

Sinhala and Tamil Publication will be printed separately.



SESSIONAL PAPER No. II—1997

**INTERIM REPORTS OF THE
COMMISSION OF INQUIRY INTO THE
INVOLUNTARY REMOVAL OR
DISAPPEARANCE OF PERSONS IN
THE WESTERN, SOUTHERN AND
SABARAGAMUWA PROVINCES**

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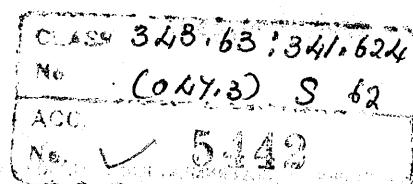
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INTERIM REPORT I—MARCH 1995

COMMISSION OF INQUIRY INTO INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN WESTERN, SOUTHERN AND SABARAGAMUWA PROVINCES

Preliminary Report

Introduction

Your Excellency by warrant dated 13.11.94 has appointed—

Madam Manouri Kokila Muttetuwegama,

Prof. Srisuddha Singharatna Bandara Don Abeyratna Amal Jayawardene, and
Bulathsinhalage Jayantha Pandukabaya De Almeida Guneratne

to inquire into incidents of involuntary removals or disappearances in Western,
Southern and Sabaragamuwa Provinces. Our full terms of reference are annexed
hereto marked 'A'.

It is now three months since we commenced work on 10.01.95 with the appointment
of Mr. Wimaladharma Ekanayake as this Commission's Secretary and the Securing
of our office at the BMICH.

Our work and considerations over these two months have covered the following
aspects :—

1. Demographic survey of the area concerned,
2. Collection of information of involuntary removals and disappearances in Western,
Southern and Sabaragamuwa Provinces—
 - (i) Absence of national data-base;
 - (ii) List of Government Departments and Non Governmental Organisations which
responded ;
 - (iii) Paper advertisements ;
 - (iv) Radio and T.V.;
 - (v) Grama Seva Niladharis.
3. Responses—
 - (i) Number
 - (ii) Extension of closing date.

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If any marks are already there in the book, readers should point them out to the issuing
officer. In the absence of such a report, the book issued will be considered a perfect copy.

The penalty for a damaged
book is the full cost of its
replacement plus a fine.

4. Sources of information to Commission—

- (i) **Questionnaire** ;
- (ii) **Commissioner of Prisons** ;
- (iii) **Inspector General of Police** ;
- (iv) **Secretary, Defence** ;
- (v) **Attorney-General** ;
- (vi) **Court Records** ;
- (vii) **Human Rights Task Force** ;
- (viii) **Conclusion on Sources of Information.**

5. Recommendations on Sources of Information—

- (i) **Immunity to Witnesses** ;
- (ii) **Investigation Unit for Commission.**

6. Proposed Programme of Work—

- (i) **Sample hearings** ;
- (ii) **Extension of mandate** ;
- (iii) **Staff**.

7. Recommendations on Requisite Supportive Measures.

I. DEMOGRAPHIC SURVEY OF THE AREA

An initial survey of demographic patterns of these areas reveals that half the population of Sri Lanka live within these boundaries. (See Annexure 'A')

II. COLLECTION OF INFORMATION OF INVOLUNTARY REMOVALS ETC.

1. There is No Official Data-Base of this information although the phenomenon under survey is one well-known to the general public, with "Ussanawa" becoming a word of popular parlance.

INTERIM REPORT OF THE COMMISSION OF DISAPPEARANCES IN WESTERN ZONE

2. The following Government Department and N.G.O.'s made available to us names and addresses of petitioners who had communicated with them:

Presidential Secretariat ;

Ministry of Justice ;

Ministry of Defence ;

Human Rights Task Force (HRTF) ;

The Presidential Commission of Inquiry into involuntary removals etc. (Appointed 11th January 1991).

N.G.O.s :—**Mothers and Daughters of Lanka Front**

Parents and Children of the Disappeared

INFORM

MDDR

These records, often made contemporaneously with events complained of, have been valuable evidence of consistency on the part of petitioners to this Commission. We have communicated with each person of whom we have thus been informed inquiring whether they wished us to inquire into their matter.

We await responses from BASL and SLFP. We have addressed requests to the BASL (Bar Association of Sri Lanka) and the SLFP (Sri Lanka Freedom Party) on hearing from petitions sent to us that such petitioners had earlier communicated with these organisations.

We would Welcome such information from any organisation and had been at pains to make this clear.

3. Newspaper Notices:

- (i) **Notices in identical terms inserted by the three Commissions,**
- (ii) **Notices of a more informal structure in national newspapers in Sinhala, Tamil and English. (Annexure 'C' lists the newspapers, dates and the notice.)**
- (iii) **Many News items about the appointment and work of our Commission has been carried in the national newspapers.**

4. Radio and T.V.:

Both state and Private media have made reference to the Commission in various feature shows as well as on News Programmes. This helped us to reach the persons concerned, and we thank the respective Chairmen and Editors.

5. Notice at Grama Niladhari Officers:

Poster-size notices on coloured paper couched in sinhala and Tamil were put up at the 5000 Grama Niladhari Officers and Divisional Secretary Officers (Assistant Government Agents Officers) of our area to whom these assignments were entrusted have successfully completed their task. Many of the Grama Seva Niladharis themselves have responded with reports of afflicted families in their area.

III. RESPONSE

1. Number of complaints received

Upto 08.04.1995, complaints of 14,815 instances of involuntary removals and disappearances alleged to have occurred in our area in the period since 01.01.1988 have been received. (A break-down district-wise of these is contained in Annexure 'D')

2. Extension of date for sending in complaints

We have extended the date once (on February 14th for a further month) and, should Your Excellency decide to extend our mandate, shall continue to do so periodically, our experience has been that a flood of new applications reach the Commission's Office around the closing date. However, it is our intention to be available to complainants right upto the very last date of this Commission's period of operation.

IV. SOURCES OF INFORMATION TO COMMISSION

1. Questionnaires

A Questionnaire (formulated by the commissioners on the lines of the U.N. Human Rights Committee's Quesetionnaire but adapted to suit the terms of our mandate) has been sent out to each complainant. Your Commissioners would like to emphasise here that, provision was made in the questionnaire to accommodate not only involuntary removals or disappearances occasioned or caused by State agencies but also by non-State agencies. This has proved a fruitful exercise. It is apparent that this has assisted persons coming before us to gather together beforehand valuable relevant information in many instances in consultation with neighbours and relations whose names are than given. The Questionnaires prove, also, to be a valuable source of inter-related information. We thank the N.G.O.s who render assistance to complainants in filling up these Questionnaires. The University Centre for the study of Human Rights deserves special mention for organising a Workshop for lawyers on the projected work of the Commission.

2. Commissioner of Prisons

The Commissioner of Prisons has supplied this Commission with names, addresses and place of detention of all persons in his custody as at 01.01.1995. These lists represent all persons in official custody as at 01.01.1995 other than in North and East

INTERIM REPORT OF THE COMMISSION OF DISAPPEARANCES IN WESTERN ZONE

and some areas of Western Province. We were impressed by the Commissioner of Prisons ability to muster together this information in an astonishingly short time, and thank him and all his subordinates in various prisons and places of detention for their collective effort. Names of prisoners were arranged according to districts and made available to the complainants.

3. Inspector General of Police

The I.G.P. has provided the Commission with the following information, and we thank him for same;

- (i) Details of suspects held under ER (Emergency Regulations) and PTA (Prevention of Terrorism Act) as at 1.1.1995
- (ii) Persons detained under Detention Orders issued by the Police in the period since 1.1.1988 in the S.P. Divisions (Superintendent of Police Divisions) of Nugegoda, Mount Lavinia, Colombo, Panadura, Galle, Elpitiya, Ratnapura, Kelaniya, Negombo, Gampaha, Kegalle and Kalutara.
- (iii) Records maintained at Police stations of Western, Southern and Sabaragamuwa Provinces of the disposal of dead bodies under Emergency Regulation 55, since 01.01.1988.
- (iv) List of Police Stations and names of O.I.C.s (Officer-in-Charge) thereof since 1988.
- (v) Circulars relating to arrest, detention and release issued by Police H.Q. 1989 - 1994.
- (vi) Police Departmental Order Book

Police Information Books:

We thank Your Excellency for acceding to our request that all Officers-in-Charge of Police stations be directed to preserve and retain in their charge all Police Information Books.

4. Secretary, Ministry of Defence:

The Following information has been requested from the Secretary of Defence :—

- Lists of Detention Camps in Western, Southern and Sabaragamuwa Provinces,
- Names of Officers-in-Charge, and periods,
- Names of detainees, with dates.

The new Secretary, Defence, has written that this information is being collected.

However, we have since been informed with regard to item "names of detainees" that these records were located at the Joint Operational Command (JOC) and have been destroyed in the bomb-blast of June 1991.

An inquiry subsequently addressed to Army Head-quarters elicited the information that:

"Detention Camps were managed by the Police and Joint Operations Headquarters. The Army was only involved in the provision of security and as such Army Headquarters does not possess lists of detainees."

5. the Attorney-General

(i) Habeas Corpus:

The Attorney-General's Department has been requested to make available to the Commission a list of Habeas Corpus applications filed in the relevant period in the Court of Appeal, the Magistrates Courts and the High Courts. These could be a useful source of information as our law requires the Attorney-General be made a Respondent in all Habeas Corpus applications where detention by the state is alleged.

(ii) Other Legal Proceedings:

Your Commissioners do not anticipate difficulty in obtaining from the Attorney-General's Department its file pertaining to any Inquest or other legal proceeding in respect of matters covered by our mandate, as and when the particular matter comes up for consideration by us. We assure Your Excellency that our use of such material will be in accordance with established principles of law such as the right not to incriminate oneself.

6. Court Records

We have adopted the procedure of providing the petitioner with a letter from this Commission addressed to the Registrar of the relevant Court requesting that a copy of the record be made available to him for production to the Commission. We do not anticipate any problems in this regard.

7. Human Rights Task Force (HRTF)

This Commission's thanks are due to the HRTF for its prompt response to our requests.

8. Conclusion on Sources of Information

A hall-mark of the incidents covered by our mandate, however, is the absence of follow-up by the state's investigative agencies even when such incidents were brought to their notice at that time. In these circumstances, the evidence of members of the general public having personal knowledge of these matters becomes all the more important.

Your Commissioners have accordingly sought to publicise the fact that all evidence brought before the Commission will receive complete confidentiality including information from the petitioners themselves. We await the public's response. As a necessary sequel to this approach Your Commissioners decided to conduct all proceedings before the Commission in Camera. Your Commissioners will elaborate on this aspect in the Interim Report which they hope to place before Your Excellency by mid June, 1995.

V. RECOMMENDATIONS ON SOURCES OF INFORMATION

1. Immunity to Witnesses

We recommend that legal immunity be granted to witnesses in respect of matters disclosed to the Commission. This would encourage a full and frank disclosure by all persons concerned.

2. Investigative Unit

An independent investigative unit is essential. We have submitted to the Presidential Secretariat a project proposal in respect of this.

VI. PROPOSED PROGRAMME OF WORK OF THE COMMISSION

1. "Sample" Hearings

Your Commissioners intend to hold hearings in respect of c. 1250 complaints over the period of the next two months, and have drawn up a schedule thereto of sittings at Colombo and various provincial centers. (This schedule is annexed hereto marked 'E').

Our aim in embarking on this intensive programme of hearings is to gain in some degree an overall insight into the phenomenon Your Excellency has requested us to investigate. No meaningful recommendations on other aspects covered by our mandate is possible without this.

We have already commenced sittings in respect of incidents alleged to have occurred in the Colombo, Gampaha, Kegalle and Matara Districts, and have investigated 837 such complaints to 08.04.1995.

2. An Interim Report

We hope to place an Interim report based on the Sample Hearings before Your Excellency by mid June 1995.

3. Extension of Mandate

The execution of this proposed programme of inquiries requires an extension by you of the period of our mandate which as at present in due to expire on 31.03.1995.

4. Staff

The Commission's Secretary, Mr. W. Ekanaýake, Assistant Secretary Mr. E. M. Subasinghe and staff, Prof. Samaranayake of the University of Colombo Computer Department and his staff at CINTEC Computer Services, Dr. Ramani Jayathilake, Dr. Edirisinghe and Dr. Sasanka Perera of the Department of Sociology, University of Colombo, Dr. Deepika Udagama and the Centre for the Study of Human Rights, as also the management of the BMICH, deserve our thanks.

5. Lawyers

While the Attorney General has for the purpose of leading evidence before the Commission made available a Senior State Counsel and a State Counsel, the services of four other lawyers from the unofficial bar have also been obtained by the Commission.

VII. RECOMMENDATIONS ON REQUISITE SUPPORTIVE MEASURES

1. Training centre for young women rendered head of household through bereavement :

Training in Life Skills and Technical Skills. First centre to be located in Gampaha District. We are concerned at the violent disruption of families live in Gampaha District revealed in the cases from that District we have already inquired into.

2. A Family-Support Scheme

To enable Minors to continue their education according to capacity.

3. Counselling

Our inquiries have made clear that the emotional trauma consequent on the incidents Your Excellency has mandated us to inquire into have a long-term effect, and that attention to this aspect will have to be part of rehabilitation.

4. Deeds of Ownership

Direction to District and Divisional Secretaries to confer Deeds of Ownership on bereaves families Heads of Household where this Commission has recommended this step to him on finding the family has been resident for several years on state-owned land.

5. Death Certificates

Direction to the Registrar of Births and Deaths to issue to immediate dependents a Death Certificate based on material furnished by relevant authorities such as the Grama Niladhari of the relevant division, and findings of this Commission. The objective of this direction is to enable the dependents of the disappeared person to obtain employment, emoluments, insurance benefits, and other similar moneys lying

to his credit at the time of his disappearance or in respect of which a release would not be normally obtainable in the absence of evidence of death, eg. cash bail furnished on behalf of a disappeared in a case where such disappeared had been enlarged on cash bail. A simplified procedure was introduced by the present Government in November 1994, enabling an application direct to the Registrar of Deaths for a Death Certificate where a person has been missing without communication with those who would normally expect to hear from him, for over one year.

We recommend the use of the media to bring this procedure effectively to the public's attention. The need for a speedy response to such applications by the state's administrative machinery must be emphasised. In Matara for instance, several A. G. A. Officers were still awaiting receipt of printed forms of Applications under the Registration of Deaths (Temporary) Act despite persons affected coming to them for help continuously over the last six months.

6 . Compensation

Compensation without discrimination to bereaved families will not only be a positive step towards the rehabilitation of those families. It would also be a valuable acknowledgement of state liability in respect of Human Rights Violations.

Your Commissioners recommend a scheme for compensation be put in operation without delay. We should bring to your notice in this context that a scheme for the Payment of Compensation to Victims of Grave Mishap, had been used by the then Ministry of Social Services to compensate selected bereaved families in the Kegalle District.

7. A Legal Assistance Scheme

To enable members of victimised families to protect and vindicate their existing rights. A special legal assistance scheme may be established for this purpose till the problems of these families are sorted out and their legal rights crystallised. Cases coming up before the Commission reflected a wide spectrum which ranged from uncertainty attached to pending labour tribunal cases to the inability on the part of a wife of a disappeared person who was now contemplating another marriage.

8. Transfer/Interdiction of Officers Names as Respondents in Habeas Corpus Applications

The current practice of not interdicting or even transferring out Officers named as respondents in Habeas Corpus cases is a grave obstacle to the restoration of a climate of respect for law and fundamental rights. In one instance, an Officer with 38 Habeas

Corpus applications v. him in respect of disappearances in the Police area of which he was Officer-in-Charge, is now Head-Quarters Inspector of the Police Station not 5 miles away.

Your Commissioners recommend that this practice should cease.

Madam Manouri Muttetuwegama,
Chairman.

Prof. Amal Jayawardena,
Member.

Mr. Jayantha De Almeida Guneratne,
Member.

17.04.1995.

ANNEXURES :

- A — Terms of Reference of Commission
- B — Demographic information of area covered
- C — Newspaper advertisement and papers
- D — Breakdown district-wise of applications received
- E — Schedule of proposed sittings to mid May 1995.

TERMS OF REFERENCE OF COMMISSION

- (a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the Western Province, Southern Province and Sabaragamuwa Province at any time after January 01, 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 matters that have been inquired into under the terms of this Warrant.

Annex 'B'

STATISTICAL SURVEY ON THE WESTERN, SOUTHERN AND SABARAGAMUWA PROVINCES

Population Statistics of Sri Lanka would reveal that almost half of the population in the country live within the boundaries of the Western, Southern and Sabaragamuwa provinces (48.6 percent). The highest population density is recorded in the District of Colombo (2,991 persons per sq. km.). The District of Gampaha ranks next to Colombo (1,105 persons per sq. km.). Kalutara, Galle and Matara districts also have a relatively high population density (578-605 persons per sq. km.). A similar concentration of population can be found only in two other districts in Sri Lanka : Jaffna (886) and Kandy (657). The population density of other districts which come under our purview is as follows : Kegalle (444) ; Ratnapura (287) ; Hambantota (200).

The three provinces which come under the jurisdiction of our Commission also represent a significant political force in the country. Out of the total of 160 electorates in the country, 74 are found within the boundaries of the Western, Southern and Sabaragamuwa provinces.

PERCENTAGE DISTRIBUTION OF THE POPULATION IN THE WESTERN, SOUTHERN AND SABARAGAMUWA PROVINCES (1991)

Western Province	Percentage
Colombo	25.8
Gampaha	11.4
Kalutara	8.9
	5.5
	<hr/>
	25.8
Southern Province	Percentage
Galle	13.0
Matara	5.5
Hambantota	4.5
	3.0
	<hr/>
	13.0
Sabaragamuwa Province	Percentage
Ratnapura	9.8
Kegalle	5.4
	4.4
	<hr/>
	9.8
Total	48.6

**LIST OF ELECTORATES IN THE WESTERN, SOUTHERN AND
SABARAGAMUWA PROVINCES**

01. Colombo District :

01. Colombo North
02. Colombo Central
03. Borella
04. Colombo East
05. Colombo West
06. Dehiwala
07. Ratmalana
08. Kolonnawa
09. Kotte
10. Kaduwala
11. Avissawella
12. Homagama
13. Maharagama
14. Kesbewa
15. Moratuwa

02. Gampaha District :

16. Wattala
17. Negombo
18. Katana
19. Divulapitiya
20. Mirigama
21. Minuwangoda
22. Attanagalle
23. Gampaha
24. Ja-Ela
25. Mahara
26. Dompe
27. Biyagama
28. Kelaniya

03. Kalutara District :

29. Panadura
30. Bandaragama
31. Horana
32. Bulathsinhala
33. Matugama
34. Kalutara
35. Beruwala
36. Agalawatte

**LIST OF ELECTORATES IN THE WESTERN, SOUTHERN AND
SABARAGAMUWA PROVINCES**

04. Galle District :

37. Balapitiya
38. Ambalangoda
39. Karandehiya
40. Bentara-Elpitiya
41. Hiniduma
42. Baddegama
43. Ratgama
44. Galle
45. Akmeemana
46. Habaraduwa

05. Matara District :

47. Deniyaya
48. Hakmana
49. Akuressa
50. Kamburupitiya
51. Devinuwara
52. Matara
53. Welligama

06. Hambantota District :

54. Mulkirigala
55. Beliatta
56. Tangalle
57. Tissamaharama

07. Kegalle District :

58. Dedigama
59. Galigamuwa
60. Kegalle
61. Rambukkana
62. Mawanella
63. Aranayake
64. Yatiyantota
65. Ruwanwella
66. Deraniyagala

08. Ratnapura District :

67. Eheliyagoda
68. Ratnapura
69. Pelamadulla
70. Balangoda
71. Rakwana
72. Nivithigala
73. Kalawana
74. Kolonna

**PERCENTAGE DISTRIBUTION OF POPULATION BY ETHNICITY
(CENSUS - 1981)**

All Races	Sinhales (Low) Country and Kandy)	Sri Lanka Tamil	Indian Tamil	Sri Lanka Moors	Burghers	Malays	Others
<i>Western Province</i>							
Colombo	100.0	77.6	10.0	1.2	8.3	1.2	0.3
Gampaha	100.0	92.0	3.5	0.4	2.7	0.6	0.6
Kalutara	100.0	87.2	1.2	4.1	7.4	0.1	0.1
<i>Southern Province</i>							
Galle	100.0	94.5	0.9	1.4	3.2	0.1	
Matara	100.0	94.5	0.7	2.2	2.5	0.1	
Hambantota	100.0	97.1	0.6	0.1	1.2	1.0	
<i>Sabaragamuwa Province</i>							
Ratnapura	100.0	85.00	2.4	10.6	1.7	0.1	0.2
Kegalle	100.0	85.9	2.2	6.7	0.5		0.1

Annex 'C'

NEWS PAPER ADVERTISEMENTS

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Newspapers Published the advertisement

01. Attha – Sinhala
02. Dinamina – Sinhala
03. Divaina – Sinhala
04. Lakkima – Sinhala
05. Lankadeepa – Sinhala
06. Ravaya – Sinhala
07. Silumina – Sinhala
08. Sunday Divaina – Sinhala
09. Sunday Lankadeepa – Sinhala
10. Yukiya – Sinhala
11. Sunday Thinakaran – Tamil
12. Sunday Veerakesari – Tamil
13. Thinakarn – Tamil
14. Veerakesari – Tamil
15. Daily News – English
16. Island – English
17. Sunday Island – English
18. Sunday Leader – English
19. Sunday Observer – English
20. Sunday Times – English

INTERIM REPORT II — JULY 1995

Introduction

Your Excellency by warrant dated 13.11.94 has appointed

Madam Manouri Muttetuwegama,

Prof. Srisuddha Singharatna Bandara Don Abeyratne Amal Jayawardene, and
Bulathsinhalage Jayantha Pandukabaya De Almeida Guneratne

to inquire into incidents of involuntary removals or disappearances in Western, Southern and Sabaragamuwa provinces. Our full terms of references are annexed hereto marked "A".

It is now seven months since we commenced work on 10.01.95.

We have inquired into 1,262 complaints to date. This is 15% of the complaints received by us so far.

The topics given consideration in this Report as well as our observations therein are base on the experience and insight gained through these inquiries.

The statistical data in this Report is based on a computerisation of the information in 1,003 cases inquired into.

All references to cases in this Report is by File Number. Our intention in this is to protect the confidentiality of the petitioners and other witnesses who have come before us and performed a valuable service by sharing with us their first-hand experience.

The Code used in these Files numbering is as follows:

WC	Colombo
WG	Gampaha
WK	Kalutara
SG	Galle
SM	Matara
SH	Hambantota
ZR	Ratnapura
ZK	Kegalle

These 8 districts comprise of three Provinces: Western, Southern and Sabaragamuwa.

CHAPTER I

INTERPRETATION OF THE TERMS AND SCOPE OF THE MANDATE

Of the 1,262 cases inquired into so far, in a number of cases the Commission has had to take several decisions regarding the terms and scope of its Mandate. These cases may be classified as follows:

1. Case of Patent Lack of Jurisdiction

In 10 cases the complaints related to periods prior to 1st January, 1988 and the Commission had to reject the petitions since *ex facie* it did not possess jurisdiction to inquire into these complaints. We feel obliged to recommend that, suitable steps to be taken to inquire into "disappearances" and "involuntary removals" during the period 1984 and 1987. Quite apart from popular knowledge, in a well informed report Amnesty International has referred to over 680 "disappearances" during the period 1984 to Mid 1987 alone of the 134 cases of "disappearances" recorded by Amnesty International at least seven cases are reported to have been from the Hambantota district which falls within the Jurisdiction of this Commission.

2. Case of Latent Lack of Jurisdiction

This category of cases may be conveniently grouped as follows:

- (i) Cases of attempted abductions;
- (ii) Cases where although the disappearance itself was established the surrounding circumstances and the available evidence could not link the disappearance to an abduction or involuntary removal;
- (iii) Cases in which the evidence revealed that the victims had been killed while defying the curfew imposed by the government;
- (iv) Cases where the victims had been involuntarily removed but released later.

3. Case of Abduction Followed by Subsequent killing

A fundamental question we had to address our minds was whether this class of cases fell within the terms of our Mandate. We did feel inhibited at the start in providing a positive answer to this question in as much as even members of the government had reportedly expressed the view that such cases were not covered by the terms of our Mandate.

Having first examined the terms of paragraphs (a) and (c) of the Mandate we were of the view that those terms clearly acknowledge the right of a person to live in his place of residence. Given the objectives spelt out in paragraphs (f) and (g) of the Mandate we were of the view that, one could hardly draw a logical distinction between a person who has been unable to return to his place of residence because he was involuntarily removed or disappeared and a person who has been unable to return to his place of residence because he was killed after being involuntarily removed. We were fortified in this view by the fact that, the very inquiry into a case of involuntary removal or disappearance is ultimately to ascertain what had happened to such disappeared or involuntarily removed person. We found further support for this view in the preamble to our Mandate as well. Accordingly, we ruled that this class of cases fell within the Mandate decreed by Your Excellency. Incidentally, so far abducted and killed cases of this class have come up before us for inquiry.

2. Powers of the Commission

1. Need to Preclude Judicial Review
The Commission derives its powers from the Commission of Inquiry Act, No. 17 of 1948 (as amended) and the Mandate issued by Your Excellency. Given the nature of the evidence that has transpired before us in several cases the stage contemplated by Section 16 of the Act may soon be reached. Section 16 of the Act reads thus:

“16. Every person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by one or more persons who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in the manner aforesaid”.

Although We are aware of the strict interpretation given by Their Lordships' Courts with regard to the availability of prerogative writs against Commissions appointed under the Act under consideration, as a safety-valve and in order to prevent unnecessary delay we would recommend Your Excellency to advise the Government that the Commission of Inquiry Act be amended by introducing a preclusive clause ruling out judicial review of proceedings before the Commission.

2. Need to Preclude Orders staying Proceedings of Commission

Of the 1,262 cases inquired by us so far, in several cases we have found that there are Habeas Corpus applications which are still pending in Courts. These include the bizarre and horrendous cases of the disappeared schoolboys of Embilipitiya. We are in doubt as to whether we should launch full scale investigations into such cases. This doubt stems from the fact that, the Commission of Inquiry Act does not contain provisions that preclude orders of Court Staying Proceedings of this Commission

arising by reason of Collateral proceedings. Accordingly, we recommend Your Excellency to advise the Government that steps be taken to amend the Commission on Inquiry Act by bringing in a provision similar to Section 18B of the Special Presidential Commission of Inquiry (Special Provisions) Law No. 7 of 1978 (as amended by Act, No. 4 of 1978). That Section reads thus:

“18B. No Court shall grant an order staying the proceedings of any Commission on the ground that any matter which is the subject of inquiry before the Commission is the same matter or subsequently the same matter which, whether directly or indirectly, arises or is likely to arise for consideration or determination in any proceedings before any Court.”

3. Adoption of the Institutional Decision Formula

The Commission commenced sittings in mid March, 1995. There were 11,273 petitions received by the Commission as at that date. Initially the Mandate of the Commission was to end in July, 1995. However, Your Excellency was pleased to extend the said Mandate upto the end of September, 1995. Even if it is extended further we feel the need to conclude our hearings within the shortest possible time. Being mindful of these considerations we thought it is appropriate from the point of view of practical expediency to have the primary evidence of witnesses recorded in fit cases before the three Commissioners sittings separately. We did not find anything objectionable to this procedure in as much as in every single case where evidence was recorded in this manner all three Commissioners sittings as a Collective body met to deliberate on the facts of such cases before arriving at any substantive decision.

We are constrained to add here that it is this procedure that enabled us to conclude sittings in respect of 1,262 cases in the period Mid-March to Mid-May 1995!

4. Investigations Sans Any Qualitative Distinctions

4.1 Our inquiries have revealed that the alleged perpetrators of the acts contemplated by the Mandate fall into the following categories:

- (a) Police Officers
- (b) Armed Service Personnel
- (c) Politicians
- (d) Personal Enemies
- (e) Subversive Groups
- (f) Unknown Persons
- (g) Combinations of any two or more of the above

4.2 The evidence so far led before us revealed that the victims fall into the following categories:

- (a) Persons with or without subversive links
- (b) Police Officers or Armed Service Personnel
- (c) Politicians

4.3. Our inquiries have proceeded on the basis that the Mandate given to us encompasses the several situations enumerated above. We have directed both the Police Department and the Armed Services to send us complete lists of police officers and armed service personnel respectively who might have "disappeared" or "been involuntarily removed" during the period under scrutiny. This view of the terms of the Mandate accords with the dictates of fairness and balance.

3. Need for Further Investigations—Penal Aspects

1. In 335 cases out of 1,003 inquired into so far names of abductors or perpetrators of the acts complained of were disclosed by witnesses. Of these we found the evidence about the identity of such abductors or perpetrators to be credible in 111 cases thereby warranting steps to be taken in terms of Section 16 of the Commission of Inquiry Act.

2. In 335 cases we found the evidence as a whole warranted further investigations with a view to prosecution.

3. In 668 cases we are of the view that there is no cogent evidence to conduct any further investigations. Although in most of these cases "disappearance" itself was established, there was no evidence to link the same with an "involuntary removal".

In this category of cases we are not inclined to make any positive recommendation. Although in these cases identity of the abductors or perpetrators of the act complained of could not be established where the disappearance could be linked to an "involuntary removal" we found there is nothing in principle to deny to the affected families reliefs such as welfare measures envisaged by paragraph (g) of our Mandate. There were 549 cases falling with this category.

4. In Camera Proceedings and Press Releases—The Rationale

1. In our preliminary report we stated the reasons why we decided to conduct our sittings *in Camera*. Given the fact that, at this preliminary stage the evidence is entirely *ex parte* we felt that it was against the spirit of natural justice and fair play in action to allow to be made public names of persons whom the witnesses suspected of having perpetrated the acts in question. Apart from this consideration, as the evidence led before the Commission has revealed, members of the police and security forces as well as others who are allegedly responsible for "disappearances" and "involuntary removals" are still continuing to hold official positions. Consequently, these persons may be prompted to intimidate witnesses coming before the Commission. This security threat to witnesses was another reason that influenced us to hold *Sittings in Camera*. We are fortified in that decision for it was after some persuasion by Counsel and Commissioners that the witnesses were prepared to disclose the names of the alleged abductors. So far as the consideration of natural justice principles adverted to earlier is concerned we are fortified by that approach in as much as out of the 382 cases in which perpetrators were named by witnesses. A third reason for the adoption of this approach was to make clear that we are not ready to be made a platform for unjustified attack on anybody including the Police and Armed Forces.

2. Although we resolved to hold our sittings *in Camera* for the reasons stated above, we felt that general public must be made aware of the nature of the work the Commission is engaged in and the Commission's rulings on specific matters

particularly in regard to the terms and scope of its Mandate. With this educative function as its objective we decided to release periodic accounts of the Commission's proceedings and rulings to the press without in any manner compromising on the 'anonymity' principle. We hope that this exercise would prove useful in arresting and focusing the attention of the general public on the Socio-political and Socio-economic impacts the events and incidents of the period under consideration by the Commission has had on society. A few illustrative cases may be given at this point. See : Annexure "F"

Legal Proceedings as Contemplated by the Mandate

1. Our Mandate requires us *inter alia* to inquire into and report on the legal proceedings that can be taken against the persons held to be responsible for the involuntary removals or disappearances during the period under consideration. In so far as the aspect of involuntary removals is concerned in 382 out of 1,003 Cases inquired into by us the alleged perpetrators have been named by witnesses. These fall into the following categories :

- (a) Police Officers ;
- (b) Defence Personnel ;
- (c) Subversive Groups ;
- (d) Personnel Enemies ;
- (e) Unknown Persons ;
- (f) Combinations of any two or more of the above.

2. In 271 of the said cases we found that the allegations were either based on mere surmise or some pre-conceived suspicion. In the balance 111 cases we found that both in terms of credibility and cogency there was *prima facie* evidence in regard to the identity of those responsible for the said involuntary removals. However, in as much as the evidence so far led before us in all these cases has been *ex parte* we have directed our investigations unit to conduct further investigations with a view to testing further the veracity of the said allegations. Consequently, we will be making our recommendation on this aspect in our final report to Your Excellency.

3. In so far as the aspect of "disappearances" is concerned we would like to make the following observations in the first instance.

4. A common feature of an overwhelming number of cases of involuntary removals, irrespective of who might have perpetrated the act), has been the refusal on the part of the police to record any statement sought to be made by the aggrieved parties and even in the few cases where such statements were recorded the Police failed totally to take any consequential action. This inaction is a demonstrable factor which we have identified as one of the main reasons that resulted in the complete breakdown in the law and order system of civil administration. The evidence led before us has also revealed the police stations and the names of some police officers who have been privy to this. Viewed in this light we are unable to find any justification for the general defence suggested by some of the police officers whom we interviewed that, subversive activities had to be met by counter subversive measures". On the contrary is the blind eye shown by the state.

particularly in regard of the torture and酷刑 of all Mandates. With this objective in view we decided to take advantage of the Commission's position as far as possible to expose the conduct of our Government in this matter. We also tried to expose the various forms of torture and酷刑, particularly, but not only, to the political opponents of our Government. We also tried to expose the various forms of torture and酷刑, particularly, but not only, to the political opponents of our Government. We also tried to expose the various forms of torture and酷刑, particularly, but not only, to the political opponents of our Government.

CHAPTER 2

THE NATURE OF THE DESTRUCTION DISCLOSED BY THE EVIDENCE AND THE MEASURES NECESSARY FOR THE PREVENTION OF RECURRENCES IN THE FUTURE

This section contains a consideration of "measures necessary to prevent the occurrence of such alleged activities in the future" as required by our Mandate (sub-section 10).

It is in 2 Parts: firstly, a consideration of the nature of the destruction as disclosed by the evidence; and secondly, a consideration of the measures necessary to prevent a recurrence, in the light of the revelations in the evidence.

The Nature of the Destruction Disclosed by the Evidence

The nature of the destruction disclosed by the evidence went far beyond what could be attributed to a breakdown of relations between the perpetrator and the victim:

The petitioners before the Commission were clearly aware of this, and would describe the prevalent situation graphically and in concrete terms, while at the same time seeking to identify the person who had been the immediate link in bringing this "system" into operation against them. Accordingly this section will be phrased as far as possible in the words of the witnesses themselves, either verbatim or in paraphrase, and without any interpolation.

The topics to be considered in this chapter, also, have been decided on the basis of the evidence before the Commission and while they may accord with certain *a priori* perceptions, the consideration of these topics should be on the basis that "this is what the evidence shows".

The topics considered are:

1. **The destruction of the democratic base of society;**

2. **The suppression of the freedom of Speech and Association;**

3. **The destruction of the constitutional guarantee of equality;**

4. **The destruction of community initiatives and community supports;**

5. **The destruction of the Police Force and Grama Sevaka Services; the rise of Death squads.**

1. The Destruction of the Democratic Base of Society

"As incidents of disappearances of candidates and active supporters occurred, and murder and arson to political opponents in the guise of anti-subversive activities increased, a disgust of elections was brought about in the people. This is what happens when you participate in elections," said the mother of an SLFP activist who has disappeared - WC 375.

The Wife of a UNP organiser of the Colombo Central area who had been abducted by unknown persons apparently as a consequence of an intra-UNP leadership struggle

said: "There was no UNP high up who did not know my husband" - WC 3120.

In another case the mother of a staunch supporter of the UNP who alleged that her son had been abducted by the Bureau of special operations at the request of a UNP

Pradesheeya Saba Member as a consequence of an intra-UNP struggle at the Colombo

Mayoral elections 1991 said: "My son and Sothithi Upali grew up in the same "garden" and were friends from childhood" - WC 615.

The father of an Embilipitiya school boy who has disappeared after abduction, reported to this Commission: "We were

victims of political revenge as we were active SLFPer. Finally my 16 year old daughter committed suicide." - ZR 2061.

A mother of an Attanagalla SLFPer reporting the abduction and disappearance of her son to this Commission said: "the politically

powerful instigated the Police in this as our whole area is against him" - WG 611.

"our house was set on fire the same day as my brother's abduction, and my 20 year old brother who saw this whole incident is still suffering" - ZK 9665.

These things are done in the guise of anti-JVP operations" said a mother reporting to the Commission how an armed gang came in search of her son, the only SLFPer in a UNP family, and took another as "hostage" in his place. - WG 3206.

Reporting an incident as recent as the Southern Provincial Council election 1993, a retired School Principal said: "I was in an active SLFPer, so was my son. We had worked hard and got the SLFP MP elected. Now this was the time of the Southern Provincial Council elections. Making my son disappear was a part of the reign of terror designed to intimidate the electorate and thereby snatch the victory to the reigning party" - SG 1030.

A systematic repression and general intolerance of the democratic opposition was spoken by witnesses in case after case. "My son was 'lifted' because he supported the legitimate opposition" - WG 9444.

Evidencing the plight of SLFP families, the witnesses said: "SLFP receptions to leaders were held in my premises. Mrs. Bandaranaike, Mr. Anura Bandaranaike have all come there. But I didn't file a case when my son was abducted, although I know the informer, through fear" - ZK 6142.

My husband was killed in 1977 for supporting the SLFP on his return from the SLFP meeting in Kegalle. My son was 8 years old then and I wrapped Beedi to support him. He was an Electronics Undergraduate in 1989 when he was abducted" - ZK 6142.

"My husband was a staunch SLFPer. The JVP killed him for not giving them his van" - WC 9817.

Similar evidence was placed before us of the fate of activists of other opposition parties. "Vijaya Kumaratunga's office (SLMP) was in my house. When my son was abducted I could not file a Habeas Corpus application as I feared for my other sons." – ZR 5053. "My husband was the Ceylon Workers Congress Branch President at his workplace. The government was a UNP + CWC one, but a government registered vehicle was used for his abduction." – WC 3017.

"My husband was a staunch MEP activist. He was active in the Bank Employees Trade Union and was abducted" – WC 906.

And finally even after the declaration of a Presidential amnesty : "When my son, a Technical College scholarship student was released on Amnesty after the 1988 Presidential Election, the police said: "don't think you have escaped, and he was abducted soon afterwards and has since disappeared" – WC 583.

N. B.— The only reason why losses suffered by the UNP, LSSP and the CP through the murder of candidates etc. is not considered in this section is because these events have not surfaced in the evidence before us to-date.

2. The Suppression of the Freedom of Speech and Association

The suppression of the freedom of speech and Association was spoken to by petitioners giving evidence on the abduction and disappearance of journalists, of human rights activists, of trade unionists and NGO activists in these fields. A mother spoke of the loss of her Son, a popular English language journalist, a source of information on human rights violations here, who was abducted and killed and his body thrown into the sea, as he was about to take up a post abroad as Secretary to an International Organisation of Journalists. – WC 6009.

Another mother spoke of her son, an undergraduate working as a journalist in human rights while the University was closed, who was abducted and has disappeared since. WC 9266.

Witnesses spoke of how a Habeas Corpus application had to be withdrawn due to threats to their lawyer ; of the actual murder of another lawyer who was appearing for them. – ZK 9663 and SG 9752.

In one incident a father giving evidence of how his two sons whom he had entrusted for safety to a human rights activist / opposition MP, were abducted from that MP's house, said : "We turned to X (name given) as he was the Secretary of a Human Rights Lawyers' Organisation; but my sons were abducted from there too and have disappeared." – WC 496. And as another father put it : "the Police wouldn't do their duty. So we had to turn to NGOs and International organisations." – ZK 5155.

A Long list of trade unionists, lost to their families and the country during that time, must be considered. We have had reports of several such incidents already. A SLFP trade unionist, brother of the then General Secretary of the SLFP Trade Union Federation, "disappeared without trace on a bus journey to Colombo." Wife. – WC 73.

"My husband, a Ceylon Tobacco Company trade unionist, was abducted while at the company gate and has disappeared since. Please help me to get his EPF and other dues." – Wife – WC 9828.

"My mother, a trained family planning advisor, was an active member of the Midwives union. They came in the night and took her away while she was still in her night dress ; she has since disappeared." Daughter – WC 3173.

"My husband was supervisor at the Kotmale work site and was abducted when he formed a Trade Union there. Even persons who are Cabinet Ministers now, were unable to find him for me." – SG 1019.

"My husband tried to form a Trade Union in the Free Trade Zone, Katunayake. He and four others were abducted on the same day and have disappeared since." Wife – WG 600.

"My husband was a trade-unionist in the Free Trade Zone, and that is why he was abducted." Wife – WC 72.

3. Destruction of the Constitutional Guarantee of Equality

The potential that article 12 of our constitution carries in providing rights and opportunities to persons who would otherwise be subject to certain barriers was blighted in the guise of counter-subversive operations. Some incidents revealed in our inquiries were in relation to families who had suffered disadvantages on the ground apparently of caste and on account of being economically disadvantaged families.

"We worked hard to convert our clay hut into two rooms with tiled roof. So our families were destroyed" claimed the wife of an agricultural labourer, depressed caste, who was abducted from his house while he was sleeping and has since disappeared. – ZR 6097.

"My son was the one educated person my village had. If you suspect a person, take him to Courts; don't kill him" said a father, depressed caste, recounting the abduction and subsequent disappearance of his bright younger son. In his evidence he described how the elder brother coming in from minding the cattle would ask eagerly 'has Malli been found?' , and how that son too committed suicide thereafter. – ZR 775.

A mother describing the abduction and disappearance of her Engineer son stated how the father an illiterate agricultural labourer, was drowned while plucking lotus flowers for a 'Pooja' and thereafter how the younger brother committed suicide. – SM 4108.

The father of a Muslim scholarship student at Ananda College recounted the loss of his son caught in the curfew on his return journey from Maradana Mosque, and disappeared since. – WC 442.

"My son was an undergraduate, the first from our area" said the father who lost his son after disappearance. – WG 9495.

4. The Destruction of Community Initiatives and Community Supports

The bonds of family weakened in the face of the anxiety and uncertainty engendered.

A senior government servant giving evidence on the abduction and disappearance of his nephew, a popular Ayurvedic Physician – Bhikku, said “I didn’t report the abduction and disappearance of my widowed sister’s only son as I have a son and I feared for his safety should I do so” – WC 5550. In another instance, a father reporting his loss to the Commission said “The army took away my 2 sons as they were walking by the road. One of them has returned. We are rendered passive victims as regards the disappearances of the other through fear our surviving son too will be lost to us” – ZR 2048.

The Temple, the Hospital, the traditional symbols of refuge and help, became associated instead with the destroyer. “We had no one to turn to. Even our temple had been turned into an Army – Camp”, said a sorrowing mother to us – SM 345. “Seven were taken. None returned. Our temple was used as an Army – Camp” said a villager, reporting the loss of his son and 6 others to the Commission. – SH 7017; “when we found my brother with gun-shot injuries my husband took him to the Government Hospital, and remained in the ward with him. But the Army abducted my brother from the ward and there is no news of him since”, said a sister, vividly describing how Doctors and medical staff became passive bystanders. – SG 1001.

The resultant sense of isolation was portrayed time and again in the evidence. “There was no one to complain to—The government was deaf; the Opposition absent; the Police drove us away like dogs. The JVP killed, the Army killed” said a mother who had lost 3 sons taken away in 3 different rounding-up operations never to return – SM 344.

Said another mother an agricultural labourer, 58 years old, whose only son had been abducted and since disappeared ; “I consulted 55 sooth-sayers, I kept the paddy my 19 year old son had earned in order to feed him with new rice when he came home. As it is now I can’t even give an alms giving for him” – WC 114. “I left my 15 year old daughter at the pitch to come and give evidence before this Commission”, said the mother of a porter at the Pettah Market abducted and disappeared, a casualty of the EPLF/ IPKF – WC 207. “No one would help us find our son. We put his photograph in the papers too. My husband has committed suicide since.” said a mother bearing witness to the phenomenon of ‘paper’ advertisements regarding youth abducted and disappeared, instead of the usual ‘paper columns of marriage proposals’ WC 9405. Said a brother (16 years then, 22 now) : “the bereaved are exploited. We are asked to come to this meeting, that inquiry, to no effect. My father was served a ‘Vacation of Post’ notice from his government office (in the Eastern Province) who wouldn’t accept his report of being driven hither and thither in search of his son” – WC 326.

5. The Destruction of the Police Force and Grama Sevaka Services : the Rise of Death Squads

“JVP activity was on the rise at the time. The usual training period for police officers was shortened from the usual 6 months to 4 months plus 1 1/2 to 2 months’ military training. Police officers’ concept of the duties of a Police Officer changed as a result.” – WC 6009.

“The Grama Sevaka is the chief Peace officer of the village. When I joined the Grama Sevaka service, appointment was by the Public Service Commission, after an examination, and was followed by special training thereafter. From 1985 onwards Cultivation Officers and Special Service officers were amalgamated with the Grama Sevaka Service. Special Service Officers and Cultivation Officers had been appointed to these posts on the MP’s recommendation, devoid of an entrance examination”.

“Various private groups were engaged in killing each other during this period. There were pro-government groups, anti-government groups, Pro-JVP groups and groups opposing them. Armed squads who did not belong to the Police or Army but took their orders from above came into being. Finally Police and Army officers too started using their arms for purposes of private revenge” – WC 6009.

Thus the police and gram sevaka service were diverted from serving the public to serving the politician – in – power. This is essentially worse than a total absence of a Police Force/ Grama Sevaka Service.

The evidence before us revealed the public’s perception of this reality. A cruel subterfuge of the time is best described by a sinhala phrase: “Horage mava lavva pena balanawa” which translates loosely as “Asking the thief’s mother to catch the thief”. I appealed to the IGP for assistance as the area-Police refused to record my complaint of the abduction of my son. The IGP referred the matter for inquiry to the very same person who had refused in the first place. He is ASP of the area now” – WG 3156. In other instances, the bereaved were sent on what can only be described as a Round-About. A father’s complaint to us : “I complained to the President who referred me to the Circuit Police who sent me to the Ratnapura Police : who sent me to the Balangoda Police. Balangoda Police sent me to the Army camp.” – ZR 2095. This was a familiar refrain.

Finally, there were the Death Squads. “My son was burnt and branded as JVP. It was the Minister’s Death Squad that did this,” said a sorrowing mother – WG 691. “Our house was burnt down. My children and I had nowhere to go. It was the MP’s Death Squad.” Wife – SM 7485.

It was inevitable then, that police functions of recording and investigating into complaints of the general public, so central to the effective administration of the criminal law completely broke down. It was not easy to listen to witnesses as they said ; “I went to the Police 76 times when my son was abducted and my house burnt down, but they would not record” – WC 983 ; and “The police drove me away. The Grama Sevaka said : Go to the new Grama Sevaka. The new Grama Sevaka said : go to the old,” said a mother who lost 2 sons. – WG 3322.

Even where a complaint had been recorded what ensued was no investigation at all or, at most a perfunctory, or downright biased, one (See annexures, for some instances). A special study of the police investigations into the incident termed, "THE HOKANDARA MASS GRAVE" is annexed hereto, by way of illustrations. It should be noted that all the evidence analysed in this study was available to the Police from 1989.

Police Declaration of Death/ Disappearance were issued to enable some affected families to receive compensation under the "MAPS" – (See chapter 5 in "Reliefs") The certificate, issued by the officer-in-charge of the Police station concerned, does not state the grounds on which the finding is based. A sad anomaly that can arise from this is that, even where the basis for the Police Declaration was a disposal of the bodies in terms of police powers of disposal of bodies under Emergency Regulation 55 (ff), the family continue to be in ignorance of the exact fate of the disappeared person. Thus in one case, an illiterate mother, tracking down with great fortitude the fate that befell her two sons taken away by Police officers whom she recognised, is still awaiting the outcome of her Habeas Corpus application filed 5 years ago, while our investigations have revealed that the bodies of her 2 sons have been disposed of under the provisions of ER. 55(ff). – WC 909/ 910.

Notes:

1. M. A. P. S. Scheme – See Chapter 5 in Reliefs.

2. ER 55(ff) : See Annexure "C" for the full text.

CHAPTER 3

CORRECTIVE MEASURES REQUIRED IN THIS SITUATION WITH A VIEW TO THE PREVENTION OF RECURRENCES IN THE FUTURE

The Police Force including the Gramarakshakas and Volunteer Police Reserve and the Gramasevaka Service

The elimination of "Alternative Structures of Command" within the police force and Gramasevaka system is the most urgent matter requiring correction.

"An alternative structure came into being in the police of officers junior in rank and rapidly promoted through political patronage who were used by politicians for their own ends". – WC 6009.

Recruitment in this period has been on the basis of and with a view to the control of political opponents, not the control of crime. Enormous amounts have been paid illegally as "rewards" in contravention of the provisions of the Police Ordinance ; and officers against whom the Supreme Court has made order for the payment of Compensation for breach of fundamental rights have been further "rewarded" by these amounts being paid by the state accompanied by a total absence of the recovery of these amounts from the person concerned. Senior police officers have reported to this Commission how police training in investigation has been at a stand-still during the relevant period.

The regular police force we find to be very concerned about the practices outlined above.

We recommend :

1. The institution of disciplinary action against miscreants, including legal action, in the near future.
2. The identification of rules as regards the requisite qualifications for police officers and Gramasevakas by a committee set up for that purpose, plus the promulgation of a rule that future promotions of all officers will be decided on the basis of such qualifications-plus-his record of past performance, with new recruitments to be strictly on the basis of the requisite qualifications, is recommended.
3. A training programme in investigations including a "crash" programme to cope with the vastly increased volume of work that the findings of the three Commissions on Disappearances will entail, should be worked out by a committee of the Police and Justice Ministry. We have come across several good investigations by officers still in the police force or retired, and we recommend that these officers be used as a "resource" pool. Further, the UN and Commonwealth Organizations on police training could be asked to assist in this programme.

A system of a Police Lay-Visitors' Panel for each Police Area

"The new Government instructed us to complain to the police now about the abductions and disappearances we had suffered, if the police had not recorded our complaints at that time.

I did ; but the complaint as recorded does not contain what I said."—Mother who has lost two sons. — SH 1098

It is necessary to re-establish the community-based forces and procedures to which the citizens can turn when faced with a possible misuser of police powers = state power. Such community based structures have a valuable part to play in the spheres both of monitoring and of prevention of such misuse. A Panel of Lay-Visitors for each police station area could serve this function:

Some of the functions that should be entrusted to them are :—

- to speak to detainees ;
- to check conditions of detention ;
- to check records of the police station in respect of a detention ;
- to liaise in the presentation of complaints to the police station ;
- to liaise with the SSP/DIG of the area ;
- to accompany persons to the police stations when requested to do so ;
- to make complaints themselves in a representative capacity, inclusive of impending problems ;
- the co-ordination at local level with the Human Rights Task Force (HRTF) could be an aspect of their work with importance for the restoration of Law and Order nationally.

Aspects such as the conditions of appointment, qualifications for, powers of etc. should be worked out by the Ministry of Justice.

A system of Police Lay-Visitors' Panels is in operation in the United Kingdom, with some success. The profile suggested above is with special reference to the needs of our country at the present stage of national re-construction.

Citizens' Advisory Bureaus

"I need assistance to get my husband's pension" — WC 4843.

Please help me to recover my lost piece of land. My children and I were driven out after my husband was abducted and killed" — SH 5531.

A system of Citizens' Advisory Bureaus would be a valuable aid to the whole community for advice on various matters. In the context of disappearances specifically, such a system is required for the assistance of bereaved persons in finding solutions to problems attendant on the disappearance, such as the recovery of EPF dues, advise on obtaining Death Certificates, the settlement of property matters etc.

The Reintroduction of the "24-Hour-Rule" :

The requirement that all persons taken into custody be produced before the Magistrate within 24 hours, to be placed in Fiscal's custody (not police) if not released on bail, which was a long-standing salutary feature of our law was rendered inoperative in respect of the many persons in detention under emergency regulations, with many adverse consequences some of which have been examined by the Supreme Court in the exercise of its fundamental rights jurisdiction.

The 24-Hour-Rule rule should be reintroduced without delay.

The Army

In order to underline the need for clear structures of Accountability some experiences of the South are set out below :—

"Army vehicles ran around while bodies burned on the roads. This was the Era of Terror, though 'papers now dare to laugh at this phrase " Father

— ZR 8617

"When my son 19 years old disappeared from the road in January 1990 the whole village said the abduction and disappearance must be by the Army"

— ZR 9680

"After a rounding-up operation by the army in our village I went to the nearby camp as they had taken in my son. They said he had been taken to Boossa. I went to the camp at Boossa but he was not there. We have thus come to learn that "Boossa" is a synonym for Death." — ZR 2119

Your Commissioners Welcome the enlarged powers of the HRTF

We Recommend in addition :

1. the enforcement of the requirement of a valid detention order in respect of every person in state custody.
2. the over-all supervision of All places of detention to be with the Commissioner of Prisons.

The HRTF's 1993/94 Report's account of 'Persons reported missing but found' runs to 72 names of persons found in various camps and police stations. The object of the recommendations given above is to prevent persons going missing. An analysis of persons missing in the Nugegoda area (1) as reported to this Commission (2) as reported by the police stations in that area and (3) according to Police Detention Orders for the Nugegoda area, is annexed hereto marked "D", as they tell their own tale on Persons-Gone-Missing.

We intend to place further proposals before Your Excellency after consultation with the other two Commissions, before long.

CHAPTER 4

THE INVESTIGATION AND PROSECUTION OF PERPETRATORS

The investigation and prosecution of perpetrators is required on two grounds. It is firstly a right, both of society and the bereaved. It is necessary, also, for national reconciliation.

An estimate of numbers, based on a case-by-case consideration, calculated by the percentage of the cases already inquired into in which your Commissioners have found ground for recommendation of penal action after investigation would be, 2,184, that is about 25% of the petitions.

This is a big job.

The agency of investigation should always be the civil investigative arm of the state namely the police. This is necessary in the cause of the restoration of respect for the Rule of Law; to underline that the era of real authority being in "alternative structures" is a thing of the past. It is also necessary in the cause of national reconciliation.

Where the investigation is one of alleged misconduct by police officers the Special Investigation Unit (SIU) already in existence in the police force since 1988 which functions directly under the Inspector-General of Police (IGP), should continue to be entrusted with the investigation of such complaints, after whatever changes of personnel and internal structures which the IGP considers to be requisite in order to eradicate completely from that unit any aura of being part of the hitherto prevalent "alternative command structures".

A specific feature attendant on the lapse of time since the occurrence of the incidents to be investigated, is the fact that officers complained of have in more than one instance now reached positions in the police service which render them the authority which, under police regulations, should be conducting the inquiry. For instance an Inspector of Police may now be the Senior Superintendent of Police of the area, or a Police Sergeant be the Head Quarters Inspector of the Police station. We have already brought such a matter to the attention of the IGP who has responded by transferring that investigation to the CID-WG63.

The instance cited above serves to underline the need for a generalized system of referral of investigations v. police officers to one place.

The investigation of alleged misconduct by private persons/politicians/army personnel : There can be no distinction drawn on principle between these categories; all should be treated the same. The civil arm, the police, should investigate.

The investigation into vertical patterns of responsibility and alternative command structures: Even at this early stage of our inquiries we have been struck by the total lack of investigation into these aspects, even where the state has undertaken inquiry into complaints of involuntary removal or disappearances. Thus, in a series of Gampaha District cases, or in the well-known Embilipitiya school boys' cases, a marked characteristic is what can justifiably be termed a refusal by the investigating authority to look for and identify the source of command to those abductions and subsequent disappearances.

Your Commissioners intend to get together with the other two Commissions to share our experience and look into this aspect, as the Terms of Reference of the three Commissions appointed by Your Excellency which are identical, states;

(d) "Whether there is any credible material indicative of the person or persons responsible for the alleged removal or disappearances"

Mean while our inquiries have already revealed that investigations on an area basis is clearly called for in respect of the following files:

WG	423
WG	98
WG	99
WG	479
WG	3,018
WG	436
WG	548
WG	3,155

A note on WG 3155 is appended by way of illustration of the allegation in these cases.

Jurisdiction should always be with the Courts irrespective of whether the case is v. private individuals, police officers, army personnel or politicians. The problem of the time-lag involved in litigation presently, must be addressed taking into consideration the fact that the bereaved petitioner has already had to wait a period of 5/6/7 years for even an acknowledgement of the wrong done to him.

The treatment of suspects until the conclusion of the inquiry/case :

- the transfer of the officer out of the area with immediate effect is urgent, and should be operative in respect of the individual irrespective of any consideration whether his present post is the same or some other.
- Interdiction with immediate effect until the end of the inquiry/case should be ordered.
- Suspension of eligibility to promotion should be automatic.

These recommendations are based on the paramount consideration that it is imperative to send the right "message" out to all, if a genuine change of attitude is to take place.

The Protection of/and Immunity for Petitioners and Witnesses:

Under the principles of natural law a man has the right to protect himself from self-incrimination. This is known in popular parlance as the right to remain silent. In the context of our present considerations however, this does not take us much further, in that valuable evidence which would otherwise be forthcoming would remain unavailable to us through fear of self incrimination.

A letter from a petitioner annexed hereto is an instance of fears entertained, of another type: "will I be in danger by reason of giving evidence before the Commission, should the regime change?"

We Recommend: therefore that an amnesty be declared for persons confessing to human rights violations to this Commission. The fear of persecution at some later time however is best addressed by a concerted effort to uphold the principal of Respect for the Rule of Law, for no mere "letter" of the law can guarantee it.

CHAPTER 5

RELIEF MEASURES

In our mandate, Your Excellency has instructed us to report on "the relief, if any, that should be afforded to parents, spouses, and dependents of the persons alleged to have been so removed or to have so disappeared."

In this regard, we would like to make some recommendations on the following aspects :

1. Compensation to affected families.
2. Scholarships to minors.
3. Vocational Training.
4. Emotional Rehabilitation.

1. Compensation

In September 1988 the Ministry of Rehabilitation and Construction inaugurated a scheme which came to be known as the "Payment of Compensation to Most Affected Persons (MAPs)." According to the Ministry's circular no. M/R&R/UAS/MAP/1, dated 26.09.1988, compensation would be paid in respect of "deaths that may have occurred and injuries sustained as a result of ethnic violence, terrorist activity, related security operations and consequent civil unrest, since 24th July, 1983."

However, a decision made by the Cabinet on November 22, 1989, effectively denied the benefits of the above scheme to a large number of affected families. The Cabinet decision was as follows:

The Cabinet was informed that claims for compensation were made even in respect of dead terrorists on the basis that they were killed due to terrorist action. It was decided that when considering claims for compensation on deaths due to terrorist action, care should be exercised to exclude terrorists being paid compensation.

This decision has resulted in an endemic discriminatory practice to the detriment of the well-being of the innocent dependents of the missing persons. The processing of applications for compensation was handled by Government Agents/Divisional Secretaries. No precise definition was given as to the meaning of a "terrorist," and as such, these officials had to depend on Police clearance to ascertain whether the missing persons were engaged in terrorist/subversive activities. All the missing persons were not subversives, and some were wrongly identified as such. Irrespective of their innocence, the disappearance itself left a stigma that the person concerned had some

connection with subversive activities. Even if they were terrorists, it is morally incorrect to victimise the innocent members of their families. This discriminatory practice cannot be justified in any way as it amounted to a segregation of a certain section of society as "terrorists by relationship."

Under the compensation scheme, affected families were entitled to receive compensation as follows : Rs. 50,000 in respect of a married person; Rs. 25,000 in respect of an unmarried adult; Rs. 15,000 in respect of a minor. Politicians were treated as a "special category," and compensation was paid in the following manner for loss of life and injuries sustained due to terrorist/subversive related activities. Ministers, Governors, Members of Parliament and Chief Ministers ; Rs. 600,000 for deaths and Rs. 600,000 for injuries; their spouses or children: Rs. 500,000 for deaths and Rs. 500,000 for injuries.

Compensation has been expeditiously paid even in respect of recent incidents of political violence. For example, compensation has already been paid in respect of those who lost their lives and sustained injuries in the Grandpass bomb explosion in 1994 and also those who suffered due to recent election-violence. In other words, it has now become an established practice that the State takes the responsibility for the breakdown of law and order in a given situation by paying compensation to the affected families. Unfortunately, however, the majority of those who suffered in the era of terror during 1988-91 are still languishing without being paid any compensation and being left in the lurch to take care of themselves.

As Your Excellency is aware, the PA Manifesto pledged that the new government will "pay compensation without any political discrimination on behalf of those who have disappeared, been tortured or lost property." When you were the Prime Minister, many affected families had written to you regarding the issue of disappearances. During our sittings we came across many letters sent from your office to the affected families promising that after the Presidential Election the new government will appoint Commissions to inquire into the disappearances and that measures will be taken to pay compensation to the affected families. After the Presidential Election, the Ministry of Ports, Shipping, Rehabilitation & Reconstruction held a series of meetings in various provinces to give instructions to relevant officials regarding the expeditious processing of applications for compensation. These meetings were given wide publicity in the media and a feeling was created among the people that compensation would be expeditiously paid beginning from November last year. Applications have already been submitted in large numbers but we understand that this scheme has not been implemented so far.

To be fair by the affected families who came before the Commission during our first round of sittings, it should be mentioned that their major consideration was not compensation. They were mostly concerned about the fate of their missing persons, and a significant number believe that their missing family members are still alive. They wanted the Commission either to find their loved ones or to punish the wrong-doers. They all appreciated the fact that the present government has at least appointed a Commission giving them for the first time an opportunity to talk to an official body about the fate of their missing persons. As one witness who signed with thumbprint said: "You are the first authority to acknowledge my loss." Mother - SH 5491.

It should be noted that the overwhelming majority of the disappeared persons' families belong to low-income groups, and as such, the sudden disappearance of their family members most of them were the bread-winners of the family-left them facing a very difficult financial situation. Under these circumstances they need a helping hand, and therefore, compensation has become a very vital issue in their struggle for survival.

The payment of fair and adequate compensation is an urgent necessity. We understand that this will indeed be a tremendous financial burden on the government in the present context. We sincerely believe that the entire society should share the responsibility of helping out these affected families. In this context, Your Excellency may consider the idea of introducing a new tax, somewhat similar to the Defence Levy, not only to generate sufficient funds for this purpose but also to create an awareness that in a national calamity such as this, society as a whole should come together and make a commitment to solve the problems of these affected families.

The following table indicates the number of families who have already received compensation during the period 1988-1994. As far as the three provinces (Western, Southern, and Sabaragamuwa) which belong to our Commission are concerned, it has been estimated that nearly nine thousand families would be entitled to claim compensation.

Payment of Compensation under M. A. P.

During the period 89.01.01 - 94.10.31

District	No. Apps Paid for Deaths	Compensation Paid
Colombo	330	13,553,000. 00
Gampaha	207	8,805,000. 00
Kalutara	278	11,050,000. 00
Galle	368	16,938,000. 00
Matara	737	30,392,000. 00
Hambantota	801	31,553,000. 00
Kegalle	213	9,475,000. 00
Ratnapura	211	8,852,000. 00
Total	3,145	130,618,000. 00

(These statistics were obtained from REPIA)

Public Servants and Corporation Employees :

It should be noted that the above-mentioned scheme ("Assistance for Most Affected Persons") has not covered victims who served as employees in the Public Sector, Corporations, and other state owned institutions. They were handled by their respective employers in terms of circulars issued by the Ministry of Public Administration or under their own schemes. However, the decision of the Cabinet to exclude "terrorists" from the compensation scheme had an impact on determining compensation to public servants and cooperation employees, and it appears that this practice is continuing even under the present government despite its pledge to pay compensation without political discrimination. This was brought to our notice by an affected family which came before our Commission very recently (file No. 1178). The missing person concerned was a government teacher at the time of his disappearance, and his family has been unable to claim any compensation or pension rights for the past several years. When the family made a fresh application recently in this regard, the Director/ Education Department (Galle), in his letter dated July 6, 1995, had informed the family that in order to make any monetary payment, a clearance certificate from the Senior Superintendent of Police would be required. This has placed both the affected family and the police officers in a difficult situation. The fact of disappearance has created a stigma of terrorist connections, and as the witness himself told us, it is difficult for the police to certify the missing person's innocence in a situation like the one that prevailed several years ago.

We appeal to Your Excellency to give necessary instructions to the public sector, corporations, and state institutions to do away with the requirement of police clearance regarding the payment of compensation and granting of pension rights, WOP benefits, EPF benefits etc. Such discriminatory practices should not be allowed to undermine the rights and benefits of the employees.

2. A Scholarship Programme to Minors

"Today too my son cried at having to go to school without books required....."
(From evidence of a mother (file 1550)

From the perspective of the future well-being of the country, children can be considered the most adversely-affected persons in the families of missing persons. The sudden disappearance of parents has affected not only their emotional security but also their economic stability, which has a direct bearing on their education. Some are finding it difficult to continue their studies in the midst of economic hardships. To ease this situation, it would be advisable to introduce a scholarship programme whereby a monetary allocation could be granted annually or bi-annually towards the purchase of educational material. This could be integrated into many scholarship programmes administered by the Ministry of Education.

It should be mentioned here that a large number of missing persons were unmarried, and therefore, the number of school-going children involved is not very large. Out of 1,262 cases investigated so far, the number of school-attending children (up to G.C.E. O/L) was estimated at 543. The breakdown of this number according to their educational levels is given below :

Class	Number of Children
Montessori	18
Year 1	55
Year 2	43
Year 3	55
Year 4	46
Year 5	53
Year 6	42
Year 7	51
Year 8	47
Year 9	46
Year 10	32
Year 11	37
G.C.E. (O/L)	17
Total	543

3. Vocational Training

The suffering of the affected families cannot be compensated by monetary grants alone. Besides minor children, missing persons have also left behind spouses, adult children, and other dependent siblings. These families have now become female-headed households, but the wives find it difficult to maintain their families as they are not adequately skilled and gainfully employed. Even the adult children of the missing person's families are mostly unemployed.

Some form redress should be made available to the spouses and the youth left behind in missing person's families through some of the many training schemes and job opportunities provided by the government. Some families who came before us personally expressed their desire to benefit from such programmes.

At this stage we are unable to formulate a comprehensive scheme regarding vocational training. However, we would like to highlight the fact that vocational training to the needy members of the affected families is a vital need that requires serious attention. It goes without saying that vocational training is a national need and opportunities should be made available to all the needy people. However, since these families have already suffered due to the sudden disappearance of one or more of their children, it is quite justifiable to give them special consideration. The Ministry of Labour and Vocational training, and also the Apprenticeship Training Institute should be able to accommodate a substantial number of needy people in their existing programmes.

4. Emotional Rehabilitation

"After the disappearance of our son, my wife has become insane. She now chases after children on the street crying out our son's name." Husband - file 2092

"I saw my son's headless corpse thrown on the road. I am not in my right senses since then." Mother - file 7923

My husband's burnt corpse was on the road. I worshiped him and came away. My heart wished to bring him home, but no one would assist me." Wife - file 7922

The members of the affected families have undergone a traumatic and agonizing experience in dealing with the fact of disappearance. Any welfare scheme should take into consideration not only their economic rehabilitation but also their emotional rehabilitation.

The Commission has come across several incidents of suicide involving not only females but also males. We were very sad to find out that a mother of twins committed suicide a few weeks before the scheduled inquiry into the disappearance of her husband. Her husband as well as her father had been abducted by the security forces and both had disappeared subsequently. In a letter written to the Commission earlier, she pleaded: "You will be blessed, if you can find my husband," In another case, an Engineer (a son of an agricultural labourer) was abducted and disappeared subsequently. His father drowned while picking lotus for pooja, and then his younger son also committed suicide.

Sri Lanka in the recent past has undergone several traumatic experiences – two insurrections in the South and three Ealam wars-with disastrous consequences on the social psyche of the nation. People take it for granted that our culture is capable of absorbing all these shocks. Culture has its own limits. We saw how emotionally shattered people were when they came before the Commission. We spotted several witnesses who urgently need emotional help.

We recommend that the educational Services and health Services plan out and put into operation a scheme for the sensitization of all their personnel to the need to be alert to this aspect; 2) and to setting up of a referral scheme whereby affected children or adults needing attention may be referred to the counselling services; 3) to mobilise the mass media to make the public aware of the emotional aspects of this phenomenon, including the likely repercussions to the society as a whole, if these aspects continue to remain unaddressed.

CHAPTER 6

NATIONAL RECONCILIATION

Human Rights are EVERYBODY'S rights

The public perception of: "They compensated their fellows: now you are compensating yours" has to be eradicated wholly.

The following recommendations are based on these principles.

THE MANIFESTATION OF THE REQUISITE POLITICAL WILL by the re-affirmation of the state's commitment to human rights, the re-affirmation of the right to peaceful dissent, Free and Fair Elections being held at regular periods, and the commitment to over-all development irrespective of race, caste, religion or region are an essential and integral part of national reconciliation to which Your Excellency has already committed the state and our people.

THE PAYMENT OF COMPENSATION by the state as an acknowledgement of state responsibility, to all bereaved families irrespective of the race or political affiliation of the disappeared person, with supportive services for the education of children, vocational training for youth and emotional rehabilitation, being part of the compensation, is essential for national reconciliation,

THE PROSECUTION OF PERPETRATORS' OF BOTH SIDES, subject to an Amnesty for persons who confesses to human rights violations to this Commission within a stated period of time, is also essential for national reconciliation.

Finally, we recommend the erection of a "Wall of Reconciliation whereon are inscribed the names of all who have disappeared or died in this tragic period of our country's history".

Your Commissioners consider this recommendation to represent a very important aspect of national reconciliation. This Memorial Wall which will contain names denoting all sections of the Sri Lankan people, will be a symbol of our essential unity to future generations, a place to which everyone in this country could come and pay respect to those lost to us.

CHAPTER 7

THE DANGERS ATTENDANT ON A DELAY IN THE REALISATION OF EXPECTATION

Ours is a commission of Inquiry.

The afflicted are fed-up with Inquiries + No follow-up. The case of the Embilipitiya School-body: Nine inquiries held (See annexure) is an example.

It is Imperative, therefore, to take meaningful steps now.

National Reconciliation requires this.

CHAPTER 8

SUMMARY OF RECOMMENDATIONS

1. Interpretation of the Terms and Scope of the Mandate

Recommendation

1. Enlargement of Mandate to cover period 1984 to 87.
2. The inclusion of a preclusive clause, ruling out judicial review of proceedings before the commission, in the Commissions of Inquiry Act.
3. The inclusion of a provision similar to Sec: 18B of the Special Presidential Commission of Inquiry (Special Provisions) Law No. 4 of 1978, in the Commission of Inquiry Act.

2. The Nature of the Destruction Disclosed by the Evidence and the Measures Necessary for the Prevention of Recurrences in the Future

1. Disciplinary Action, including legal action, against miscreants.
2. (i) Requisite Qualifications for police officers and grama Sevakas to be identified; (ii) Promotions to be on the basis of (i) above + past performance; (iii) New Recruitments to be on the basis of (i) above.
3. Training Programme in investigations to be started immediately for police personnel.
4. A System of Police-Lay-Visitors' Panels to be instituted for each police area.
5. Citizens' Advisory Bureaus for each provincial Secretariat area.
6. The re-introduction of the "24-Hour-Rule" regarding police custody.
7. The enforcement of the requirement of a valid detention order in respect of every person in state custody.
8. Commissioner of Prisons to have over-all supervisory powers in respect of all places of detention.

3. The Investigation and Prosecution of Perpetrators

1. The agency of investigation to be—
 - (i) the civil investigative arm of the state, always;
 - (ii) the special Investigation Unit of the Police to handle complaints v. Police Officers.
2. Jurisdiction to be with the Courts always.

3. The treatment of suspects until the conclusion of the inquiry/case to include:

- (i) The transfer out of the area of the officer concerned;
- (ii) Interdiction until the end of the inquiry/case;
- (iii) Suspension of eligibility to promotion to be automatic.

4. The protection of witnesses by:

- (i) an amnesty be declared for persons confessing to Human Rights violations to this Commission.
- (ii) Immunity from Prosecution.

4. Relief Measures

- 1. The payment of compensation to be without any political discrimination.
- 2. The introduction of a new tax, on the lines of the Defence Levy, to generate adequate funds for the payment of fair and adequate compensation.
- 3. The public sector be instructed to do away with the requirement of a clearance certificate from the police.
- 4. A scholarship Programme for school-going children of missing persons, to be integrated into the existing scholarship programmes administrated by the Ministry of Education.
- 5. The provision of vocational training to the Heads of female-headed families and youth in families of missing persons, through their integration into general training schemes provided by the Government.

6. For the purpose of Emotional Rehabilitation we recommend:

- (i) The Educational Services and Health Services plan out and put into operation a scheme for the sensitization of all their personnel to the need to be alert to this aspect;
- (ii) and to setting up of a referral scheme whereby affected children or adults needing attention may be referred to the counselling services;
- (iii) to mobilise the mass media to make the public aware of the emotional aspects of this phenomenon, including the likely repercussions to the society as a whole, if these aspects continue to remain unaddressed.

5. National Reconciliation

- 1. The erection of "A Wall of Reconciliation" whereon are inscribed the names of all who have disappeared or died in this tragic period of our country's history.
- 2. The above is in addition to:
 - 1. The manifestation of the requisite political will by the re-affirmation of the right to peaceful dissent, to free and fair elections, and the commitment to over-all development.
 - 2. The payment of compensation by the state as an acknowledgement of state responsibility;
 - 3. The prosecution of perpetrators subject to an amnesty for those conferring to Human Rights Violations.
 - 4. Meaningful steps to be taken immediately in respect of the above steps.

INTERIM REPORT III — MARCH 1996

1. Your Commissioners have pleasure in presenting to Your Excellency our report in respect of 4,000 cases inquired into by us in the period 10.03.95—03.03.96
2. The break-down District-wise of these cases is depicted below, also our findings in respect of them on the issue of whether an involuntary disappearance is proved.

CHART I

Cases Inquired Into

District	No. of Cases Inquired	No. where 'Disappearance Proved'
Colombo	640	640
Gampaha	763	644
Kalutara	376	322
Galle	192	182
Matara	843	729
Hambantota	474	420
Ratnapura	467	415
Kegalle	245	229

- 2.1 The 4,000 cases inquired into represent roughly half of the petitions received by us to date.
3. The following particulars in respect of the 4000 cases that form the subject of this report will be found in Schedule I. (Provisional list Attached).

Column No.	1	2	3
Title :	Name of Victim	Address	GN Division
Column No.	4	5	6
Title	Sex	Date of birth	NI Card No.
Column No.	7	8	
Title	Date of Disappearance	Complainant's Name and Relationship	
Column No.	9	10	
Title	Disappearance Proved	Compensation Paid	
Column No.	11		
Title	Immediate Compensation necessary/Scholarship are Required/Vocational Training/Legal Advisory Services		

4. This Report is further to our Second Interim Report, and should be read in conjunction with it. The 1003 cases which formed the basis of the statistical presentation in the Second Interim Report are included for consideration in the 4,000 cases that are the basis of this Report. Our observations and recommendations in our 2nd Interim Report have gained added relevance with the weight of evidence in the cases inquired into.
5. This Report covers cases where the nature of the crime may be classified as :
 - (i) Abducted/arrested and subsequently disappeared ;
 - (ii) Abducted/arrested and killed ;
 - (iii) Released from detention, subsequent abduction and disappearance ;
 - (iv) disappeared involuntarily without prior arrest or abduction ;
 - (v) Killed on the spot;
 - (vi) Any other.
- 5.1 Cases of Involuntary removal not resulting in disappearance inquired into by this Commission will be considered in our Final Report.
- 5.2 All the cases of Death/Disappearance at the hands of subversives reported to us to date have been inquired into and these cases form part of the 4,000 reported on here. Such cases, 348 in number constitute 8.70% of the 4,000 inquired into to date.
6. The names of the Disappeared in Schedule 1 are listed alphabetically under Grama-Niladhari Division of permanent residence, within the relevant Province and District, in the hope that Your Excellency will make this information available at Grama Niladhari and Divisional Secretariat levels in order to facilitate the issue of Death Certificates so that our findings may be reflected in the main-stream documentation of this country as soon as possible.
 - 6.1 The Normalisation of Public Administration in respect of the maintenance of records is required if the people are to feel a return of normality to their lives.
 - 6.2 A feature that struck us most forcefully in our year's inquiries was the utmost care that has been taken not only by individual perpetrators, but by the system itself, to prevent these occurrences from being reflected in the official records of the country. Starting with the refusal of the local police to record complaints – which was a general feature in all 3 Provinces, through the blatant use of vehicles without number-plates, right upto the refusal to allow the bereaved to take possession of corpses identified by them let alone obtaining Death Certificates in respect of them, there is clear evidence of a conspiracy to keep these deaths/ disappearances from being recorded on the official annals of this country. The sooner this is rectified, the better.

7. Our inquiries have revealed the great extent to which urgent assistance is required to avert the irrevocable ruin of bereaved families. The availability of our findings at Grama Sevaka and District Secretariat level, will assist the execution at local-level of decisions taken at national-level with regard to the rehabilitation of the bereaved families, both emotional and economic rehabilitation. Instances where the need for such services was very apparent from the evidence lead at our inquiries are recorded at column 11 of the Schedule to this Report by way of examples.
8. We are appalled at the evidence emanating from our inquiries of base-less hopes still entertained by many with a consequent inability to come to terms with the reality of disappearance. While the issue of Death Certificates is an important step towards the emotional rehabilitation of the bereaved survivors, the re-establishment of community support the – counselling services on the lines recommended in our 2nd Interim Report (chapter 5, Section 4 page 44) must follow.
9. The urgent need to take steps to avert the children of bereaved families falling out of the safety-net of Free Education has been drawn attention to already by our 2nd Interim Report. These families are already economically marginalised ones. Functional illiteracy will again become a feature of the village of the South if the wherewithal to enable children of these families to continue their education without disruption is not forthcoming.
- 9.1 A scholarship scheme on the lines of the scheme operative in respect of children of deceased soldiers' families is advisable.
10. Vocational Training for School-leavers, identified already as a national need, is specially relevant in the context of bereaved families. For economic and emotional rehabilitation, and even more in order to avert the coming into existence of a powder-keg to be set alight in the next round of youth unrest. Special attention has to be paid to including the youth of these bereaved families in existing courses of vocational training.
- 10.1 It is hoped that the identification of such needs will form part of the training given to Samurdhi Niyamakas under the new Samurdhi Scheme.
11. Sri Lanka may well be figuring amongst countries with the highest number of female-headed families in proportion to its population. The evidence before us in case after case revealed how these women end up the most exploited in our society.
- 11.1 Acknowledgement of this new phenomenon requires to be mainstreamed both in the government and non-government sectors, for the requisite assistance to be forthcoming.

12. The provision of Legal Advisory Services at Divisional Secretariat level, a recommendation of our 2nd Interim Report, (page 29) is a need further underlined by the evidence at our inquiries.

Problems in connection with Employment rights Property rights Bank Loans, Insurance are some categories in respect of which petitioners have sought the commission's assistance. Chart 2 below given some figures on this.

- 12.1 Such a Service would be of benefit to the whole community, of course. CHART 2

LEGAL ADVISORY SERVICES REQUIRED

DISTRICT	CMB	GMP	KLT	GAL	MTR	HMB	RTN	KGL	TOTAL
Property Related Problems	32	60	12	7	26	21	16	17	191
Employment Related Problems	63	71	27	6	27	14	11	23	242
Insurance, Bank Loans, Housing Loans etc.	21	29	8	2	14	9	10	7	100
Inheritance and Succession	9	7	5	5	2	2	2	3	35
Civil Status	1	2	0	0	4	2	3	1	13
Recovery of Compensation	115	149	95	46	150	78	83	64	780
Others	36	57	13	4	34	15	15	20	194
Total	277	375	160	70	257	141	140	135	1555

13. Finally, on the issue of Compensation:

- 13.1 The REPIA scheme (Rehabilitation of Persons Properties and Industries Authority) operated under the previous government excluded families whose bereavement was not at subversive hands. An unacceptable category which may be termed "Terrorists-by-Relationship" was thus created, and excluded from benefits under the scheme.

- 13.2 Our inquiries have clearly revealed the similarity of the plight bereaved families were reduced to, irrespective of whether their loss was at the hands of subversives or of the State. There is no ground whether in justice or in logic for this distinction.

13.3 Payment of Compensation/ Pension Rights to Public Servants deserving special compensation

In Our Interim Report submitted to your Excellency in July 1995, we had pointed out the urgent need to revoke a cabinet decision made by the previous government which has resulted in an endemic discriminatory practice in respect of payment of compensation. The cabinet decision made on November 22, 1989, reads as follows :

"The Cabinet was informed that claims for compensation were made even in respect of dead terrorists on the basis that they were killed due to terrorist action. It was decided that when considering claims for compensation on deaths due to terrorist action, care should be exercised to exclude terrorists being paid compensation."

This cabinet decision to exclude "terrorists" from the compensation scheme had an impact on determining compensation not only to the general public but also to public servants. Unfortunately, this cabinet decision remains valid even under the present government. During the sittings of our Commission, we came across several cases of public servants where families have been unable to claim any compensation or pension rights for the past several years. It has been the practice that when an application for compensation/pension benefits is made, the relevant authority would ask the applicant to produce a clearance certificate from police to ascertain whether the missing person was engaged in terrorist activities. This requirement has placed both the affected family and the police officers in a difficult situation. The fact of disappearance has created a stigma of terrorist connections, and as such, it is difficult for the police to certify the missing person's innocence in a situation like the one that prevailed several years ago.

We would like to reiterate that all the missing persons were not subversives, and some were wrongly identified as such. Even if they were subversives, it is morally incorrect to victimise the innocent members of their families. The discriminatory practise introduced by the 1989 cabinet decision cannot be justified in any way as it amounted to a segregation of a certain section of the society as "terrorists by relationship."

In order to correct this wrong, we respectfully request Your Excellency to revoke the 1989 Cabinet Decision. This would also amount to satisfying one of the election pledges made in the PA Manifesto that the new government will "pay compensation without any political discrimination on behalf of those who have disappeared, been tortured or lost property." As an immediate measure, we appeal to your Excellency to give necessary instruction to the public sector and state institutions to do away with the requirement of police clearance regarding the payment of compensation and granting of pension rights.

13.4 "Property Compensation" was another category of loss for which compensation was paid under the REPPIA scheme. Chart 3 below is particularly significant evidence of inequity. While Rs. 3,283,272 is the total of the amounts given to 22 persons under "Property Compensation-Special Categories", and Rs. 10,472,905 is total of the amount given to 130 persons under "Property Compensation-Government Servants", our experience from our inquiries is that a number of persons had their dwelling houses completely destroyed during the relevant period but received no compensation for loss. (REPPIA has reported to this commission that the number of applications in respect of damage to houses received by them to date is 1500) This includes some families who have received compensation in respect of a death/ Disappearance at subversive hands. In pecuniary terms these houses, often cadjanthatched wattle and daub huts, may not be worth much, but they are the only homes and their contents the only possessions, of the bereaved. There is irony in the reflection that this destruction, hitherto unacknowledged, was taking place alongside a State-sponsored Project to Build a Million Houses.

CHART 3

I. PROPERTY COMPENSATION SPECIAL CATEGORIES

District	Number of Applications Received	Number of Applications Paid	Amount Paid-Rs.	Number of Applications Pending	Amount Required Rs.
Colombo	12	20	195,000	—	—
Gampaha	4	3	572,000	—	150,000
Kalutara	6	6	1,683,742	—	—
Galle	1	1	180,000	—	—
Matara	10	5	180,030	5	750,000
Hambantota	4	2	250,000	2	300,000
Kegalle	2	2	162,500	—	—
Ratnapura	2	1	60,000	1	150,000
TOTAL	31	22	3,283,272	9	1,350,000

SOURCE REPIA

2. PROPERTY COMPENSATION—GOVERNMENT SERVANT

District	Number of Applications Received	Number of Applications Paid	Amount Paid-Rs.	Number of Applications Pending	Amount Required Rs.
Colombo	24	19	1,493,250	5	375,000
Gampaha	—	—	—	—	—
Kalutara	25	21	1,267,975	4	300,000
Galle	20	13	1,044,660	7	525,000
Matara	50	44	4,440,350	6	450,000
Hambantota	33	24	1,305,570	9	675,000
Kegalle	9	7	668,000	2	150,000
Ratnapura	7	5	252,900	2	150,000
TOTAL	168	133	10,472,905	35	2,625,000

SOURCE REPIA

INTERIM REPORT OF THE COMMISSION OF DISAPPEARANCES IN WESTERN ZONE

13.5 The payment of compensation to bereaved families under the present government commenced in December 1995 with the payment of compensation in respect of 500 persons in the Matara District of the southern Province.

13.5.1 These payments were in respect of Deaths or disappearances.

13.5.2 The identification of the cases for payments on that occasion was made at the Regional Secretariat level. Evidence lead at our inquiries revealed that among the deaths/disappearances compensated for figured persons of all political inclinations in the wide array available in our country.

13.5.3 The Agency used was REPIA; and the scales were those already operative under their schemes viz; Rs. 50,000 in respect of a married person; Rs. 25,000 in respect of a single adult ; Rs. 15,000 in respect of a minor.

13.5.4 There were no payments in respect of loss of property.

14. As an acknowledgement by the community that a wrong has been done, we commend the practice of payment of compensation in respect of all categories of disappearances.

14.1 However, the payment of Compensation cannot in any way be considered to be a substitute for the kind of assistance outlined in the paragraphs above and in column 11 of Schedule I. It was amply evident from the evidence lead at our inquiries that those services were required independent of the payment of compensation.

15. This Report has concentrated on what may be termed "Welfare" aspects. We have done so in the conviction that the sooner these aspects receive attention, the sooner will commence the requisite process of healing at the personal level, and reconciliation at the national-level.

15.1 We would emphasise, however, that we have been mindful at all times of your mandate to us, and it is only once we were satisfied that a disappearance in terms of mandate had occurred that we have looked to issues of rehabilitation.

16. Our findings of "Disappearance Proved" in respect of nearly 4,000 cases raises the fundamental issue of "Penal Responsibility" we shall address that issue in our next Report to Your Excellency.

17. In conclusion, we wish to state on the basis of experience gained at our inquiries, that Your Excellency's decision to appoint Commissioners of Inquiry into Involuntary Disappearances stands completely validated.

18. The provision of a guarantee of immunity in respect of witnesses own abuse of human rights.

Our inquiries have revealed the existence of witnesses who are reluctant to come before us to divulge what would be valuable information on 'how the system works' in the absence of a guarantee of immunity for prosecution in respect of their own abuses. Such a principle of immunity already exists in our legal system in respect of a person implicated in a crime who agrees to divulge all he knows as a witness for the prosecution in exchange for the withdrawal of charges against him.

Over and above this 'legal' consideration there exists the moral and ethical consideration which is fundamental to the re-establishment of a society based on Respect for the Rule of Law. This requires the participation of erstwhile wrongdoers in the process, whether they were in the security services, political organisations of any other. An essential requisite for the re-establishment of Respect for the Rule of Law is the eradication of the 'System' that enabled thousands of these deaths and involuntary disappearances to go unpunished, and even unacknowledged.

19. It is our duty to draw attention to the fact that there are 4106 cases more still to be inquired into. A break-down of these cases District-wise is shown by Chart 4.

CHART 4

Cases Not Inquired into upto 03.03.96

District	No. of Cases Not Inquired
Colombo	180
Gampaha	232
Kalutara	482
Galle	369
Matara	1174
Hambantota	976
Ratnapura	413
Kegalle	280

Madam Manouri Muttetuwegama,
Chairman.

Prof. Amal Jayawardena,
Member.

Jayantha De Almeida Gunaratne Esqr.,
Member.

INTERIM REPORT IV—NOVEMBER 1996

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Room No. 4-103, Bandaranaike
Memorial International Conference Hall,
Baudhaloka Mawatha, Colombo 07.

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My No.

Special Interim Report

Secretary to the President,
Presidential Secretariat,
Colombo.

REGISTRATION OF DEATHS (TEMPORARY PROVISIONS)
ACT NO. 2 OF 1995

The validity of the above Act ends on 04.01.97.

I am sending herewith the statistics obtained from the 93 Divisional Secretaries in the three Provinces within the mandate of this Commission pertaining to applications received for Death Certificates and the number issued so far.

1. No. of disappearances reported to the Commission — 8380
2. No. of applications received by Divisional Secretaries for Death Certificates — 6664
3. Number issued so far — 4035
4. Balance to be issued — 2629

(A detailed summary is sent herewith)

It is very unlikely that the Divisional Secretaries would be able to issue the balance Death Certificates before 04.01.97.

The Death Certificate is a very vital document for the dependents of persons disappeared. It is also a pre-requisite for the payment of compensation.

- We recommend :
1. Action to extend the validity of the above Act be expedited.
 2. A programme to educate the general public on the provisions of the Act be instituted via the Media in all three national languages.

Mrs. Manouri Muttetuwegama
Chairman

- Annexures — 1. Summary of Divisional Secretaries reports on the issue of Death Certificates.
2. Instructions issued by the commission to facilitate the issue of Death Certificates.

REGISTRATION OF DEATHS

(TEMPORARY PROVISIONS) ACT NO. 2 OF 1995

District	Serial No.	Divisional Secretariat	No. of Applications received	No. Registered up to
Colombo	1	Colombo	50	26 27.08.96
	2	Kaduwela	39	30 03.09.96
	3	Dehiwala-Mt.Lav.	20	16 26.09.96
	4	Moratuwa	12	06 13.08.96
	5	Kolonnawa	21	03 13.08.96
	6	Nugegoda	24	18 04.09.96
	7	Maharagama	36	11 12.09.96
	8	Homagama	38	37 13.08.96
	9	Kesbewa	45	33 22.08.96
	10	Hanwella	11	10 13.08.96
Gampaha	11	Gampaha	72	44 04.09.96
	12	Minuwangoda	82	20 10.09.96
	13	Ja-Ela	78	69 10.09.96
	14	Wattala	30	26 03.09.96
	15	Dompe	35	31 21.08.96
	16	Mahara	10	05 14.08.96
	17	Kelaniya	42	14 16.08.96
	18	Divulapitiya	85	53 15.08.96
	19	Katana	60	20 19.08.96
	20	Mirigama	97	55 15.08.96
	21	Attanagalle	59	13 18.09.96
	22	Negombo	27	03 11.09.96
	23	Biyagama	36	24 29.08.96
Kalutara	24	Kalutara	135	76 26.08.96
	25	Panadura	71	29 14.08.96
	26	Beruwala	119	48 18.09.96
	27	Bandaragama	24	17 14.08.96
	28	Horana	46	26 24.09.96
	29	Dodangoda	47	15 22.08.96
	30	Matugama	56	02 19.08.96
	31	Bulathsinghala	44	13 13.08.96
	32	Walallawita	49	42 19.08.96
	33	Agalawatta	98	65 20.08.96

Annexure—I

District	Serial No.	Divisional Secretariat	No. of Applications received	No. Registered up to
Galle	34	Galle	13	08 25.09.96
	35	Thawalama	09	— 23.09.96
	36	Niyagama	25	18 19.08.96
	37	Ambalangoda	13	04 13.08.96
	38	Karandeniya	123	90 09.09.96
	39	Elpitiya	39	28 16.08.96
	40	Neluwa	20	11 27.08.96
	41	Nagoda	21	17 06.08.96
	42	Balapitiya	22	14 29.08.96
	43	Hikkaduwa	34	12 14.08.96
	44	Akmeemana	07	02 23.08.96
	45	Bentota	30	16 13.08.96
	46	Bope-Poddala	07	04 14.08.96
	47	Habaraduwa	57	22 20.08.96
	48	Baddegama	31	05 14.08.96
	49	Yakkalamulla	44	29 15.08.96
Matara	50	Matara	132	83 17.08.96
	51	Welligama	55	46 21.08.96
	52	Kamburupitiya	180	174 16.08.96
	53	Hakmana	146	131 23.08.96
	54	Pasgoda	136	132 12.09.96
	55	Kotapola	193	161 02.10.96
	56	Malimbada	63	57 14.08.96
	57	Akuressa	311	164 21.08.96
	58	Dickwella	305	258 19.08.96
	59	Thihagoda	123	100 16.08.96
	60	Mulatiyana	283	254 31.08.96
	61	Devinuwara	184	152 12.09.96
Hambantota	62	Hambantota—Suriyawewa	60	19 05.09.96
	63	Tangalle	89	79 12.09.96
	64	Ambalantota	209	74 30.08.96
	65	Weeraketiya	297	200 29.08.96
	66	Tissamaharamaya	216	112 02.09.96
	67	Katuwana	131	93 03.09.96
	68	Angunukolapalassa	173	01 27.09.96
	69	Beleatta	201	53 06.09.96
	70	Lunugamwehera	120	74 04.09.96
			45	22 14.08.96

District	Serial No.	Divisional Secretariat	No. of Applications received	No. Registered up to
Kegalle	71	Aranayake	23	13 14.08.96
	72	Dehiowita	73	53 19.08.96
	73	Deraniyagala	38	11 21.08.96
	74	Galigamuwa	24	07 20.08.96
	75	Kegalle	16	01 20.08.96
	76	Mawanella	58	13 02.09.96
	77	Rambukkana	65	29 21.08.96
	78	Ruwanwella	20	20 13.08.96
	79	Warakapola	14	13 16.08.96
	80	Yatiyantota	20	17 13.08.96
Ratnapura	81	Ratnapura	07	— 21.08.96
	82	Kuruwita	25	10 26.08.96
	83	Eheliyagoda	03	01 15.08.96
	84	Nivitigala	03	— 21.08.96
	85	Ayagama	02	01 20.08.96
	86	Pelmadulla	10	10 27.08.96
	87	Godakawela	23	04 08.09.96
	88	Imbulpe	15	07 13.08.96
	89	Kalawana	08	01 12.08.96
	90	Weligepola	23	19 16.08.96
	91	Balangoda	44	41 14.08.96
	92	Kolonna	28	22 11.09.96
	93	Embiliptiya	187	47 23.08.96

ISSUING OF DEATH CERTIFICATES

Up to 31.08.96

Province	District	No. of applications received	Number issued
Western	Colombo	304	201
	Gampaha	713	357
	Kalutara	689	333
Southern	Galle	495	280
	Matara	2216	1797
	Hambantota	1541	727
Sabaragamuwa	Kegalle	355	163
	Ratnapura	351	177
	TOTAL	6664	4035

Annexure—II



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PRESIDENTIAL COMMISSION OF
INQUIRY

into Involuntary Removal or Disappearance
of Persons in Western, Southern and
Sabaragamuwa Provinces

පුරකථන අංකය/තෙවළපිශී ඩිල./Telephone No. : 683538; Fax- 697420

මුද්‍ර අංක 2-103.

බණවාරකායක ආස්ථාරණ ප්‍රාග්‍රහණ
සම්බන්ධ ගාලුව. කොළඹලෝක තාවත.
කොළඹ 07.

අංක 2-103,

පණ්ඩාරනායක ත්‍රාපකාර්ත්ත, සර්වජ්‍ය
මානාංශ මණ්ඩපම, පෙනත්තාලොක
මාවත්තත, කොළඹ 07.

Room No. 2-103, Bandaranaike
Memorial International Conference Hall,
Buddhaloka Mawatha, Colombo 07.

මගේ අංකය
වෙතු ඕව. | බිජිල්වී එස්ට්‍රේ/
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..... මයාගේ අනුරුදුහන්වීම

මහතමයාන්තී/මහතම්යාන්,

මෙම විසින් එවත ලද 1996 දිනැති ලිපිය
ලැක්කීම්.

මරණ සහතිකයක් ලබාගැනීම්/ වන්දී මුදලක් ලබාගැනීම සම්බන්ධයෙන්
කරුණාකර පහත දක්වා ඇති උපදෙස් අනුව කටයුතු කරන්න.

මෙයට, කොළඹමේ අනුපරිදි,

ලැක්මී

අනුරුදුහන්වී කෙනෙකුගේ මරණ සහතිකයක් ලබාගැනීම සඳහා උපදෙස්

මෙය ලබාගත යුත්තේ මියකිය අය අවසන්වරට පදිංචි ව සිටි දිස්ත්‍රික්කයේ
උපැඪුන්ත සහ මරණ උපයාපදිංචි කිරීමේ රෙකිජ්ට්‍රාර ගෙනි. එම කාර්යාලයක් ඔබ
පදිංචි ප්‍රදේශයේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ඇත. ප්‍රාදේශීය ලේකම් මූණෑයි ඒ
සඳහා ඉදිරිපත් කළයුතු පියවිලි ඉල්ලා ගත්ත. එන්ම ඉන්පසු කළයුතු දේ පිළිබඳව
උපදෙස් දෙනු ඇත. ඉතා ඉක්මණිනම මරණ සහතිකය ලබාගැනීමට කටයුතු
කරන්න.

බලවත්සේ විවෘත පත්‍රවත් සඳහා සහනාධාර

අනුරුදුහන්වී අය වෙළුවත් සහනාධාර තුමයක් පුහුරුත්ථාපන අමාත්‍යාංශය
යටතේ ඇත. ඔබ මෙතෙක් එම ආධාර මුදල ලබාගෙන තැන්තාම්, ඔබ ප්‍රදේශයේ
ප්‍රාදේශීය ලේකම් හමුවේ අවශ්‍ය ඉල්ලුම් ප්‍රතියක් සම්පූර්ණ කර බාරදෙන්න. මෙම
සඳහා මරණ සහතිකය ලබාගෙන තිබීම අවශ්‍යය.

