

ACCOUNTABILITY AND ITS IMPORTANCE

Impunity is perhaps the single most important factor contributing to the phenomenon of disappearance. Perpetrators of human rights violations...become all the more irresponsible if they are not held to account before a court of law.¹

In recent years international human rights enforcement strategies have come increasingly to focus on the need to impose direct legal accountability on the perpetrators of serious human rights violations. Such accountability is essential if basic rights are to be effectively protected and future violations prevented. It is the responsibility of governments to seek accountability regardless of whether the perpetrators are members of that government or its security forces, members of groups working under the control of those forces, officials of previous governments, or members of anti-government groups.

The issue of accountability for past abuses gained prominence in the 1980s as unprecedented global political change focussed attention on the crimes of ousted regimes. Accountability was closely tied to perceived trends towards democratization and to political upheaval. The overthrow of the Communist governments of Eastern Europe and the breakup of the Soviet Union have been by far the most dramatic political change of the decade. Elsewhere, civilian governments replaced military rule in Argentina, Brazil, Chile, Guatemala and Uruguay. The Marcos regime in the Philippines and Duvalier's rule in Haiti ended in the exile of the two dictators and hope, short lived in both cases, that human rights violations would cease. Nepal held its first multi-party election in thirty years and joined Taiwan and Korea in overturning entrenched and abusive governments. Political change in Guinea, Sudan and Uganda in the mid-1980s also held out the promise of increased respect for human rights.

Many new governments in the past decade have embraced human rights language and used it to denounce the abuses of their predecessors. In a few cases this interest in past violations led to real improvement in human rights policy. In most, implementation of plans to address accountability was stymied by a variety of political factors. In some, demands for accountability were used to purge the country of followers of the old regime and repression continued. As Jose Zalaquett pointed out in 1988, "A policy to deal with past human rights abuses should have two overall objectives: to prevent the recurrence of such abuses and to repair the damage they caused, to the extent that is possible. Other objectives, such as retribution or revenge,

cannot be considered legitimate.² Neither can acts designed to disable political opposition or curb public criticism by producing a scapegoat without the intention of truly ending abuses or fully investigating reports of violations.

Unlike most of the countries mentioned above, Sri Lanka has not experienced a dramatic change in its political system. It has enjoyed regular elections since it gained independence in 1948. But Sri Lanka has been torn by a decade long civil war, several militant insurgencies and brutal government anti-insurgency campaigns. Demands for accountability for past abuses are aimed squarely at perpetrators within the current administration and emanate from an angry citizenry, from human rights groups, and from Sri Lanka's donor nations. These donors, influenced by the sweeping changes in other regions, are exerting heavy pressure on the Sri Lankan government to address issues of accountability that usually emerge after a radical change of government.

Asia Watch recognizes the difficulties that governments may face in bringing members of their own forces to justice for violations of human rights, particularly in situations of extreme civil unrest, and the right of all governments to take measures to control civil strife. In implementing any policy of accountability the state must balance its undeniable obligation to punish gross violations of human rights and its need for economic and political stability, using international human rights conventions as guides.

Following a period of systematic human rights violations, whatever human rights policy a...government puts in practice will necessarily be subsumed within a larger objective which aims at one or more of the following: To achieve a measure of national unity and reconciliation, particularly when the human rights violations of the past took place in a context of (if not directly caused by) extreme political polarization and civil strife, including forms of armed struggle.... To build or reconstruct institutions that are conducive to a stable and fair political system. To procure the economic resources needed to achieve those ends, particularly when the transition periods are marked by fragility and a measure of economic success is instrumental for political stability.

It is important that the...government publicly states the rationale for the human rights policy it adopts, in terms of its relationship to specific human rights aims and the larger national objectives being pursued.³



In this context, laws which grant immunity from prosecution or other legal protection to those who have committed gross violations⁴ are antithetical to the promotion of human rights. Recent experiences in several Latin American countries and the Philippines clearly demonstrate that failure to punish members of the armed forces can lead to continuing abuses, even where the government initially authorizing the violations has changed and the new government is eager to improve the country's human rights record. Prosecution and punishment of past abusers is essential to the deterrence of future violations.

Equally important is the investigation, public acknowledgement and full disclosure of information regarding past violations. The government has an obligation to make known all that can be reliably established about gross violations of human rights; their nature and extent; the identities and fate of victims; the identities of those responsible for the policies and practices that resulted in the violations; the identities of the perpetrators and those who knowingly aided and abetted them.

A third concern essential to full accountability is the need to make reparations, to the extent possible, to the victims or the victims' families for gross violations. While insufficient on its own to end future violations (critics in Sri Lanka have maintained that the government's willingness to pay reparations to victims of human rights violations, but unwillingness to punish members of its forces who perpetrate abuses contributes to the feeling of impunity enjoyed by the security forces), it is nonetheless desirable that some effort is made to repair the damage done by abusive forces.

Countries which have ratified or acceded to international human rights conventions have legal as well as moral responsibilities to ensure that human rights violators are held accountable for their activities and that whatever possible remedy is provided. Some Conventions spell out this requirement expressly. For example, Article 3 of the International Covenant on Civil and Political Rights (the ICCPR), which was ratified by Sri Lanka in 1980, provides that the parties to the Covenant undertake:

- (a) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) to ensure that any person claiming such a remedy shall have his right there to determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- (c) to ensure that the competent authorities shall enforce such remedies when granted.⁵

The UN Human Rights Committee has stressed the necessity for parties to the ICCPR to investigate serious human rights violations and "to hold responsible" their perpetrators,⁶ and UN General Assembly Resolution 33/173 (1978) urged all governments to

ensure that law enforcement and security authorities or organisations are fully accountable, especially in law, in the discharge of their duties, such as accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances.

The UN Working Group on Enforced and Involuntary Disappearances visited Sri Lanka in October 1991 and released its report on that mission in January 1992. The Working Group acknowledged that a huge number of disappearances had occurred in Sri Lanka between 1983 and 1991- "by far the highest number ever recorded by the Working Group for any single country." The report recommended that government forces responsible for disappearances in Sri Lanka be rigorously prosecuted and "that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances." The Chairman of the UN Human Rights Commission, in his statement on Sri Lanka at the 48th session of the Human Rights Commission, urged the Sri Lankan government to accept and implement the Working Group's recommendations, including recommendations which support retroactive accountability for violations.

UN General Assembly Resolutions and the Commission on Human Rights⁷ have urged all governments to "ensure that law enforcement and security authorities or organisations are fully accountable, especially in law, in the discharge of their duties, such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or voluntary disappearances..."

The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions⁸ adopted by the UN General Assembly in December 1989 are particularly pertinent as to the types of measures which should be adopted by governments in whose territories disappearances occur, and where lawyers and litigants seeking to bring to justice those responsible have been subjected to harassment.⁹

In response in part to pressure from donor governments, the Sri Lankan government has undertaken a variety of initiatives designed to meet its international human rights



obligations. It has exhibited a new willingness to discuss issues of accountability and as promised to accept the recommendations of human rights groups. In December 1991, the government announced its acceptance of most of the recommendations Amnesty International made in its September 1991 report of the situation in Sri Lanka.¹⁰ Asia Watch welcomes these steps, but the real test will come in how effectively the new initiatives are implemented. This report, based on the information collected during Asia Watch's mission to Sri Lanka in December 1991, will examine the new human rights agencies and task forces set up over the last two years, how well they address the most serious human rights concerns in Sri Lanka and what still needs to be done.

Notes

1. *Report of the Working Group on Enforced or Involuntary Disappearances to the Forty-seventh session of the Commission on Human Rights, E/CN.4/1991/20, p.85, para 406.* ~
2. Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints (with special reference to examples from Latin America)," prepared for Aspen Institute for Humanistic Studies Conference on "State Crimes: Punishment or Pardon," November, 1988.
3. *Ibid.*
4. The terms gross violations or gross abuses apply to acts of genocide, arbitrary, summary or extrajudicial executions, forced or involuntary disappearances, torture or other gross physical abuse, and prolonged arbitrary deprivation of liberty.
5. Similarly, Article 5 of the Genocide Convention (which Sri Lanka ratified in 1950) states:

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any other acts enumerated in Article 3.
6. See e.g. *HRC Report 37, UN GAOR Supp No 40, Annex V, General Comment 7(16), para 1 (1982); UN Doc E/CN.4/Sub.2/Add.1/963.*
7. See e.g. *GA Res 33/173, para 1(b) (1978).*
8. *GA Res 44/162.*
9. See especially Principles 1,2,6,15. In this Report they are referred to as the UN Principles.
10. In its report, *Sri Lanka - the Northeast, ASA 37/14/91*, Amnesty International made 32 recommendations to the Sri Lankan government. They include suggestions for better control and instruction of army personnel and police officers and prompt prosecution of criminal cases against members of the security forces, better protection for detainees, and the strengthening of new human rights initiatives.

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