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CRIME WITHOUT PUNISHMENT

Each day, Amnesty International becomes aware of further gross human rights violations, including political killings and "disappearances", committed in different parts of the world. One of the main factors contributing to these barbaric realities is the phenomenon of impunity: as long as the agents of repression believe they can kidnap, torture and murder without fear of discovery or punishment, the cycle of violence will never be broken.

With the dramatic political changes in various regions of the world, human rights have reached greater prominence in international relations than ever before. Governments find it increasingly embarrassing to be labelled as a human rights violator, not only at the United Nations but also in other relations between states. Thus, in recent years, the Organization of American States, the Organization of African Unity, the Conference on Security and Cooperation in Europe, the Commonwealth heads of government and the Francophone Summit have all had human rights at the heart of their agendas. In June 1993, the second World Conference on Human Rights took place in Vienna, Austria. More than 170 governments were represented and with varying degrees of sincerity solemnly reaffirmed their commitment to fulfil their obligations to respect and promote human rights.

Countries whose rulers would not even have paid lip service to human rights a decade ago are now declaring their importance. Some are bringing their laws into line with international human rights standards or at least have promised to do so. Many have established new institutions to promote and protect human rights. In some cases, this reflects a real commitment by new governments. In others, it is an essential if unwelcome part of a strategy for survival in the current world situation.

However, political killings and "disappearances" continue to be committed with impunity, at times on a horrific scale. There is still no serious pretence of accountability in some countries where human rights are most brutally violated. In Iraq, since the end of the Gulf War, Kurds in the north of the country and Shi'a in the south have been massacred in their thousands by government troops. These are only the latest atrocities in a long history of massive human rights violations. In Myanmar (Burma), the military rulers have turned the country into a secret state of terror in their ruthless crackdown on those who oppose them.

In the war in former Yugoslavia tens of thousands of people have been victims of political killings or "disappearances". Investigations and prosecutions by the Yugoslav Federal and Croatian authorities for crimes

perpetrated during the war in Croatia in 1991 and 1992 have largely been half-hearted and have mostly centred on investigating crimes carried out by the other side.

This sent the wrong message to those same or other, new perpetrators in the following war in Bosnia-Herzegovina which started in April 1992. While all three sides have been responsible to some extent the members of the Bosnian Serb forces in particular have relied on poor communications and their own uncertain international status to act with impunity in ignoring the most basic of standards for protecting human rights in or out of war. The competing desires both for humanitarian relief, an urgent peace settlement and an eventual thorough investigation of gross abuses of human rights have also set conflicting aims for the international community in its intervention in the former Yugoslavia and made it even more difficult to break the cycle of impunity.

Tens of thousands of civilians have been killed in Sudan during the civil war which began in 1983 and continues to date. The targeting of civilians has been a deliberate tactic by government forces in their attempt to regain control over areas held by the armed opposition Sudan People's Liberation Army (SPLA). The two rival factions of the SPLA have also committed atrocities against the civilian population. A climate of impunity has given encouragement to the various parties to continue this policy of deliberate killing.

In the province of Aceh in northern Sumatra, Indonesian security forces began counter-insurgency operations against an armed resistance movement in 1989, which resulted in the killing of an estimated 2000 civilians and the "disappearance" of scores in military or police custody. This pattern of grave human rights violations is not unique but strongly reminiscent of the situation in other parts of Indonesia and East Timor. The most conspicuous similarity has been to the Government's use of summary executions by anonymous death squads, known locally as "mysterious killings", which was described by President Suharto as a kind of public "shock therapy" designed to restore public order¹. No significant change in the policies or practices of the Indonesian security forces has been observed: serious human rights violations continue to be committed with impunity up to the present day in Aceh, even if on a reduced scale, while the Government fails to carry out investigations, pay compensation to victims or their relatives and bring suspected perpetrators to justice.

But in today's world, gross violations increasingly take place under elected governments with explicit human rights commitments and institutions. The gulf between commitments and practice can only be bridged if all unresolved human rights abuses are properly investigated and the guilty brought to justice. Victims, their relatives and society at large all have a vital interest in knowing the truth about abuses. Bringing the guilty to justice is not only important in the individual case, but also sends a clear message that violations of human rights will not be tolerated and that those who commit them will be held fully accountable. When members of the police and security forces are allowed to commit crimes with impunity, deadly attitudes and contempt for the rule of law flourish.

In Sri Lanka, tens of thousands of people were unlawfully killed or "disappeared" at the hands of government forces between 1987 and 1990 in a

¹ Suharto: *Pikiran, Ucapan dan Tindakan Saya*, (Jakarta: PT Citra Lantoro Gung Persada, 1989), p.364

campaign of counter-terror against a Sinhalese armed opposition group. Armed conflict with Tamil separatists (who themselves were responsible for atrocities) also resumed in the northeast of the country in 1990. Government troops there have caused the "disappearances" or deaths of thousands more civilians, including babies and elderly villagers. In spite of new mechanisms created in mid-1991 for the investigation of certain types of human rights violations, virtually none of those responsible for political murder or "disappearance" has been brought to justice.

Since 1983 Amnesty International has documented the cases of at least 4,200 people who "disappeared" in Peru after having been detained by the security forces. Thousands more people have been killed since 1983 by government forces in extrajudicial executions, including some 500 people in 18 separate massacres documented by Amnesty International. Massacres by soldiers have often followed armed attacks by the Communist Party of Peru - Shining Path (PCP: *Sendero Luminoso*), whose rebellion has been marked by brutal atrocities against civilians - or by other armed groups. Yet members of Peru's armed forces have acted with almost total impunity. In spite of the international obligations taken on by Peru to investigate all human rights violations, in the last 10 years there have been very few thorough and independent investigations. When those alleged responsible for violations are prosecuted, they are brought before military courts which almost invariably acquit the accused. Amnesty International knows of only two cases in the last 10 years where members of the Peruvian armed forces have received significant sentences for the killing of civilians.

In some countries, violations are carried out by paramilitary groups or so-called "death squads" which operate with official approval. In the Philippines, for example, the government's counter-insurgency strategy has involved semi-official armed groups it describes as "vigilantes" collaborating closely with official security forces. Although repeatedly implicated in grave human rights violations, their activities have not been curbed.

In other countries governments claim to be powerless to control paramilitary groups and refuse to accept responsibility for bringing their abuses to an end. In Colombia many human rights violations in recent years, including thousands of political killings and hundreds of "disappearances", have been attributed to paramilitary organizations. These have been described by the Colombian authorities as groups of right-wing extremists acting outside state control. However, judicial investigations have uncovered compelling evidence that many paramilitary groups have been made up of, or supported by, members of the Colombian armed forces. Similarly, in South Africa, a growing body of evidence has emerged linking "hit squads" responsible for political killings with covert police and security force operations.

One technique used by governments and branches of the security forces to deflect criticism is to announce an investigation which then leads nowhere. Sometimes the announcements are made in good faith, but if they do not produce results they can end up simply acting as a barrier against uncovering the truth. Official investigations of abuses by Israeli forces in the Occupied Territories since the beginning of the Palestinian *intifada* (uprising) in 1986 have usually been inadequate. They rarely result in prosecutions. Those found guilty have received punishments which often failed to appear commensurate with the offences committed. Both the army and civil authorities in Uganda have announced numerous inquiries into reported extrajudicial executions by soldiers. Very few of these investigations have produced results which have been made public. For example,

the results of an investigation into killings committed in late 1988 have still not been made public. The principal effect of these investigations, whose results are never aired and discussed publicly, has been to prolong the army's ability to act with impunity.

Even when investigations are carried out and judicial proceedings started, the institutions responsible for the administration of justice are often weak or inefficient. Frequently they are susceptible to pressure from other branches of government or the security forces. Prosecutors or judges sometimes behave with outstanding courage, only to be killed or to flee into exile when their governments are unwilling or unable to protect them from the threats of the accused - usually members of their own security forces.

A prime example is the Cayara massacre in Ayacucho, Peru in May 1988. An army captain and two corporals were killed when a Peruvian army patrol was ambushed by members of the Communist Party of Peru (PCP - Sendero Luminoso). The inhabitants of the nearby village of Cayara were collectively held responsible by the army for the PCP's actions and were immediately subjected to acts of reprisal which left 30 captured peasants dead. Members of the military blocked the possibility of independent investigations and the civilian authorities proved reluctant or unable to bring the perpetrators to justice. Exceptionally, a special investigation was carried out into the Cayara case. But again, the official allegedly responsible for the massacre blocked the investigation and was eventually promoted. Nine witnesses were killed or "disappeared". The prosecutor in charge of the investigation was dismissed from his post and fled into exile following repeated death threats. The case was closed, exhausting any possibility of bringing those responsible to justice before a civilian court. In the face of international outcry, two successive Peruvian governments denied the very existence of a massacre, describing it as the result of a confrontation with "terrorist elements". The Inter-American Commission on Human Rights examined the case and referred it to the Inter-American Court of Human Rights in February 1992. The Court, however, heeding purely formal objections put forward by the Peruvian government, decided to close the case. As a result, the Cayara massacre and the responsibilities ensuing from it were never examined by the Inter-American Court. In June 1993, the Inter-American Commission published a full report on the case.

In July 1992, South Africa's leading independent forensic pathologist, Dr Jonathan Gluckman, told the press he had details of scores of deaths in police custody since the mid-1980s. Ninety per cent of these, he said, contained evidence that the police had killed people in their custody. The Minister of Law and Order responded to these allegations with an internal police investigation, the results of which were announced in November 1992. The Minister dismissed the allegations as unsubstantiated. Following the publication of his concerns, Dr Gluckman was subjected to death threats and his office was placed under surveillance, apparently by the security services.

The process of justice is sometimes subverted by measures such as transferring cases to special tribunals. Typically, as in Colombia, Guatemala and Peru, these are military tribunals which rarely pursue vigorously prosecutions against fellow officers in human rights cases. Often the accused are acquitted - sometimes even promoted. When in exceptional cases convictions are secured, the punishment rarely bears any relation to the crime.

The failure of state institutions to protect human rights discourages victims and their relatives from using important domestic remedies, such as

habeas corpus. The fear of reprisals can make such remedies useless. In Sri Lanka, for example, relatives of the "disappeared" who have made inquiries with government officials have subsequently received death threats, and lawyers and witnesses who testified before the courts have been killed. Witnesses and complainants in human rights related cases in Peru and the Philippines have faced the same fate.

Amnesty laws which prevent prosecutions and trials or close investigations also undermine the search for truth and justice. Some regimes responsible for human rights violations, anticipating their loss of power, have preempted investigation by proclaiming amnesties. Successor governments have been placed under tremendous pressure to uphold such measures, or to concede them where they did not already exist.

Even in Argentina, the foremost instance of political or military leaders being held to account for human rights violations, the political retreat from full accountability has been rapid. In 1985 five of the military commanders who formed the juntas which ruled Argentina between 1976 and 1983 were convicted. They had waged a "dirty war" against "subversion" during which more than 9,000 people "disappeared" after abduction and torture. The Argentine Government's appointment of a national commission on the "disappeared" and its 1984 report *Nunca Más* (Never Again) were also pioneering official exposures of the truth of past impunity. Yet amnesty laws put a "*Punto Final*" (Full Stop) to further prosecutions and gave immunity to those who acted under orders (in "due obedience").

In Uruguay, an amnesty negotiated with the outgoing military government was challenged when a quarter of the electorate signed their names to a petition demanding a referendum to repeal the amnesty. The referendum in 1989 resulted in a defeat, with only 42 per cent voting for the proposal to repeal. However, in 1992 the Inter-American Commission on Human Rights concluded that the 1986 amnesty law was incompatible with the American Convention on Human Rights and urged the government to investigate killings, torture and "disappearances" committed during the period of military rule in the 1970s and early 1980s.

In Chile, 1991 saw the publication of the report of the National Commission for Truth and Reconciliation. Although it documented the massive scale of human rights violations under the previous military government, the report did not guarantee criminal investigations into those abuses. In fact, the Chilean courts continue to apply an amnesty law which was passed by the former military government to close investigations into cases of human rights violations which occurred before 1978.

In El Salvador, the General Amnesty Law for the Consolidation of Peace, approved in March 1993, prevents the investigation and prosecution of all those responsible for human rights abuses committed in the context of the civil war (1980-1992). It specifically protects those mentioned by name in the report of the Truth Commission, a body appointed by the United Nations to investigate some of the worst human rights abuses committed during the war. As a result of the law, the members of the armed forces sentenced in 1991 for the 1989 killing of six Jesuit priests and two members of staff at the Catholic University were released. Immediately after the law's publication, local human rights groups challenged its constitutionality before the Supreme Court of Justice of El Salvador. However, in what appears to be an abdication of its constitutional powers, the Court ruled that "the Constitutional Chamber of the Supreme Court of Justice does not have jurisdiction over purely political

questions", thus rejecting the petition by the human rights defenders. For its part, the government, in marked contrast to the speed with which it extended impunity for human rights violators, has yet to implement important recommendations by the Truth Commission such as the reform of the judiciary, a thorough investigation into the activities of the "death squads" and the creation of a compensation fund for victims of human rights violations and their relatives.

A law adopted by the Parliament of Mauritania in May 1993 granted total amnesty to members of the security forces for human rights violations committed between 1989 and 1992. More than 400 black Mauritians have been killed by government forces or pro-government militias since 1989. At least 100 were extrajudicially executed in the context of intercommunal violence between Mauritians and Senegalese. Dozens of others "disappeared". After the wave of arrests which followed an alleged plot to overthrow the government in 1990, at least another 300 detainees died as a result of torture or inhuman detention conditions. Despite multi-party elections and other political reforms in 1992, no official investigation was carried out into these human rights violations and the complaints lodged by lawyers representing many of the victims' widows were rejected by the Ministry of Justice.

In South Africa, throughout 1992 new evidence of covert security force involvement in killings and other unlawful acts against opposition organizations came to light. The evidence implicated senior officers in the security forces and government ministers. However, the government enacted an amnesty law in November 1992, effectively providing immunity from prosecution for human rights violators.

In other African countries in the past few years, governments have granted immunity from prosecution to former government and security officials in order to bring about rapid political settlements to conflicts. In countries such as Benin and Congo, the overall effect of letting particular individuals act with impunity has been to avoid a close examination of the conditions which allowed them to commit human rights violations. For example, in 1991, the former president of Benin, Matthieu Kérékou, was granted immunity from prosecution.

Elsewhere in Africa the progress of investigations, even after governments have changed, has sometimes been so slow that governments have abandoned their initial commitment to bringing human rights violators to justice. Undoubtedly the task of collecting evidence which can be presented to a court appears daunting in many cases. Many of those with immediate experience of past abuses are dead, or, having fled abroad, are still unwilling to risk return and possible reprisals for giving evidence. Much of the material evidence, too, is often destroyed - documents burned and bodies buried in secret graves. It is therefore vital that information is presented in a public forum, such as a public inquiry or trial. Otherwise the pressure not to proceed to a trial is enormous.

In Eastern and Central Europe, and in Germany, controversy raged about the accountability of those associated - even through Communist Party membership alone - with the former governments. Meanwhile the Cambodian peace settlement failed to include provisions to bring to justice those responsible for the massive human rights violations of the past.

The debate over accountability in Eastern Europe has underlined the importance of guaranteeing the fundamental human rights of everyone, including those accused of responsibility for human rights violations. Over the years Amnesty International has monitored the trials of many of those it had previously blamed for human rights violations. Even if people have been convicted of human rights crimes after fair trials, if they are sentenced to death Amnesty International appeals for their sentences to be commuted. For example, Amnesty International observed several trials in Kuwait. The defendants were accused of violations during the Iraqi occupation, violations which Amnesty International had condemned in 1990. Amnesty International called attention to the gross unfairness of the trials and campaigned against the carrying out of executions. The death sentences were eventually commuted.

If abuses by those responsible for law and order are to be brought to an end, Amnesty International believes that all governments must fulfil certain fundamental responsibilities.

First, there should be thorough investigations into allegations of human rights violations. The object of such investigations should be to determine individual responsibilities and to provide a full account of the truth to the victim, their relatives and society. Investigations must be undertaken by impartial institutions, independent of the security forces, which must be granted the necessary authority and resources for their task. The results of the investigations should be made public. When human rights violations have become endemic in a society, investigations of individual cases may not be enough. A public commission of inquiry should investigate the entire pattern of abuses and the reasons why they occur. It should examine the institutions and agencies responsible and propose future changes to laws, institutions, administrative procedures and practices, training and accountability of personnel.

Second, those responsible for human rights violations must be brought to justice. They must be held to account even if they were or are officials of a past or current government and regardless of whether they are members of the security forces or semi-official paramilitary groups. Those accused of human rights crimes should be tried, and their trials should conclude with a clear verdict of guilt or innocence. Amnesty International takes no position on what sentence should be passed, provided that the death penalty is not imposed. However, the systematic imposition of penalties that bear little relationship to the seriousness of the offences brings the judicial process into disrepute and does not serve to deter further violations. Respect for the rule of law cannot be promoted unless all trials are conducted in full conformity with internationally recognized standards.

Third, amnesty laws which prevent the emergence of the truth and accountability before the law are not acceptable. This applies whether the law is passed by those responsible for the violations or by successor governments. The interests of national reconciliation after a period of violence and confusion may be served by pardons after conviction: Amnesty International takes no position on this. But it does insist that the truth is revealed and the judicial process completed.

The protection of human rights requires action, not words. Allowing the perpetrators to commit abuses, however clearly prohibited by law, without consequences for themselves, perpetuates their crimes. Ensuring that they are brought to justice transmits throughout a society the clear message that

violations will not be permitted to continue. In the early 1990s, the rhetoric of human rights has reached an unprecedented prominence in world affairs: in how many countries will this rhetoric contribute to halting the vicious spiral of political killings and "disappearances" committed with impunity?