking decisive steps to follow up on the PCIIRP's recommendations would constitute a clear signal of the new government's political will to bring to justice those suspected of being responsible for human rights violations.

Amnesty International urges that all case reports submitted to consecutive presidents by the PCIIRP be immediately made public, unless doing so would jeopardize ongoing criminal proceedings.

Amnesty International urges the government to announce the steps it has taken in response to the conclusions and recommendations of the PCIIRP in each of the case reports submitted so far.

Amnesty International urges the government to make public the final report of the PCIIRP and announce the steps it will take in response to it within a reasonable period of time from the submission of the report to the President.

⁶This figure includes approximately 100 cases "laid by" (set aside but not closed) by the commission on the basis that witnesses did not turn up to give evidence. The commission explained that this decision was taken in those cases (mainly from the northeast) where witnesses could not travel to Colombo due to the security situation in that part of the country.

Time for truth and justice

Amnesty International urges the government to give wide publicity to the final report of the PCIIRP and make it widely available throughout the country.

Evidence of "disappearances": excavation of mass graves

In early January 1994, President Chandrika Bandaranaike Kumaratunga (then Chief Minister of the Western Province) was among hundreds of people present at the excavation of three mass graves discovered on a mountainside at Suriyakande, Ratnapura District. The graves were thought to contain the remains of up to 300 people believed to have been detained and killed in custody in the period 1989 - 1990.

Amnesty International and local organizations called on the then government to ensure that a full, impartial investigation was carried out into the discovery of the mass graves, in line with UN guidelines on the disinterment and analysis of skeletal remains. It urged that any further exhumations be done under the supervision of forensic experts. In February 1992 the former government had accepted a recommendation from the WGEID to request the assistance of an international team of forensic experts under the auspices of the UN. However, no such assistance was in fact requested; further excavations at Suriyakande were stopped and throughout the first part of 1994 little or no progress was reported in the forensic examinations of those bodies already disinterred.

After the new government took office in August 1994, other graves thought to contain the remains of people who "disappeared" in the period between 1988 and 1990 in the southern part of the country were excavated. The excavations at Suriyakande were resumed in mid-September after the government, through the Attorney-General, made an application to the local magistrate's court for further excavations.

Amnesty International also called upon the new government to invite a multi-disciplinary group of forensic experts. It urged the government to ensure that any further exhumations be carried out under their supervision and in accordance with UN guidelines on the disinterment and analysis of skeletal remains to minimize the risk of losing crucial evidence about the cause, manner and time of death.

To date, most excavations have been initiated following complaints made to local magistrates by relatives of "disappeared" who often suspected that the body of their "disappeared" family member had been illegally buried in a certain place but had been too afraid to come forward.

The responsibility for the gathering of evidence at the site of the excavations and the procedures followed during the disinterment and analysis of skeletal remains has so far been in the hands of government medical officers (Judicial Medical Officers or District Medical Officers - JMOs and DMOs), often assisted by members of the police force. Forensic experts met by Amnesty International during its recent visit expressed concern about the *ad hoc* way in which excavations had been carried out. They also complained about the delay in the day-to-day work of JMOs who are called to the sites of excavations around the country and the drain these specialized forensic examinations cause on state resources.

To Amnesty International's knowledge, approximately 20 sites containing the skeletal remains of people thought to have been extrajudicially executed in the period between 1988 and 1990 were exhumed in the southern part of the country in the months following August 1994 when the new government came to

Time for truth and justice

power. However, many more such sites exist, including in the northeast.

Following the establishment of the three commissions of inquiry to investigate "disappearances" and extrajudicial executions which have occurred since 1 January 1988, Amnesty International urges that a procedure be established to allow that remains of victims of human rights violations be analyzed by forensic experts called upon by the commissions.

This could help to ensure that exhumations are carried out in line with UN guidelines on the disinterment and analysis of skeletal remains and that all the relevant evidence is safeguarded at this early and crucial stage of investigations, not only in order to provide evidence to be presented to the courts, but also so that the relatives of the victims could finally be informed of the fate of their loved ones.

In October 1994 a leading international forensic expert made an exploratory visit to Sri Lanka at the invitation of the President (the then Prime Minister). He has since submitted specific recommendations to the government for the setting up of a training program for local forensic experts and the establishment of an independent forensic team.

Providing such training and increasing the expertise available in the country to carry out excavations of mass graves, would relieve the pressure on JMOs and DMOs, decrease the burden on state resources and speed up the judicial process. Finally, it would also guarantee consistency in the way in which excavations are carried out.

Amnesty International urges that all the necessary steps be taken to ensure that the analysis of remains of victims of human rights violations exhumed to date is carried out in line with UN international guidelines on the disinterment and analysis of skeletal remains and that adequate resources are made available for that purpose.

Bringing the perpetrators to justice

Whereas it is part of the commissions' mandate to inquire into and report on "whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances", it is the government's responsibility to initiate prosecutions in those cases in which there is enough evidence to do so.

To date, it is unclear how determined the government is to embark on the process of bringing to justice those responsible for past human rights violations. For instance, according to the *Daily News*, Colombo, of 15 October 1994, the Minister of Justice and Constitutional Affairs has stated that "[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 he also reportedly stated: "It is not possible for us to embark on a futile and impossible task of apportioning blame." The President, on the other hand, has made a number of statements in which she has indicated that alleged perpetrators would be prosecuted. For instance, in an interview with the BBC on 17 October 1994, in response to a question put as follows: "Over the last few weeks there has been a spate of exhumation from mass graves from the time of the JVP uprising five years ago. Do you think it's a good idea to rake up the past in this way?" she stated: "Quite definitely yes. Because all civilised societies use

Time for truth and justice

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."

Amnesty International urges the government to clarify its position on the prosecution of alleged perpetrators.

The need to bring the perpetrators of "disappearances" and extrajudicial executions to justice has been established as an obligation in international human rights standards.

Article 14 of the UN Declaration on the Protection of All Persons from Enforced Disappearance states: "All States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced disappearance, found to be within their jurisdiction or under their control, to justice." Article 17.1 stresses that "[A]cts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified." Article 18 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that "[G]overnments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions...are brought to justice... This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed."

Amnesty International believes that those thought to be responsible for extrajudicial executions and "disappearances" must be held to account regardless of whether they are officials of a past or current government and whether they are members of the security forces or of semi-official paramilitary groups. Those against whom there is sufficient evidence of their involvement in human rights violations should be tried and their trials should conclude with a clear verdict of guilt or innocence. All trials should be conducted in full conformity with internationally recognized norms for fair trial.

The government's stated commitment to investigate the thousands of extrajudicial executions and "disappearances" should be accompanied by a pledge to bring to justice those responsible for them. Wherever there is sufficient evidence of the involvement of individual members of the security forces or others in human rights violations criminal charges should be brought against them without delay. Amnesty International understands this to be the case in at least some of the cases examined by the PCIIRP. In cases where there is enough evidence that the security forces are responsible for an extrajudicial execution or "disappearance" but where, due to lack of evidence, no individual officer can be held accountable, the government should acknowledge responsibility and offer adequate redress (see also below, Compensation, rehabilitation and redress).

In July 1994, Amnesty International published a document *Sri Lanka: When will justice be done?* The report highlighted 18 cases of extrajudicial execution and "disappearance" that occurred in Sri Lanka since 1983. Each of the cases illustrated different aspects of Amnesty International's concerns about the lack of proper investigation and prosecution. In the majority of them, some form of investigation or prosecution had taken place, yet the outcome had been far from satisfactory. Justice has not yet been done. Indeed, some of the investigations seemed to have been set up in order to silence public outcry at the time without any real determination to bring those responsible to justice.⁷

⁷The cases listed in the report were: the killing of 53 Tamil political prisoners at Welikada prison, Colombo in July 1983; the AI Index: ASA 37/04/95 Amnesty International April 1995

Time for truth and justice

The first ever commission of inquiry into reprisal killings at Kokkadichcholai in June 1991 and the subsequent trial of 19 soldiers and a lieutenant before a military tribunal had a most unsatisfactory outcome. The commission was established to ascertain whether there was a connection between an explosion which had killed two soldiers, and the subsequent killing of 67 civilians nearby. It was also required to report on whether the deaths of the 67 civilians resulted from military action, or from deliberate retaliatory action taken to avenge the deaths of the soldiers. It was not required to establish the identities of the individuals responsible for the killings of the civilians. Although such commissions do have powers to summon witnesses, including persons "whose conduct is the subject of inquiry", to require evidence to be given under oath, and to examine the person concerned as a witness, in this case these powers were not used throughout the inquiry. In January 1992, 17 soldiers appeared before the commission in civilian dress. The commission apparently asked their lawyer how he wished to proceed, and the outcome was that only the commander-in-charge on the day of the killings gave evidence, and this was in the form of unsworn testimony. Lawyers representing the survivors and eye-witnesses to the killings were given no opportunity to cross-examine the commander or any other soldier, although civilian witnesses had been subjected to cross-examination when they had given evidence earlier. This unsatisfactory investigation by the commission was followed by a trial before a military tribunal, not a civilian court. The commission had recommended that the military conduct further investigations and trials. In the end, none of the 20 suspects was found guilty of murder. The 19 soldiers were acquitted and the lieutenant-in-charge was convicted on lesser charges of failing to control his troops and disposing of bodies illegally at the site. To date nobody has been brought to justice for the murder of the 67 civilians.

The similarly unsatisfactory outcome of the trial in March 1991 of three police officers from Tangalle police station suspected of being responsible for the death in custody of the lawyer Wijedasa Liyanarachchi in September 1988 is another example of the way in which unsatisfactory investigations have resulted in the ultimate failure to bring to justice those responsible for killings.

In this case, although a public inquiry under the Emergency Regulations was held and three police officers were subsequently prosecuted for murder, ultimately nobody was found guilty of his murder. The charges against the three police officers were reduced to illegal detention and conspiracy to detain illegally. They were given suspended sentences and fined. In its judgment, the High Court had recommended that investigations be reopened to establish who was responsible for the death of Wijedasa Liyanarachchi, pointing to "highly incriminating circumstantial evidence" that had arisen during the questioning of a now retired Deputy Inspector General of Police (DIG) appearing as a witness, whose evidence was disbelieved by the court.

"disappearance" of 23 young men from Naipattimunai, Amparai in May 1985; the death in custody of Wijedasa Liyanarachchi, a lawyer, in September 1988; the abduction and killing of three young men from Ratnapura town in October 1988; "Black Cats" killings at Eppawala, Anuradhapura in March 1989; reprisal killings at Menikhinna, Kundasala, Arangala and Mahawatte, Kandy in September 1989; the killing of Sanath Karalliyada, a lawyer at Teldeniya, Kandy in October 1989 and others involved in the inquiry into the death of Jayantha Bandara, shot by police in June 1989; the "disappearance" of 32 schoolboys and others from Sevana Army Camp, Embilipitiya between late 1989 and early 1990; the abduction and killing of Richard de Zoysa, a journalist, in February 1990; the abduction and murder of 12 villagers at Wavulkele, Gampaha in February 1990; the rape and killing of W Chandrawathie of Eppawala, Anuradhapura in September 1990; the mass graves discovered at Suriyakande, Ratnapura in January 1994; the "disappearance" of 159 refugees from Eastern University Refugee Camp in September 1990; the "disappearance" of over 160 villagers from Saturukondan, Pannichaiyadi, Pillaiyadi and Kokkuvil, Batticaloa in September 1990; reprisal killings at Kokkadichcholai in June 1991, the deliberate killing of Muslim and Tamil villagers in Polonnaruwa in April 1992; the reprisal killings of 39 villagers at Mailanthanai, Batticaloa in August 1992; and the "disappearance"/extrajudicial execution of 16 farmers at Vannathi Aru, Batticaloa in February 1993.

Amnesty International April 1995AI Index: ASA 37/04/95

Time for truth and justice

Shortly after the judgment, the first accused reportedly committed suicide. The DIG was initially appointed head of a special police team (Bureau of Special Operations), but was subsequently given early retirement.

In March 1992, on request of the Criminal Investigation Department of the police, the Maligakanda magistrate's court ordered a fresh investigation into the case. It directed that the passport of the retired DIG be impounded to prevent him leaving the country. The retired DIG then went underground and issued a number of statements to the press in which he spoke of death squad activities in the south of the country, providing, for instance, a list of 830 persons who he said had been killed between July and November 1989 in the Central Province. He later repeated these allegations in sworn statements. Instead of ensuring that such serious allegations were properly investigated, the authorities immediately filed a case in the High Court against the retired DIG and several newspapers that had published the statements charging them with bringing the government into disrepute and creating disharmony among different communities. Soon afterwards, the retired DIG left the country in circumstances which were not clear.

In June 1993, however, he returned to the country. The next day, he appeared in the High Court and was granted bail. The Attorney General's department was quoted as saying that they would consider withdrawing the charges against him if he in turn would withdraw the allegations he had made in the various sworn statements. On 8 July 1993, the retired DIG filed such a sworn statement, also implying that some of the earlier statements had not originated from him. The Attorney General then withdrew all charges against him relating to the sworn statements. The investigation into his role in the abduction, torture and illegal detention of Wijedasa Liyanarachchi recommended by the High Court remains to be implemented.

On 29 July 1993, the retired DIG was appointed Vice Chairman of the Sri Lanka Ports Authority, a senior position in government service.

Amnesty International is aware that trials are due to start in which members of the security forces and others face charges of murder and abduction with intent to murder, in relation to certain extrajudicial executions and "disappearances" which occurred in the period between 1988 and 1992. For instance, the trial of eight army personnel and a school principal charged with the abduction with intent to murder and the wrongful confinement of a group of young people at Embilipitiya between late 1989 and early 1990 is scheduled to take place in September 1995. Amnesty International also understands that the trial of 21 soldiers charged with murdering 35 villagers at Mailanathanai, Batticaloa in August 1992, is due to start shortly.

If a court finds an alleged perpetrator guilty, Amnesty International takes no position on what sentence should be passed, provided the death penalty is not imposed. However, it believes that penalties should be imposed that relate to the seriousness of the offences in order to deter further human rights violations. Respect for the rule of law cannot be promoted unless all trials are conducted in full conformity with internationally recognized standards.

Amnesty International urges the government to act promptly to ensure that those responsible for grave human rights violations are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the

Time for truth and justice

perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be held before the civilian courts.

The Indemnity (Amendment) Act, which gives immunity from prosecution to all members of the security forces, members of the government and government servants involved in enforcing law and order between 1 August 1977 and 16 December 1988 provided that their actions were carried out "in good faith" and in the public interest, is currently still in force. Even though this law has not been used to date, the fact remains that as long as it is on the statute book, defendants will be able to invoke it in court in attempts to protect themselves from prosecution in cases relating to events that took place during this period. Repealing the Act would be a clear signal to members of the security forces that those responsible for human rights violations - regardless of when they were committed - will not be protected.

Amnesty International urges the government to repeal the Indemnity (Amendment) Act as a sign of its commitment to bring those responsible for human rights violations to justice.

Amnesty International urges the commissions to consider making a strong recommendation that perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

Compensation, rehabilitation and redress

According to international human rights standards, fair and adequate compensation should be paid to victims of human rights violations or their relatives once official responsibility has been established.

Amnesty International welcomes the powers given to the commissions to inquire into and report on "relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been...removed or...disappeared". It has also welcomed the undertaking in the PA's election manifesto that it "will pay compensation, without any political discrimination, on behalf of all those who have disappeared, been tortured or lost property." However, providing compensation should never be seen as a replacement for bringing those responsible for past human rights violations to justice.

Currently, a system is in force in Sri Lanka for people whose relatives have been killed to receive compensation. However, they first have to obtain a death certificate on the basis of which they can apply for compensation. A death certificate also allows families of "disappeared" people to qualify for relief, sort out pension payments, property rights, financial matters and so on. In the past, those relatives who wanted to obtain a death certificate faced considerable difficulties, particularly as any applications had to be supported by a police report. In any case, many relatives refused to make use of this procedure because they did not want to concede that their loved one was dead.

On 25 November 1994 legislation was passed in parliament providing that where a person is reported missing and presumed dead or has not been heard of for a period exceeding one year by those who would normally have heard from them if they were alive, the next-of-kin could apply to the District Registrar of Deaths to register the death and obtain a death certificate. This law would reportedly simplify the above procedure.

Time for truth and justice

Whereas Amnesty International welcomes the immediate positive effects such a measure can have for the families concerned, it also believes that the issuing of death certificates should in no way absolve the government of its responsibility to try and establish the fate or whereabouts of the "disappeared", to bring those responsible to justice and to adequately compensate and rehabilitate victims or their relatives.

Amnesty International is urging that a simple, speedy, just and fair procedure for the granting of compensation be established which should be made widely known within the country.

Amnesty International is urging that victims of "disappearance" who have reappeared should be provided with appropriate medical care or rehabilitation.