

The PA government, in fulfilling its election pledge, appointed in November 1994 three Commissions to inquire into 'disappearances' of people during recent political violence and other human rights violations. The two Commissions have already investigated a large number of alleged disappearances. The following comment is excerpted from AI's document "Sri Lanka, Time for Truth and Justice" (April, 1995).

COMMISSIONS INQUIRING INTO DISAPPEARANCES AI'S OBSERVATION AND RECOMMENDATIONS

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

An Amnesty International delegation visited Sri Lanka in early February 1995 and met with President Chandrika Bandaranaike Kumaratunga, several members of the government, members of the newly-established commissions and members of the PCIIRP and the Human Rights Task Force set up by the former government.

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

Interpretation of Mandate

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

Amnesty International believes that it is impossible to separate the occurrence of "disappearances" from the occurrence of extrajudicial executions in Sri Lanka. For example the fact that, at the height of the counter-insurgency operations in the south the bodies of people abducted at night by plainclothes men in unmarked vehicles were dumped by the side of the road or in fields, mutilated or burned beyond recognition,

illustrates how the commissions would have to investigate both violations in order to establish the full truth. The abduction in February 1990 of journalist and broadcaster Richard de Zoysa whose body was found the following day, also demonstrates the need to investigate both types of violations to get to the full truth.

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

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

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

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

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

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

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

Why Three Commissions?

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

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

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

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

A Public Report

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

"The truth must be *officially proclaimed* and *publicly exposed*. Public knowledge of the truth, following appropriate investigations, is an essential requisite for a policy that covers past human rights abuses because such a policy deals with a problem that affected not only individual victims but society as a whole... Hiding the truth perpetuates the actual suffering and indeed the violation of the rights of the relatives of the victims, when their fate is not known; it keeps deep resentments and it makes national unity and reconciliation more difficult. Moreover, hiding the truth allows the military or

other groups or institutions responsible for past abuses to escape the judgement of history and to insist on exculpatory versions of what happened: new recruits will absorb an institutional tradition which has not expunged its most objectionable aspects. All this can only weaken efforts to prevent the recurrence of human rights abuse and to reinforce the rule of law.

For all these reasons it is not sufficient that well-informed citizens have a reasonably good idea of what really happened. It is not enough either that the mass media or other sources disseminate the truth, however widely. The important thing is that the truth is established in an officially sanctioned way, in a manner that allows the findings to form part of the historical record of the nation and that establishes an authoritative version of the events, over and above partisan considerations.

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

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

Bringing the Perpetrators to Justice

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

To date, it is unclear how determined the government is to embark on the process of bringing to justice those responsible for past human rights violations. For instance, according to the *Daily News*, Colombo, of 15 October 1994, the Minister of Justice and Constitutional Affairs has stated that "[t]he government owes a duty to the parents and kith and kin to help them to ascertain the fate of their loved ones and offer some compensatory relief to lighten their misery". But he also reportedly stated: "It is not possible for us to embark on a futile and impossible task of apportioning blame". The President, on the other hand, has made a number of statements in which she has indicated that alleged perpetrators would be prosecuted. For instance, in an interview with the BBC on 17 October 1994, in response to a question put as follows: "Over the last few weeks there has been a spate of exhumation from mass graves from the time of the JVP uprising five years ago. Do you think it's a good idea to rake up the past in this way?" she stated: "Quite definitely yes. Because all civilised societies use punishment as the major method of prevention. And I think this kind of horrendous happenings have to be exposed even if we have to exhume, every one of them should be investigated, the culprits should be found if possible, and punished".

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

Compensation, Rehabilitation and Redress

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

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

Currently, a system is in force in Sri Lanka for people whose relatives have been killed to receive compensation. However, they first have to obtain a death certificate on the basis of which they can apply for compensation. A death certificate also allows families of "disappeared" people to qualify for relief, sort out pension payments, property rights, financial matters and so on. In the past, those relatives who wanted to obtain a death certificate faced considerable difficulties, par-

ticularly as any applications had to be supported by a police report. In any case, many relatives refused to make use of this procedure because they did not want to concede that their loved one was dead.

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

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

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

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

ON EDUCATION

*Dear Teacher,
I am a survivor of a concentration camp. My eyes
saw what no man should witness:
Gas chambers built by learned engineers.
Children poisoned by educated physicians.
Infants killed by trained nurses.
Women and babies shot and burned by high
school and college graduates.
So I am suspicious of education.
My request is:
Help your students become human, Your
efforts must never produce learned monsters,
skilled psychopaths, educated Eichmanns.
Reading, writing, arithmetic are important
only if they serve to make our children more
human.*

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