

Human Rights

Correspondence School

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Lesson Series 63

The right to the truth

Summary

This lesson introduces the right to the truth, which is an inherent part of international law. This right is fundamental in situations of human rights violations, and is closely linked to the realization of many rights.

The lesson outlines various international law provisions making up the right to the truth. It also examines various cases and countries in Asia where the right is commonly denied.



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Theme: The right to the truth

The Issue

The right to the truth is an inherent part of international law, and is in fact intimately linked to many rights, such as the right to legal protection, to an effective investigation, to seek information, as well as non-derogable rights such as the right to be free from torture.

An individual victim or family member of a victim suffering a human rights violation has the right to know the truth surrounding the heinous crime committed against them. At the same time, society has the right to know the truth surrounding such crimes as well, to ensure that they are not repeated, and to allow society to move forward.

Without the right to the truth, many other rights cannot be realized, as seen in many countries of Asia.

The Lessons

Lesson 1 will give an overview of the right to truth in international law.

Lesson 2 will reflect on the obstacles to the right to truth in Asia.

Cover photograph of Sandya Eknaligoda, protesting against the disappearance of her husband Prageeth and the lack of investigation into his case. Source: Ishara S Kodikara, February 2010.

Lesson 1

This lesson will examine the nature of the right to the truth and its scope. (Much of the lesson is based on the ‘Study on the right to truth’ report by the UN Office of the High Commissioner for Human Rights, February 2006.)

A. What is the right to truth?

The right to the truth implies knowing the entire truth as to events that occurred, their specific circumstances and who participated in them. The right to the truth was historically linked to missing and disappeared persons; its scope was thus focused on knowing their fate and whereabouts. As international law on the right to the truth has evolved to apply in all situations of serious human rights violations, the scope of the right has also expanded. It now includes the entitlement to seek and obtain information on:

- The causes leading to the person’s victimization;
- The causes and conditions pertaining to serious violations of international human rights and humanitarian law;
- The progress and results of the investigation;
- The circumstances and reasons for the perpetration of crimes under international law and gross human rights violations;
- The circumstances in which the violation took place;
- In the event of death, missing or enforced disappearance, the fate and whereabouts of the victims; and
- The identity of the perpetrators.

The right to the truth is **both an individual right, as well as a collective right**. While each individual victim has the right to know the truth about violations affecting him, the truth also has to be told at the level of a society to safeguard against the recurrence of such violations, as noted in Principle 2 of the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. Also, the state has a “duty to preserve memory” (Principle 3); a society’s history is part of its heritage, and this includes the history of its oppression. Preserving this history is thus important, in particular to guard “against the development of revisionist and negationist arguments” (Principle 3).

B. Relationship to other rights

The right to the truth is closely linked to many rights, including

- The right to an effective remedy,
- The right to legal and judicial protection,
- The right to family life,
- The right to an effective investigation,
- The right to a hearing by a competent, independent and impartial tribunal,
- The right to obtain reparation,
- The right to freedom of expression (which includes the right to seek and impart information).

International bodies including the Human Rights Committee have concluded that the failure to provide information regarding the fate of disappeared persons, the circumstances of an execution, or the burial place of executed individuals can amount to torture or ill treatment.

The inalienable character of the right means it should not be subject to any limitations. Furthermore, its close relationship to other non-derogable rights such as the right not to be tortured means that the right to truth should also be considered non-derogable.

The right to the truth is also linked to the state's duty to protect and guarantee human rights, and its obligation to conduct effective investigations into human rights abuses. It can also be linked to the principles of rule of law, transparency, good governance and democracy.

C. International principles and provisions

Historically, the concept of the right to truth finds its roots in international humanitarian law, particularly concerning the right of families to know the fate of their relatives, and the obligation of parties to armed conflict to search for missing persons. This is explicitly codified in the **Additional Protocol I to the Geneva Conventions** (12 August 1949), which covers the issues of missing persons and victims of forced disappearance:

Article 32

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Article 33

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

With the emergence of the practice of enforced disappearances in the 1970s, the right to truth gained increasing attention from the international human rights community. The establishment of the UN Working Group on enforced or involuntary disappearances in 1980 developed an important doctrine on this right regarding the crime of enforced disappearances, which has been codified in the 2006 **Convention for the Protection of All Persons from Enforced Disappearance**:

Article 24

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

More recently, the Working Group adopted a **General Comment on the Right to the truth in Relation to Enforced Disappearances** (July 2010), paragraph 3 of which states,

Indeed, the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to the truth. Such a limitation must be strictly proportionate to the only legitimate aim: to avoid jeopardizing an ongoing criminal investigation. A refusal to provide any information, or to communicate with the relatives at all, in other words a blanket refusal, is a violation of the right to the truth. Providing general information on procedural matters, such as the fact that the matter has been given to a judge for examination, is insufficient and should be considered a violation of the right to the truth.

Although the right to truth was initially referred to solely within the context of enforced disappearances, it has gradually been extended to other serious human rights violations, including extrajudicial killings and torture. It has also more recently been cited in relation to combating impunity and in the context of remedies and reparation for serious human rights violations.

The amended **Set of principles for the protection and promotion of human rights through action to combat impunity** (5 February 2005) reaffirms the ‘inalienable’ right to know the truth regarding gross human rights violations:

Principle 2

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

Principle 3

A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

Principle 4

Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.

Principle 5

States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.

Questions For Discussion

1. What is the importance of the right to the truth? Is this right protected in your country?
2. Discuss how the right to the truth applies in any case of human rights abuse you have recently come across. Was the right realized or denied?

3. How would you go about realizing the right to the truth? Are there any aspects regarding this right missing from the international provisions mentioned above?

Lesson 2

This lesson will examine cases in which the right to truth is violated around Asia, and how this is related to the violation of other human rights.

A. Denial of the right to truth

Mr Prageeth Ranjan Bandara Eknaligoda disappeared shortly after he left his office at the LankaeNews Website headquarters in Colombo, Sri Lanka on 24 January 2010. Mr Eknaligoda, who has been a victim of an unresolved abduction in the past, is a journalist and visual designer who works for a website that supports the presidential opposition. His disappearance coincided with the presidential election (two days later) and state interference in the publication, which led his family to believe that a state agency is responsible for his disappearance.

Mr Eknaligoda has not been seen or heard from since shortly after he left his office on January 24, when he made a phone call noting that he was in Koswatte. When his wife went to the Homagama police on the morning of January 25 to report the incident, with the person he last spoke to by phone (a Gamini Perera), she was initially refused assistance. After some persuasion, the Officer In Charge recorded two statements from Mrs Eknaligoda and Mr Perera.

The only apparent investigative activities to have occurred by February 4, were statements that were taken by a police officer from Homagama police station and two officers purporting to be from the CID (Criminal Investigation Department) from Eknaligoda's neighbours, on January 28, regarding the possibility of private disputes or grudges related to the victim.

It is significant that the LankaeNews website that Mr Ekanaligoda works for was blocked by the government controlled Sri Lanka Telecom shortly after his disappearance. The block was lifted after the election. The LankaeNews premises were also searched for two hours on the night of January 28 by a large number of unidentified persons, after which the website was again blocked for a short time. Their vehicle number was

identified and reported to the police (32-8432). Despite this, no further official action has been seen to have been taken.

Ekanaligoda's family do not believe that his disappearance is the result of a private grudge. On 27 August 2009 he was victim of an organized abduction; he was blindfolded, transported a considerable distance and chained in a kind of cell overnight, by men who responded to organized instruction from someone referred to as a higher officer. He was released after the officer told them that he was not the correct target.

On June 24, six months after Prageeth Eknaligoda's disappearance, his wife Sandya and son held religious ceremonies at a famous Hindu temple at Modara, Colombo. Sandya prayed to supernatural forces for help in finding the whereabouts of her husband, telling the media later that she has lost faith in the authorities.

From the time of Prageeth's disappearance, several government spokespersons have talked to the media, including a few ministers. They all promised a speedy resolution to the matter through effective investigations. The Inspector General of Police and his spokespersons made similar promises. While these promises were being announced however, government propaganda stated that Prageeth Eknaligoda had not in fact disappeared, but was in hiding and would soon return.

Sandya's declaration of no faith in the legal process echoes the general feeling of many persons in Sri Lanka. The failure of the legal process is the result of a totalitarian tendency where public institutions are prevented from functioning in a normal manner. The government's claims that Sri Lanka has an effective judicial system and does not need inquiries from international agencies about human rights abuses is belied by citizens turning to supernatural forces for help in matters of truth and justice [For additional information see AHRC-STM-157-2010, 26 July 2010 and AHRC-UAC-009-2010, 4 February 2010].

Role of the state

Just as Sandya's right to the truth has been denied by the lack of effective investigation into her husband's disappearance, a similar denial and violation is ongoing in the Philippines, where up to 1000 persons may have been subjected to political killings since 2001. The army is thought to be responsible for these as part of its counter-insurgency against left-winged armed groups [See HRCS [Lesson Series 57: Arbitrary deprivation of life in the Philippines](#) for more details]. Although the frequency of the killings began to drop after concerted local and international monitoring and pressure, those responsible have not been held to account and little effective investigation or prosecution has taken place.

Between January-September 2008, the Asian Human Rights Commission (AHRC) reported the extrajudicial killing of 42 persons, including women and children, by vigilantes in southern Philippines. Earlier, the AHRC

had also documented 139 cases of extrajudicial killings of social activists between January 2003 and November 2007. Almost none of these cases have resulted in convictions, nor have the perpetrators been identified, charged or prosecuted in court.

In January 2008, the government investigating body Task Force Usig concluded that a farmer, Tildo Rebamonte, who was found dead four days after he had disappeared, was a 'rebel killed in a legitimate encounter' with the police. For the head of the investigating body, as well as the police, such a conclusion was enough to close the case and excuse the police from all responsibility of the man's death.

But who has the authority to decide that a person's death or the manner he was killed was legitimate or not? It is not the police. Even when he was killed in the manner the police claim, still it does not give any molecule of immunity to the actions by the policemen which resulted to the deprivation of a person's life... the police owe an explanation to the victim's relatives and family: How was he killed? [AHRC, "Legitimate encounter' is not a license to kill", AHRC-STM-023-2008, 24 January 2008]

According to the International Covenant on Civil and Political Rights' monitoring body, the Human Rights Committee's General Comment No. 6 (3 and 4); "... States parties should take measure not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. State should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared person".

Moreover, allegations were made that before Tildo Rebamonte was found dead, several policemen forcibly entered his residence, handcuffed him and took him away to use as a guide in search for rebels and their camps. He then went missing for four days until his mutilated body was found. This needs to be investigated. It is not the responsibility of the police to reach conclusions and verdicts regarding cases; that is the responsibility of the court. The police should focus on investigation and the collection of evidence, which will help the court in its proceedings.

Concluding and deciding prematurely that the victim's death does not merit further investigation constitutes an excess of the police duty and usurping of the court's judicial power and authority to hear complaints and cases. If these practices are allowed to continue it will seriously threaten every citizen's fundamental right which gravely puts to risk, not only the activist, but every citizen. This action by the police of prematurely making conclusions and their distorted understanding of the protection of right to life and the State's obligation to uphold it thus legitimized this murder.

It is every Filipino's Constitutional right that every allegation of police atrocities and violations of rights are effectively investigated and remedies are made available. In this case, however, the police effectively deprived the victim's relatives and

families of their right from obtaining that remedy; an investigation into the victim's death that is adequate and effective [AHRC, "Legitimate encounter" is not a license to kill].

State officials in the Philippines have even resorted to justifying these killings and therein removing—in their own minds at least—the need for any investigation. In the case of seven alleged criminals killed in separate shooting incidents by men reportedly on motorbikes from March 18-22 in General Santos city for instance, the police and mayor wasted no time in announcing that the killings were likely the result of a conflict amongst thieves, given that all the victims had criminal records.

One of the victims, 16-year old Rolim Dagano, was reported to be on a 'list' of persons allegedly involved in the theft of motorcycles. Prior to this killing, murders of motorcyclists and the subsequent theft of their motorcycles was a widespread problem—at least ten were reported in January alone. Aside from Rolim, the remaining victims were not on any 'list' of criminals.

Whether or not the murder victim had a criminal record is irrelevant however, to carrying out an effective investigation. Murder is a criminal act and it is the duty of the police to hold those responsible to account.

In failing to do so, they deny victims' families of any remedies, particularly of knowing the circumstances of their loved ones' deaths. Meanwhile, families' claims that their loved ones were not criminals and were not involved in any criminal activity, are not looked into. Families are also forced to live with the stigma of their loved ones being branded as criminals. They are deprived of equality before the law and equal protection by the law, because the law enforcement authorities themselves have justified the murders, concluding they were nothing but a 'war amongst criminals' [AHRC, 'Endorsing murder in the Philippines', *Ethics in Action*, vol. 2, no. 2, April 2008, pp. 28-29].

A similar situation can be found in Bangladesh, as the Asian Legal Resource Centre (ALRC) described in its written statement to the UN Human Rights Council on 24 August 2010. Having described a few cases of abductions, the ALRC noted that,

None of the above-mentioned cases have been credibly investigated by the authorities. The law-enforcement agencies, particularly the Rapid Action Battalion that is thought to be responsible for many of the abductions, continue to enjoy impunity. There has been no official record made publicly available regarding the arrests and detention of victims; all the allegations of abduction or arrest have been denied by the RAB; the police have refused to register formal complaints against the RAB regarding the disappearances and have further harassed the complainants and recorded erroneous information regarding the incidents. This obstructs attempts by relatives to locate their loved ones and seek justice concerning these abuses. Habeas Corpus applications cannot be registered, as the law-enforcement agencies do not maintain or provide any official records regarding the abduction or arrests, detention and whereabouts of the persons.

As there is no information or evidence regarding the victims' deaths, including dead bodies, the relatives cannot file murder charges against the perpetrators. If petition cases are registered with Magistrate's courts, they are investigated by police officers who only cover up crimes by their colleagues. Given Bangladesh's seriously flawed criminal justice system, there is little hope of achieving justice concerning abuse perpetrated by state-actors for victims or their relatives.

Moreover, when the media and human rights defenders have attempted to document cases of enforced disappearances they have been seriously intimidated, obstructed and harassed by law-enforcement agencies and top officials of the government, including the office of Prime Minister, the Ministry of Home Affairs and the Ministry of Information, showing top-level complicity in the growing problem of forced disappearances [Asian Legal Resource Centre, 'Bangladesh: Increasing incidence of enforced disappearances being committed with impunity must be halted', ALRC-CWS-15-03-2010].

B. Denial of state responsibility

The link between the right to truth and other human rights means that state agencies deny the right to truth in attempting to cover up their role in specific violations, such as extrajudicial killing or enforced disappearances. As seen in the cases and situations described above, police and security officials refuse or incompetently investigate cases of human rights violations; investigations are the key to ensuring the right to truth for victims and their families.

There are both legal and social consequences to this denial. Legally, principles of equality before the law, due process as well as the functioning of public institutions such as the police and judiciary are all at stake, and questions regarding their credibility and independence are raised. Socially, victims and society are denied the basic right to know what happened, they are denied the right to search for answers, to come to terms with events as they occurred. This is a denial of their dignity, of humanity. As noted by Spanish born social psychologist and philosopher Ignacio Martin-Baro (1942-1989),

It is clear that no one is going to return to the imprisoned dissident his youth; to the young woman who has been raped her innocence; to the person who has been tortured his or her integrity. Nobody is going to return the dead and the disappeared to their families. What can and must be publicly restored [are] the victims' names and their dignity, through a formal recognition of the injustice of what has occurred, and, wherever possible, material reparation... Those who clamor for social reparation are not asking for vengeance. Nor are they blindly adding difficulties to a historical process that is already by no means easy. On the contrary, they are promoting the personal and social viability of a new society, truly democratic.

Questions For Discussion

1. Discuss the importance of the right to the truth in each of the three countries and situations mentioned above.
2. Choose one situation and discuss what can be done to protect and realize the right to the truth in those circumstances. How can this help in the protection of other human rights?