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Sri Lanka: ICJ calls for justice as inquest into killing of 17 aid workers concludes

Following the conclusion of the official Magistrate's inquest into the killing of 17 aid workers in Muttur last August, the International Commission of Jurists (ICJ) today called for a prompt, independent and thorough investigation by a body that has the trust of all Sri Lankans and for those responsible to be brought to justice.

"The inquest Magistrate has pointed out flaws in the investigation so far and indicated the next steps in the investigation", said Michael Birnbaum (Queens Counsel), the ICJ's official observer at the inquest hearings.

"The Sri Lankan Government needs to dispel serious concerns about whether the justice system is now able to carry out independent and credible investigations into who was responsible for these killings and to mount effective prosecutions", added Michael Birnbaum.

"The Government should entrust the investigation to a national body that has the trust of all Sri Lankans and if that is not possible, then the Government should look elsewhere for assistance in the investigation," he added.

The ICJ supported the Magistrate's ruling that the investigation of the case had been inadequate. "I believe it was right for the Magistrate to order that the Criminal Investigation Department (CID) should seek the assistance of Australian expertise to reinvestigate the ballistics evidence", said Michael Birnbaum.

"I am particularly concerned that despite a Memorandum of Understanding between the Governments of Sri Lanka and Australia, whereby Australian experts would assist in the analysis of bullets found at the scene and recovered from the bodies, the CID has unilaterally arranged the ballistics examination", added Michael Birnbaum. "Involvement of independent, outside experts would have helped to allay any suspicion of tampering with evidence – an issue which has been raised in at least one other similar case".

The ICJ expressed its condolences to the relatives of the *Action Internationale Contre la Faim* (ACF) workers killed in Muttur. "This is an appalling atrocity. These brave people were seeking to help the local population. The killers could not have been in any doubt about who they were executing. The premises were clearly marked as those of ACF and most of the victims wore its

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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distinctive T-shirts. Yet, they were made to lie down on the ground and were shot in the head. Their families are entitled to justice – this means not only the identification and prosecution of those responsible, but also financial and other compensation”, said Michael Birnbaum.

A remarkable feature of the inquest was that it was heard by two different magistrates. The first was the magistrate of Muttur, himself a Tamil. On 4 September 2006, he received a telephone call from the Ministry of Justice notifying him that on the instructions of the Judicial Services Commission (JSC), he was to send the file to the Anuradhapura Magistrate who would continue the inquest.

Michael Birnbaum commented: “To appoint a new magistrate to hear a case that is well under way is virtually unprecedented. In my view, this mid hearing substitution of magistrates by the JSC was unlawful under Sri Lankan law and without justification. Worst of all, the way it was done might well undermine the confidence of the Tamil minority in the system of justice”.

However, Michael Birnbaum paid tribute to the sensitivity and fairness with which the two magistrates handled the case. The improper action of the JSC had not, in fact, compromised their independence and impartiality.

The ICJ welcomed the Magistrate’s order that further steps should be taken to protect the identity of the witnesses who are willing to come forward with additional evidence and also residents living near the crime scene.

“Fear is the enemy of justice. Unless the Government of Sri Lanka implements a witness protection programme, witnesses will rarely come forward in any case where they feel themselves to be in peril. Measures that should be considered include: the use of evidence by video link, the physical protection of witnesses by a body independent of the police and army, and the temporary or permanent relocation of particularly vulnerable witnesses”, said Michael Birnbaum.

The ICJ acknowledges the establishment of a Presidential Commission to enquire into a number of recent serious human rights violations, including the killing of the 17 ACF aid workers. The Commissioners are to be assisted by a panel of foreign observers. Michael Birnbaum commented: “I hope that the Commissioners will be able to conduct independent and impartial investigations, implement a comprehensive witness protection programme and make full use of the expertise and advice offered by the international experts”.

“However, the Presidential Commission of Inquiry is outside the Sri Lankan justice system and will report only to the President. Its work should not delay the Government from moving swiftly to resolve the Muttur killings”, concluded Michael Birnbaum.

Background

In the first week of August 2006, 17 Sri Lankan employees of a French humanitarian non-governmental organisation, *Action Internationale Contre la Faim* (ACF), were killed in their office compound in Muttur. Sixteen of the victims were Tamil, four were women and one was Muslim. The incident occurred in the context of extreme hostilities in the area. At the end of July 2006, UNHCR reported that over 50,000 civilians were displaced due to the flare-up of violence in Muttur and its surrounding areas in Trincomalee, and an estimated 15,000 were trapped in Muttur and Eachchilampattu alone.

The inquest began in the Muttur Magistrate's Court and was later heard in the Anuradhapura Magistrate's Court following an order to appoint a new magistrate to hear the case in early September 2006. The inquest recommenced on 20 September in Anuradhapura, when the newly presiding magistrate ordered the next hearing to take place on 4 October, in Kantale. All subsequent hearings have taken place in Kantale.

Mr Michael Birnbaum QC visited Sri Lanka from 5 to 11 March 2007 and observed the final hearing in the inquest in Kantale Magistrate's Court on 7 March 2007. He last visited Sri Lanka in 2006 to observe the 22 November 2006 hearing of the inquest.

Mr Michael Birnbaum QC has practiced for over 35 years as a criminal barrister both prosecuting and defending including domestic and extradition work. For nearly 15 years he has sat, and continues to sit, as a Recorder (deputy judge). Mr Michael Birnbaum QC has conducted trial observations in Nigeria and Sierra Leone and written numerous opinions and *amicus curiae* briefs on human rights issues, including cases in the USA, India, Hong Kong, Malaysia, Sierra Leone and Nigeria. He frequently represents defendants appealing to the Judicial Committee of the Privy Council from Caribbean courts.

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