



Sessional Paper No. VI - 1997

CENTRAL

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

Part I

(PART II CONTAINS THE ANNEXURES)

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Interim Reports appended

**FINAL REPORT OF THE
COMMISSION OF INQUIRY INTO
THE INVOLUNTARY REMOVAL OR
DISAPPEARANCES OF PERSONS
IN THE CENTRAL, NORTH-
WESTERN, NORTH CENTRAL AND
UVA PROVINCES**

PART I

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FINAL REPORT

By Warrant dated 30th November, 1994, Her Excellency the President appointed Mr. T. Suntheralingam (Chairman), Mr. M.D. Jesuratnam and Mr. H.M.S.B. Madawala 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 so disappeared;
- (d) whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
- (e) the legal proceedings that can be taken against the persons held to be so responsible;
- (f) the measures necessary to prevent the occurrence of such alleged activities in the future;
- (g) the relief, if any, that should be afforded to the parents, spouses and dependants of the persons alleged to have been so removed or to have so disappeared; and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.

Mr. Jesuratnam declined the appointment due to ill-health; Mr. Madawala desired to be discharged from the Commission with effect from 01st April, 1995. The appointment of new members to replace them was not sought.

Notices were published in the Newspapers, the Radio and the Television calling for complaints of disappearances since 01st January, 1988. Inquiries commenced in March, 1995. They were conducted in places as close as possible, to the places of residence of the complainants. (A schedule of such places is given in appendix V).

The total number of complaints received by this Commission is, 15,045. Several complaints were received in respect of the same persons. 6,443 complaints have been inquired into, as at 11th April, 1997. New complaints were accepted till 30th September, 1996.

Complaints which could be described, as extra-judicial killings were also inquired into, even though they do not strictly fall into the category of "involuntary removals and/or disappearances" as specified in the warrant.

As a result of threats to some witnesses in the course of the hearings, the press and the public were excluded from the sittings. When requested, evidence was led in camera.

The Commission is required to transmit a report or interim reports, setting out the findings of the inquiries and the recommendations. Nine Interim Reports have already been tendered to the President. The Final Report should be read along with the Interim Reports. Each of these reports contains the observations and recommendations of this Commission, in respect of five of the seven terms of reference. The observations and recommendations made in those reports also apply to all the complaints inquired to by this Commission, from 13th May, 1996 till 11th April, 1997. Gist of the recommendations already made in the Interim Reports, is annexed (vide appendix III). The specific findings of this Commission in respect of the individual complaints inquired into, are given separately in the schedules, annexed to each of the Reports. Terms of reference (e) and (f) remain to be dealt with in this Final Report.

Where there is credible material indicative of the persons responsible, a team of investigators, as recommended earlier, should be appointed. Investigators should be selected from among competent officers, of the Criminal Investigation Department. They should be provided with adequate financial and logistical support to enable a thorough and impartial investigation to be conducted. Before the investigation commences the persons, against whom there is credible material, should be transferred out of the Province and/or sent on compulsory leave.

It is recommended, that the Attorney General assigns a team of State Counsel, to assist the investigators in their work. Where sufficient evidence is available, they should be tried by Civilian Courts and not by Military Tribunals.

Since there is a huge backlog of cases, before the Courts and as 7 to 8 years have elapsed, it is recommended that Special Courts be constituted, to hear cases against those alleged to have caused disappearances. It is important that the sentence should fit the crime.

In several of the complaints inquired into, the names of Members of Parliament, Provincial Council and Pradesiya Sabha members have transpired as those responsible for some of the disappearances. In a few cases, there is evidence that they physically participated in such activities, while in others the disappearance followed threats by such persons.

There are a few Grama Niladharis who had helped the Armed Forces to illegally remove persons. Where evidence against them, is inadequate to arraign them before a Court of Law, they should be severely dealt with for any violation of departmental rules.

Terms of Reference (e) —

THE LEGAL PROCEEDINGS THAT CAN BE TAKEN AGAINST THE PERSONS HELD TO BE RESPONSIBLE.

The Government should vigorously prosecute persons responsible for disappearances. If there is material available against any persons they should be brought to justice, irrespective of who the perpetrators are. Severe disciplinary punishment should be meted out to Government Officials who have failed to take adequate measures, to prevent disappearances.

The civil law in many countries provides the possibility to sue a public official for damages caused in the commission of human rights violations, although sometimes this possibility has been abridged under immunity or indemnity measures. Often civil suits are the only remedy left when criminal prosecution has been blocked.

In addition, disciplinary action should be taken against those who had violated official procedures.

As causing the disappearance of a person is not an offence under Sri Lankan Law, prosecutions might be made on account of acts which constitute the ingredients of a disappearance such as arbitrary arrests, unlawful detention and failure to produce before a Court of Law.

It would be difficult to establish liability in all cases of disappearances, over the past ten years. Indictment and conviction in particularly heinous cases would enhance, in the eyes of the public at large, the credibility of the administration of justice and restore trust in the rule of law. At the same time it may help to bring an end to the climate of impunity still prevailing in the country and promote national reconciliation.

Terms of reference (f) -

THE MEASURES NECESSARY TO PREVENT THE OCCURRENCE OF SUCH ALLEGED ACTIVITIES IN THE FUTURE

- (i) Prompt punishment of those responsible for the involuntary removals and/or disappearances irrespective of who the perpetrators are, is one of the most important steps that could be taken to prevent the re-occurrence of such activities in the future.
- (ii) Laws and Regulations gave special powers such as
 - (a) The power to arrest, and detain incommunicado and without charge or trial, for long periods.
 - (b) The power to dispose of bodies, without post-mortem inquiry or inquest proceedings.

"The Government should undertake a general over-haul of its Emergency Legislation, relating to arrest and detention of persons, to ensure that the present legislation conforms to accepted International Standards regarding due process and treatment of prisoners. Grounds for the transfer of detainees should be clearly circumscribed. Time limits for bringing a person before a Judge following his arrest should be shortened, as the present time limits appear excessive."

- (iii) "Stricter obligations should be imposed on the officers in charge of the implementation of security legislation. Such obligation should cover matters such as the recording of detentions and transfers, the obligation to obtain, within a minimum period, a detention order or to release the detainee without such an order, the obligation, to inform the detainees of the reason for their detention and to respect their right to have recourse to a competent authority for a review of the detention order, and the obligation rapidly to put into effect orders received from competent courts. Also, provisions may be included which require informing relatives of the place of detention and providing detainees, with easy access to legal counsel. Furthermore, appropriate sanctions for those officers who fail to comply with their obligations should be established in the legislation."
- (iv) The Government should examine closely the Law and Practice of Habeas Corpus in order to expedite the present procedure and make it more effective.
- (v) It is recommended, that appointment, promotions and disciplinary control of the Police be vested in an independent Police Commission in order to prevent political interference with the Police. Members of such Commission should be chosen for their impartiality, competence and independence .
- (vi) Every member of the Police and the Armed Forces should be given a comprehensive education, on Human Rights and Humanitarian Law. Human Rights records of members of the Armed Forces and the Police should be taken into account in the consideration of promotions. The introduction of Training Courses on Human Rights and Humanitarian Law for Army and Police Personnel should be considered.
- (vii) Persons should be detained only in places legally authorised for such purposes. There should be easy access to such places of detention by relatives, Members of Human Rights Organisations and Citizens Committees and the like.
- (viii) In many cases, complaints were not recorded and no investigations were carried out. In few instances, complaints were recorded but distorted and written. It is important that complaints are recorded promptly and correctly, followed by a thorough, prompt and impartial investigation.
- (ix) In the course of inquiries by the Commission there were instances of intimidation of witnesses. It is necessary that complaints of intimidation be dealt with expeditiously and deterrent punishment imposed.
- (x) Arms and Ammunition issued to Security Personnel especially those assigned to Politicians should be strictly monitored.

In conclusion, it would appear that many persons lost their lives after January, 1988 on account of their political convictions. An analysis of the disappearances during this period would show that most of the disappearances occurred in 1989. It should be remembered that Hon. R. Premadasa became President in the latter half of December, 1988. A General Election was held in February, 1989. By that time the Organisers, Activists and Supporters of the Sri Lanka Freedom Party could have been identified by the then Government in power. There is enough and more material to indicate that most of the victims were organisers etc., of the Sri Lanka Freedom Party. It would appear, that such persons were branded as JVPers and their names given to the Police and Armed Forces for elimination. At the beginning, the response from the Police and the Army as regards elimination appeared to be slow, but later the Police and the Army seemed to have been prodded into action by threats, purportedly by the JVPers; one is not certain whether this was a ploy, adopted by the then Government, to make the Police and Armed Forces go all out to wipe out the Sri Lanka Freedom Party supporters under the guise of crushing the JVPers.

It is imperative that this report and the findings contained therein, are given wide publicity. In the Commission's view, such publicity will serve to inform all concerned, that the Police and Security Forces, entrusted with the power and duty to maintain law and order, will not be permitted to abuse their power with impunity, but will be called upon to answer and pay for any un-Lawful and/or inhuman acts to committed by them, abuse of the powers entrusted to them.

It will also serve to provide some solace to those who have suffered as a result of such abuse of power, that their grievances have been inquired into, and some relief provided to assuage their grief.

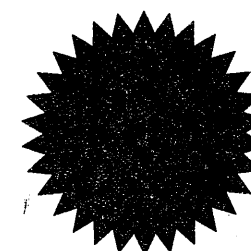
T. Suntheralingam,
Chairman.

Date : 07.07.1997.

L.D.B. - 65/44(V)

P.O. No. SP/6/N/191/94

**BY HER EXCELLENCY
CHANDRIKA BANDARANAIKE KUMARATUNGA
PRESIDENT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**



To: 1. Thirunavukkarasu Suntheralingam Esquire,
2. Marnickam Dutton Jesuratnam Esquire, and
3. Hitihamy Mudiyansele Senaratna Banda Madawala Esquire.

Greetings :

WHEREAS allegations are being made that persons were involuntarily removed from their places of residence in the Central Province, North Western Province, North Central Province and Uva Province by persons unknown, or that persons have disappeared from their places of residence in such Provinces and that the whereabouts of the persons alleged to have been so removed or to have so disappeared are not known:

AND whereas it has become necessary to ascertain the truth of such allegations, to recommend measures to prevent the occurrence of such alleged activities, and to take proceedings according to law against any person or persons found to be responsible therefor:

AND whereas I am of opinion that it would be in the interests of public safety and welfare that inquiries should be held to ascertain whether any person or persons were so removed or have so disappeared, and if so, whether any person or persons were responsible therefor and to determine what measures should be taken to prevent such alleged activities in the future:

AND WHEREAS it appears to me to be necessary to establish a Commission of Inquiry to investigate and report on the matters hereafter mentioned:

NOW THEREFORE, I CHANDRIKA BANDARANAIKE KUMARATUNGA,
President reposing great trust and confidence in your prudence, ability and fidelity, do

in pursuance of the provisions of Section 2 of the Commissions of Inquiry Act (Chapter 393), by these presents appoint you, the said-

1. Thirunavukkarasu Suntheralingam Esquire,
2. Marnickam Dutton Jesuratnam Esquire, and
3. Hitihamy Mudiyanseelage Senaratne Banda Madawala Esquire.

to be my Commissioners 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 so disappeared ;
- (d) whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances ;
- (e) the legal proceedings that can be taken against the persons held to be so responsible ;
- (f) the measures necessary to prevent the occurrence of such alleged activities in the future ;
- (g) the relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have to disappeared ;

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

AND I further name you Thirunavukkarasu Suntheralingam Esquire to be the Chairman of the said Commission;

AND I do hereby authorize and empower you, the said Commissioners, to hold all such inquiries and make all other investigations, into the aforesaid matters as may appear necessary, and require you to transmit to me within four months from the date hereof, a report or interim reports thereon under your hand, setting out the findings of your inquiries, and your recommendations;

AND I do hereby direct such part of any inquiry relating to the aforesaid matters, and you may in your discretion determine, shall not be held in public;

AND I do hereby require and direct all public officers, and other persons to whom you may apply for assistance or information to render all such assistance and furnish all such information as may be properly rendered and furnished in that behalf;

AND I do hereby declare that the provisions of section 14 of the aforesaid Commissions of Inquiry Act shall apply to the Commission:

Given at Colombo, under the seal of the Democratic Socialist Republic of Sri Lanka, this Thirtieth day of November, One Thousand Nine Hundred and Ninety -four.

By Her Excellency's Command,

K. BALAPATABENDI,
Secretary to the President.

P.O. No : SP/6/N/191/94

In the exercise of the powers vested in me by section 4 of the Commissions of Inquiry Act (Chapter 393), I do hereby enlarge the time for the rendering of the report of the Commission, until the Thirtieth day of September, 1995.

President.

Presidential Secretariat,
Colombo,
30th March, 1995.

P. O. No. SP/6/N/191/94

In the exercise of the powers vested in me by Section 4 of the Commissions of Inquiry Act (Chapter 393), I do hereby enlarge the time for the rendering of the report of the Commission, until the Thirty First day of December, 1996.

President.

Presidential Secretariat,
Colombo 01.
1st October, 1996.

P. O. No. SP/6/N/191/94

In the exercise of the powers vested in me by Section 4 of the Commissions of Inquiry Act (Chapter 393), I do hereby enlarge the time for the rendering of the report of the Commission, until the Twenty Eight day of February, 1997.

President.

Presidential Secretariat,
Colombo 01.
31st December, 1996.

P. O. No. SP/6/N/191/94

In the exercise of the powers vested in me by Section 4 of the Commissions of Inquiry Act (Chapter 393), I do hereby enlarge the time for the rendering of the report of the Commission, until the Thirty First day of May, 1997.

President.

Presidential Secretariat,
Colombo 01.
28th February, 1997.

(Copy of Newspaper Notice calling for information on Involuntary Removals and/or Disappearances)

APP II

NOTICE

PRESIDENTIAL COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL AND DISAPPEARANCES OF CERTAIN PERSONS IN THE CENTRAL, NORTH WESTERN, NORTH CENTRAL AND UVA PROVINCES

Her Excellency Chandrika Bandaranaike Kumaratunga, President of the Democratic Socialist Republic of Sri Lanka has in pursuance of Section 2 of the Commissions of Inquiry Act (Chapter 393), appointed a Commission of Inquiry Consisting of Thirunavukkarasu Suntheralingam Esqr, (Chairman) and Hitihamy Mudiyansele Senaratna Banda Madawala Esqr, 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 so disappeared ;
 - (d) whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances ;
 - (e) the legal proceedings that can be taken against the persons held to be so responsible ;
 - (f) the measures necessary to prevent the occurrence of such alleged activities in the future ;
 - (g) the relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have so disappeared ;
and to make such recommendations with reference to any of the matters that have been inquired into under the terms of the Warrant.
02. The Commission is authorised and empowered to hold all such inquiries and make all other investigations into the afore-said matters as may appear necessary and is required to report setting out its findings and recommendations.

03. Mr. M. C. M. Iqbal of the Sri Lanka Administrative Service has been appointed Secretary to the said Commission.
04. The Commission hereby invites any person, or organisation desirous of making representations on any matter or matters referred to above in respect of any such incidents in the Provinces stated above to write to the Secretary to the Commission on or before 10th February 1995 indicating the specific matter or matters on which such person or organisation desires to make such representation and the names and addresses of witnesses and/or documents, if any, that need be examined in support of such matter.
05. If any such person or organisation desires to give evidence in camera, arrangements could be made to do so, if such desire is indicated in the written communication to the Commission. Such written communication will be treated as confidential.
06. All such communications to the Commission should be sent to the Secretary to the Commission on or before 10th February 1995 at the undermentioned address;
- Secretary,
- Presidential Commission of Inquiry into Involuntary Removal of Persons and Disappearances in the Central, North Western, North Central and Uva Provinces,
- Governor's Office,
4th Floor, Unity Plaza,
Colombo 04.
07. The date and place at which the evidence of such person or organisation is to be recorded will be notified in due course.
08. Every such person or organisation giving such evidence shall be entitled to the privileges for witnesses as provided for in the Commissions of Inquiry Act.

By Order of the Commission,

M. C. M. IQBAL,
Secretary to the Presidential Commission.

10th January 1995.

(Copy of Notice informing the public that the Commission is to continue receiving complaints)

NOTICE

PRESIDENTIAL COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL AND DISAPPEARANCES OF PERSONS IN THE CENTRAL, NORTH CENTRAL, NORTH WESTERN AND UVA PROVINCES SINCE 1ST JANUARY 1988

1. In deference to requests by many members of the Public and other Organisations, this Commission has decided to continue to entertain complaints pertaining to the above mentioned matter as long as its warrant is in force. Such Complaints should be sent to the undermentioned address. There is no form specified for this purpose. A signed letter giving the name of the person who disappeared, date and place of disappearance is adequate to enable the Commission to initiate proceedings. Inquiries will be conducted in the Districts where the complainants reside.

2. Any person having information on such occurrences could write to us conveying such information which will be treated very confidentially.

3. The Office of this Commission is now situated at the undermentioned address.

M. C. M. IQBAL,
Secretary to the Commission.

No. 18/220, Dabare Mawatha,
Narahenpita, Colombo 05.

Telephone No. 594909.
10.02.1995.

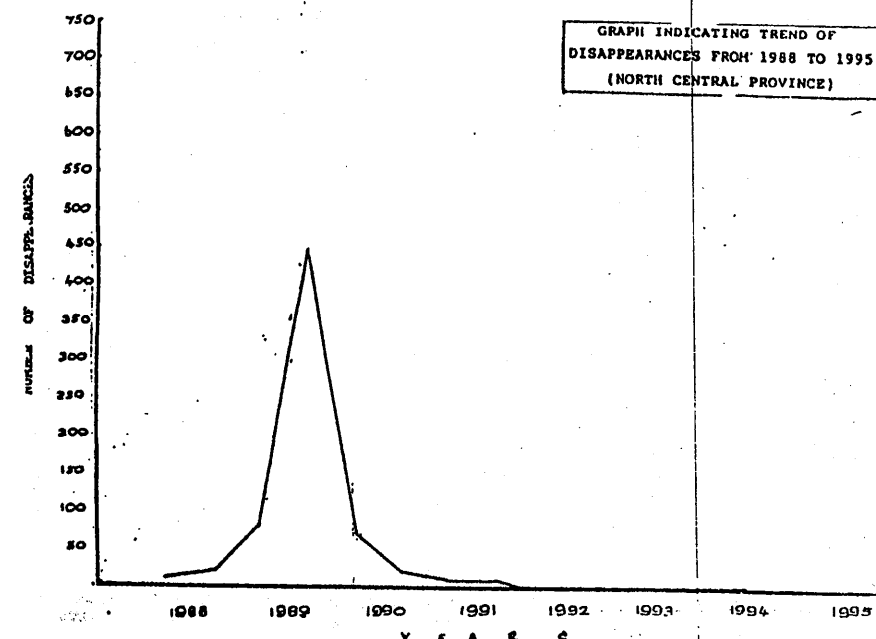
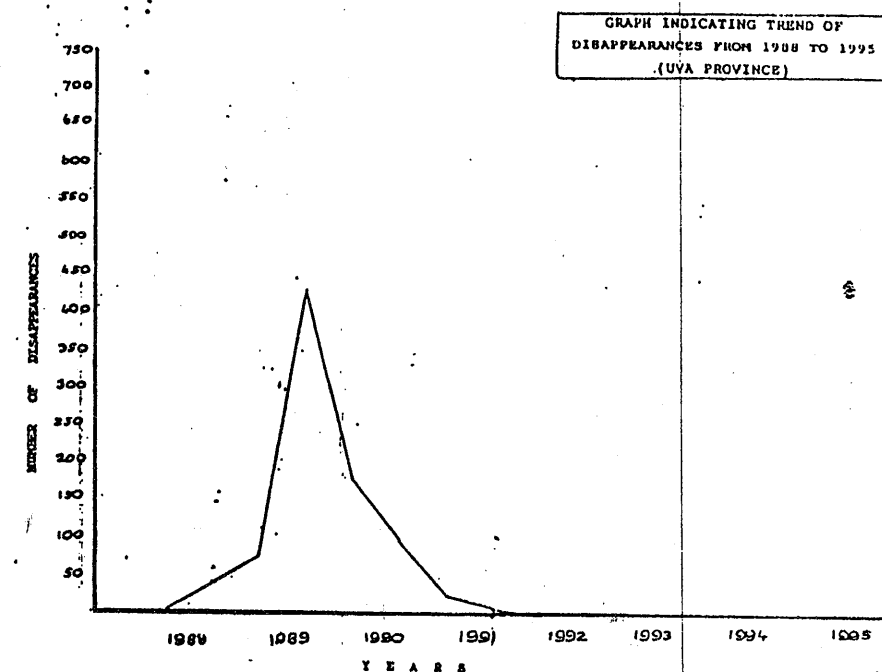
App III

GIST OF THE FINDINGS AND RECOMMENDATIONS IN THE INTERIM REPORTS ALREADY HANDED OVER

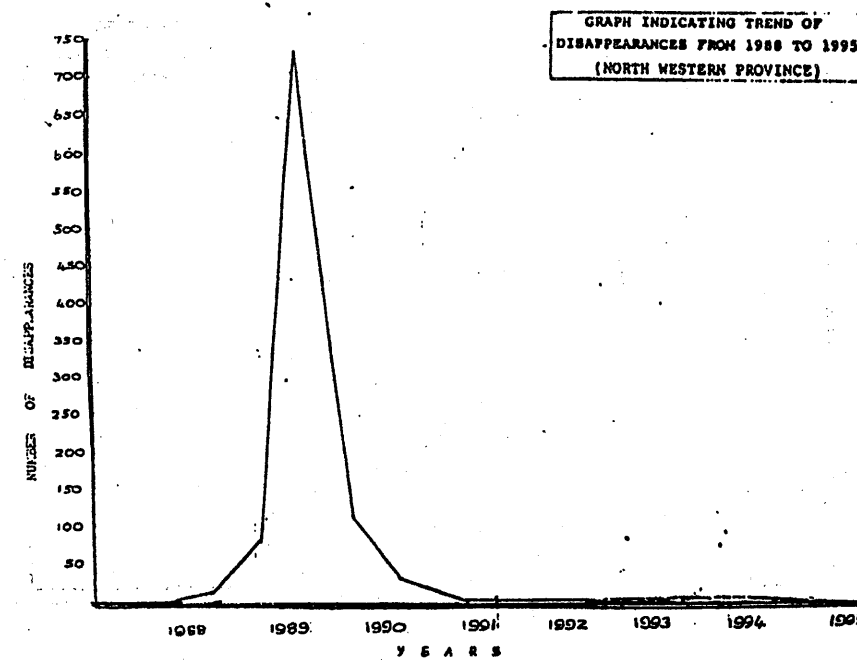
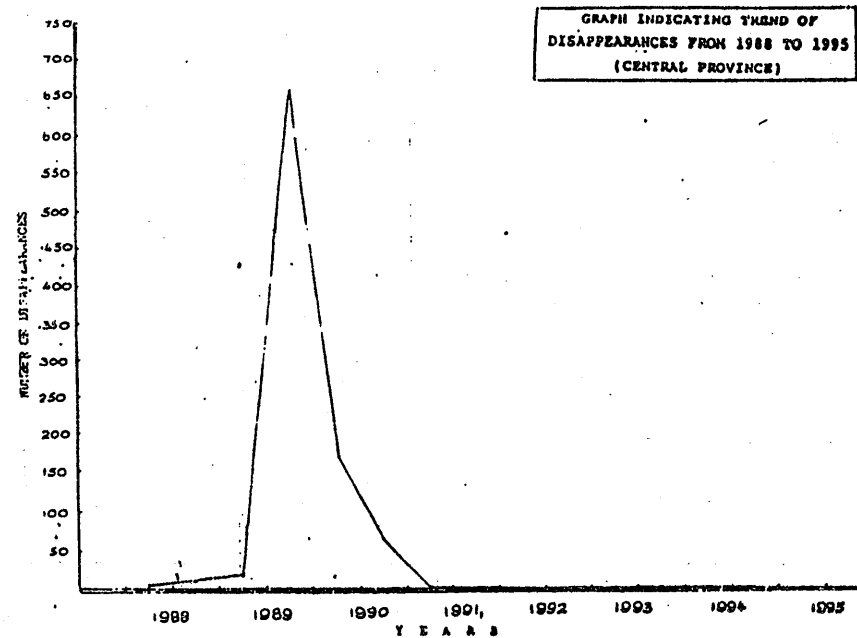
A summary of the recommendations already made in the Interim Reports in respect of terms of reference (a), (b), (c), (d) and (g) of the warrant is given below : (those in respect of (e) and (f) are in the text of the Final Report)

- (a) Persons have been involuntary removed and/or have disappeared after 1st January, 1988 in the Central Zone that is Central Province, North Western Province, North Central Province and Uva Province.
- (b) The evidence available to establish such removals and/or disappearances are set out in the respective schedules annexed to each report.
- (c) The present whereabouts of those removed or who have disappeared are not known. The bodies of some of them had been found subsequently.
- (d) There is "credible material, indicative of the person/persons responsible" for such removals and/or disappearances, in a fair number of complaints inquired into. The persons against whom such materials is available, are referred to in the schedules annexed to the reports.
- (g) 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 a State officer and a member of the Public in respect of such persons disappearance.
- (h) Children of persons removed and/or disappeared to be awarded scholarships to assist them in their education.
- (i) Death certificates to be issued to all those whose disappearance had been confirmed by the Commission, dispensing with the need for a certificate from the Grama Niladharis.
- (j) 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.
- (k) 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 damages be assessed, by the Valuation Department and suitable redress be granted to them.

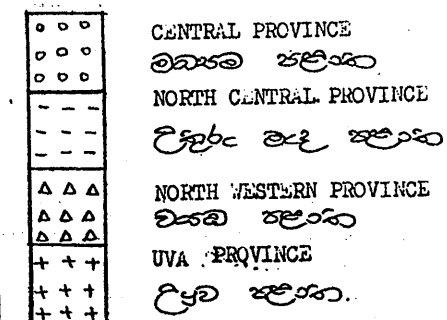
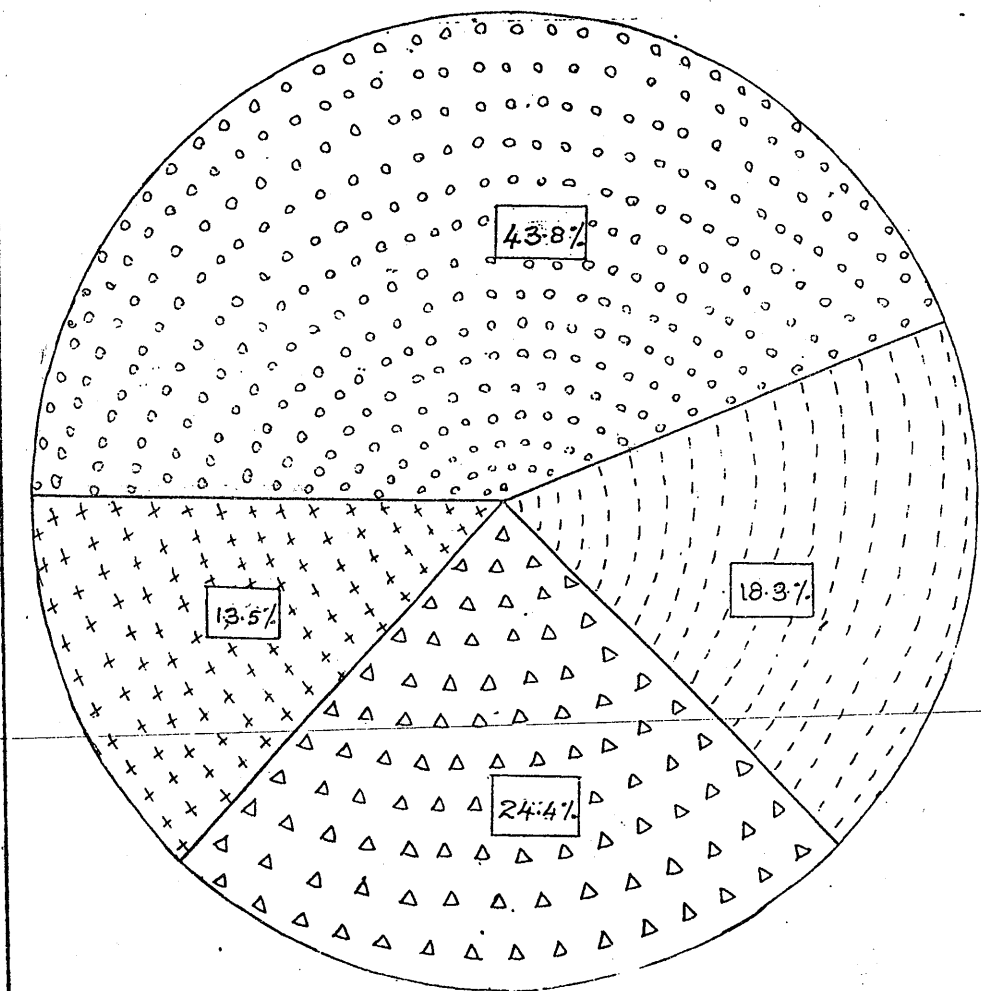
(BASED ON THE NUMBER OF COMPLAINTS INQUIRED INTO BY THIS COMMISSION)
(APPENDIX IV a)



(BASED ON THE NUMBER OF COMPLAINTS INQUIRED INTO BY THIS COMMISSION)
(APPENDIX IV a)

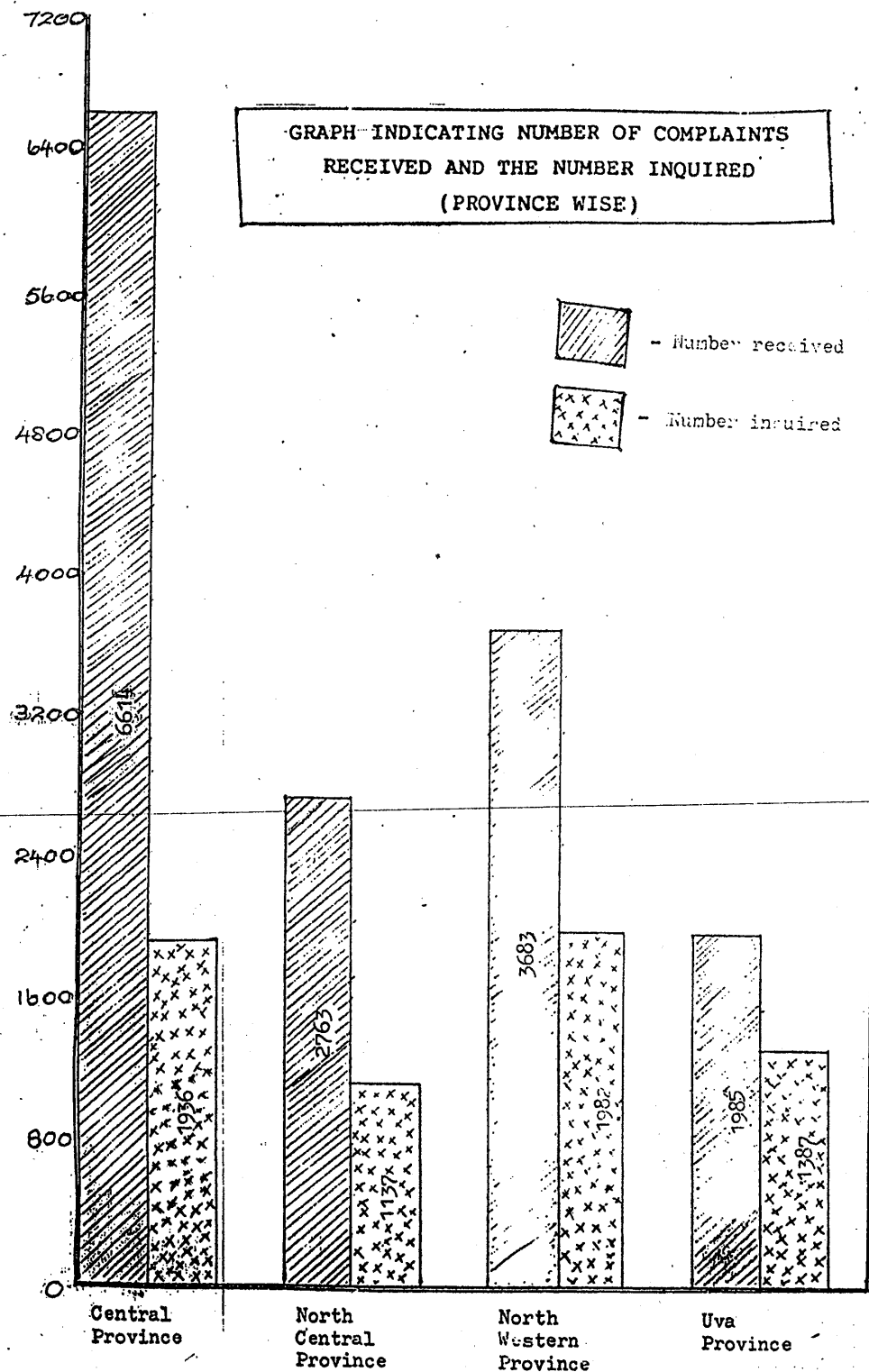


GRAPH SHOWING THE PERCENTAGE OF COMPLAINTS OF DISAPPEARANCES
BETWEEN JANUARY 1988 AND DECEMBER, 1995
RECEIVED PROVINCE WISE.



(APPENDIX IV C)

Number of Complaints



APP V

PLACES WHERE THE COMMISSION HELD SITTINGS

Places of Inquiry	Period
Kandy	13.03.95-24.03.95
Badulla	03.04.95-07.04.95
Anuradhapura	17.04.95-28.04.95
Kurunegala	08.05.95-19.05.95
Mahiyangana	05.06.95-15.06.95
Moneragala	03.07.95-14.07.95
Kekirawa	24.07.95-04.08.95
Polgahawela	21.08.95-01.09.95
Matale	18.09.95-29.09.95
Welimada	16.10.95-27.10.95
Polonnaruwa	13.11.95-24.11.95
Galgamuwa	11.12.95-22.12.95
Kataragama	06.01.96-16.01.96
Embilipitiya	17.01.96-19.01.96
Walapane	05.02.96-09.02.96
Kotmale	12.02.96-16.02.96
Anamaduwa	05.03.96-15.03.96
Wellawaya	15.04.96-19.04.96
Haputale	22.04.96-26.04.96
Hatton	13.05.96-23.05.96
Nikaweratiya	10.06.96-21.06.96
Habarana	15.07.96-02.08.96
Girandurukotte	12.08.96-16.08.96
Bibile	19.08.96-23.08.96
Uva Paranagama	26.08.96-30.08.96
Katugastota	16.09.96-27.09.96
Kuliyapitiya	21.10.96-01.11.96
Chilaw	04.11.96-08.11.96
Ipalogama	09.12.96-20.12.96
Gampola	13.01.97-31.01.97
Tanamalwila	17.02.97-20.02.97
Moneragala	24.02.97-28.02.97
Passara	03.03.97-07.03.97
Warakapola	10.03.97-14.03.97
Ridigama	31.03.97-11.04.97

(During the intervening days the Commission was either having sittings in Colombo and/or was conducting investigations based on the evidence recorded and was writing the Interim Reports.)

ABBREVIATIONS

(Used in this Report)

AND	-	Anuradhapura
BAD	-	Badulla
CEN	-	Central Province
IGP	-	Inspector-General of Police
IP	-	Inspector of Police
JVP	-	Janatha Vimukthi Peramuna
KND	-	Kandy
KNG	-	Kurunegala
LTTE	-	Liberation Tigers of Tamil Eelam
MON	-	Moneragala
MP	-	Member of Parliament
MPC	-	Member of Provincial Council
MTL	-	Matale
NCP	-	North Central Province
NEL	-	Nuwara Eliya
NWP	-	North Western Province
PC	-	Police Constable
PLN	-	Polonnaruwa
PTL	-	Puttalam
RPC	-	Reserve Police Constable
SI	-	Sub Inspector of Police
SLFP	-	Sri Lanka Freedom Party
UNP	-	United National Party
UVA	-	Uva Province

FILE NUMBER CODES AND THEIR SINHALA EQUIVALENTS

CEN/KND	-	මධ්‍ය/මහ
CEN/NEL	-	මධ්‍ය/නුවර
CEN/MTL	-	මධ්‍ය/මල්
NWP/KNG	-	ව/කුරු
NWP/PTL	-	ව/පුත්
NCP/ANP	-	උම/අ
NCP/PLN	-	උම/පොළො
UVA/MON	-	උච්/මොණ
UVA/BAD	-	උච්/බදු