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Sri Lanka: ICJ inquest observer finds flaws in investigation into killing of ACF aid workers

The International Commission of Jurists (ICJ) today released the report of its observer of the inquest into the killings of 17 aid workers in Sri Lanka in August last year. Senior British barrister, Michael Birnbaum QC, found significant flaws in the investigation carried out by the local police and the Criminal Investigation Department (CID).

The report recommends the establishment of a team independent of the police and security forces to investigate this crime, to identify the perpetrators and to report to the Attorney-General, who should then ensure that those responsible are prosecuted. The ICJ also recommends the establishment of a comprehensive witness protection programme.

In the first week of August 2006, 17 aid workers of *Action Contre la Faim* (ACF) were shot dead at close range in the grounds of the ACF office in Muttur, Sri Lanka. The killing took place in the aftermath of a battle for control of the town between the security forces of the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). To date, the CID has not identified the perpetrators of this crime.

The ICJ's observer based his report on his observation of inquest proceedings in Kantale in November 2006 and March 2007; analysis of court records, police reports and forensic reports; and meetings with both Magistrates who heard the inquest, the CID, the Secretary to the Ministry of Justice and Law Reforms, and the lawyer for the families of the victims, amongst others. The report examines in detail the police investigation into the killings and the course of the inquest proceedings.

The ICJ acknowledges the inherent difficulty of investigating serious crimes such as these killings, particularly in the context of a violent armed conflict and that the CID's investigation is continuing.

Nevertheless, the observer identifies evidence of a disturbing lack of impartiality, transparency and effectiveness of the investigation to date, including the following:

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- Official police reports indicate that from the outset, prior to any investigation, the police had decided that the LTTE were responsible for the killing.
- Collection of evidence has been incomplete and inadequate. In particular, the CID has not interviewed any member of the Sri Lankan security forces, nor any Tamil, apart from the family members of those killed.
- There are a number of unanswered questions as to the finding, description and transmission of the ballistic exhibits. The observer made a detailed analysis of the relevant documents and reports and found many apparent inconsistencies. Concern is raised regarding the failure of police to obey certain orders made by the second Magistrate, in particular an order that the ballistics exhibits should only be opened in the presence of an Australian expert.

On 4 September, the Judicial Service Commission (JSC), via the Secretary to the Ministry of Justice and Law Reforms ordered the Muttur Magistrate, who had already conducted three hearings in the inquest, to transmit the case to the Magistrate of Anuradhapura. The ICJ observer found no provision in Sri Lankan law that could justify the substitution of one magistrate for another, especially at such an advanced stage in the inquest proceedings. The substitution amounted to an unwarranted interference in the proceedings and was not in accordance with international standards.

The observer found that both magistrates had conducted the inquest with sensitivity and fairness and that the improper substitution did not compromise their independence and impartiality.

The ICJ is making a number of recommendations elaborated in the report, including that the Government of Sri Lanka should:

- establish a team of investigators independent of the police and security forces to investigate this crime and identify the perpetrators;
- establish a witness protection programme that could include provision of protection by security personal not associated in any way with the Sri Lankan police or military, use of pseudonyms for witnesses, evidence given *in camera*, evidence given via video link, relocation of witnesses, including the possibility of relocation outside of Sri Lanka;
- seriously consider reforms of the criminal justice system to ensure impartial and effective investigations and independent decisions as to prosecution.

The report also makes recommendations to the Presidential Commission of Inquiry (CoI), appointed in November 2006 to look into 15 specific past human rights violations including the ACF killings, regarding witnesses it may wish to call and lines of enquiry that could be pursued.

The ICJ urges the GoSL to ensure that whatever the outcome of the CoI, every effort is made to identify and to prosecute those responsible for the killings through the criminal justice system.

The ICJ expresses its condolences to the families, friends and colleagues of the victims.

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