

We published in our issue - vol.3 No 10 - an overview of the Truth Commissions that had been set up to investigate disappearances in Latin American Countries.

The following article deals with this question in relation to the 'disappearances' commissions that have been set up in Sri Lanka, their mandates and modes of operation and poses the question as to whether the proceedings of these commissions will really serve the interests of justice. We also publish, elsewhere in this issue, some conclusions by Amnesty International on the same issue.

SEEKING JUSTICE OR REVENGE ?

Sunila Abeysekera

Disappearances' is a word which became a regular part of the Sri Lankan vocabulary in the past decade. Although the rhetorical response to such a terminology should be 'How can a human being simply disappear?', the term 'disappearance' came to be used to describe incidents in which persons were abducted by unidentified persons and could not be traced thereafter. The phenomenon is most usually a part of much broader political repression, and became highlighted in various countries of South and Central America in the 1970s; in the international human rights arena, 'disappearances' in Argentina, Uruguay, Guatemala and El Salvador have been among the most widely publicised and acknowledged.¹ The Working Group on Enforced and Involuntary Disappearances was created under the aegis of the UN Commission of Human Rights in 1980.

The UN Working Group on 'Disappearances' visited Sri Lanka in 1991 and 1992 to inquire into the large numbers of complaints they had received regarding cases of 'disappearance'; the second visit was an unprecedented one in the history of the WG and is an acknowledgement of the gravity of the situation in our country. The WG submitted reports to the Commission on Human Rights at its February sessions of 1992² and 1993³; in the global context, Sri Lanka has been placed on record as the country with the largest number of documented cases of 'disappearances' ever reported. At the same time, the extrajudicial execution of those taken into custody and the disposal of bodies, for example, by public cremation, without any inquiry being held into the death has created a situation in which it is very possible that there never will be a complete and correct record of those tens of thousands of persons who were 'disappeared' - meaning abducted and executed - in the years in question. If there is any necessity to refresh the memory of readers as to the horror of the situation, reference may be made to the a listing of politically motivated murders for the month of August 1989, as reported in the national press of the time.⁴

In 1991, after several years of public outcry regarding the situation, President Premadasa appointed a Presidential Commission of Inquiry into the Involuntary Removal of Persons (PCIRP). This Commission had a mandate to investigate 'removals' which took place from the date of its promulgation, which was the 11th January 1991. It has been in session now for over four years, and is said to have submitted several

reports of its investigations to the President. However, none of these reports have been made public as yet; the terms of appointment of a Presidential Commission include that they should submit their reports to the President, subsequent to which the reports should be presented to Parliament as Sessional Papers and only then made public.

In 1994, the present President Kumaratunga appointed three further Presidential Commissions of Inquiry to investigate 'disappearances'; this time, the Commissions had a mandate extending back to January 1, 1988. The three Commissions cover diverse geographical regions, and in the months since they began work, seem to have evolved different methods of work and varying interpretations of their mandate. A recent report by Amnesty International on this issue very clearly sets out their comments and proposals regarding the Commission.

However, the appointment of these various Commissions, and their actions in summoning persons who have had family members 'disappear' to bear witness as to the events that took place and as to who was responsible for them raise a number of political, philosophical and moral questions that none of the mandates of these Commissions seem able to clarify. During the time of election campaigning, the issue of 'disappearances' was a focus on many public platforms. Yet it remains unclear as to whether any person who pledged to deliver justice for victims of disappearances has really thought the issue through in all its complexity.

On the one hand, we confront the reality of accountability and impunity. Among those named and identified as being responsible for having 'disappeared' persons in the past years are members of the security forces, still in uniform, still holding positions of responsibility. It took quite a while for the first PCIRP to impress upon the Police Department the necessity to interdict any member involved in a case being investigated by them. It is still unclear what steps the new Commissions are able to take in this regard. This situation also places grave obstacles in the path of unearthing the truth regarding certain incidents, since witnesses may, quite rightly, be hesitant about speaking out and in particular about naming someone who is still a figure of authority; the fear of brutal reprisals still run very deep in the minds of many, in particular in rural communities, who witnessed the irrational bloodbaths of the past.

Can a realistic assessment of the present situation, especially given security considerations, lead us to believe that the government of Sri Lanka is both willing and able to prosecute even senior members of the Police and Army who are identified as being responsible for human rights violations? How can they proceed? Can one prosecute everyone who has been involved, at every level? Given the numbers involved, does this mean getting involved in processes of litigation that could take years, even decades? Is there a difference in the accountability of an ordinary soldier or Police Constable who pleads that he simply followed orders from his superiors, and that of a senior officer who argues that he was fighting a threat to the stability of the state using any means at his disposal? And what of those officers of the Police and Army who, in turn, testify to orders emanating from political centres of power?

On the other hand, we must confront the reality of the need for both justice and reparation for the parents, siblings, wives, husbands, children of those who 'disappeared'. All of them want to know what happened to their family members; they want to know who was responsible. As a newspaper report on the testimony of one parent before a Commission said, 'I want to know whether I am to celebrate my child's birthday, or commemorate the anniversary of his death'. Some family members want an official acknowledgement of death so that they could claim pensions and benefits, redeem pawned property, even remarry. Some of them need financial compensation. But all of them want justice and reparation - not mere financial compensation but public acknowledgement of what happened and a public commitment to the security of those who live on.

In this context, perhaps it is interesting for the government of Sri Lanka and other concerned human rights groups and activists to look at what has happened in other countries where similar problems have existed. It has always been easier to offer compensation than reparation. The granting of amnesties to human rights violators, especially in cases where they belong to the security forces, has been a common practice. Even when there has been a mountain of evidence against certain uniformed officials, states have let the perpetrators of the most inhuman and barbaric crimes go free.

In Argentina, the Organisation of Mothers of the Plaza del Mayo refused for many years to accept financial compensation; they demanded justice first. An amnesty guaranteed freedom to many in the security forces who were implicated in cases of human rights abuse. A public acknowledgement of state involvement in the mass disappearances that took place in that country in the late 1970s only came in April of 1995!

In El Salvador, the state agreed to the appointment of a Truth Commission, as part of the peace process. Three non-Salvadoreans were appointed to that Commission - two reputed diplomats from South America and a well-known US lawyer with years of experience in human rights work. The mandate of the Commission included examining the pattern of impunity and making legal, political and administrative recommendations to prevent a repetition of past abuses and to stimulate reconciliation. In order to facilitate its work, the

Commission focused on 30 cases in depth, identifying instances which reflected the most shocking events of the conflict. The Commission also decided to publish the names of those persons identified as being responsible for the abuses because the Commissioners felt that not to mention names would reinforce the very cloak of impunity which they were charged with removing.

The Commission's report was published in March 1993, and confirmed that the armed forces were largely responsible for 'disappearances'. Among its conclusions was that 'death squads' linked to state structures had become an instrument of terror responsible for the systematic physical elimination of political opponents. The report also cited the judiciary as bearing a great responsibility for the impunity with which the abuses had been committed. As may be expected, the report generated a major furor in security circles, and many objections were raised as to its contents. The consequence? Within hours of the issuing of the report, a draft amnesty law was presented to the Legislative Assembly of El Salvador, and, seven days later, the General Amnesty Law came into force⁵, despite appeals against such a step made by human rights groups working both inside and outside of El Salvador.

A Truth and Reconciliation Commission is also due to be appointed in South Africa, as part of the process of national reconciliation in that country. Among the proposals before the Commission is the granting of an amnesty to those who 'confess' to having carried out certain human rights abuses for strictly political reasons; there will be a deadline before which the 'confessions' should be made.

The question that we are left with, then, is how it would be possible to undertake an investigation into past human rights abuses, including 'disappearances', in Sri Lanka in a spirit of national reconciliation and healing rather than get embroiled in a witch-hunt, in an acrimonious search for revenge?

The barbarism and inhumanity which we as a country have been exposed to in the past years has left deep and bitter scars on all of us; there is perhaps not a person in the island who has not been touched by the death or disappearance of somebody. The traumas suffered by those who have been more directly exposed to acts of political violence are only barely being uncovered at present; it is quite clear that it will take generations before we are able to rid ourselves of these scars completely.

In talking about the need for healing and reconciliation, a major issue is that of persuading those who have suffered a loss, the parents, the wives, the children of the 'disappeared' to accept a generalised and more political solution to their issue rather than embark on a path that seeks the punishment of each and every individual involved. Working with these families, one encounters men, women and children who are driven by a desire to uncover the truth about the fate of their loved one, no matter what the cost they may have to pay; you meet young children whose only aim in life is to grow up and kill the man or men who they see as being responsible for the abduction of their father. Knowing the gravity of their

loss, how can one ask them to forgive the wrong-doers in principle ?

And yet, what options do we have ? Given the fact that trying to prosecute perhaps thousands of persons may take years and given that even if one were to undertake such an exercise, the lack of tangible evidence against many of them could lead to their acquittal in any case, what are we asking for ?

In the first instance, we could demand a public acknowledgement that such incidents did take place in this country. Up to date, the government of Sri Lanka has never made such an acknowledgement to the people of this country.

Secondly, we could demand prosecution of a few selected cases in which indisputable evidence is available, with a view to uncovering and exposing the pattern of events during this period of time. Such an exercise would make visible the links between authoritarian structures of political power that are driven by a need to repress opposition and weak structures of public accountability and control under which institutions such as the judiciary and the Police can act against the interests of those they are supposed to serve.

Thirdly, we could demand reparation, not only financial but also social reparation, for the family members of the 'disappeared' regardless of political affiliation. In the past, there has been gross discrimination in the payment of compensation; those whose family members were abducted by the JVP or the LTTE have received compensation, while those whose family members were abducted because of the suspicion that they may be members of the JVP or LTTE have never received any such sum of money.

Fourthly, we could demand institutionalisation of laws and mechanisms that would effectively guarantee that such incidents would never take place in this country again. The slogan

of organisations of family members of the disappeared and human rights groups throughout South and Central America has been 'Nunca Mas' - NEVER MORE.

There is no doubt that as a country and as a community we are all traumatized and in some ways paralysed by our collective experience. It is obvious that some process of healing of these wounds has to take place if we are to evolve once more into a cohesive and humane community in which all human beings are treated with dignity and respect and in which dissent is viewed as an integral part of democratic praxis. Whether we decide to seek justice or revenge may determine the shape of our journey into the next millennium. In order to achieve this, the state has to show us that it has the political will to go ahead with the exposure of the truth, no matter how unsavoury it may be, and as members of civil society we have to show that we have the collective will to transcend our immediate desires for summary justice and move on to the next phase of our social and political history.

Notes

1. See Amnesty International 1993, *Getting away with Murder; Report on Political Killings and 'Disappearances in the 1990s;*
2. See UN Doc. E/CN.4/1992/18/Add.1 of January 8, 1992.
3. See Un Doc. E/CN.4/1993/25/Add.1 of Dec. 30, 1992.
4. INFORM listing; for more details, see International Alert, 1989 *Political Killings in Southern Sri Lanka;*
5. See Amnesty International, June 1993, *El Salvador : Peace without Justice.*

At a time of debate about re-implementing the death penalty in Sri Lanka-----read

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