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Front Cover: One of Timor-Leste's "Stolen Children" is re-united with her mother in May 2015.

Back Cover: Winning Entries from the on-the-spot poster-making contest titled: "Beyond Legislation: Hope, Action, Justice"

Unbowed

Asia fights for truth and justice

By: Khurram Parvez

Unlike in some countries where the number of cases of enforced disappearances and other forms of human rights violations is decreasing, Asian states are witnessing an upsurge in new cases. It is quite unfortunate that we do not have many examples of ways to solve this problem in Asia, which the governments can follow to end the vicious cycle of impunity.

In the Philippines, former president Ferdinand Marcos' Martial Law had ended but the phenomenon of enforced disappearance has not. Suharto's dictatorship in Indonesia had also collapsed but Aceh and West Papua continue to witness enforced disappearances. Nepal has seen an end to its armed conflict, yet the leaders who swore to protect freedom and democracy deny the people of justice. Sri Lanka has seen 60,000 people disappeared over the last several years. The Bangladeshi government claims to prosecute the alleged perpetrators of crimes committed in the 1971 war for independence, but its hands are also drenched with the blood of its own people. South Korea demands justice for the transgressions of North Korea, but hardly sees anything outside of it. In Kashmir, disappearances continue and India still refuses to tell the truth about the 8,000 people disappeared and has yet to prosecute perpetrators.

Thailand's quest for democracy has led to



“Countries with bad human rights records are sometimes condemned in this international arena. But they have become immune to the shaming game, so we need to go beyond this tactic.”



disappearances in 1992. Timor-Leste has finally seen the dawn of freedom, but there is still much that needs to be done for the families of the disappeared who are still waiting for the truth as to what has happened to their loved ones. Hundreds of disappeared in Pakistan have been returned, but there is still a huge number of disappeared whose fates remain unknown. Iraq, Afghanistan, and Syria have suffered from the worst forms of violence and one cannot even imagine the scale of violations, including enforced disappearances, done to the people.

The International Convention for the Protection of All Persons from Enforced or Involuntary Disappearance aims to address this form of human rights violation but very few Asian countries have signed and ratified the instrument. Countries with bad human rights records are

sometimes condemned in this international arena. But they have become immune to the shaming game, so we need to go beyond this tactic. We need to have the perpetrators of enforced disappearances prosecuted. This will deter other state actors from cultivating impunity among the ranks of government.

The Asian Federation Against Involuntary Disappearances (AFAD) and its members across 10 Asian countries are working hard to document cases and lobbying to have more Asian countries ratify the Convention. We have had several small successes as a Federation and as a member organization and we strive to build on these

successes until we achieve our final objective: To have a world without *desaparecidos*.

Unfortunately, Asia still does not have the mechanism to hold these perpetrators accountable for their crimes. AFAD needs to focus on its mission to provide substantial documentation of cases of enforced disappearances. It is through effective documentation that we will be able to build strong campaigns and effective international lobbying.

Khurram Parvez is AFAD's Chairperson and is APDP's Programme Coordinator.

A (re-)encounter in Timor

Stolen children of Timor find their way back to their families

By: Ivanka Custodio

It was noon and sweltering in Dili, Timor-Leste. The tension in the room was palpable as families had their eyes glued to the window, waiting for vehicles to pull up in the sandy driveway that doubled as a basketball court. Some of them had gone outside, restless and unable to concentrate on the assignment: write their name on half of a heart cut-out and the name of their disappeared loved one on the other half.

Soon, a car arrived, followed by two more. People spilled out of the cars and met the crowd that slowly gathered outside. A man hesitantly stepped forward from the crowd of families. Then, he hugged a woman who got out of the car and they wept together.



This was the scene in Asosiasaun HAK's re-unification event held last 18 May 2015. Co-organized by Asia Justice and Human Rights (AJAR) Indonesia and Timor and the Asian Federation Against Involuntary Disappearances

(AFAD), it was a landmark event in the search for truth and justice for families of the disappeared.

Fourteen people who were born in Timor travelled from different parts of Indonesia to Dili that day to see their relatives whom they had not seen for decades. They were just a few of the "stolen children" of Timor—children who were disappeared by Indonesian state forces during the occupation of Timor-Leste from 1975-1999.

The children met different fates after they were taken away from their families. Some recounted the abuses they suffered from the people who adopted them. A few considered themselves lucky to have been brought up by a loving family and given a chance to study.

It was the first time the families learned that the sister, brother, son, daughter, or uncle stolen from them decades ago was alive and had been looking for them. They were incredulous. Some of the families had already accepted the loss and even put up gravestones for their lost loved one. Their emotions were mixed.

They were joyful to hear that their loved one was alive, nervous and apprehensive that the person they once knew intimately was now using a different name and practiced a different religion,

"It was the first time the families learned that the sister, brother, son, daughter, or uncle stolen from them decades ago was alive."

and anxious, although eager, to be reunited with the child they thought was lost.

Joy and laughter spread across the room as each family sat down in various areas to catch up on the things they have missed in each other's lives for the past two to three decades.

Before leaving for the Office of the Provedor for Human Rights and Justice (PDHJ), the returning children of Timor put their half heart on the board next to the other half bearing their families' name. It was a beautiful moment. Hearts were whole again.

I looked closely at the board and noticed that not all of the hearts were completed. Perhaps, it was because of the chaos of the event. But I felt that those hearts had finally found their peace.

At the PDHJ office, the commissioner welcomed the returnees to their homeland. He spoke of possible challenges that may arise if the returnees decide to stay in Timor for good. Primarily, the



Liga Guatemalteca de Higiene Mental's Marco Garavito talks about the importance of providing psychosocial accompaniment to families of the disappeared.

Indonesian government does not accept dual citizenship. But this issue could be dealt with later, he said. It was a day of celebration for

the families and they couldn't wait to go back to their villages in Lospalos, Viqueque, Dili, Ermera, Manatuto, and Manufahi.

As soon as the event was over, they traveled back to the villages and were welcomed by their mothers and fathers, aunts and uncles, nephews and nieces whom they had never met, as well as

old playmates and school buddies. Finally, they were home.

Collaborative effort

Despite the fact that the reunification was a civil society-led initiative, the organizations also engaged government institutions in



Rozerio Soares Freitas, who was disappeared in 1976, is given a warm welcome by his relatives and other members of the community in Watulari, Watuloho.

Timor-Leste and Indonesia to emphasize government accountability. They engaged the Timor's PDHJ, Commission for Reception, Truth and Reconciliation (CAVR), Prime Minister's Office, and Ministry of Social Solidarity in Timor; and Indonesia's National Human Rights Commission (Komnas HAM) and the embassy in Timor-Leste.

Komnas HAM and PDHJ signed an agreement in May 2013 to implement the recommendation made by the bilateral body, Commission on Truth and Friendship (CTF), to form a Commission for Disappeared Persons tasked to establish the fate and whereabouts of the disappeared Timorese persons, including children who were separated from their families and taken to Indonesia during the occupation. Two years have since passed but no such commission has been established. Civil society organizations continue to call on both governments to honor their commitment.

Skills exchange

AFAD, with its member organizations HAK and KontraS, also organized a skills exchange with various human rights and development organizations in Timor-Leste and Indonesia. The skills exchange focused on the provision of psychosocial accompaniment in the process of

documenting the cases and during the re-unifications. To facilitate the skills exchange and discuss best practices in psychosocial accompaniment, AFAD invited Marco Antonio Garavito of the *Liga Guatemalteca de Higiene Mental*, an organization that has been assisting families of the disappeared search for their loved ones. The group has successfully facilitated 412 re-unifications in Guatemala.

A session on documentation in aid of searching for the “stolen children of Timor” was also included in the program. Participants from International Committee for the Red Cross-Timor shared their experience in documenting and searching for the disappeared children in Timor.

Mr. Garavito shared about his organization’s experiences in facilitating the re-unifications— from the process of documenting the disappearance cases, to conducting investigations, to organizing the first reunion of the families and the previously disappeared loved ones, to helping these families sustain their relationship after being reunited. He imparted valuable lessons on the nature of re-unifications, highlighting both the individual (psycho) and social aspects of the event.

One day of the skills exchange was also devoted to the process of documentation that would aid in the search for the disappeared. AFAD Secretary-General Mary Aileen Diez-Bacalso led a discussion on the mandate of the UN Working Group on Enforced or Involuntary Disappearances (WGEID) and how to use documentation in accessing its procedures such as submission of cases, general allegations, and urgent action appeals, including country visits. Members of HAK and other Timorese and Indonesian organizations such as ICRC Timor and AJAR participated in the discussions.

The re-unification event also included a historical tour around the capital, Dili, and meetings with civil society groups and government agencies of Timor such as the Ministry of Social Solidarity and the Office of the Prime Minister.

The re-unification of the families in Timor-Leste is a victory not only for HAK, AJAR, Kontras and AFAD. It is a victory for all the families of the disappeared all over the world. The event serves as an inspiration to the families, a testament that hope is not lost, and that attaining truth and justice is indeed possible.

Ivanka Custodio is AFAD’s Regional Research and Documentation Officer.

Bridging the great divide

The struggle for true reconciliation for victims of enforced disappearance continues

By: Yati Andriyani and Tioria Pretty

Enforced disappearances in Indonesia occurred particularly in the New Order regime (1965-1998) and continued into the reformation era (1998-2004). This phenomenon occurred massively during the transition from the Old Order to the New Order (1965-1966) when people who supported the Old Order and were accused of being affiliated with the Communist Party of Indonesia became the target of enforced disappearance. It also happened during Indonesia's occupation of Timor-Leste from 1975-1999 and during military operations in conflict areas: Aceh (1989-2004), Timor-Leste (1975-1999), and Papua (1969-now). The state also resorted to enforced disappearance to silence radical religious groups considered opposed to the state ideology and to intimidate pro-democracy groups that demand reform in the New Order.¹

Indonesia has gone through more than a decade of Reformation (1998-2015), the transition phase

from an authoritarian regime to a democratic government. This phase has spawned a number of regulations considered legal. The period also saw the establishment of human rights instruments to provide protection, enforcement, and fulfillment of human rights following the country's history of human rights violations that transpired during the New Order regime. The instruments also served as a constitutional guarantee to resolve gross human rights violations.² However, these regulations and legal instruments cannot be implemented because of the government's lack of commitment and political support and the absence of truth documentation. Victims' rehabilitation also continues for more than a decade now after the transition.

Unfulfilled promise

Indonesia is currently under the leadership of President Joko Widodo (or Jokowi) for the period 2014-2019.

¹ Based on the National Human Rights Commission's study, 32,774 individual cases of enforced disappearance resulted from operations conducted by the State. In the Mysterious Shooting case between 1982 and 1985, only 67 out of 5,000 victims were identified. In the Tanjung Priok case, 14 people went missing. Meanwhile, according to KontraS, the condition and whereabouts of approximately 88 victims involved in the Talangsari case remain unknown. Additionally, the National Human Rights Commission reported that about 75 people went missing during the military operations conducted in Aceh from 1989-1998. On 27 July 1996, 13 people were missing. The 1997-1998 enforced disappearance case also saw 13 people missing, according to both KontraS and the National Human Rights Commission. In a May 1998 Fact Finding Team report, 1,190 people were disappeared in relation to the riot that transpired from 13-15 May 1998. In relation to the 1966-1967 Teminabun Tragedy in Papua, the National Human Rights Commission reported that a number of detainees out of 500 people held in custody for their alleged involvement with Freedom Papua Organization are still missing until now. The Commission also found out that 20 people went missing during the Sentani Tragedy in 1970 and around 2,000 people were missing and killed in the Jaya Wijaya and West Wamena Tragedy. Aristoteles Masoka (Papua) is also still missing until now, according to KontraS and the National Human Rights Commission.

² Law No. 39 of 1999 on Human Rights, Law No. 26 of 2000 on Human Rights Court, and also some ordinances made by the People's Consultative Assembly (TAP MPR), such as TAP MPR No. V/MPR/2000.

During the presidential election campaign in 2014, enforced disappearances from 1997-1998 became a hot topic, as one of the presidential candidates, Prabowo Subianto, was suspected of being involved in this human rights violation.

At the start of his five-year administration, President Jokowi formulated the Medium Term Development Plan [RPJMN]2015-2019 that promised to establish “an *ad hoc*/temporary commission, with the task to facilitate the disclosure of past gross human rights violations which, while directly under the President, shall be fully responsible to the President...”

A year has passed and there has been no positive implementation by the government to resolve this issue.³

Reconciliation without truth and justice?

There is a serious gap between President Jokowi’s promises engraved in the RPJMN 2015-2019 and the actions of the ministers under the President. One year after Jokowi became the President, none of the seven gross human rights violations being prosecuted by the General Attorney, which includes the 1997-1998 enforced disappearance cases, based on Law No. 26 of 2000 in the Human Rights Court have been pursued.⁴

The General Attorney tasked to prosecute gross human rights violations through the judicial mechanism promotes a settlement through reconciliation instead. The Truth Revealing Committee⁵ under the coordination of the Coordinating Ministry of Political, Legal and Security, and Attorney General, National Human

Rights Commission, National Police, Indonesian National Army, and State Intelligence Agency also advocate for the settlement of gross human rights violations in the past through reconciliation.

The Commission for the Disappeared and Victims of Violence (KontraS), together with the victims of human rights violations and families and other human rights and democracy figures in Indonesia, rejects the establishment of the Truth Revealing Committee and refuses to accept its proposal to solve human rights violations through reconciliation.

KontraS argues that such reconciliation cannot be realized without justice for the victims and it is impossible to achieve if there is no effort to rehabilitate the victim’s dignity. Reconciliation is a process that is part of the victims’ rights and, ideally, it is the victims who initiate it and not the State. KontraS also believes that the proposed reconciliation sides with the perpetrators and not the victims.

“Indonesia’s occupation of Timor-Leste from 1974-1999 had resulted in various human rights violations, including the forced disappearance of the children.”

Indonesia is now entering a phase of consolidation of democracy and the ideal step should be to push for the National Human Rights Commission investigation of the seven cases, which are 1965 Tragedy, Mysterious Shooting in 1982-1985, Talangsari, Trisakti-Semanggi-I-II, May Riot, Enforced Disappearances in 1998, and Wasior-Wamena. The willingness of the State to

³ KontraS press release, Pemerintahan Jokowi Tidak Akuntabel dalam Hak Asasi Manusia <http://www.kontras.org/home/index.php?module=pers&id=2177>

⁴Trisakti-Semanggi I and II Case in May 1998, Mysterious Shooting in 1982-1985, Talangsari Case in 1989, 1965-1966 Tragedy 1965-1966, Wasior-Wamena Case in 2001/2003.

⁵ Up to the time this article has been made, there has been no clarity on the official name of this team. Previously, a number of media reported it as the Reconciliation Joint Team. Later, the media referred to it as the Truth Revealing Committee.

finish these cases must be followed with actions to reveal the truth, a judicial process to break the chain of impunity, a rehabilitation of victims, and a guarantee that enforced disappearance will not happen again.

However, the President has been passive in providing directives, thus leaving the ministers to take actions that are not in conformity with his vision and mission, as well as the Nawacita.⁶ The settlement of cases then is set up to fail in holding the perpetrators accountable for their crimes and further cultivate impunity.

The President also continues to avoid following up on the recommendations made by the parliament to the then President Susilo Bambang Yudhoyono in 2004: (1) to solve the 1997-1998 enforced disappearance case, which required the immediate establishment of an *ad hoc* Human Rights Court, (2) to search for the 13 missing activists, (3) to provide rehabilitation for the victims and families, and (4) to ratify the Convention on Enforced Disappearance.

Disappeared Timorese children reunite with family

Indonesia's occupation of Timor-Leste from 1974-1999 had resulted in various human rights violations, including the forced disappearance of the children.⁷ Based on the Report of the Commission for Reception, Truth and Reconciliation from 2002-2005, about 4,000 children of Timor-Leste had been forcibly disappeared from 1975-1999. The governments of Indonesia and Timor-Leste established a

Commission of Truth and Friendship (CTF) in 2005-2008 as a bilateral mechanism to find out the truth about what happened in Timor-Leste in 1974-1999⁸ and eventually pave the way towards reconciliation, improve friendship between both governments, and ensure that similar violations would not recur in the future.

Both Commissions recommended a program for the missing and separated children.⁹ The CTF recommended setting up a Commission for Missing Persons and encouraged the two governments to cooperate in collecting information and in identifying all children who were separated from their parents, and informing the families of victims the whereabouts of their children.¹⁰

Until now, the two governments have not acted on these recommendations. In an effort to push for more action on the part of the authorities, the Indonesian National Human Rights Commission and Timorese *Provedoria dos Direitos Humanos e Justica* (PDHJ/the Office of the Provedor for Human Rights and Justice) have signed a cooperation agreement¹¹ and then a Memorandum of Understanding (MoU) for the period of 2015-2018. The two groups promised to follow up on CTF's recommendations concerning the disappeared children of Timor-Leste.

But the government of Indonesia lacked the will and commitment to identify and reunify these separated children. Until now, the establishment of such Commission and the implementation of the MoU have yet to be implemented quickly,

⁶ a political platform that Jokowi carry in his governmental cabinet

⁷ <http://www.cavr-timorleste.org/in/home.htm>

⁸ <http://www.etan.org/etanpdf/2006/CAVR/bh/07.8-Pelanggaran-Hak-Anak.pdf>

⁹ <http://www.chegareport.net/profil-of-ctf/?lang=id>

¹⁰ <http://www.chegareport.net/wp-content/uploads/2014/10/CTF-laporan-akhir-20081.pdf>

¹¹ <http://www.komnasham.go.id/kabar-latuharhary/komnas-ham-mengembalikan-belasan-anak-timor-leste-yang-terpisah-keluarganya>

accurately, and efficiently.

In 2013, Asia Justice and Human Rights (AJAR), a civil society organization in Indonesia and Timor-Leste, began collecting data on the disappeared Timorese children and, in cooperation with KontraS, Elsam (Institute for Policy Research and Advocacy), IKOHI (Indonesian Association of Families of the Disappeared, and HAK Association (Law, Basic Rights, and Justice Foundation), it led efforts to find the separated children. Then, it urged the Indonesian National Human Rights Commission and Timorese PDHJ to facilitate the visits and family reunification process, which occurred on 18-23 May 2015. The event saw 14 people—two women and 12 men—who were separated from their families at the ages of 5-15 years between 1979 and 1994 reunited with their families in Timor-Leste.¹²

The visit also provided the avenue for the children to meet with Timorese civil society organizations, Timor-Leste's Prime Minister, Minister of Social Solidarity, the Chairperson of Timorese PDHJ, and the Ambassador of Indonesia.¹³

Prior to the visit, AJAR Indonesia facilitated the healing process for the children, while AJAR

Timor-Leste and HAK Association gathered the families in Timor-Leste and also prepared them for the reunion, making sure they had proper understanding of the situation and the openness to accept and welcome back the children they lost during the conflict. AFAD, together with HAK Association, also prepared the families of the disappeared for the reunification by providing a training on psychosocial accompaniment.

AJAR is committed to continue working with other civil society organizations and the state institutions such as the Indonesian National Human Rights Commission and Timorese PDHJ to collect data, search for the children, and reunite them with their families. But it needs a lot of support to build on the success of such a visit. The group aims to extend this visit to helping families also access social, cultural, political and financial assistance because the separated children, now grown men and women, have different citizenship, customs, culture, and geographic location.

Yati Andriyani is the AFAD Council Member of KontraS, while Tioria Pretty is the organization's Campaign Staff.

¹² <http://pdhj.tl/a-pdhj-e-a-komnas-ham-assinaram-um-acordo-de-cooperacao-continua/?lang=en>

¹³ <http://www.kontras.org/home/index.php?module=pers&id=2064>, Tuesday 26 May 2015, Komnas HAM – AJAR – KONTRAS – IKOHI – ELSAM Membawa Mereka Pulang: Rekomendasi CAVR dan KKP tentang Orang Hilang dan Anak-anak yang Dipisahkan Harus Segera Dilaksanakan

Structures of violence

APDP and IPTK study the extent of the Indian State's human rights violations and culture of impunity in Jammu and Kashmir

By: Parvaiz Matta



The Indian-administered Jammu and Kashmir continues to be the highly militarized zone of the world. The region is internationally recognized as a disputed territory between India and Pakistan and this has caused widespread and systematic violence. The institutional culture of moral, political, and juridical impunity has resulted in the disappearance of 8000+ persons, 70,000+ deaths, 7000+ unknown, unmarked and mass graves, and numerous cases of torture and sexual violence perpetrated by Indian military and paramilitary forces. The armed forces are equipped with draconian laws such as the Armed Forces Special Powers Act (AFSPA), Disturbed

Area Act, Public Safety Act, etc., which provides them with legal impunity to perpetrate human rights violations. The widespread human rights violations in Jammu and Kashmir must be understood to have occurred within the forcible control of territory by the Indian State and its functionaries against a struggle for self-determination. There is a complex make-up of structural violence and institutional denial in Jammu and Kashmir.

In order to understand and analyze the composition of violence in Jammu and Kashmir, the Association of Parents of Disappeared Persons (APDP), in association with the International Tribunal for Human Rights and Justice in Indian Administered Kashmir (IPTK), released in September 2015 a comprehensive report called,

“Structures of Violence-Indian State in Jammu and Kashmir.” The report was prepared after two years of extensive research and documentation. **“Notably, the research documents the extrajudicial killing of 1,080 persons and enforced disappearance of 172 persons, as well as the numerous cases of torture and sexual violence.”**

It is a part of the continuing work to understand and analyze the role of the Indian State in Jammu and Kashmir and identifies the structure, forms, and tactics of violence of the Indian State in Jammu and Kashmir.

Notably, the research documents the extrajudicial killing of 1,080 persons and enforced disappearance of 172 persons, as well as the numerous cases of torture and sexual violence that were perpetrated by some personnel of armed forces whose estimated strength in Jammu and Kashmir is between 656,638 and 750,980.

The study also contains 333 detailed case studies and identified 972 alleged perpetrators including 464 army personnel, 161 paramilitary personnel, 158 Jammu and Kashmir Police personnel, and 189 government gunmen. The 972 alleged perpetrators includes senior ranked officer of the Indian Army and other military and paramilitary forces that also involve top police officials of Jammu and Kashmir Police.

The report analyzes mass crimes and litigation of mass crimes and concludes that there can be no expectation of justice from the Indian Judicial System. The report also finds court martials in Jammu and Kashmir to be opaque, biased, and against international norms.

In this research report, patterns of violence are identified, individual State actors are named, phenomena such as unmarked and mass graves, enforced disappearances and government gunmen such as the *Ikhwān* are brought to light and, consistently, the Indian State has been indicted. The study also illustrates the patterns of violence through individual case studies and is directly concerned with identifying the structure, forms and tactics of violence of the Indian State. It keenly asks these questions: How does the Indian State perpetrate this violence? What precisely is the structure, physical and institutional, through which weapons, ammunition, soldiers, officers, camps and battalions inflict violence on the people of Jammu and Kashmir? Where is the control? (The driving motivation of this exercise is, and has always been: Responsibility.) Who do we hold

responsible for the individual and collective acts of violence?

The cases documented in this report may constitute crimes of genocide, crimes against humanity and war crimes under international law. This documentation emphasizes the importance of collecting evidence and presenting it in a way that would enable future international processes to understand the violence in Jammu and Kashmir and the structure responsible for it. Note that international criminal law does not limit responsibility to only the physical perpetrators of crime. The principles of individual criminal responsibility are based on the notion that those who do not physically commit the crime in question are still liable for other forms of participation. This includes, for example, ordering, instigating, or even inciting.

The focus of the report was on indictments against the Indian State and its functionaries. During conflicts when authorities disregard the rule of law and criminalize the populace on the basis of their political aspirations, it is vital to hold the authorities accountable. The APDP/IPTK is mindful of its responsibility to highlight other human rights violations. But, the Indian State does not even recognize the rights of belligerents in a conflict. All such actions by belligerents are immediately labelled as “anti-national.” These issues stem from the fact that the Indian State does not acknowledge the existence of an international or non-international/internal armed conflict. Therefore, it is difficult to correctly investigate and understand such crimes.

In addition to the cases of extrajudicial executions, torture, and sexual violence, the report also contains a chapter on enforced disappearances, which documents the disappearance of 172 persons. The cases have been documented comprehensively from different areas of Kashmir

through interviews with victims' families and also by seeking, observing and analyzing official records.

Role of police

In most of the human rights violation cases, particularly those involving enforced disappearances, the police has taken years to lodge the First Information Reports regarding the abduction/arrest or extrajudicial execution of the victims despite repeated requests from the relative families. Often, the police files reports only after the intervention of judiciary.

For decades, the Jammu and Kashmir Police has failed to regularly file First Information Reports (FIR) but has claimed that the search for victims is ongoing and investigations are being carried out. In many cases, no information exists on whether any investigations or prosecutions were conducted by the police. Additionally, in some cases, it appears that the police closed the cases despite an evidence on record and did not file closure reports before a court of law as required by the law. Some investigations have also been closed after stating that the perpetrators could not be traced. In such cases, it is not ascertained whether formal orders for closing the cases were passed or not. All these have allowed perpetrators to elude justice.

Conduct of judiciary

The so-called largest Indian Judiciary has failed in ensuring justice and protecting the rights of Kashmiris. The general experience with the judiciary is that it has allowed itself to be influenced by the power and will of the executive branch, thus rendering itself subservient to the State. The judicial processes have taken decades to confirm the abduction and disappearance of the victims and have indicted groups of armed forces without fixing specific culpability on the individual perpetrators. Despite having evidence

on record against most of the perpetrators, the judges have failed in fully discharging their duties on recording all facts and circumstances of the cases. During the research process, it has been observed in all the cases that the delayed inquiries and deferred finalization of inquiry reports apparently did not result in any further action or prosecution of perpetrators. It has also been examined that the manner in which the inquiry reports summarized the testimony of the witnesses has always been unclear and lacks sufficient detail for a thorough analysis. Furthermore, security agencies have denied the arrest or abduction of the victim and, at times, claimed that the victim either escaped from their



Families of disappeared persons gather at the APDP office for a training on documentation of ED cases.

custody or was released soon after his arrest. Some families reported that they were asked to produce their evidence before the judicial inquiries. But the evidence was never presented on the day of the inquiry and families were asked to leave with a promise they would be informed when to return. Needless to say, they were never informed when to return. In some cases, the courts closed the cases even before the conclusion of the inquiries.

Moreover, in some cases, the courts have ordered inadequate monetary relief after protracted process. The delayed manner, in which the cases were handled, effectively provided for the institutional delay of justice which every time strengthened impunity. The High Court should

have continued to monitor the investigations on the FIRs. Instead, the High Court, most of the time, limited itself to the issue of compensation only. The approach of the High Court clearly resulted in a denial of justice as it appears that no investigations or prosecutions have ever taken place.

The judicial processes in Jammu and Kashmir, which particularly involve the State Human Rights Commission [SHRC], have exhibited a strong inclination to simply grant compensation instead of effectively investigating and prosecuting human rights violations. The SHRC has tended to recommend granting monetary ex-gratia relief of Indian rupees 100,000 or compassionate employment under SRO-43 [Statutory Rules and Orders], but despite such recommendation, implementing agencies often deny this relief to the families. Notwithstanding the value of these benefits to victims and/or their families, it is unfortunate that the judicial processes have not demonstrated a willingness to provide true justice i.e. making the perpetrators account for their crimes.

The research has also learned that the armed forces have often justified their acts of commission or omission by claiming that their actions were done in the pursuance of "official duty." If any armed forces personnel rape a woman while serving at the front, does that count as "official duty?" Similarly, other heinous human rights violations such as fake encounters, torture, enforced disappearance cannot be done in pursuance of an official duty. By their very definition, these are illegal acts, for which the responsible armed forces personnel should be made accountable.

Under Indian law, the legal immunity provided to the armed forces under Section 7 of the AFSPA is caveated by the "good faith" requirement. The

Supreme Court, instead of giving a strict interpretation of what would constitute good faith, has given the armed forces even more leeway to commit serious crimes.

Reading the individual cases examined in this report, alongside judgments of the Indian Supreme Court and other literature on the subject of human rights in Jammu and Kashmir, it is clear that there is an overwhelming unwillingness to genuinely investigate or prosecute the armed forces for human rights violations. There is, on occasion, a willingness to order compensatory relief, but not to bring the perpetrators to justice. Without adequate prosecution and the fixing of individual criminal responsibility, monetary compensation is at best a palliative and at worst a bribe to buy silence. More importantly, domestic processes of justice do not appear to have the capacity or willingness to consider violations done during conflict in light of the relevant international humanitarian law.

Government's approach and myth of court martials

Prior to prosecuting armed forces personnel, there is a need to seek sanction from the Ministry of Home Affairs India. However, based on all the available official government documents, most of the cases sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] do not mention having sought this preliminary requirement, thus suggesting that investigations, if any was conducted, never reached the prosecution stage. Also, it appears that even the Ministry of Home Affairs has not taken any action in almost all the cases.

The Government of Jammu and Kashmir has always taken extensive time to investigate and acquire sanction for prosecution under AFSPA, which has helped the perpetrators elude justice,

while it leaves the victims' families exhausted. In almost all the cases, it is very difficult to determine if the cases against perpetrators took steps to acquire sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] from the Ministry of Home Affairs in India. Most of the times no reasons are on record for the decline of sanction for prosecution.

The available documents for most of the cases do not suggest that the army held court martials. The so-called court martials have always shielded perpetrators and, as *modus operandi*, have always scuttled the process of investigation and prosecution. No person can be a judge in their own cause is one of the oldest principles of natural justice that has been completely disregarded by the court martials under the Army Act, 1950, and the Border Security Forces Act, 1968, particularly for serious human rights violations. The court martials not only violate natural justice but also other sacrosanct guarantees enshrined in the Indian criminal justice system.

In order to ascertain the status of all the documented cases, APDP sought information from the government on all inquiries and court martials conducted by the military and paramilitary forces in Jammu and Kashmir, but the authorities refused to share any information. APDP also strived to seek information on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs since the conflict began in Jammu and Kashmir, but again no information was ever provided. This clearly reveals the Government of India's indifference to the investigation and prosecution of perpetrators of human rights violations.

The Government of India, particularly the Ministry of Home Affairs and Ministry of Defense, seems to care very little about the High

Court judicial inquiry orders, the Jammu and Kashmir Police investigations, or in instituting a process for delivering justice. It is obvious that the authorities' inadequacies in compiling and submitting timely inquiry reports and declaring that perpetrators cannot be traced thus justifying the closure of cases have engendered a culture of impunity. Furthermore, the non-cooperation of the Government of India via these two ministries and the non-compliance of the military and paramilitary forces, as well as the judiciary's failure to resolve cases in a speedy manner, have resulted in the unprecedented violation of human rights in Jammu and Kashmir.

Ironically, instead of holding the perpetrators accountable for their actions, they have received promotions, commendations, medals, gallantry awards and other recognitions for meritorious service.

The case studies in the report reiterate the lack of will power to provide justice to victims and their families. Despite overwhelming evidence, the Indian judiciary and executive—supported by the legislature through laws such as AFSPA—do not allow for fair and independent processes of investigation or prosecution. The list of alleged perpetrators, their ranks, units and area of operations strongly suggests that the crimes cited in this report were carried out across Jammu and Kashmir by the various members of the armed forces and police. Crimes in Jammu and Kashmir have not been committed despite the Indian State but because of it. The report emphasizes that the structures of the Indian State, including the Government of Jammu and Kashmir, have not just stood by while human rights violations took place, but they bear a far higher level of culpability. They must be held accountable for putting in place structures specifically meant to carry out these crimes.

Domestic Indian law does not criminalize enforced disappearance or torture. Non-criminalization of these human rights violations means that the Indian law is unable to hold the perpetrators responsible for their crimes and people do not have the legal means to prosecute them.

The UN Working Group on Enforced or Involuntary Disappearances has reiterated that military courts have contributed significantly to impunity for enforced disappearances and has consistently maintained that military tribunals are one of the greatest impediments in achieving justice for enforced disappearances. The Working Group, in one of its earliest reports in 1993 submitted to the Commission on Human Rights, stated that:

Legal prosecution and sentencing in the case of offences involving gross violations of human rights such as disappearances should take place within the framework of the civil courts, even if those concerned belonged or belong to the armed forces.

The Inter-American Convention on Forced Disappearance of Persons expressly states that members of the military or other state actors involved in enforced disappearances cannot invoke military jurisdiction. It also clearly states that: "The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties."

This evidence and attempt to assign responsibility must not be ignored by the international community. In fact, in light of the Indian State's unwillingness to provide justice, international mechanisms must be put in place to receive and process this evidence. In the era of globalization, human rights are not the sovereign responsibility of States. The international instruments and

mechanisms exist as guarantors of rights and freedoms transcending State boundaries. India's claim of being a functional democracy and demand for a permanent seat in the United Nations Security Council is belied by its unlawful conduct in Jammu and Kashmir and refusal to allow accountability. In July 2008, the European Parliament passed a resolution urging the Government of India to investigate unmarked and mass graves. But, no action has been taken on this matter.

India's history of denying the applicability of international law to the Kashmir conflict and its refusal to allow access to international humanitarian institutions, UN Special Rapporteurs, and independent human rights investigators to Jammu and Kashmir is well known. Hence, APDP appeals to the international community and justice mechanisms as domestic remedies have conclusively failed the people of Jammu and Kashmir.

This report seeks a response from the international community. The case studies of enforced disappearances, extra-judicial killing, sexual violence and torture, supported by official records or testimonies, must not be ignored. To ignore this evidence is to endorse the violence of the Indian State. There must be an immediate initiation of processes that collect and analyze this information to be used as a part of a formal procedure that records the truth and assigns responsibility.

In the recommendations part of this report, the international community is asked to put moral and economic pressure on India to recognize the importance of the rights of the people of Jammu and Kashmir under armed conflict and to perform its obligations to the people of Jammu and Kashmir under international humanitarian and human rights law.

Moreover, as an interim measure, it has been recommended that the United Nations Human Rights Council should take cognizance of the findings, testimonies, and documentary evidence presented in this report with regard to the existence of grave, widespread and systematic human rights violations, and pervasive structures of state violence in Jammu and Kashmir, and appoint a Special Rapporteur with a specific mandate to investigate India's violations under international law, international humanitarian law and international criminal law. The Special Rapporteur may be empowered to use such modalities and procedures as it may deem necessary for its mandate, as in the case of Eritrea, Cambodia, Palestinian Territories, Sudan and other such mandates.

It is also recommended that the Government of India and Government of Jammu and Kashmir should allow free access to Jammu and Kashmir to all the relevant Special Procedures of the UN Human Rights Council for the purpose of carrying out investigations into allegations mentioned in this report and receiving submissions from victims of human rights violations.

APDP also calls on the UN Security Council to exercise its power to refer the situation in Jammu and Kashmir to the Prosecutor of the International Criminal Court.

The group also appeals to foreign governments and their embassies/missions in India and the UN Department of Peacekeeping Operations to record the names and identifying information of all alleged perpetrators listed in this report and deny them entry into their territory or into the UN Peacekeeping Forces. Foreign governments, under Universal Jurisdiction, where applicable, must prosecute these alleged perpetrators.

The international community must act now to hold Government of India accountable for its worst human rights records in Jammu and Kashmir.

Parvaiz Matta is APDP's Campaign and Research and Documentation Staff.

Bangladesh:

Rise in Enforced Disappearance Cases and Persecution of Human Rights Defenders

By: Sazzad Hussain¹

The human rights situation in Bangladesh has deteriorated in recent years due to a political crisis created in the absence of an accountable government. The present Awami League led government has pushed the country towards a volatile situation by repealing the Constitutional provision of conducting Parliamentary elections under a non-partisan 'caretaker' government², through the Fifteenth Amendment³ to the Constitution of the People's Republic of Bangladesh. This has allowed human rights violations, criminalisation of politics, violence and the deterioration of the law and order situation in the country.

The crime of enforced disappearance has become endemic and has become a part of the trend of extrajudicial killings. Allegations by the families of the disappeared persons have been frequently raised against law-enforcement agencies and over the years this has been increasing in Bangladesh. The root cause of enforced disappearance develops due to autocratic political systems and to suppress self determination movements or peoples' movements. In the context of Bangladesh, most of the incidents of enforced

disappearances occurred due to political instability where the government uses state apparatus to gag the voices of the opponent political groups. Political identities of the disappeared persons entail that due to their involvement in the opposition political groups they became victims of enforced disappearance. Thus, the acts of enforced disappearance have become an institutionalised practice of repression resorted to by the government. As this is a crime perpetrated by the state actors and perpetrators enjoy impunity, they sometimes exercise their power voluntarily.

Cases revealed that members of law enforcement agencies take money from influential political members of the ruling party and work on their behalf. Due to the culture of impunity, the rule of law has become non-existent; it also broadens the scope for misuse of power by law enforcers. This is due to the fact that the state does not exercise reasonable control over its agencies, engages in human rights abuses, and establishes no measures to prevent acts of disappearance. In addition to this, deep rooted corruption encourages state actors to abduct people for ransom (though they

¹ The writer is a Programme Coordinator of Odhikar and the Country Campaign Staff of AFAD.

² The caretaker government system was abolished by the Awami League led government through the 15th Amendment to the Constitution when they were in power from 2009-2013.

³ On June 30, 2011, the Awami League government unilaterally amended the Constitution, ignoring the protests from the then Opposition, Bangladesh Nationalist Party (BNP) and its alliance; and without any consensus or referendum which created a political crisis. The Election Commission then declared an Election Schedule, which was not shared with the then BNP-led parliamentary Opposition. The BNP-led Opposition refused to participate in the elections unless a caretaker government was reinstated. As a result, the 10th Parliamentary Elections were held on 5 January 2014 in a politically violent atmosphere, with general strikes, physical confrontations, the burning of vehicles and human casualties. In 153 constituencies (out of 300), Awami League candidates were declared uncontested winners, even before the polling commenced, as there was no other candidate contesting.

are also hired by private entities to undertake disappearances) which is often followed by extrajudicial executions. The Government endorses these illegal activities by its agencies either by approving them silently or condones them by remaining silent. Case studies also show that suspected accused people were either arrested without a warrant or picked up by the members of law enforcement agencies and then disappeared, as the law enforcement denied the arrest. Because of substantial reporting, several disappearance victims have been produced in courts as 'arrested' in pending cases after a long time or have been implicated in a 'gunfight' where

“Recent harassment of Odhikar and impediments on its activities by the government show the escalating level of persecution on human rights defenders in the country.”

it is often stated that the person who disappeared died due to crossfire between members of law enforcement agencies and the accomplices of the accused. As per the law, arrested persons must be produced before a Magistrate

within 24 hours⁴. In many cases the law enforcers do not follow this legal provision and keep the arrestees hidden in their custody, violating the law.

Enforced disappearance is a serious violation of

fundamental human rights and is considered a crime against humanity as defined under Article 7 of the Rome Statute⁵ of the International Criminal Court⁶, because it violates the human rights of both the disappeared person and the family. It is imposed against people who have been labeled as 'enemies of the State', on the pretext of maintaining peace and order and protecting 'national security'. It also strips a disappeared person of the right to be protected by the law, which is recognised under Article 16 of the International Covenant on Civil and Political Rights and Article 31 and 32 of the Constitution of the People's Republic of Bangladesh. The families of the disappeared people are unable to seek legal recourse, as the criminal law of the country does not recognise disappearance as a 'crime'.

Odhikar, as a member of the Asian Federation Against Involuntary Disappearances (AFAD) and the International Coalition Against Enforced Disappearance (ICAED), has been working on documentation, fact finding and creating a network of victims' families; and also campaigning against enforced disappearances since 2009. Odhikar publishes a monthly report on the human rights situation, which includes incidents of enforced disappearance. The reports are based on information gathered by local human rights defenders associated with Odhikar and data collected from daily newspapers. According to information gathered by Odhikar, there were a

⁴ Section 61 of the Code of Criminal Procedure, 1898 entails provisions about persons arrested not to be detained more than 24 hours. It states that, "No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

⁵ Article 7: For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population which includes enforced disappearance of persons.

⁶ Bangladesh ratified the Rome Statute of the International Criminal Court on 23 March 2010.

⁷ Odhikar only documents allegations of enforced disappearance where the family members or witnesses claim that the victim was taken away by people in law enforcement uniforms or by those who said they were from law enforcement agencies.

⁸ Between 2009 and 2015, a total of 92 persons have been released and found in blindfolds or produced before court after several days/months of detention in unknown locations.

Rapid Action Battalion and the Detective Branch of Police are involved in most cases of disappearance.



The Rapid Action Battalion in motion. Photo: The Guardian

The widespread and indiscriminate practice of enforced disappearances unveils the government's systematic operation to suppress opposition groups and silence the voices of its own citizens. Enforced disappearances stand in the same spectrum of the government's violent repression, alongside torture, extrajudicial killings, illegal detention, filing fabricated criminal cases and harassment against political opponents and human rights defenders. The situation of the country has become repressive as a result of the government's restraint on opposition parties and alternative voices; by taking away the rights to freedom of expression, assembly and association through imposing draconian laws - the Information and Communication Technology Act 2006 (Amended 2009, 2013), Section 144 of the Code of Criminal Procedure 1898, Special Powers Act 1974, Anti-Terrorism Act 2009 (Amended 2012, 2013) and

Money Laundering Prevention Act 2009 (Amended 2012).

Apart from the widespread human rights abuses, freedom of expression is seriously under threat in Bangladesh. From January to November 2015, 31 persons were arrested under the Information and Communication Technology Act 2006 (Amended 2009, 2013) for criticising the government and commenting against the Prime Minister, Sheikh Hasina and her family on social media. This law has curtailed the freedom of expression and the government is using this Act against human rights defenders, journalists, bloggers and people who have alternative opinions. Odhikar has been persistently monitoring and documenting such aggressiveness of the government. As a result, it has come under government ire for being vocal against human rights violations and for campaigning to stop them.

The present Awami League led government, after assuming power in 2009, placed intense pressure and instituted severe harassment on Odhikar for its reports on the human rights situation, particularly on enforced disappearances and extrajudicial killings in the country. The Organisation is continuously under surveillance and its staff and members being harassed by various intelligence agencies, including Special Branch (SB) and Detective Branch (DB) of police, National Security Intelligence (NSI) and Directorate General of Forces Intelligence (DGFI). Their activities, movement and cell phones are

⁹ This presence is, to some extent, also being felt by other NGOs that monitor civil and political issues and corruption.

monitored as well. The constant visibility of men from law enforcement agencies watching the Odhikar office is, under the present circumstances, tantamount to intimidation and is hindering regular organisational activities. The grassroots level human rights defenders spread across the country, who are associated with Odhikar, are also under surveillance and occasionally under threat.

Recent harassment of Odhikar and impediments on its activities by the government show the escalating level of persecution on human rights defenders in the country.⁹ On August 2, 2015, the Bangladesh Police Headquarters issued a press release to the media where it stated that the statements made by Odhikar on 'Extrajudicial Killings' are contrary to existing laws of Bangladesh, which is tantamount to challenging rule of law and the judicial system. Odhikar refuted the claim of the Police by responding that Odhikar is a persistent voice against human rights violations and impunity. It has been fighting for improving the criminal justice system and for the establishment of rule of law and an end to impunity in Bangladesh, since its inception in 1994. Extrajudicial killings contravene rule of law. Incidents of extrajudicial killings are occurring and such allegations are regularly made by the victims' families. There are also incidents where police threaten to kill arrestees in 'crossfire' in order to extract 'confessions'. Odhikar gathers such evidence from reports published in different national dailies and information

sent by human rights defenders from the field; and releases its reports after confirming and compiling such information.

In the afternoon of 29 August 2015, the National Press Club authority abruptly cancelled a programme, which was scheduled to be held on 30 August at the National Press Club auditorium. The Press Club authority cancelled its permission over the phone and would not allow Odhikar to host the programme at their premises. August 30 is the International Day of the Victims of Enforced Disappearances. The family members of victims of enforced disappearance were to come together at a solidarity meeting at the National Press Club auditorium on that day. The programme was to be jointly organised by members of the families of the disappeared, the Asian Federation Against Involuntary Disappearances (AFAD), the Asian Legal Resource Centre (ALRC), the International Federation for Human Rights (FIDH) and Odhikar. The meeting was organised to allow family members of victims of disappearance to recall the incidents, remind everyone of the issue and demand justice and recovery.

Odhikar also received information that some members of victims' families who were supposed to attend the programme had been threatened over the telephone and told not to participate. On August 30, 2015 law enforcement agencies in various districts also inquired about local human rights defenders associated with Odhikar; and advised them not to conduct any programmes in relation to the International Day of the Victims of Enforced Disappearance.

The harassment and intimidation faced by Odhikar does not only come from law enforcement agencies and the lower courts. It is a multi-pronged effort of the Government. The NGO Affairs Bureau (NGOAB), which is under the Prime Minister's Office, has barred the release of all project related funds of Odhikar, since August 2013, in order to stop its human rights activities. Furthermore, the NGO Affairs Bureau has even sought information and confirmation of activities of Odhikar as per an NGO regulatory Bill - Foreign Donations (Voluntary Activities) Regulation Act 2014, which was approved by the Cabinet, but is yet to be enacted into law by the Parliament. The Organisation is still operating due to the volunteer services of grassroots level human rights defenders associated with Odhikar and their commitment to human rights activism.

The Government must thoroughly investigate

each reported incident of disappearance speedily and efficiently; and put in place a directive that security forces operate within the laws. Complaint mechanisms must be clearly established and free from any kind of refusal, resistance, threats, coercion and intimidation. Bangladesh has obligations under the ICCPR and the CAT to prevent cases of enforced disappearance. The Rome Statute of the International Criminal Court, which Bangladesh ratified in March 2010, also refers to the systematic use of enforced disappearance as a crime against humanity. Therefore, Odhikar reminds the Government of Bangladesh that, since it has been elected for the third term at the UN Human Rights Council, it has the duty to ensure the right to life and protection under the law. Regardless of who perpetrated the crime, it is the duty of the state to see that proper justice is delivered.

Nepal's new constitution

A disregard for the core concerns on enforced disappearances

By: Bikash Basnet

After years of political wrangling, Nepal made history by promulgating in September 2015 its very first constitution. It established Nepal as a federal democratic republic with secular values. The country's parliament was able to secure enough votes to approve the new constitution in spite of some small parties boycotting the voting process, not to mention the violent protests waged by Terai-based political parties, including Madeshi and Tharu communities and minority groups in southern Terai.

The promulgation of the constitution brought hope to Nepal, especially after it just suffered from the devastating twin earthquakes that came in April and May. But it did not take long for despair to override this hope as violent protests in Terai continued and the border with India was unofficially closed.

The dissatisfaction with the new constitution partly stemmed from its failure to heal the wounds of victims of disappearances and to address the major concerns of victims of the 10-year long armed conflict in Nepal. It is estimated that more than 17,000 people were killed, thousands dispossessed and disappeared, thousands of civilians tortured and hundreds of women and girls raped and subjected to other forms of sexual violence.

Notably, the fate and whereabouts of more than 1,300 people are still unknown. Under the Comprehensive Peace Agreement in November

2006, both the Maoist and the political parties agreed to investigate and prosecute the human rights violations of the past, but no concrete and meaningful action has been initiated. As a result, the perpetrators of human rights violations during the conflict remain free, thus developing a culture of impunity.

The promulgation of the constitution is considered to be the final step in the peace process and transition to democracy. However, the core concerns and sufferings of the decade-long armed conflict are still not acknowledged and have yet to be addressed in a more concrete manner. Despite sustained pressure, continued struggle and recommendations of conflict victims, national human rights commissions, civil society, human rights organizations, and the international community to draft a constitution aligned with international human rights standards, inadequacies continue to exist in the legislation. Conflict victims still clamor for the establishment of truth and justice for their relatives, the promise that these violations will not happen again, and the commitment to provide adequate reparation for all victims.

The new constitution recognized in its preamble the contributions of the martyrs and disappeared in prior years of struggle, but it explicitly fails to acknowledge the sacrifices made by victims of the more recent conflicts, of the people who helped lay the foundations of the country's transition to democracy.

Gaps in the constitution

Primarily, the constitution fails to guarantee the right to life. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) specifies that no one shall be arbitrarily deprived of his or her life.

Additionally, Article 20 (4) of the constitution states that no person shall be punished for an act, which was not punishable by law when the act was committed, and no person shall be subjected to a punishment greater than that prescribed by law at the time of the offence. This provision prevents the retrospective application of criminal law. Conflict victims have long since been demanding the applicability of retrospective law to prosecute serious crimes committed during the conflict under international law.

Furthermore, Article 21 (2) states that the victim of crime shall have a right to social rehabilitation and justice with compensation as provided for by law. But the constitution fails to incorporate and criminalize serious crimes, including disappearances committed during conflict and it fails to guarantee the victims' right to reparation.

Article 22 (1) states that no person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner. This provision is not in line with the definition of torture as provided in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Nor is it in line with Article 16 of UNCAT, which restricts the prohibition of these acts to situations of detention only.

Article 40 (5) under the 'right to social justice' states that the families of martyrs who sacrificed their lives in the people's movements, armed conflicts, and revolutions for a democratic

progressive change in Nepal, the families of those who were disappeared, persons who fought for democracy, victims of conflict and the disappeared, persons who were physically maimed, the wounded and the victims, shall have the right with priority, as provided for by law, to education, health, employment, housing and social security, with justice and appropriate respect. The constitution, however, fails to guarantee the core issues of the conflict victim's right to truth, justice, and reparation. Moreover, it excludes the victims' rights to psychological counseling, skill-based training, free education,

“Conflict victims still clamor for the establishment of truth and justice for their relatives, the promise that these violations will not happen again, and the commitment to provide adequate reparation for all victims.”

employment, identity, social recognition, acknowledgement, felicitation, and other social rights.

Likewise, under state policies in Article 51 (b) 2 and 3, Nepal will uphold the rule of law by protecting and promoting human rights. These provisions also reiterate the country's commitment to implement international treaties and agreements to which Nepal is a state party. In practice, Nepal is failing to adopt best practices for the transitional justice process and ignoring decisions of the Supreme Court, thus promoting impunity and merely paying lip service to its international legal obligations.

The new constitution has also adopted the legacy of the Comprehensive Peace Accord and Interim Constitution 2007, but it does not embrace the sentiments of the peace process and evades the concerns of the transitional justice process.

Article 276 confers upon the President a sweeping authority to pardon and grant clemency, thus creating conditions that institutionalize impunity for human rights violations such as enforced disappearance, torture, extrajudicial executions, war crimes, and crimes against humanity. It ignores victims' rights to justice and to remedy.

Article 273 (11) does not allow for an individual or group to approach the courts to raise questions about whether the suspension of a particular right is constitutional or not. This discriminatory provision contravenes Nepal's obligations under international law, as the suspension of any rights should be lawful, consistent, and temporary. Furthermore, the right to an effective remedy for violations of rights, including non-derogable rights should apply at all times.

Way forward

Though the new constitution has strongly articulated civil and political, as well as economic, social, and cultural rights under fundamental rights and duties of the state, its success depends on its effective execution.

Madesh-based political parties have rejected and disowned the constitution, as they are unhappy with the demarcation of federal states. This has thrown the new constitution into debate before it has even been executed.

The concerns of conflict victims have once again been sidelined due to political instability and the reluctance of the political leadership to address the past. The present power sharing of the ruling parties and appointment of accused perpetrators in the cabinet makes it clear that Nepal continues to cultivate impunity and refutes victims' right to truth, justice, and reparation. The new constitution should guarantee the implementation of the landmark decisions of the Supreme Court of Nepal, criminalize the acts of enforced

disappearance and proceed to become a state party to the UN convention relating to enforced disappearance with the aim to prevent such crimes in the future.

Adding insult to injury for conflict victims, the Government of Nepal has proceeded with the establishment of a Truth and Reconciliation Commission, and a Commission on the Inquiry of Enforced Disappearance with flagrant disregard for the February 2015 decision of the Supreme Court calling for its revision in line with internationally recognized standards of transitional justice.

Consequently, the whole process has been rejected and disowned by both conflict victims and the human rights community. Impartiality is vital for the commissions' legitimacy, which has been seriously harmed by the appointment of commissioners based on political lines instead of appointing independent experts. Today, politically divided human rights defenders, conflict victims manipulated by commissions and political leaders, and a transitional justice process that serves as a weapon to bargain for power, have triggered the deterioration of human rights and rule of law in Nepal, thus keeping the transitional process at a crossroads.

Bikash Basnet is Advocacy Forum's Campaign Staff.



Twin Lobby

Full Implementation of RA 10353 and Ratification of ED Convention

By: Nilda Lagman-Sevilla



Members of FIND, AFAD and PAHRA call on President Benigno S. Aquino III to ratify the Convention on Enforced Disappearances at a press conference during IWD 2015.

In a meeting in Malacañang on 06 October 2010 on the 98th day in office of then newly elected president of the Philippines Benigno Simeon Aquino III, he assured representatives of the Families of Victims of Involuntary Disappearance (FIND), the Asian Federation Against Involuntary Disappearances (AFAD), the Philippine Alliance of Human Rights Advocates (PAHRA), and families of desaparecidos that he would “study the matter” of endorsing the passage of the anti-disappearance bill and the signing and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (Convention). He did sign the bill into law on 21 December 2012 but he has yet to sign the Convention.

The signing of the Convention is long overdue. Eight years and nine months ago, the Permanent Mission of the Philippines to the United Nations sent a *note verbale* dated 18 April 2017 to the UN. In this note related to the candidature of the Philippines for re-election to the UN Human Rights Council, the Philippines proudly declared that:

Having ratified all of the seven core international human rights treaties and a number of their protocols, the Government of the Philippines shall **strengthen domestic support for the signing and ratification of the ... International Convention for the Protection of All**

Persons from Enforced Disappearance.

(Emphasis supplied)

This supposedly unequivocal pledge was followed in the *note verbale* by a commitment to support the country's Presidential Human Rights Committee (PHRC) in fulfilling its mandate as the primary advisory body to the President on human rights issues and concerns. As an interagency coordinating mechanism of the executive branch of government on human rights matters, the PHRC is chaired by the Executive Secretary with the Department of Foreign Affairs (DFA) and the Department of Justice as Vice-Chairs.

Shortly before the end of the previous administration, in a last ditch effort to have the Convention signed and ratified and the domestic law enacted, FIND and AFAD, along with the parents of disappeared indigenous persons, had an audience with then President Gloria Macapagal Arroyo and Executive Secretary and PHRC Chair Eduardo Ermita. The President immediately instructed Mr. Ermita to coordinate with the Senate and other concerned agencies.

Former DFA Secretary and PHRC Vice-Chair Alberto G. Romulo, later disclosed that during the PHRC's consideration of the request of FIND and AFAD, legal issues were raised. However, when Arroyo stepped down from Malacañang on 30 June 2010, the PHRC had yet to submit its recommendation.

When the current Executive Secretary took the helm of the PHRC, the ratification of the Convention was again deliberated on by the PHRC Technical Working Group on 06 September 2010. According to former DFA Secretary Romulo

among the legal issues that PHRC had to confront were the "... provisions of Article 9 of the Convention that allows the principles of territoriality and/or nationality as the basis for the assumption of jurisdiction, and of Article 13 which stipulates that the offense of enforced or involuntary disappearance is deemed to be included as an extraditable offense in any extradition treaty between States even before the entry into force of the Convention."

"It lays a strong and comprehensive legal framework that covers the unique nature and elements of enforced disappearance vis-à-vis the victims' right to truth, and the establishment of individual criminal liability and State responsibility."

In a letter to President Aquino dated 14 April 2015, the Coalition Against Enforced Disappearance (CAED) reiterated the position of FIND and AFAD that both of the above cited articles are consistent with the objective of the Convention to bring perpetrators of enforced disappearance to justice wherever it is committed. Also,

these Articles are a virtual reproduction of Articles 5 and 8 of the Convention Against Torture to which the Philippines has been a State Party since 18 June 1986, and whose Optional Protocol it ratified on 17 April 2012. Moreover, Article 9 of the Convention has its equivalent in Article 4 of the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography which protocol the Philippines ratified on 28 May 2002 or 13 years ago.

CAED posited that if these similar provisions did not impede the signing and ratification of the said international instruments, neither should they hinder accession to the Convention.

Notwithstanding the contentious articles of the Convention, Mr. Romulo believed that the enactment of the anti-enforced or involuntary

disappearance law "... would facilitate the early ratification of the Convention." Even former DFA Assistant Secretary Leslie B. Gatan, in response to FIND and AFAD's request to meet with the current DFA Secretary Albert del Rosario to discuss the issue of accession, wrote that the government "... has considered accession to the Convention as a goal..." but "... enhancement of the domestic legal and institutional capacities to deal with the issue is however the current priority."

The enactment of the "Anti-Enforced or Involuntary Disappearance Act of 2012" followed by the speedy promulgation of its Implementing Rules and Regulations (IRR) in a record time of less than six weeks has not only laid the legal groundwork for the country's accession to the Convention but has also promptly set off the required civil and military capacity-building for a simultaneous implementation of the domestic law and the Convention.

Unable to persuade President Aquino to endorse the Philippines' signing of the Convention in time for the observance of the International Week of the Disappeared in the last week of May this year, CAED turned to allies in the Philippine Congress. On 27 May 2015, Representative Edcel "Grex" B. Lagman, member of the House Human Rights Committee, delivered a personal and collective privilege speech. Entitled "End the List" the speech did not only call for an end to enforced disappearances. It also invoked the oversight function of Congress to help ensure the full and strict implementation of the "Anti-Enforced or Involuntary Disappearance Act of 2012" (RA 10353) in synergy with the International Convention Against Enforced Disappearance.

Mr. Lagman succinctly introduced the domestic law and the Convention to his fellow legislators. In a nutshell he underscored that:

The comprehensive domestic law provides for preventive, penal, and reparative measures among other mechanisms that seek to protect the rights and welfare of victims of enforced disappearance and their families. The Convention is a treaty that provides for a clear, universally formulated and accepted or legally binding definition of enforced disappearance which RA 10353 has adopted in toto. It lays a strong and comprehensive legal framework that covers the unique nature and elements of enforced disappearance vis-à-vis the victims' right to truth, and the establishment of individual criminal liability and State responsibility. It reiterates basic principles in customary international law with respect to obligation of states to investigate and prosecute perpetrators of enforced disappearance, and to provide measures of restitution, monetary compensation, psychosocial rehabilitation, satisfaction and non-recurrence.

Apart from a common definition of enforced disappearance that clearly identifies the crime's constitutive elements - deprivation of liberty, direct or indirect involvement of state authorities/agents, and denial of custody or concealment of the fate and whereabouts of the disappeared - R.A. 10353 and the Convention have other similar provisions. These include among others: 1) prohibiting enforced disappearance under all circumstances including a state of war or threat of war, internal political instability or any other public emergency; 2) declaring enforced

disappearance as a continuing offense with limited application of the statute of limitations; 3) right to information; 4) criminalization of enforced disappearance; 5) command responsibility; 6) State protection of victims and persons involved in the search of victims, and investigation and prosecution; 7) inclusive definition of victim as the disappeared person or any individual who suffers harm as a direct result of enforced disappearance; and 8) reparation measures.

He then echoed the two questions that nag the families of *desaparecidos* and human rights organizations in the Philippines: first, have the mandated implementers of the Anti-Enforced or Involuntary Disappearance Act of 2012 complied with the provisions of the law? Second, why does the Philippines continue to refuse to sign the International Convention for the Protection of All Persons from Enforced Disappearance?

Mr. Lagman said that as a nephew of disappeared labor and human rights lawyer, Atty. Hermon C. Lagman, he joins other families of *desaparecidos* in demanding that the PHRC explain to a joint hearing of the House of Representatives' Committees on Human Rights, Justice, and Foreign Relations the reasons of the Philippine government for not signing the landmark Convention against enforced disappearance despite its having enacted the first anti-enforced disappearance law in Asia. He also directed the three congressional committees that CAED that has pushed for the signing and ratification of the Convention must be invited to the joint public hearing. He underscored that the said hearing be preceded by an oversight inquiry into the status of implementation of the domestic law penalizing enforced disappearance.

Mr. Lagman recognized the truism that laws are only as good as their implementation. He rightly observed that the legislative mill has been copiously churning out pieces of legislation. But Congress must exercise its oversight function to help ensure that these laws are properly and effectively implemented.

"And if there is an international measure that can strengthen a particular domestic law, it behooves government to adopt it with dispatch," he added. It is imperative for Congress to conduct the oversight public hearing on the enforcement of the law as its implementers from the DOJ apparently lack the relevant knowledge of the nuances of enforced disappearance, more particularly its continuing character. This inadequacy has adversely affected two vital features of the law: 1) prosecution and 2) compensation.

There should be no confusion or misinterpretation of the pertinent provisions of the law. Sec. 21 on Continuing Offense clearly provides:

An act constituting enforced or involuntary disappearance shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared person and such circumstances have not been determined with certainty.

Human rights lawyer Ricardo Sunga III cites in his paper on the Nuances of Enforced Disappearances and the Implementation of the Anti-Enforced or Involuntary Disappearance Act:

...in *Sarma v Sri Lanka*, UN Human Rights Committee, Comm. No. 950/2000, UN Doc CCPR/C/78/D/950/2000, 31 July 2003, the United Nations Human Rights Committee considered a case, even if the disappearance

started prior to the entry into force of the law, the Optional Protocol to the International Covenant on Civil and Political Rights, considering the continuation of the violation after the entry into force of the Optional Protocol. Similarly, in *Selimovic v Republika Srpska*, Case No. CH/01/8365, Human Rights Chamber for Bosnia and Herzegovina, 7 March 2003, the Human Right Chamber for Bosnia and Herzegovina considered a case, even if the events in question started prior to the entry into force of the law, the Dayton Agreement, considering the lack of information given the relatives on the fate of the missing. Furthermore, in *Varnava and Others v Turkey* (2009), Application Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, the European Court of Human Rights had to resolve Turkey's objection that it only recognized the competence of the European Commission to receive individual petitions in 1987, 13 years after the nine men allegedly disappeared. Rejecting Turkey's objection of a lack of temporal jurisdiction, the European Court took into account the continuing nature of a disappearance.

Corollary to and clarifying this provision is the following Sec. 22 on Statute of Limitations Exemption. It states that:

The prosecution of persons responsible for enforced or involuntary disappearance shall not prescribe unless the victim surfaces alive. In which case the prescriptive period shall be twenty-five years (25) from the date of such reappearance.

Additionally on the role of the public prosecutor to conduct a preliminary investigation, Sec. 16 provides that:

Government officials and personnel who are found to be perpetrators of or participants in any manner in the commission of enforced or involuntary disappearance as a result of a **preliminary investigation** conducted for that purpose shall be preventively suspended or summarily dismissed from the service, depending on the strength of the evidence so presented and gathered in the **preliminary investigation** or as may be recommended by the investigating authority. (underscoring supplied)

The office of the Prosecutor of the Department of Justice dismissed the case on the ground that the offense was committed in 2000 or before the said law took effect in January 2013. The prosecutor did not recognize the continuing character of the enforced disappearance.

The complainants-family members of the six disappeared workers in Agusan del Sur province filed a petition for review with the Office of the Secretary of Justice. The petition remains pending in this office that has a newly appointed Secretary. With respect to reparation, the grant of monetary compensation to victims and/or their immediate relatives is similarly linked to interpretation of the constitutional prohibition against an *ex post facto* law.

Again Sec. 26 on Restitution and Compensation to Victims of Enforced or Involuntary Disappearance and/or Their Immediate Relatives unmistakably provides that the surfaced victim and the immediate relative of a victim of enforced disappearance within the fourth civil degree of

consanguinity or affinity may claim for compensation as provided for under Republic Act No. 7309, entitled "An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes, and other relief programs of the government.

In another decision, the Chairman of the DOJ Board of Claims under R.A. 7309, wrote some victims that their claim under the said Act is not compensable as the Anti-Disappearance Law does not provide that R.A. 7309 will be applied retroactively to victims of enforced disappearance.

The Chairman similarly did not appreciate the continuous nature of enforced disappearance when the victim remains missing or his/her fate is not established with certainty.

In fact Sec. 27 of the IRR of R.A. 10353 states that:

Recognizing the continuing nature of the offense of enforced or involuntary disappearance, the six-month period within which to file a claim under R.A No. 7309 shall not apply. However, for victims who surfaced alive, the period of six months

within which to file a claim with the Board of Claims (BOC) shall apply.

Finally, implementers of R.A. 10353 and its IRR should bear in mind that as a social justice and human rights legislation, the IRR of the said law provides under Sec. 3 on Construction that:

This IRR shall be construed to achieve the objectives of the Act. In case of doubt in the interpretation of these rules and regulations, it shall be resolved in favor of the victims of enforced or involuntary disappearance.

This notwithstanding, the strict and full implementation of the anti-enforced or involuntary disappearance law is still an uphill battle even as the lobby for the signing and ratification of the Convention has to hurdle road blocks that hopefully should be easier to surmount with greater steadfastness and dedication of anti-enforced disappearance human rights defenders together with the families of the disappeared.

Nilda Lagman-Sevilla is FIND's Co-Chairperson and is an AFAD Council Member.

Disappearances in Sri Lanka and the visit of the UN Working Group on Disappearances*

By: Ruki Fernando

In the 35 year history of the United Nations Working Group on Enforced or Involuntary Disappearances (“WGEID”), Sri Lanka ranks number two, shamefully, in the numbers of disappearance cases the WGEID has dealt with.[1] The latest figures from the WGEID are as follows: total cases transmitted to the Government for clarification – 12,341; total cases clarified by the Government – 6,551; total cases clarified by other sources – 40; outstanding cases – 5,750.[2] Further, between 2006 (when disappearances escalated drastically) to date, Sri Lanka has had the largest number of disappearance cases, 637 cases, transmitted to any government (Pakistan was second with 169 cases). There is also a clear spike visible between 2006 and 2009: 2006 had 191 cases, 2007 had 164 cases, 2008 had 147 cases, and 2009 had 123 cases.[3]

Disappearances in Sri Lanka have been in the limelight on and off, and its likely to be in the limelight once again, during the visit of the WGEID. The visit, which is already underway, will be the WGEID’s 4th to Sri Lanka, after visits



in 1991, 1992, and 1999. It has been 16 years since the WGEID last visited Sri Lanka. Families of the disappeared, Sri Lankan activists, and the WGEID itself has been requesting an invitation for a visit since 2006, but the previous Government had consistently refused permission.

The WGEID

The WGEID, created in 1980, was the first UN human rights thematic mechanism established with a universal mandate.[4] It was created by the Commission on Human Rights, the precursor to the current Human Rights Council,[5] in the after-

[1] In 2002 the WGEID stated that Sri Lanka was the country with the second highest numbers of disappearances on the WGEID’s list, second only to Iraq. Sri Lanka had 12,297 cases transmitted to the Government and 7,335 outstanding cases. Iraq had 16,514 cases transmitted to the Government and 16,384 outstanding cases – Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, fifty-eighth session, 18 January 2002, UN Doc. E/CN.4/2002/79, para 359 and pp 77-78. In 2015, based on the WGEID figures, Sri Lanka remains the second highest on the WGEID’s list, again second only to Iraq (16,555 cases transmitted to the Government and 16,408 outstanding cases) – Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, thirtieth session, 10 August 2015, UN Doc. A/HRC/30/38, pp 27 and 29.

[2] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, thirtieth session, 10 August 2015, UN Doc. A/HRC/30/38, p 29.

[3] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, thirtieth session, 10 August 2015, UN Doc. A/HRC/30/38, pp 41 and 43.

[4] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, thirtieth session, 10 August 2015, UN Doc. A/HRC/30/38, para 1.

[5] The WGEID was established by the Commission on Human Rights in 1980. Commission on Human Rights Resolution, 29 February 1980, UN Doc. E/CN.4/RES/1980/20.

math of the large-scale disappearances that occurred in Latin America in the 1970s.[6]

The WGEID's primary task is to assist families to determine the fate and whereabouts of their missing family members. In pursuance of this task, the WGEID acts as an intermediary; providing a channel of communication between families of disappeared people and governments. The WGEID accepts complaints of enforced disappearances from families and those representing families, assesses the complaints against its criteria of an enforced disappearance, and transmits the cases to the governments concerned.[7]

The numbers and stories

Beyond the cases transmitted by the WGEID, various Commissions of Inquiries, occasional statements attributed to Police, and estimates by NGOs, there are no clear statistics about the numbers of disappeared persons in Sri Lanka. But it is certainly in the tens of thousands, possibly even up to 100,000.[8] However, I feel that the numbers sometimes takes away the attention from individual tragedies and the human faces that make up the numbers.

It was in 2007 February that Tamil journalist Subramaniam Ramachandran was last seen being stopped and taken away from an Army checkpoint near Jaffna. His parents told me they had received calls from his mobile phone in the hours immediately after that, but he was never seen afterwards. Amongst the most inspiring woman I have worked with is Mrs Sandya Ekneligoda. Due to her courageous and determined struggle, and the national and international support she mobilised, some military officers have finally been arrested and questioned this year in relation to the disappearance of her husband, Sinhalese journalist Prageeth Ekneligoda in 2010. A Commission of Inquiry tasked to look into the disappearance of activist Tamil Catholic Priest Father Jim Brown (along with 15 other high profile deaths and killings), who was threatened by the Navy and had last been seen at a Navy checkpoint in Jaffna, stated that they "could not carry out investigations due to non availability of evidence, importantly the inability to find the body of the alleged deceased." [9] Sixteen *habeas corpus* cases, which include numerous eyewitnesses of a well-known and elderly Tamil Catholic Priest and prominent LTTE leaders surrendering to the Army at the end of the war, have been dragging on for more than

[6] It was established at a time where there were no international instruments on the issue of enforced disappearance. The fact that it came into existence, in the absence of international instruments, is testament to the grave issue that enforced disappearances posed in the world and the international consensus (as represented through the UN) to take steps to address the problem. The WGEID defines an enforced disappearance based on three cumulative elements: (1) the deprivation of liberty against the person's will, (2) the involvement of government officials, at least indirectly by acquiescence; and (3) the refusal to disclose the fate or whereabouts of the person. The WGEID considers that the definition of enforced disappearance should, at the minimum, contain the three stated elements). After the Declaration on the Protection of all Persons from Enforced Disappearances was adopted by the UN General Assembly in 1992, the WGEID was entrusted to monitor the progress of states in fulfilling the goals set out in the Declaration and to provide assistance to governments in implementing the goals and existing international rules relating to enforced disappearances. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Best practices on enforced disappearances in domestic criminal legislation, sixteenth session, 28 December 2010, UN Doc. A/HRC/16/48/Add.3, para 21; Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, fifty second session, 15 January 1996, UN Doc. E/CN.4/1996/38, para 55.)

[7] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, thirtieth session, 10 August 2015, UN Doc. A/HRC/30/38, para 2.

[8] The Presidential Commission of Inquiry that is presently operating has received 23,249 complaints (including 5000 from the security forces). A submission to a previous Commission of Inquiry raised a question about 146,679 persons unaccounted in the last eight months of the war, citing official government statistics. For more statistics, see the section "*The numbers – if they matter*" in the article <http://groundviews.org/2013/08/30/sri-lankas-disappeared-visit-navi-pillay-and-another-commission-of-inquiry/>.

[9] Report of the Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights since first August 2005 ("Udalagama Commission"), May 2009, Part I, Case No. 8, p 8.

three years in Mullaitivu and Vavuniya courts. A special Committee on Disappearances in the Jaffna region, appointed in 2002 under the Human Rights Commission, found that “248 Tamils had either been killed or disappeared after being taken in by the armed services, and 25 Muslims had either been killed or disappeared after being taken in by LTTE.”[10] A friend from Batticaloa narrated how he, along with thousands of others, watched 158 young Tamils being taken away by the Army from an IDP camp back in 1990, never to be seen or heard of again.[11] Despite my friend submitting names of Army officers who were responsible to several Presidential Commissions of Inquiry, nothing has been done.

The vast majority of those who disappeared after the 1990s have been Tamils. But there have also been Muslims and Sinhalese who have disappeared. The military, police (especially the Special Task Force), and various security apparatus of the state have consistently been identified as being responsible for disappearances. In some cases, family members have identified military or police personnel who took away their loved ones and the camps they were taken away to by name, but to no avail. The LTTE too have been identified as being responsible for disappearances. The breakaway factions of the LTTE in the East (led by Karuna and Iniyabharathi) and key a partner of the previous Government in the North (the EPDP led by Douglas Devananda) have also been identified as being responsible for disappearances in collusion with state forces. The bottom line is that, across the board, whether security personnel or LTTE, there is almost complete impunity for those responsible for disappearances, including under the new Government in last ten months.

Mental and financial impact

Disappearances have caused severe trauma to surviving family members, including parents, spouses, children, and siblings. The elderly mother and father of Father Jim Brown have often told me their yearning to hear news of what happened to

their son before their death, but the mother passed away a few years back, without knowing what happened. I am not sure whether the father will hear any news of what happened to his son. While carrying forward the struggle for truth and justice, Sandya Ekneligoda had to also take her younger son for counseling.

Disappearances have also caused severe financial hardships. Families have been compelled to compromise their dignity and seek help from others to survive and carry forward their struggles, due to no fault of their own. Earlier this month, a young Sinhalese mother whose husband disappeared in 2013, called me in desperation to seek help to find money to feed her two young babies. It has been an overwhelming task to find financial support for families of disappeared persons, with very little sympathy from society, the Government, or donors. The lack of financial support has also impeded their struggles for truth and justice.

Threats, intimidation, defamation, restrictions

Families of disappeared persons, other activist colleagues, and I have faced numerous threats, intimidations, and restrictions from the state in our efforts to challenge disappearances.[12] Balendran Jeyakumary, the mother of a teenager who disappeared after surrendering to the Army was arrested in 2014, and I was arrested for trying to look into circumstances around her arrest and as I was trying to find a place for her remaining teenage daughter to stay. A meeting we had last year in a Church run centre in Colombo with families of disappeared, concerned clergy, lawyers and diplomats was broken into by an angry and threatening group. When we called the Police, they refused to evict the intruders and provide protection for us. The intruders have not been held responsible despite their identities been known and Police themselves being eye witnesses.

Inspiration from a grandmother in Argentina

Since 2007, I have spent a considerable amount of time with families of the disappeared. Accompa-

[10] Report of the Committee on Disappearances in the Jaffna Region, October 2003, pp 18-19.

[11] <https://www.colombotelegraph.com/index.php/eastern-university-massacre-missing-missing-missing-for-25-years/>.

[12] See some examples at <http://groundviews.org/2014/08/30/disappearances-and-the-struggle-for-truth-and-justice/>

nying some to hospitals, camps, and police stations in their searches. Talking to them in their homes and in my offices. Joining them in protests in the streets, in Colombo and even Geneva. Going to meet officials and politicians. Going with them to courts, the Human Rights Commission, and various other Commissions of Inquiries. Speaking at events in Colombo, Jaffna, Geneva, and elsewhere about their stories. Writing articles. After all of this, now I also wonder what I have achieved?

But inspiration to continue comes from families of the disappeared. From people like Sandya Ekneligoda and many other mothers and wives. Sinhalese, Tamil and Muslim. Even from outside Sri Lanka. Twice this year, I met Estela de Carlotto, an 84 year old grandmother from Argentina. She founded the Grandmothers of the Plaza de Mayo, to look for their missing grandchildren who were stolen at birth and adopted out; born to people who were made to disappear during the Argentine Dirty War. Estela has had a profound impact on shaping public opinion about disappearances, in Argentina, including the Government, and the world. She found her grandson last year, after 36 years of searching after her daughter had been arrested and subsequently killed after giving birth. She is firm in her commitment to continue the search for other missing grandchildren, until all are found or she is dead. Her words "crying at home and fighting in the streets" is probably what many families of the disappeared go through in Sri Lanka. It is also very true for me.

In Sri Lanka, the biggest challenge, as an activist, has been to get the sympathy and support of ordinary Sri Lankan citizens to the struggles of families of the disappeared. However, given the range of human rights and social justice issues in Sri Lanka, particularly after the war, it has not been easy even for those who advocate against disappearances to consistently support the struggles. Opposition politicians, lawyers, religious clergy, NGOs have played a crucial role in supporting families of disappeared and raising visibility. But sometimes, it was difficult to know whether some of them were using these families to promote their own agendas. It was sad when some activists tried to undermine their struggles, portraying them as being used for political agendas. It is a struggle

that leaves a heavy cost on all those involved, and at times, it is extremely difficult to muster the strength to continue. Estela's story and the fierce struggle of the grandmothers of the Plaza de Mayo, against all odds and for decades, serve as inspiration and a source of strength in continuing with what often seems like an unending struggle.

What can the WGEID do in Sri Lanka and for Sri Lanka?

Families of the disappeared, as well as activists who have been working with them, will have high expectations of the WGEID. Answers will not flow about the fate and whereabouts of disappeared persons during the WGEID's visit. It has neither the mandate nor powers to achieve that. But my hope is that the visit will help set in motion processes with strong involvement of families, professionals, and international actors that *could* lead to finding the fate and whereabouts of those who have disappeared. And further, towards justice, reparations, and guarantees of non-recurrence. In this regard, the timing of the visit is significant.

Successive Commissions of Inquiries have been appointed by previous governments to deal with disappearances. The last of which is still functioning, has received 23,249 complaints (5000 relating to the security forces). To the best of my knowledge, the Commission has been unable to find out information about even one person who is still missing.

The new Government has committed to the establishment of an Office of Missing Persons, with the assistance of the International Committee of the Red Cross. The WGEID visit comes within two months of a historic report on an investigation into alleged serious violations and abuses of human rights and related crimes in Sri Lanka, commissioned by the UN to address impunity and ensure accountability in Sri Lanka. The UN Office of the High Commissioner for Human Rights dealt extensively with the issue of disappearances and concluded that there were:

[...] reasonable grounds to believe that the Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of victims of their liberty, and then refused to acknowledge the deprivation of liberty or con-

cealed the fate and whereabouts of the disappeared person. This has, in effect, removed these persons from the protection of the law and placed them at serious risk.

There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population, given the geographical scope and timeframe in which they were perpetrated, by the same security forces and targeting the same population.[13]

The WGEID visit comes within two months of the Government having committed to a range of demands that families of disappeared persons and activists have been making for many years: to ratify the International Convention against Enforced Disappearances,[14] to criminalise disappearances in Sri Lanka, and to issue certificates of absence to families of disappeared persons where death certificates cannot be issued. There are no timelines given by the Government for these commitments, nor are there any details available of how the commitments will be given effect.

The WGEID has a strong global reputation spanning 35 years of independence, integrity, and firmly supporting families of disappeared persons and activists. Sri Lanka will test that reputation. They will have to find ways to show concrete

forms of solidarity with families of the disappeared and activists, privately and publicly, beyond mere words. They will have to rigorously study the past work done on disappearances and seek as much information as possible in relation to disappeared persons, especially in relation to mass graves and secret detention centres. They will have to gather information on relevant laws, institutions, and mechanisms – both in relation to the past and future. While noting positive commitments and actions by the Government, they will have to be careful not to be carried away by the allure of promising commitments and rhetoric, after all, the devil is in the details, including timelines that are not disclosed. They will have to make sure that diplomatic niceties and political considerations do not make them shy away from asking the difficult questions, sharing uncomfortable truths they may uncover, and making recommendations that may not be welcomed by the Government or even the majority of society, during the visit and also afterwards. Indeed, much will depend on their willingness and ability to do follow up work, and keep up the engagement after the visit, especially until they present a full report of the visit to the UN Human Rights Council in September 2016.

Ruki Fernando is a Sri Lankan HR activist and writer who has been working closely with families of disappeared persons and campaigning for truth & justice.

[13] Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), thirtieth session, 16 September 2015, UN Doc. A/HRC/30/CRP.2, paras 1127-1128.

[14] International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006, UN Doc. A/61/488 (entered into force 23 December 2010).

<http://groundviews.org/2015/11/11/disappearances-in-sri-lanka-and-the-visit-of-the-un-working-group-on-disappearances/>

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Country update: Thailand

By: Dhira-medhist Lueng-Ubon



Wife and children of Billy, a disappeared Karen ethnic community rights defender. Photo: Daily News Co. Thailand

Under a seemingly endless dictatorial rule, families of the disappeared in Thailand struggle to find truth and justice. The correspondence between democracy and human rights is not widely taught in schools, despite clear evidence of human rights abuses committed by the military junta in the history of Thailand. Unfortunately, it seems no lesson has been learned from the time millions of people supported the *coup d'état* as the only way to deal with inept and corrupt politicians, as the takeover entailed the violation of human rights.

Thailand has the highest number of coups in the world and no one will truly understand the grief resulting from human rights abuses unless he or she falls victim to it.

Military takeover

Following six months of political crisis, the Royal Thai Armed forces, led by Gen. Prayuth Chan-Ocha, launched a coup on 22 May 2014. The junta and their supporters claimed that the coup was needed to reform the nation.

Hundreds of critics were arrested and tried in military courts, according to Human Rights Watch.

Local non-government organization, iLaw, known for its advocacy on freedom of expression, reported that at least 829 people had been summoned and 506 arrested from political expression as of the end of December 2015.

The Thai military has replaced the martial law introduced in May 2014 with a new constitution and enforced Article 44 of the legislation that enables members of the military to apprehend people without a warrant of arrest.

Poonsuk Poonsukcharoen, a lawyer from the Thai Lawyers for Human Rights, said the provision allows the government to deprive hundreds of people of their liberty easier than ever. It generally starts with a summons to report to officials at specific military camps and is followed by blindfolding the summoned during the ride to an “unknown place.” In some cases, it begins with an immediate arrest wherever the person is.

Denial of rights

Officials, on the other hand, do not consider the detained as “prisoner” under the said law, so they are not entitled to rights of prisoners such as the right to meet their relatives or right to counsel.

Considering such interpretation of the law, officials refuse the acknowledgement of the person’s fate and whereabouts and disclosure in public, including the person’s family members, of details of his or her detention.

Poonsuk added that military facilities where these people are brought to are possibly an hour or two away from Bangkok, the capital city. According to the law, detainees must be released by

the seventh day of detention. Among the hundreds of people detained during the coup were held for more than seven days. The officials said the detainees “voluntarily wished” for their detention period to be extended.

Kritsuda, a prominent democracy activist, was disappeared on 28 May 2014. While held in captivity, officials recorded a video of her saying she was fine. The footage was to be shown in public. When she was released, she went abroad as a political refugee and reported on video her experience of being tortured while under custody.

Vinthal Suvaree, the spokesperson of the junta or the National Council for Peace and Order, has requested all detainees to review and effectively change their attitude towards the government. Refusal to do so will mean a denial of their whereabouts.

Pravit Rojanaphruk, a prominent journalist and champion of democracy, was another well-known case of enforced disappearance and torture.

Critics of the government are not the only ones disappeared. People who loyally served the crowned prince have fallen victim to this abuse as well.

The arrest of Suriyan and his colleagues in October 2015 is the most recent case. The Thai Lawyers for Human Rights said they were involuntarily disappeared prior to their official custody. Pakrom, one of the detainees, died while in custody and the investigation on his death was carried out covertly. His body was hastily cremated after a few days. According to the official investigation, the cause of his death was suicide. The case remains an unsolved mystery.

Unfulfilled promise

The cases presented in this report highlights enforced disappearance as a tool to silence the voice

of people asking for democracy, truth, and justice. In a country that signed but not yet ratified the Convention for the Protection of All Persons From Enforced Disappearance, anyone can potentially and possibly disappear anywhere and anytime. The culture of impunity continues to prevail. The progress of the draft on the Prevention and Suppression of Torture and Enforced Disappearance Act is still blurred, its whereabouts unknown. [1]

The struggle of the victims continue as shown in the prominent case of Billy, a prominent Karen ethnic community rights defender, who has not been seen since 17 April 2014. The Supreme Court upheld the decision of the two lower courts dismissing the case against National Park Chief, Mr. Chaiwat, who admitted arresting and illegally detaining Billy. Mr. Chaiwat claimed Billy had already been released.

As Thailand has enacted a law that authorizes the arrest of people without a warrant to serve national interest and under the context of maintaining peace and order, civilians are left unprotected from enforced disappearance in the absence of a domestic law and international convention. None of the perpetrators of this human rights abuse has been fairly brought to justice, so it is important for people to stay strong, unsilenced, and to keep pressing the military government for justice. The people must remind them of their promise to return happiness to the people of Thailand.

Dhiramedhist Lueng-Ubon was an intern for AFAD. He now works as a documenter for the Freedom of Expression Documentation Center of the Internet Dialogue on Law Reform Program (iLaw).

[1] Drafted by the Rights and Liberties Protection Department under the Ministry of Justice. The progress of the draft is unknown because the public is only given access to the draft when it is being heard by the cabinet or the national legislation assembly.

Truth and Justice in Korea

Citizens' Alliance for North Korean Human Rights helps lay the groundwork for truth and justice for the victims of enforced disappearance in Korea

By: Michele Park Sonen

Sixty years have passed since the 1953 armistice that halted the Korean War. Since then, North and South Korea have diverged significantly, particularly with respect to human rights. While South Korea has overcome authoritarian and military rule, North Korea has become one of the most repressive countries in the world. Its leadership deprives individuals of their human rights with impunity. Among the numerous human rights violations are the enforced disappearances of foreign nationals, many of whom are South Korean nationals. One of the priority areas of the Citizens' Alliance for North Korean Human Rights (NKHR) **“For decades following the abductions, the South Korean government did little to bring the disappeared home or obtain information of their whereabouts.”**

is advocating for these victims of enforced disappearance and their families. The international community has begun taking action to address the long-standing deprivation of human rights in North Korea and hold its leadership accountable. Among those initiatives are initial preparations for unification of the Korean peninsula and the transitional justice that will follow. Transitional justice will be particularly important for the victims and families of the disappeared; they have waited over four decades for truth and justice. Locating family members and, in some cases, identifying remains will be a tremen-

dous task requiring cooperation from all stakeholders—civil society, governments, and the international community. NKHR's activities this year helped lay the groundwork for this important work.

Disappeared South Korean nationals

Of the thousands of South Korean nationals abducted to North Korea, five hundred and sixteen South Koreans abducted in the decades following the Korean War remain forcibly disappeared in North Korea. These disappearances occurred as part of a systematic policy of abducting foreign nationals, particularly South Korean citizens, throughout the 1960s and 1970s, and sometimes after. During those years, 3,835 South Korean nationals were abducted by the North Korean government, roughly 90% of whom were fisherman abducted while out at sea. Others included office workers, passengers on a commercial Korean Air flight, members of the South Korean Navy, and even young students on their summer vacations. Of them, 3,310 were returned to South Korea within one year, while nine escaped and returned to South Korea on their own. The remainder—516 South Korean nationals—presumably remain in North Korea. Most have never been heard from since their disappearance decades ago. Most of their families have no information about their fates or whereabouts.

For decades following the abductions, the South Korean government did little to bring the disap-

peared home or obtain information of their whereabouts. Worse yet, the South Korean government deepened family members' wounds by treating the victims and their families as possible spies and ostracizing them from society. Only in recent years has civil society, the South Korean government, and the international community begun to seek answers and a resolution to these continuing disappearances.

Laying the groundwork for truth and justice

United Nations field office opens in Seoul

In the past few years, advocates have seen important developments in the long road to addressing human rights in North Korea. This year marked another significant milestone: the United Nations opened a field office in Seoul specifically to monitor and document human rights violations in North Korea with an eye toward accountability. The office was established in accordance with the recommendations of the United Nations Commission of Inquiry that was established in 2013 to investigate human rights violations in North Korea.

The Commission found human rights violations in all nine areas that it investigated, including the abduction of foreign nationals. Many of those violations amount to crimes against humanity, including the enforced disappearance of foreign nationals, the Commission said. This acknowledgment by the Commission was significant for many

reasons, including that it could help lead to North Korea's leaders being held accountable under international criminal law. One of the roles of the new UN field office in Seoul is to monitor the disappearances issue and collect evidence for future transitional justice initiatives and accountability.

Learning from the experiences of AFAD members

Recognizing the need to begin preparing for transitional justice, in July 2015, NKHR hosted an international seminar in Seoul to help stakeholders develop policies to ensure that North Korea's enforced disappearances are adequately addressed in transitional justice initiatives. The practical issues of exhumations, working with evidence, advocating for justice, and providing psychological assistance to victims and families will have implications for all stakeholders, particularly South Korean non-government organizations (NGOs) addressing human rights issues in North Korea, the South Korean government itself, and the UN Seoul field office.

NKHR was particularly inspired by the reunifications in Timor-Leste earlier this year – the first ever reunification of children that were abducted by the Indonesian military during the Indonesian occupation. NKHR believed important lessons could be learned from the work done by fellow AFAD members Asosiasaun HAK in Timor-Leste and KontraS in Indonesia (in cooperation with other



Seminar participants showing solidarity with Sombath Somphone. Photo: NKHR

NGOs including Asia Justice and Rights) in facilitating the reunifications. Mr. Sisto dos Santos from HAK and Ms. Yati Andriyani from KontraS shared their experiences with transitional justice initiatives in their countries and the cross-border reunification of the missing Timorese children with their families in Timor-Leste.

NKHR also invited AFAD member Shui-Meng Ng to speak about the disappearance of her husband Sombath Somphone less than three years ago. Shui-Meng's recent experience with disappearance helped stakeholders understand the impact of disappearance on family members. NKHR was fortunate to also have the expertise of Marco Antonio Garavito, Professor of Social Psychology at the University of San Carlos in Guatemala. Professor Garavito participated in the reunifications of over 400 children that were abducted in Guatemala during the country's 36-year internal conflict.

At the seminar in Seoul, Professor Garavito shared his important perspective on mental health and the importance of putting victims' needs first. Victims and family members in Korea, who must be at the center of any transitional justice initiatives, also shared their experiences and concerns. The seminar was an important opportunity for all stakeholders, particularly victims and their families, to share their pain and voice their concerns.

Documenting disappearances and engaging the UN Working Group on Enforced or Involuntary Disappearances

This year, NKHR submitted ten new individual cases of disappeared South Korean nationals to the UN Working Group on Enforced or Involuntary Disappearances (WGEID). Documenting these cases is an important way to record the ongoing disappearances. When the Working Group submits the cases to the North Korean government, it puts the North Korean government on notice that the international community regards the continued holding of these victims as grave human rights violations for which the North Korean leadership could be held accountable. The submissions to the WGEID also help lay an important foundation for legal accountability and transitional initiatives that can bring truth and justice to the victims and their families. Indeed, now is the time to collectively develop a strategy that will reunify victims of abduction and their families, facilitate the return of remains, and lead to truth and justice.

Michele Park Sosen is a program officer with the Citizens' Alliance for North Korean Human Rights

Breaking the wall of silence

By: Shui Meng Ng

Sombath Somphone, a respected 2005 Magsaysay Awardee, was disappeared on 15 December 2012 at a police post on the main street of Vientiane, the capital of Laos. The entire sequence of his abduction was caught on the police's own surveillance camera. Yet, the Lao government and police have denied involvement of government authorities. Lao authorities had promised a full investigation, but now, three years after, the case is still under investigation. The government has turned down all offers of technical assistance in the investigation from various governments, including Singapore, the United States, Australia, European Union countries, and United Nations Agencies.

In Laos, a wall of silence and fear has risen since the abduction of Sombath. With the help of the Asian Federation Against Involuntary Disappearances (AFAD) and its network of human rights organizations inside and outside the Philippines, a continuous campaign has been mounted since 2014 to crack the wall of silence around Sombath Somphone's disappearance and show to the world that impunity and injustice cannot win.

Solidarity

On 27 August 2015, AFAD and the Free Jonas Burgos Movement jointly held a solidarity event for Sombath Somphone at the U.P. Balay International, University of the Philippines (UP), Diliman, Quezon City to mark the International Day of the Disappeared.

As the wife of Sombath, I participated in the event together with two former Magsaysay Awardees: Mr. Jon Ungphakorn of Thailand (Sombath's fellow awardee in 2005) and Ms. Laphai Sengraw of Burma (2013 Awardee). The event drew more



The author signing the declaration to signify her commitment to the struggle against enforced disappearances.

than 100 participants from the diplomatic community, non-government organizations, church congregations, the academe, government agencies, families of the disappeared, and members of the media. Dr. Michael Tan, Chancellor of the University of the Philippines, graciously welcomed the audience, and related the disappearance of Sombath with that of Jonas Burgos and the two UP students, Sherlyn Cadapan and Karen Empeno. He emphasized the importance to stand up against such a horrible form of human rights violation and urged all to combat enforced disappearance.

Former Representative Walden Bello, a long-time friend of Sombath, delivered a keynote speech. He narrated how he, when he was still a Congressional representative, together with two other parliamentarians from Malaysia and Indonesia visited Laos in early 2013 to urge the Lao government to resolve the case of Sombath. He stressed the case of Sombath Somphone as a grave violation of human rights and also reminded the Lao government that Sombath is not only a citizen of Laos, but also of the Association of Southeast Asian Na-

tions (ASEAN). Laos, being a member country of ASEAN, needed to respect its human rights obligations under the ASEAN Human Rights Charter.

Jon Ungphakorn of Thailand narrated how he got to know about Sombath and his work only after they were both awarded the Magsaysay Award in 2005. He recalled how shocked he was by the news of Sombath's disappearance. In his speech he reminded all present that:

"Enforced disappearance is not an internal affair of a particular country. It is a crime against humanity, a vile human rights violation, which is of concern to all, transcending geographical boundaries and national borders. In particular, as a crime committed by state organizations (who have the necessary resources to disappear a person), whenever this crime occurs in an ASEAN state it affects the reputation and moral integrity of the whole ASEAN community. . . . It is therefore the collective responsibility of all ASEAN states to pool their efforts and resources to safely return Sombath Somphone, Jonas Burgos and all other disappeared persons to their families and communities... The walls of silence within the ASEAN community must be pulled down."

Ms Laphai Sengraw, 2013 Magsaysay awardee from Burma, spoke passionately about the need to rally civil society to stand up against state oppression and not be paralyzed by fear, for in so doing, it would only support the continued repression and impunity of the state.

"My conviction is that state repression can only be eliminated through the engaged efforts of civil society across the globe. That is, we, the people must work in democratic structures in

civil society itself, to realize democracy down to the last village in every country. . . . Let us not be intimidated by state repression. We must not let Sombath and other victims disappear from the face of the earth, forgotten as if they never existed. Civil society organizations must not become paralyzed by fear of the lurking misuse of state power. We must continue to strive together until a satisfactory explanation of each case of enforced disappearance is achieved and the perpetrators are brought to justice."

Edith Burgos, mother of Jonas, stressed the brotherhood that links Jonas and Sombath, despite the difference in nationality and culture, as well as age and experience. She said the two are linked by the brotherhood of humanity and the aspiration and hope for a better world for their families and their communities. In suffering the same fate, they are even more tightly linked. She expressed that despite the pain, Jonas, Sombath, and their families must continue to have faith and hope; and instead of hatred, sustain in their hearts and minds love and forgiveness.

In my own address, I expressed my thanks to all the supporters of the cause and fellow victims of enforced disappearances. But despite our collective pain, and the devastation and bereavement that enforced disappearance has brought us, I told everyone that we must draw strength from one another for we are not alone.

"Sombath's disappearance has taught me that I am not alone. Thanks to the Asian Federation Against Disappearance, I have become connected to a network of human rights organizations and victims networks across Asia and beyond. I have met many of the victims and their families. Many have struggled economically and socially and against contin-

ued impunity. But what most amazed me is that they have somehow found strength and continue to fight for truth and justice for their loved ones – some for ten years, some for twenty or even more. . . . It shows clearly that the light that keeps our human hopes high in our search for truth and justice can never be snuffed out, not even under the most difficult situations. It is this connection and solidarity with the other victims of the disappeared that keeps my own hope alive, and my own search for truth and justice for Sombath going.”

Indeed, the Solidarity for Sombath Campaign in Commemoration of the International Day of the Disappeared is a celebration of the undefeatable spirit of humankind and our collective wish to turn our pain into strength. We must continue to wipe out enforced disappearance in every society and in every country. Let us join hands to “End the List.”

Shui Meng Ng is the wife of Sombath Somphone.



Joining hands to “End the List” at the Solidarity for Sombath event in the 2015 IDD.

Victory belongs to the child

(Adapted and updated for print from a speech given at the National Union of People's Lawyers, September 20, 2010, Microtel, Metro Manila)

By: Edita T. Burgos, Ocds



Yumi Burgos, daughter of Jonas and granddaughter of the author, wins the Grand Prize of the Citizen Disaster Response Center national poster-making contest with this piece.

“Victimhood” – if there is such a word, similar to motherhood and brotherhood – is a “phenomenon” that has occupied most of my waking hours for more than eight years now, ever since the abduction of my son, Jonas. I tried to be more objective and rational, so I would understand what it is all about. Like a third party, I would ask questions and then also provide myself with answers.

Hoping that understanding would not only help me learn how to cope but also actively contribute in the search and possible recovery of the disappeared, I vigorously pursued explanations and answers to my own questions.

A lot of families of victims of enforced disappearance become aware of abductions only when they

happen to a friend or a member of the family. While they may have read or heard about people being disappeared, the knowledge would remain on the periphery of their consciousness and they would usually not give it much thought. They practically have zero knowledge about why this happened to them and are unprepared for what to expect and how to cope. I can say this is true for both the least and the most educated among us. I am particularly speaking about myself and my relatives.

The best way I can describe this kind of “victimhood,” is that it is like being hit by a whirlwind. It gives you the feeling of being buffeted from all sides. Internally, we are confronted with the uncertainty of the whereabouts and fate of our disappeared, feelings of guilt for not being able to do anything, and anxiety at the thought that our missing loved one is being tortured. Externally, we receive contradicting counsels that contribute to the bewilderment. Even well-meaning friends can help confuse the family or friend of the disappeared with contradicting counsel.

In my case, there were those who told me to just keep quiet so that I would not invite ire from the perpetrators as that could make them torture Jonas even more. Some said I should just pray and be silent. Others who had families or friends disappeared as well advised me to be very visible in the media because that was the only way people would

know about the disappearance and the perpetrators might be forewarned not to hurt Jonas.. Others told me there was nothing I could do, because the torturers had no souls.

Then there is anger. Some ask, "how dare they?" And for some people, the feeling of helplessness to not be able to do anything stirs within them vengeful thoughts.

The result is "paralysis": a kind of numbness that prevents the rational faculties to act decisively or worse, succumbing to a kind of a continuing internal agitation that distorts one's sense of judgment. Mainly, all these reactions stem from the unknown, which ranges from legal matters to dealing with the military.

At this state of vulnerability, those who provide refuge and protection play significant roles, which, on one extreme, could even mean the difference (for the victim's relatives) between going into depression or keeping a sane balanced state. Among those that play such critical roles are those who provide paralegal and legal, economic and moral support. The support, however, is not always immediately available for the families.

Finding support

The greatest number of victims of enforced disappearance belong to the peasant sector. And it goes without saying that, in the Philippines, those who belong to this sector cannot afford to hire a lawyer or have the means to pursue the search actively.

People often joke: "*Hindi lang 'pro bono' pati na 'abono.'*" This applies to most human rights cases.

Jonas' family is lucky. I do recall the lawyers often treating us to lunch after case hearings. It was also the lawyers who would offer us a ride to the court for hearings. For whatever was lacking, whether it was filing fee or transportation for the witnesses, it was our lawyers who were first to dig into their pockets.

In the lingo of Jonas who was a graduate of BS Agriculture and an authentic farmer, *abono* has a positive meaning, which is fertilizer. It is applied to enrich or enhance the soil to improve crop production. True to this word, although said in jest, there is a lesson here.

Lawyers, defenders, and advocates can provide the enhancement that is most needed when the victims/families of victims are at their lowest point in life. They boost the capacity of the victims so that they are not only defended but also empowered to extricate themselves from whatever debilitating state they are in and to assume an active role in pursuing the truth and searching for the missing.

How many times have we witnessed fellow mothers who were spoken to in a condescending manner by officers in uniform and, on such occasions, could not help but seethe in anger? This should not be so. We, the relatives of the disappeared, should be able to assume a superior position if we are only aware of the truth and accept that our loved ones, the disappeared, were far more superior in their selflessness to give themselves to their land. These people who tend to demean us cannot even do the same if chal-

“As we unravel the truth about what the victim was engaged in that earned the ire of the perpetrators, we can look deeper into the heart of that victim. There, one could see the desire to reform an unjust system.”

lenged.

Both the lawyers and human rights defenders are in the best position to empower the relatives because they are not only credible and knowledgeable, but they also dedicate

their lives, albeit in a different manner, just as our disappeared did.

Selfless hearts

As we unravel the truth about what the victim was engaged in that earned the ire of the perpetrators, we can look deeper into the heart of that victim. There, one could see the desire to reform an unjust system. There, one might discover that the victim offered his all, even his life, for others. This is the truth that we can share with the families. This knowledge would help them rebuke the “demonization” peddled by the perpetrators to cover up the crime.

Why cannot most people sympathize with this? It is because we fail to go beyond the ideology of either the left or the right. We also lack the ability to be charitable in our efforts, hence, people can, in clear conscience, walk away from a family of an enforced disappearance victim.

It is always difficult for some relatives to talk about what their kin was engaged in. The truth brought unpleasantness or embarrassment be-

cause they could not completely comprehend why their kin did what they did. Only when they look at their motives is it easier to ask: “Are we more Christian than them?” If we help them gain a better understanding, then this evil can be confronted. They will no longer be fearful or embarrassed.

In trying to understand why Jonas became a victim, it dawned on me that these people, the victims of extralegal killings and enforced disappearances lived such selfless lives that by their existence, they forced us to reflect on our own lives, our own values—a scrutiny that people in uniform can scarcely stand.

By living the way they did, these victims demonstrated, what our supposed leaders regrettably lack. These leaders claim to be protectors of a nation they themselves have victimized.

Letting go of anger

And for all of us left behind, any baggage in our hearts must be discarded. Whatever the circumstance, it will not help to bring this baggage into the cause because it will only dilute, make impure and corrupt the motives. It will only foster anger and revenge. The victims cannot be blamed if, at the first movement, there is anger. It is very human to be angry when one finds himself or herself helpless in defending their disappeared family member or friend. Revenge then consumes one’s thoughts and makes a person unaware that it is only in our thoughts that one can “fight” back but the perpetrators are not affected by our thoughts so these negative thoughts do not help us, they can only cause tears of frustration to

fall. And tears would only blur the vision. Negative thoughts and emotions give way to tears that blur the vision.

One cannot and must not nurture anger. Through patient efforts and explanation, human rights defenders can, in fact, assuage the feelings of the victims. Only when defenders can be self-critical—in a healthy manner—or when they can transcend ideologies or simply stop being ideological will they be able to develop that credibility among victims, families of victims, as well as others.

This ongoing campaign against activists waged in the guise of fighting terrorism is evil. How can one believe that peace is the objective of any endeavor that uses violence as a strategy? It is wise to remember that if we are trying to put an end to human rights violations and aim for peace, we—imperfect as we are—must use the way of peace.

Human rights defenders—be they lawyers, para-

legal workers, sociologists, volunteers, etc.—have a very big responsibility. It is not only to defend people's rights, but also to convince society that they have the truth and this should not be ignored.

At times when the opposition seems so huge and omnipresent and daunting, it would be wise to recall how small David was standing before the giant Goliath. One is an evil brute and menacing and the other, small, yet just. Remember that the true defender of God's cause always stands before the world, seemingly overmatched. The world knows now that victory belonged not to the giant but to the child. The child who had a pouch of smooth pebbles and a slingshot, which he learned to use adeptly after countless hours of practice. Long before we go to the battlefield, we need to spend countless hours preparing too and one crucial way to do so is through prayer.

Edita Burgos is the Chairperson of Free Jonas Burgos Movement (FJBM) and is a Council Member of AFAD.

The girl with green eyes

By: Amina Masood Janjua

The car was moving fast and scenes were changing quickly. Sometimes, the beauty of the environment would catch my attention, but I immersed myself most of the time in the overwhelming ocean of thoughts, feelings, passion, and grief.

Jamila is a young girl of 14 and she lives in a small village called Bara Banday in Swat, a scenic valley of rivers, mountains, and forest in the northern Khyber Pakhtunkhwa province of Pakistan. She has big green eyes green and possessed an innocent beauty. In the wake of military operations, her brother Shah Khalid and grandfather Roohul Ameen were taken away. She was left with her mother, grandmother, and younger brothers and sisters. Her father went to the Middle East to work and provide for the whole family. I was fighting both cases in the streets, courts, and on each and every platform.

I first met Jamila when she came to Islamabad. She was among the 35-40 women and children from Swat who joined a camp as representatives of their disappeared loved ones. We instantly became friends and she shared all her heart's woes with me. I saw how pain and grief had left her very pale and thin; her eyes brimmed of dreams and tears.

I am going to that valley now with a heavy heart. Jamila will meet me there and I do not know what to say to her. Can she understand that there is a deadlock in the Supreme Court and why her brother's case could not be addressed since last year? Will she understand that the commission



The author with the Jamila, whose brother and grandfather were disappeared. Photo: DHR

lacks the will to challenge the perpetrators of this heinous crime? I will try to explain but I am afraid she will be heartbroken.

Endless suffering

The operation of 2009 is still far from over, yet another one has started in June 2014. The casualties and damages of the first one have yet to be fully addressed, and now we confront an even bigger crisis. It is a tragedy of endless suffering: 20,000 people from North Waziristan Agency located at the border of Pakistan and Afghanistan have been disappeared and are now homeless and living a hand-to-mouth existence in the cities of Bannu, Kohat, Tank, D.I.Khan.

We have received 70 reported cases of disappearance this year and we expect the number to rise. But will Jamila understand this? To her, these are mere numbers. She will ask for her brother, and I will have no answer.

The Khyber Pakhtunkhwa province has been in a state of war since the 9/11 terrorist bombing in the U.S. happened. Citizens have been subjected to all sorts of human rights violations, slaughtered, bombed, droned, abducted, disappeared, and tortured in underground cells.

U.S. troops are leaving Afghanistan. The government had tried to broker a peace deal or initiate a dialogue between the Afghan government and the Afghan Taliban, but all attempts failed.

The promise

I endeavor to explain to Jamila that South Asia is not the only region affected by dictatorial regimes, foreign interference, and human rights violations. Third world countries also suffer from the same problem. It is widespread in Far East Asia, Asia Pacific, Middle East, and even in Latin America.

Countries such as Kashmir, Bosnia, Palestine, and the Philippines have had many people disappeared. Many girls like Jamila are asking for their brothers and fathers. Many mothers search for their sons. Many wives look for their husbands.

I would tell Jamila that all she needs is courage to continue the struggle and remain steadfast in efforts to pursue truth and justice. I would tell her to never lose hope, to keep raising her voice and “you will see that your brother will be home one fine day.” That I promise, I’ll tell her.

If this could comfort a bleeding heart, I would be the luckiest person. Thinking about this girl with green eyes, I entered the lush green valley of Swat.

Amina Masood Janjua is the chairperson of Defence of Human rights Pakistan. She is an artist and activist whose husband was disappeared in July 2005. She has waged a tireless struggle against enforced disappearance and has registered 2,300 cases in 10 years.



Amina Masood Janjua carries the torch of hope for fellow families of the disappeared in Pakistan and in other Asian countries. Photo : DHR

Hope for a Bright Tomorrow

Children of the disappeared in Nepal seek better economic and psycho-social assistance to improve their lives.

By: Santosh Sidgel

"I never wanted to go to School Parents' Day. Everyone would come with their parents but I have no father." – Anita Sedhain, 20

"Seeking for truth and justice may be a long struggle. But, at present, I am worried about my higher education. There is no one to help us." – Rachana Lopchan, 19

These are quotes from young people whose parents were disappeared in Nepal during the country's decade-long (1996-2006) armed conflict. These voices represent the psychological and economic impact of enforced disappearance on the youth and highlight the indifference of the state towards the needs of the families of the disappeared.

Rachana Lopchan, 19, studies at the Management College in Kathmandu. Her father, Shyam Lopchan, was arrested in 2002 from his home at Chitwan by members of the Royal Nepal Army and was never seen again since then. Rachana always wanted to study in a good college and earn a technical degree, but her family's poor economic conditions kept her from doing so. During a monthly talk program in Kathmandu, she strongly advocated for the children of disappeared persons to be given a chance to get higher education. She wanted to gain a technical skill after her secondary education to be able to work and help support her family.

Most of those disappeared in the decade-long conflict were breadwinners of the family. Thus, their loved ones had to bear economic obstacles that force them into a miserable life. The children, in particular, grow up with many psychological scars and wish to know what really happened to their parents. They are also burdened with concerns about their future as many of them lack funds to get a better education. This constant search for truth about their family members and the challenge to secure a brighter future bring insecurities in their lives. Meanwhile, the state remains reluctant in offering assistance.

Call for support

In April, Nepal was hit by a massive earthquake and both state and private sector worked to provide educational assistance and scholarships to children living in areas hardest hit by the quake. Interestingly, the state's intervention was regarded by family members of the disappeared with skepticism. They began to question: "If the state can manage to subsidize the fees and bring different schemes for children in the earthquake-hit areas, why can't the state address [our needs]?"

Many international and national organizations have been supporting the families of the disappeared by providing programs that help them cope with the "ambiguous loss" and become economically independent.

The International Committee of the Red Cross, for

example, has been conducting "Hatemalo" program to assist families in their psychological rehabilitation. Hatemalo is a program that focuses to help the families of the disappeared economically, psycho-socially and other ways possible. Heifer, another international organization has been helping members become more productive economically.

Overlooked youth

Most of these programs though focus on adult members, i.e. wives, fathers or mothers of the disappeared. The youth are often overlooked.

These young children struggle to accept the "ambiguous loss" and cope with society. The "incompleteness" of their family has brought many dilemmas in their life. Older family members also avoid openly talking about their "loss" and lack the ability to counsel the youth properly—a gap which organizations working in this field should address. These children are growing up, if not already grown up, and unless this problem is psychosocially addressed, their awareness and conviction to pursue justice do not get developed.

Anita Sedhain, 20, is studying nursing in a college in Kathmandu. Her father, Mukunda Sedhain, was arrested on 19 December 2009 from Kathmandu by plainclothes men. According to the National Human Rights Commission of Nepal, Mr. Sedhain was taken by army personnel and detained in Jagadal Battalion, Chhauni. His whereabouts remain unknown.

Anita recalled not wanting to go to School Parents' Day because her friends often asked where her father was. As she did not know what happened to her father, she could not offer a reply. Until today, she does not want anyone inquiring about her father. She believes though that if she had some psycho-social counselling or training,



she would be able to handle the situation better. The lack of proper counselling has left young ones like Anita to resort to suppressing their emotions, unable to share their feelings in a proper way. This has made them run away from the truth about their family member rather than learn how to accept the "ambiguous loss" and prepare for the future.

As mentioned earlier, the youth is often left out of psycho-social counselling and discussion programs conducted by human rights organizations, so they miss out on the transitional justice discourse and development process. Hence, they feel like there has been no development in the transitional justice process and view the organizations' efforts for rehabilitation as inconsequential.

Increase awareness

"Why do you call again and again? I have no hope in government or any in organizations like yours. Please, don't call again. I don't want to remember the incident...." – teenage boy

A teenage boy from a remote village replied to me: "Organizations like yours are doing nothing for us.", when I called him on July, 2015 to ask about few facts on his father's disappearances. I listened to his complaint silently and when he finally stopped, I asked him if he was aware of the Truth and Reconciliation Commission and the

Commission of Inquiry on the Disappearances of Persons. I also told him about the efforts of Conflict Victims' Society for Justice (CVSJ) to find truth and justice for disappeared persons and their family. Then he complained that the state and organizations did not make them aware of these groups and works by them.

This case shows many facets of the transitional justice process: (a) indifference of the youth of families of the disappeared to the transitional justice process, (b) pessimism of the youth, and (c) necessity of human rights organizations to make the youth aware of the transitional justice process in Nepal.

Focus on the youth

The efforts of human rights organizations should be on making the youth realize that receiving justice is a long process, as the state is reluctant to address the issue and perpetrators of enforced disappearances are in power.

The youth should also be made to feel that there are organizations that really work for them. This is only possible if they are brought into the mainstream discussion and included in the different programs that are conducted in the national or regional level. The programs should be designed to include the youth in discussions and made aware of the developments in the transitional justice process.

It is important to note that there has not been any serious research on the impact of this "loss" on the psychology of the youth and how it would affect their lives as they grow up. There should be a massive research on the need of these youth to bring them into the mainstream discourse of the transitional justice process. They should be addressed now before it is too late. The human rights organizations, civil societies, and victims' rights defenders should be serious about the concerns of these youth. These youth are those who will struggle for the truth and justice for their disappeared loved ones.

So, programs should be designed and launched to support them in accepting the "loss" and help them become more resilient and stronger as they carry on this long journey towards truth and justice.

Santosh Sidgel is CVSJ's Research and Documentation Staff.



Umbrellas with different slogans are displayed on the International Justice Day rally. Photo: CVSJ



Janak Bahadur Raut, council member of AFAD and Chairperson of CVSJ, addresses the people attending the umbrella rally on International Justice Day. Photo: Santosh Sidgel



Candle-lighting ceremony during the International Day of the Disappeared. Photo: AI

Keeping the truth alive

Best practices in AFAD's documentation program

By: Ivanka Custodio

There are many ways to make the truth disappear and cast people outside of history: by obscuring it, fabricating it, deriding it, and bending it. Truth holds power, but its strength lies in people's memory. States that want to thrive in impunity thus employ violent means to consign the truth to oblivion.

So people must tell and retell their stories and keep the truth from being buried or forgotten. This is the primary aim of documenting cases of enforced disappearances: to keep the truth alive.

Documentation is the process of recording the circumstances surrounding an enforced disappearance case and it is a preliminary step in finding the truth about the fate and whereabouts of the disappeared.

It also provides evidence that can be used in court to bring the perpetrators to justice. So, collecting information comes with risks. Security forces resort to using scare tactics to keep people from remembering.

Truth-telling

Through documentation, people have brought to light how enforced disappearance has become a widespread systemic practice to silence individuals regarded as threat to the state.

Families of victims of enforced disappearances play an essential part in keeping the truth about enforced disappearances alive. They themselves are victims of this human rights violation and deserve truth and justice.

The Asian Federation Against Involuntary Disappearances (AFAD) has dedicated itself to documenting and reporting cases of enforced disappearances. As a Federation composed of organizations of families of the disappeared, AFAD believes that the families should be at the forefront of the struggle against enforced disappearances.

One of the ways by which AFAD harnesses the power of truth-telling is by reporting cases of enforced disappearances to the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID). Since a majority of Asian states have yet to ratify the International Convention on the Protection of All Persons Against Enforced Disappearances (ICPAPED), the UN WGEID and the 1992 Declaration that provides its mandate are important avenues to exact State accountability for cases of enforced disappearances.

This year, AFAD has submitted a total of three general allegations. General allegations have been filed against the Lao People's Democratic Republic to call the attention of the Working Group on the alarming situation of enforced disappearances in the country and to highlight the failure of the Lao government to return development worker, Sombath Somphone, to his family.

General allegations have also been filed against the Islamic Republic of Pakistan for its draconian Protection of Pakistan Law, which expanded the powers of State security forces in quelling terrorist groups. Similarly, the deteriorating human rights situation in Bangladesh has also necessitated the submission of general allegations to bring atten-

tion to the rising number of enforced disappearance cases in the country this year.

Psychosocial healing

In the process of re-telling and gathering the truth about enforced disappearances, families of the disappeared are asked to re-live the horror and pain of losing their loved ones. The “Minimum standards of work with focus on psychosocial work for enforced disappearance and grave human rights violations,” first reached international consensus in 2007 to ensure that families of victims process their experiences properly and not go through the trauma again.

The minimum standards are guidelines that emphasize the importance of psychosocial care for the families in search of their disappeared loved ones. They also outline a conscientious process to assist in reunifying victims and their families and include ways to handle information and provide transparency to the families in all aspects of human rights interventions.

Since reaching a consensus on these minimum standards in 2014, AFAD has been pushing for its popularization and application in its work. The best example was the re-unification event in Timor-Leste last 18-22 May 2015. Marco Antonio Garavito from *Liga Guatemalteca de Higiene Mental* facilitated the psychosocial processing of 14 Timorese who were taken from their families between 1979 and 1994 during the Indonesian military occupation of Timor-Leste.

Mr. Garavito has facilitated more than 400 re-unification events. He discussed with the families the importance of accepting the “stolen children,” even after their identities have drastically changed since the time of their disappearance. Highlighting both the individual (psycho) and social aspects of re-unifications, he led a skills exchange

with Timor-based human rights organizations on psychosocial care and accompaniment.

Using his organization’s experience, Mr. Garavito talked about how psychosocial accompaniment is crucial in helping the families and the victims sustain their relationship after the initial reunion. He also underscored the importance of gaining the trust and confidence of the family from the time documentation of the disappearance **“The minimum standards are guidelines that emphasize the importance of psychosocial care for the families in search of their disappeared loved ones.”** started to providing regular updates on the status of the search by being honest to them about the possible outcomes of the search.

Heart of the struggle

In Jammu and Kashmir, members of the APDP stress the fact that families have a big role to play in the struggle against enforced disappearances. In a place where there is an intense State repression, conducting field documentation is very challenging. Similarly, there is also the problem of balancing the cost of travelling to the localities to document cases with the families’ socio-economic needs. For this reason, APDP decided to train the families in conducting documentation in their own localities and devised a pay-per-case scheme to help alleviate their financial burdens.

APDP’s Campaign Officer Parvaiz Matta said the strategy has resulted in the consolidation of the families of the disappeared in the struggle against enforced disappearances. They are able to relate with the experiences of one another and thus created among themselves a network of psychosocial support in the localities.

APDP has started training a batch of young people—children of the disappeared—including

young women. Since the families have been mobilized to document the cases, more families have come forward to seek redress for the disappearance of their loved ones. APDP is optimistic that the involvement of the young family members in documentation will ensure that the struggle lives on.

Families of the disappeared are at the core of the fight to keep the truth alive. It is their stories that need to be told and re-told, and it is them who need to do the telling in order to continue the struggle against enforced disappearances. They do not just survive to tell the tales of the past anymore. They live to re-write the future.

“Walang Paalam”:

Using film to raise awareness on enforced disappearances

By: Ron de Vera

“Hindi mo namamalayan, marami ang nawawala nang walang paalam.” (You don’t notice it, but many people disappear without saying goodbye). This line from a proposed script resonated with many staff members of the Asian Federation Against Involuntary Disappearances (AFAD) and Families of Victims of Involuntary Disappearances (FIND) while conceptualizing a film meant to raise awareness about enforced disappearances. When the film was finally finished, *“Walang Paalam”* (No Goodbyes) was found to be a suitable title.

AFAD has already published books, brochures, and has come out with documentaries and other forms of campaign materials. Using film as medium to aid in raising awareness was the next logical step. As such, *“Walang Paalam”* was conceptualized. *“Walang Paalam”* features the three kinds of *desaparecidos*: forcibly disappeared but surfaced alive (*“Porferia”*); disappeared and found dead (*“Celio”*); and continuing disappearance (*“Hermon”*). Below are the synopses of each of the three features within the film.

“Porferia” narrates the story of Porferia Acuram, a church-based volunteer worker then on her third trimester of pregnancy, and her husband who were apprehended on July 19, 1989, in Misamis Occidental by the military on suspicion of collaborating with the New People’s Army. They were detained incommunicado, tortured and ordered to dig their common grave. The spouses maintained their innocence despite the brutality of their captors. They were

rescued through the help of their community and the intercession of a local lawyer.

“Celio” is principally based on the mass abduction, torture and killing of farmers suspected as rebels in the 1980s in Zamboanga Del Sur. It is a gripping story of a father whose son, a fresh high school graduate, was abducted by military elements together with numerous farmers of Tigbao and buried in unknown graves. In April 2001 Mang Celio reportedly helped FIND dig and identify the remains of his son, which were exhumed together with those of 11 other victims.

“Hermon” tells of the tragic struggle of a young lawyer Hermon C. Lagman, whose militant advocacy helped workers demand their rights not only through legal processes but more importantly by mass action. He banded with the workers and together they fought for justice and the emancipation of the working class. In open defiance of the martial law strike ban, he spearheaded the strikes in La Tondeña Inc., Mead Johnson-Bristol Group of Companies, Atlantic Gulf and Pacific Co., and Solid Mills in 1975 and 1976. For his resolute crusade to promote and protect workers’ rights, Lagman was taken by state agents on May 11, 1977, on EDSA. He remains missing after 38 years, 6 years more than his age of 32 at the time of his disappearance. *“Hermon”* also highlights the continuing torment of families, particularly the victim’s mother who endlessly grieves for her missing son and in her old age imagines that he would still reappear.

Partnering with allies

Since the inception of this project, AFAD has explored various channels to reach out to as many viewers as possible. The geography of the Philippines has proved to be a challenge in bringing the film to its intended audience. So, AFAD partnered with other human rights organizations, faith-based organizations, school-based groups, and even independent film-makers' groups across the country. By the end of the 2015, "Walang Paalam" has been shown in 12 cities across the archipelago and has reached approximately 2,700 viewers (see Figure 1: Map of film screenings).

Impactful

The film has succeeded in leaving an impact on its viewers. Representatives from two schools (Ateneo de Davao and University of the Philippines - Baguio) and Cinematheque Iloilo will be partnering with AFAD in showing the film again in 2016.

AFAD hopes that the short-term impact felt by these potential partners will eventually translate into the desired long-term effects of taking action against the phenomenon of enforced disappearance through direct local and national lobbying.

“Raising awareness must be complemented with direct lobbying activities and educating people must go beyond mere understanding but also translate into concrete actions.”

Sustaining efforts

It took three years to produce the film—a milestone for both AFAD and FIND. But the work does not end here. Raising awareness must be complemented with direct lobbying activities and educating people must go beyond mere understanding

but also translate into concrete actions such as the ratification of the convention against disappear-

ance and demanding for the effective implementation of the domestic law. The learning points culled from the experience this year has set the tone for the Federation's campaign plans in the Philippines in 2016.

Human Rights Education, for example, is a new component that has been integrated into the Philippine campaign. This takes into account the observation that learners effectively absorb new information immediately before and after the film showing. Additionally, AFAD has set up a website that provides further information about the film and, more importantly, the issue of enforced disappearance.

As 2015 comes to a close, AFAD looks forward to the next year filled with hope and driven to work for a world without *desaparecidos*.



Figure 1: Map of film screenings

Ron de Vera is the Philippine Project Coordinator for AFAD.

Enhancing Capacities:

Towards a world without *desaparecidos*

By: Christian B. Gultia

29 March 2015 – The Asian Federation Against Involuntary Disappearance (AFAD) Executive Council, together with the AFAD Secretariat and Country Campaign Staff participated in a three-day seminar-workshop entitled, “*Enhancing Capacities: Towards a World Without Desaparecidos*,” which was held in Holiday Inn, Silom in Bangkok, Thailand.

The seminar tackled effective international advocacy, which included understanding the UN system and the regional mechanisms available for the Federation and the integration of gender and development in the relevant work of AFAD to address enforced disappearances.

Enhancing capacities for institutional strengthening

From the point of view of AFAD’s present leadership, institutional strengthening remains a strong priority for the Federation. The training provided an avenue not just for the leadership to present the organization’s status but also track its progress in the next couple of years. It also provided an opportunity for member-organizations to share strategies and experiences, as well as for AFAD Council members and staff to meet and discuss the plans and other unfinished business in the AFAD management.

Enhancing capacities in effective international advocacy

Effective international advocacy forms part of the major work of the Federation. Since its humble beginnings, AFAD has relied on the resilient efforts of the members to campaign across national,

regional, and international borders to end the growing and unresolved cases of enforced disappearances. To date, AFAD continues to work for governments to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, highlighting its important role as the focal point of the International Coalition Against Enforced Disappearances (ICAED). Inherent in the coalition’s work, AFAD also campaigns for states to enact domestic laws that will criminalize enforced disappearances and for states to recognize the competence of the UN Committee on Enforced Disappearances (UN CED).

The training on effective international ad-

vocacy was facilitated by Atty. Cecilia Jimenez who is an expert in International Human Rights Law and the UN structure and its mechanisms. **“From the point of view of AFAD’s present leadership, institutional strengthening remains a strong priority for the Federation.”**

She discussed the importance of strategizing and effective communication in the challenging advocacy work. She highlighted that, since Asia submitted the highest number of cases of enforced disappearances to the Working Group, human rights organizations will have to double their effort to follow up and ensure that cases are resolved by their respective governments.

The United Nations' structure

Atty. Jimenez provided an in-depth discussion of the UN mechanisms that may be utilized to address cases of enforced disappearances. She presented a comparative analysis of the mandates and limitations of the UN Human Rights Council Special Procedures, the UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-recurrence as part of the Special Procedures, the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID) and the Universal Periodic Review.

Regional mechanisms

In the last part of the session for Effective International Advocacy, the speaker facilitated a thorough discussion of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which is a regional mechanism that AFAD and other human rights organizations in Asia should consider. This was discussed by Atty. Emerlyn Gil who is also an international human rights lawyer. She gave emphasis to the limitations of AICHR in terms of direct interference from national/local affairs of States. Although AICHR seems to be a challenging regional mechanism, Atty. Gil concluded that it is imperative for organizations to engage with the work of the AICHR in order to reform and make the body more functional.

Gender and development

AFAD recognizes the importance of including a more gender-sensitive approach in the struggle against enforced disappearances. It acknowledges the gender dimensions that must be closely observed in the planning and implementation of programs intended to resolve complex issues of enforced disappearances.

The last part of the training was a Gender and Development workshop which was facilitated by Dr. Carolyn Sobritchea, who is a professional lecturer

and a former Dean of the Asian Center of the University of the Philippines (UP). From 2000 to 2007, Dr. Sobritchea also served as the Director of the UP Center for Women's Studies.

Dr. Sobritchea discussed the difference between sex and gender, the gender roles, the status of women in various Asian countries, gender division of labor and existing international women's human rights instruments. She also introduced the framework of gender and development, a people-centered development paradigm that recognizes gender equality as a fundamental value that should be reflected in development choices.

AFAD Secretary General Ms. Mary Aileen Bacalso also briefly discussed, in response to the discussion on gender and development, the gender-responsive provision in Philippine Law against enforced disappearances and the ICPAPED. She also highlighted the General Comment of the UN WGEID on women who are affected by the phenomena of enforced disappearances.

After the sessions on gender, the AFAD leadership revisited and reviewed the AFAD Gender Policy that was previously proposed to the Federation.

Christian Gultia is AFAD's Fundraiser and Assistant to the Secretary-General.



Dr. Sobritchea discusses the different manifestations of gender bias in the Gender and Development Training.

AFAD Secretariat Page

Activities organized by the Secretariat in the Philippines in 2015

By: Toni Serrano-Soriano

Year-end assessment, performance evaluation and planning with the Executive Council

28-30 January, Tagaytay, Philippines

Screening of “Walang Paalam”

(No Goodbyes)

26 February, University of the Philippines Film Center

“Walang Paalam” is a film about the lives of victims of enforced disappearance. It aims to raise public awareness on this human rights violation. To date, the Philippine Project Coordinator has organized 20 film showings in 11 cities nationwide.

Enhancing capacities for our advocacy towards a world without *desaparecidos*

29 March-3 April, Bangkok, Thailand

A training on organizational development, effective advocacy, and gender sensitivity attended by the AFAD secretariat, council members, and campaign officers.

Team building/planning

26 April-1 May, Potipot Gateway Resort, Zambales, Philippines

International Week of the Disappeared

Press conference

28 May, Kenny Rogers Roasters, Matalino Street, Quezon City, Philippines

Book launching of “From Grief to Courage”

24 July, Ateneo Law School, Manila, Philippines

The book chronicles the best practices in many

countries represented in the conference titled “Best Practices in Advocating Legislation Against Enforced Disappearances” held in 17-20 September, 2014. The conference was attended by 35 delegates from Latin America, Europe, and the Mediterranean. Participants were diplomats, students, officials from the government and the security sector, friends from the religious sector, and colleagues from other organizations. The keynote speaker was the Chairperson of the Commission on Human Rights, Hon. Chito Gascon.

Mid-year assessment

22-26 July, Villa Elena Family Resort, Nueva Ecija, Philippines

A forum in commemoration of the International Day of the Disappeared, surface Sombath

27 August, UP Balay Internasyonal, University of the Philippines

This event gathered select Ramon Magsaysay awardees and members of civil society organizations on the occasion of the International Day of the Disappeared. It aimed to support the campaign to surface 2005 Ramon Magsaysay awardee, Sombath Somphone, of Laos, who is a victim of enforced disappearance.

3rd UIA Association Round Table Asia-Pacific

29-30 September, Bangkok, Thailand

The meeting was attended by the administrative officer and assistant to the secretary-general for capacity building, networking for fund raising, and for joint efforts in AFAD’s advocacy.

Breakthrough in leadership and strategy

30 November-2 December, Imperial Palace Suites, Manila, Philippines

This is a leadership workshop sponsored and facilitated by BRIDGE. Participants were the AFAD Secretariat, council members, campaign staff, and research and documentation staff from eight member countries.

On-the-spot poster-making contest: "Beyond legislation: Hope, action, justice"

11-12 December, University Hotel, Manila, Philippines

Background and theme

The Anti-Enforced Disappearance Act of 2012 (RA10353) was enacted three years ago, but the law has yet to be effectively implemented. The first test case filed was dismissed by the prosecutor and thousands of victims of enforced disappearance remain missing.

Yet, there is hope. In 2016, a new set of elected officials will take office, bringing with them renewed faith that human rights will still find its way into the core of governance platforms. AFAD believes that human rights activists must leverage this turnover of power by urging candidates to take action and bring perpetrators to justice. Thus, the theme of the poster-making contest was:

Objectives:

1. Engage families of victims (including relatives of the PICOP6) in a truth-telling session at the beginning of the contest;
2. Engage artists by giving them the opportunity to express their thoughts about enforced disappearance (thereby turning them into human rights allies in the process) through art;
3. Publish the official entries in a magazine and use it as lobbying material in 2016

Sombath commemoration/launch of online signature campaign/launch of comic booklet and

primer

16 December, Kenny Rogers Roasters, Matalino Street, Manila, Philippines

AFAD organized the event to commemorate Sombath Somphone's disappearance as well as the disappearance of thousands of victims in Asia and the Philippines. The event also provided an avenue to launch an online signature campaign, a comic booklet, and a primer on the Convention against Enforced Disappearance and also feature an art exhibit on Asia's *desaparecidos*.

Toni Serrano-Soriano is AFAD's Administrative Officer.



Secretariat Members:

1. Mary Aileen Bacalso, Secretary-General
 2. Maria Elizabeth Ramos, Finance Officer
 3. Toni Soriano, Administrative Officer
 4. Ronald Emmanuel De Vera, Philippine Project Coordinator
 5. Marija Ivanka Custodio, Regional Research and Documentation Officer
 6. Sara La Rocca, Regional Campaign Officer
 7. Christian Gultia, Assistant to the Secretary-General
 8. Amy Viña, Bookkeeper
 9. Gemina Dagdagan, General Services Staff
- 

The Federation: A Step Closer to a World Without *Desaparecidos*

By: Mary Aileen Diez Bacalso, AFAD Secretary-General

The Asian Federation Against Involuntary Disappearances (AFAD) ushered in 2015 with the 5th AFAD Congress in September 2014, which carried the theme: “Consolidating AFAD’s 17 years of struggle towards a stronger response to enforced disappearances in Asia.” This article shall feature the highlights of AFAD’s year following the Congress and the developments of the Federation as it continues to bring itself closer to its vision of a world without disappeared persons.

Enforced disappearance remains a major issue in the international front. Notably, 84 countries have submitted 42,889 outstanding cases to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID), 33 of which are Asian countries, which submitted 60 percent of the total number of cases. Yet Asia is a region that has the the least number of signatories and states parties to the United Nations Convention for the Protection of All Persons from Enforced or Involuntary Disappearances.

Considering this, it is important to note that from a Federation of 3 core group members, AFAD’s membership has grown from 3 member-organizations to 13 that are based in Bangladesh, the disputed state of Jammu and Kashmir, Indonesia, Nepal, Pakistan, Philippines, South Korea, Sri Lanka, Thailand and Timor-Leste. It

also has an individual member in Laos, a country where an organization of victims’ families does not exist due to repression. Conscious of the uneven organizational development of the bodies within its structure and the members’ varied political contexts, AFAD strives to push its constituents towards the same direction.

FIRST QUARTER: Groundwork for organizational consolidation

One of AFAD’s first endeavors was to participate in an international conference on enforced disappearances in Islamabad, Pakistan organized by the International Commission of Jurists. During the conference, AFAD’s representatives from Kashmir, Nepal, Pakistan, Philippines, and Thailand reported on the phenomenon of enforced disappearances in their respective countries and expressed solidarity with their brothers and sisters in Pakistan, one of the countries that submitted the highest number of cases to the UNWGEID. AFAD also emphasized the need to ratify the International Convention for the Protection of All Persons from Enforced Disappearance in one presentation and opened the discussion on how this convention is imperative in a country where enforced disappearances happen almost on a daily basis.

The event also provided AFAD with a good opportunity to visit the office of the Defence for Human Rights (DHR), which was its newest member-organization at that time. DHR received the AFAD representatives with sincerest hospitality and the AFAD Chairperson and Secretary-General spoke with the families of the disappeared who briefly related their stories as well. More than 15 family members of the disappeared took turns to tell their stories of horror, struggle, pain, and unwavering hope that one day, their disappeared loved ones would be an addition to the 750 disappeared people who were returned alive after months or even years in secret detention. Those whose loved ones were disappeared and subjected to extra-judicial execution also shared their stories and hoped for justice.

Following the conference, the AFAD Council held a meeting in Bangkok, Thailand from 2-3 February 2015. Ms. Amina Masood from the DHR joined the meeting via Skype. Council members took the time to review the results of the summing up of AFAD's 17 years of struggle for a world without disappeared persons and to concretize recommendations into plans. Everyone agreed that it was important to achieve a qualitative leap in attaining organic, as well as political outcomes. Moreover, deliverables of ongoing projects were identified and contracts on new projects were discussed. AFAD considered the envisioned reunification of disappeared Timorese children in

Indonesia with their biological parents in Timor-Leste as the breakthrough of the year.

With regard to research and documentation, AFAD members identified targets of 684 cases to be encoded into AFAD's database and 415 cases to be submitted to the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID). The group also discussed two new projects, namely, "A just environment for better protection from enforced disappearances to attain concrete breakthroughs for truth and justice," with the Bread for the World/Protestant Development Service, and "Gaining and reaping victories for a world without *desaparecidos*," with the OAK Foundation.

On organizational strengthening, the Council members aimed to make AFAD sustainable in terms of human and material resources to be able to respond to the long drawn struggle against enforced disappearances. It is the Federation's goal to have addressed the organizational challenges identified in the summing up results, such as for instance, security of human rights defenders especially in South Asian countries; funding limitations and the imperative of communication in between Council meetings by the end of 2018, taking into serious consideration the findings of the summing up activity.

AFAD committed to strive for a quantitative and qualitative leap in strength and performance in



AFAD's members during the conference on enforced disappearances in Islamabad, Pakistan, organized the International Commission of Jurists.

the four three years. The Federation would have corrected whatever imbalance there was in the performance of the different bodies within its structure, thus, making them march in step and head towards the same direction.

Moreover, the Council members hatched its most immediate plan for capacity building on effective advocacy and gender sensitivity and people were in consensus to hold the event in Thailand.

The Council meeting culminated in meetings between the Executive Council and Bangkok-based regional organizations such as the International Federation of Human Rights, the International Commission of Jurists, and Forum Asia. These meetings intended to fortify AFAD's voice against enforced disappearances in Asia.

In the Philippines, where the AFAD Secretariat is based, the Federation, in cooperation with the Families of Victims of Involuntary Disappearance (FIND), launched a film entitled, "*Walang Paalam*" or "No Goodbye" on March 31, 2015. The film featured three stories of enforced disappearance. One story was about two victims who surfaced alive, the other was about a victim who was found dead, and the third was about a labor lawyer who was disappeared during the Martial Law regime. He remains disappeared to this date.

The movie had been screened in several universities nationwide, in line with AFAD's campaign to turn the phenomenon of enforced disappearances from a parochial to a broader

societal concern.

Shortly after the Council meeting in February, the whole organization reconvened in March 2015 to participate in a conference on enhancing capacities for effective advocacy and gender sensitivity.

The AFAD Council, Executive Council, and the AFAD Secretariat and campaign country staff members all participated in this event that bore the theme: "Enhancing capacities towards a world without *desaparecidos*."

The activity primarily served to unify what AFAD wished to achieve in the next four years in terms of institutional building, as well as in its campaign for the signing and ratification of the international Convention for the Protection of All Persons from Enforced Disappearance. An integral part of this campaign is attaining concrete breakthroughs in the justice campaign by filing cases in court, winning these cases, and punishing the perpetrators to the full extent of the law.

Taking into consideration that Asia is bereft of regional human rights mechanisms for protection, the conference underscored the use of UN mechanisms and their mandates, specifically those of the UNWGEID, the UN Committee on Enforced Disappearances (UNCED), and the UN Special Rapporteur for the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. While the United Nations is not the end-all and the be-all of AFAD's struggles, the



AFAD Secretariat during the film screening of *Walang Paalam* on March 31, 2015 at the University of the Philippines - Diliman in Quezon City.

support of the international community is deemed important to complement efforts at the national levels in order to bring the message across to the proper authorities.

The three-day capacity enhancement was facilitated by Atty. Cecilia Jimenez, a human rights lawyer knowledgeable on UN mechanisms. To concretize the training, campaign plans were charted by participants of every country represented, which would then serve as basis for upcoming activities geared towards the realization of AFAD's targets for 2015.

Corollary to effective advocacy is gender sensitivity. In the phenomenon of enforced disappearance, the direct victims are often men, so women and children are the ones who mostly bear the brunt of the consequences. The effects of enforced disappearance include, among other things, emotional trauma caused by the unexpected loss and the absence of closure brought about by the uncertainty of the fate and whereabouts of the disappeared. Especially with the women, gendered impact includes economic dislocation as many of the disappeared were the breadwinners before the disappeared.

Women, whose social status is uncertain because of the very nature of enforced disappearance, are left to care for their children. This gendered impact of enforced disappearance all the more compels AFAD to incorporate gender into all its interventions. The participants deemed it imperative for AFAD's draft gender policy to be reviewed and finalized for implementation.

SECOND QUARTER:

Intensification of regional cooperation and reaping concrete victories

On 24, July 2015, AFAD launched its fifth book, "From Grief to Courage," which is a product of an inter-regional conference on best practices on legislation on enforced disappearances held in September 2014. Beyond legislation, the book contains best practices in all aspects of intervention to combat the malady of enforced disappearances. Presentations from experts and practitioners on the issue of enforced disappearances from Asia, Latin America, and Europe are chronicled in the book that is intended to serve as guide for all those who are part of the global fight against enforced disappearances.

Responding to the sorry state of human rights situation in Laos, AFAD continued to campaign for the release of development worker Sombath Somphone. In solidarity with Sombath's wife, Shui meng Ng, AFAD's individual member in Laos, member-organizations conducted various activities to call for Sombath's return.

"Where is Sombath?" This nagging question supposedly loud enough to be heard by the Lao government, unfortunately fell on deaf ears within the government that ironically signed the



This photo was taken during the unveiling of AFAD's fifth book "From Grief to Courage" in the Ateneo Law School in Makati City.

International Convention for the Protection of All Persons from Enforced Disappearance on 29 September 2008. This occurred despite the fact that at the beginning of the 2015, during the Universal Periodic Review of the Government of Laos at the UN in Geneva, several governments called on Laos to resolve the case of Sombath and to ratify the Convention on Enforced Disappearance. During the 105th Session of the UN WGEID, AFAD submitted a General Allegation against the Lao Government for its utter failure to abide by the provisions of the 1992 United Nations Declaration for the Protection of All Persons from Enforced Disappearance.

AFAD's voice at the regional level was echoed during the International Week of the Disappeared when member-organizations conducted, in a synchronized manner, various forms of meaningful campaign activities. Some of the member-organizations conducted their solidarity events with Laos.

Seeds had been sown and they bore fruits. Victories were then reaped. In a manner unprecedented, HAK, AFAD member-organization in Timor-Leste, in cooperation with member-organizations in Indonesia namely, Association of Families of the Disappeared in Indonesia (IKOHI), KontraS, and other civil society organizations, such as AJAR, facilitated the reunification of 14 disappeared Timorese children with their biological parents in Timor-Leste. These children were forcibly taken by Indonesian soldiers during the occupation of Timor-Leste and brought to Indonesia. HAK, in cooperation with AFAD, IKOHI, KontraS, and AJAR, facilitated a skills exchange in cooperation with the *Liga Guatemalteca de Higiene Mental*. Mr. Marco Antonio Garavito, Director of this Guatemalan organization, shared his expertise. At the time of writing, his group had found 416 Guatemalan children who disappeared during the

Guatemalan civil war from 1969-1996 and reunited them with their biological parents.

The most humanly gratifying outcome for any organization working against enforced disappearances is to find disappeared persons alive and return them to their loved ones. This was what happened in Timor-Leste when 14 disappeared children, now adults, came together to the HAK office to meet their biological families. More than 20 years of separation resulted in a very touching reunion. As Mr. Garavito said, the hearts of these families were torn apart and separated from each other for several years. It is extremely important for the separated parts of the hearts to be reunited. The reunification entails a process, which is very personal, but necessitates the accompaniment of organizations working on the issue. The event emphasized the importance of the sustainability and growth of the relationships, which for a long time, were destroyed by this cruel phenomenon.

THIRD QUARTER: Attaining a political environment that respects the right not to be disappeared

As AFAD entered the second half of the year, it intensified its campaign and lobby efforts for the respect of the right not to be subjected to enforced disappearance.

In Seoul, South Korea, the Citizens' Alliance for North Korean Human Rights organized a conference on enforced disappearances held on July 30, 2015. Invited to speak during the conference were Sombath's wife, Shui meng Ng, Sisto dos Santos of HAK Timor-Leste, and Yati Andriyani of KontraS-Indonesia. The AFAD Secretary-General acted as conference moderator and members of the diplomatic community, representatives of the UN office in Seoul, various non-government organizations (NGOs), and

families of the disappeared participated in the event. Mr. Garavito once again shared his group's success stories in finding disappeared children in Guatemala.

The full day conference was followed by a series of lobbying meetings with the Ministry of Reunification and the National Commission on Human Rights. Both of these offices promised to recommend to the Korean government the signing and ratification of the Convention on Enforced Disappearance.

As the Federation carried out lobbying activities in different countries, AFAD gave priority to Indonesia, whose new President, Joko Widodo, was catapulted to power with the earnest support of the civil society.

An AFAD delegation, composed of the AFAD Chairperson, the AFAD Secretary-General, Shui meng Ng and representatives from the AFAD Secretariat, KontraS, and IKOHI knocked on doors of government offices in Indonesia to call for the resolution of past cases of enforced disappearance and for the fulfillment of the promise to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Offices visited included the National Commission on Human Rights, Ministry of Law and Human Rights, Ministry of Foreign Affairs, and the Office of the Presidential Adviser on Human Rights. In solidarity with Indonesian and Papuan human rights defenders, the AFAD delegation joined the weekly Thursday rally in front of the Presidential Palace to call on the new government to fulfill its promises to the very people responsible for its ascent to power. There is no better time than now for Indonesia to seize this moment to serve as an example for the rest of the ASEAN countries in championing human rights by resolving past cases of human rights violations.



From L-R: Mary Aileen Bacalso of AFAD, Sisto dos Santos of HAK Timor-Leste, and Shui meng Ng, wife of Sombath during a panel discussion in the NKHR organized conference in South Korea. Photo: NKHR

On 30 August, the International Day of the Disappeared, AFAD member-organizations paid tribute to all the *desaparecidos* of the world. In the Philippines, where Sombath Somphone received the Ramon Magsaysay Award, AFAD organized a forum that honored the disappeared development worker. Shui meng Ng and former Magsaysay awardees, Seng Raw Laphai and Jon Ungphakorn graced the event. University of the Philippines Chancellor, Dr. Michael Tan, welcomed the audience and stressed the importance of putting a stop to enforced disappearances. The president of the Free Jonas Burgos Movement, Mrs. Edita Burgos, spoke of parallelisms between the case of Sombath and her disappeared son, Jonas. Mrs. Burgos considered Jonas and Sombath as brothers—as both loved farming and were disappeared. The rest of the AFAD member-organizations honored the disappeared in many different ways.

Unlike in countries such as the Philippines, where democratic space is present, in Bangladesh, families of the disappeared were blocked by the government from using the National Press Club as the supposed venue chosen to commemorate the International Day of the Disappeared. Less than 24 hours prior to the joint commemoration of the International Day of the Disappeared by AFAD, Asian Legal Resource Center,

International Federation for Human Rights and Odhikar, the National Press Club cancelled the event. The families found a new place to stage their activity, but the blocking incident at the first venue subjected them once more to a traumatic experience. Many of their cases are still recent and fresh. What occurred was only a part of the systematic persecution of human rights defenders and victims of human rights violations. Amidst all these, Odhikar never fails to strengthen its human rights defenders at the grassroots level who take charge of documenting cases of human rights violations which are chronicled in its periodic human rights report. With its several international recognitions achieved in 2014, which serve as a kind of protection, Odhikar consistently links with international organizations because domestic remedies are either futile or non-existent.

Meanwhile, Pakistan is marred by never-ending cases of enforced disappearances. The DHR has been up to its neck in filing First Instance Reports of disappearances; submitting cases to the Working Group on Enforced or Involuntary Disappearances, organizing huge rallies for families of the disappeared, commemorating traditional events, and consistently conducting solidarity events for Sombath. These activities all the more caught the ire of the perpetrators who continue to commit new cases that necessitate urgent actions.

In Nepal, a country devastated by earthquakes this year, the Advocacy Forum and the Conflict Victims Society for Justice (CVSJ) provided relief support to victims, including psychosocial support. Simultaneously, both organizations, in cooperation with civil society organizations, never failed to continue the campaign against enforced disappearance and demanded a review on the verdict on transitional justice mechanisms. The two organizations also called for the amendment

of the Truth and Reconciliation Commission and the Commission and Disappearances. The pursuit of truth and justice is an uphill climb and these AFAD member-organizations strived to conduct national and international activities, taking advantage of the Nepal upcoming Universal Periodic Review at the United Nations in November 2015.

In the disputed state of Jammu and Kashmir, the Association of Parents of Disappeared Persons (APDP) published a book entitled, "Structures of Violence." The publication reported the wanton transgression of human rights by security forces who pledged to protect their fellow citizens. Heavily militarized, Kashmir has the highest number of security forces in the world. APDP's earlier publications, "Buried Evidence" and "Facts Underground," speak about the phenomenon of mass graves in this lost paradise.



AFAD's meeting with representatives of the National Commission on Human Rights in Indonesia.

Treading the path of international work

Simultaneous with the Federation's work at the national level, AFAD Chairperson, Secretary-General, and representatives of member-organizations from Indonesia and Nepal knocked on doors of the United Nations during the 30th session of the UN Human Rights Council. While trying to exhaust domestic remedies, AFAD also accessed whatever instruments were available in the international arena.

Human rights defenders, especially in South Asian countries, are constantly at risk of being persecuted. In light of this, AFAD met with the UN Special Rapporteur on Human Rights Defenders, Mr. Michel Forst, and presented the case of human rights defenders in Bangladesh, including the government's blocking of the venue initially intended for the commemoration of the International Day of the Disappeared.

Additionally, AFAD raised its concern over Ms. Masood not being granted a visa to Switzerland and the continued refusal of the Indian government to renew the passport of APDP Patron, Mr. Parvez Imroz. Munir's assassination was also mentioned in view of the release of the pilot Polycarpus who was sentenced for 14

years, but served for only 8 years. Mr. Forst noted these concerns and committed to act on them.

In a meeting with the UN WGEID, the AFAD delegation updated the group of its work and followed up the cases and general allegations submitted. Not one of the general allegations was acknowledged, however, the cases submitted have yet to be answered. But each submission from AFAD signifies precious lives, which could be saved through the intervention of the UNWGEID. The AFAD delegation concluded in its evaluation that, in view of the limitations of the UNWGEID, it is important to follow up the cases and to explore other international mechanisms.

The AFAD delegation also met with UN Committee on Enforced Disappearances (UN CED). Even if it is not possible for governments of countries where AFAD member-organizations are based to work with the UNCED, since they have not ratified the Convention on Enforced Disappearances, AFAD still coordinated with the committee for possible joint efforts in campaigning for as many ratifications as possible, especially in Asian countries. Yeshua Moser-Puangsuwan of the Non-Violence International, a member of the International Coalition Against Enforced Disappearances (ICAED), presented the project, "Disappearance Monitor," which is a global research on all UN member states' compliance or non-compliance with the provisions in the Convention, regardless of whether or not they are states parties. With an estimated 99.99% accuracy, the Disappearance Monitor is a kind of research that questions governments and which governments in turn



AFAD and Nonviolence International's Side Event on the Imperative of the Convention on Enforced Disappearances on September 17, 2015.

cannot question. If implemented, the Disappearance Monitor project will go a long way towards universal ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance.

Notably, AFAD conducted a successful side event, in cooperation with the Non-Violence International and the ICAED. Around 60 people from NGOs and states representatives participated in the event, focused on enforced disappearances in Asia and the importance of the universal ratification and implementation of the Convention on Enforced Disappearances. His Excellency Ambassador Alberto Pedro D' Alotto of the Permanent Mission of Argentina to United Nations in Geneva graced the occasion. He stressed: "The Convention on Enforced Disappearances reinforces the rights of victims and their families and establishes mechanisms to make the obligations effective in this regard, especially on the right to truth, justice, and reparation." It was an honor to also have Mrs. Stella de Carlotto, President of the Grandmothers of the Plaza de Mayo, present in the event. The AFAD Secretary-General made a special mention of the struggle of the mothers and grandmothers in Argentina.

AFAD, being the focal point of the ICAED, took it as an opportunity to convene members of the coalition present in Geneva, as well as the Geneva-based member-organizations who were available for the meeting. The reinvigoration of the ICAED Steering Committee, given that it already has 55 member-organizations from various parts of the world, was deemed necessary. The six member-

organizations present decided to recruit fresh members to the Steering Committee when some existing members raised concerns over their limitations to carry out their responsibilities.

To maximize AFAD's presence in Europe, the AFAD Secretary-General took time to make a quick visit to London, United Kingdom to meet with its partner, the Open Society Foundation, while its Chairperson Khurram Parvez visited Brussels, Belgium to explore partnership possibilities with the European Union. It is hoped that the visits would facilitate generation of resources needed to sustain the work of the Federation.

The Year-End

During the last quarter of the year, the AFAD Secretariat visited Sri Lanka. This country holds a notorious record of enforced disappearances and many other human rights violations. It was recently visited by the UN WGEID. From the capital city of Colombo to the eastern and northern parts of the country, the AFAD delegation, in cooperation with the Families of the Disappeared, toured the whole country to meet families of the disappeared, whose wounds are still fresh from the ravages of war that resulted in the disappearance of their children. Grieving women turned to the AFAD delegates, showing pictures of their loved ones and sharing every bit of document they hold on to as proof of disappearances. Some lost more than one member of the family. Many shed tears as they related their futile search for answers. They refused charity and demanded the truth. They wanted their disappeared children to be returned alive.

AFAD's visit was followed by lobbying activities with various government ministries. The delegation met with the Speaker of the Parliament and three ministers and pushed for a dialogue between the new government and the victims. It also encouraged the government to immediately fulfill the promise to ratify the Convention on Enforced Disappearances and be the first South Asian country to have a law against enforced disappearances. In so doing, Sri Lanka would be a good example to Asia in dealing with the past and facing the future with conviction that human rights violations should never be repeated. And indeed, on 10 December 2012, as one important step, Sri Lanka has made itself the 95th signatory to the International Convention for the Protection of All Persons from Enforced Disappearance.

In the Philippines, intensive and extensive showing of films, "Walang Paalam," and "Burgos," were conducted. Within the year, AFAD had reached more than 2,000 students from major regions of the country. These activities stressed the importance of reaching out to young people and mobilizing more allies in the fight against enforced disappearances. The Burgos film was also shown in several European countries, telling the world of the determined struggle of a mother searching for the evasive truth and justice for her disappeared son.

In the final months of the year, members of the Federation convened on 30 November to 2 December for a training conducted in Manila, Philippines entitled, "Breakthrough in leadership and strategy," which was supported by Bridge Management Training. A total of 41 people

participated and the group was comprised of members of the AFAD Council, AFAD Secretariat, country campaign and documentation staff members of AFAD, including representatives of FIND. The training was made distinct from other leadership training courses by the use of meaningful exercises that addressed the needs of the organizations, as well as the individual members.

After the training, the AFAD Council met to assess the Federation's accomplishments for the year, reviewed the situation in different countries where AFAD is based and drafted general plans for the year, taking into consideration the bright ideas proposed during the leadership training. The meeting included a poignant monologue called, "Mrs. B," which narrated the life and struggle of Mrs. Edita Burgos. A moment of silence was then observed for Sombath Somphone, whose third anniversary of enforced disappearance was then to be commemorated on 15 December 2015.

Members of the AFAD Secretariat visited Nepal on 7 to 14 December 2015 to network with the human rights organizations based there and to reconnect with the families of the disappeared. Documentation practices and challenges were shared, together with its member-organizations, CVSJ and Advocacy Forum. Nepal-based legal organization, TRIAL, also joined the meeting to share their experience in using documentation to file cases of disappearances with the UN Human Rights Committee. AFAD also participated in the commemoration of Human Rights Day on 10 December, as well as in the 9th Annual Human

Rights Magna-Meet and two other mobilizations.

Meanwhile, the AFAD Secretariat in the Philippines, in cooperation with FIND, conducted a poster-making contest among the youth to raise awareness on the issue of enforced disappearance. A total of 19 people aged between 18 and 30



The photo was taken during the AFAD visit to the families of the disappeared in Sri Lanka.

participated. Family members of the disappeared from the National Capital Region and from Mindanao were invited to the event to deliver testimonies and inspire the young artists. The competition awarded the three top artists with cash prizes and plaques of recognition. The families of the victims and the AFAD Secretariat also gave two other contestants special prizes.

On 14 December, the AFAD Secretary-General

participated in an international conference on Torture and Enforced Disappearances in Asia held in Jakarta, Indonesia. Along with representatives of AFAD member-organizations in Indonesia, Bangladesh, and Shui meng Ng from Laos, the Secretary-General spoke about disappearances in their respective countries on the eve of the 3rd anniversary of the disappearance of Sombath Somphone.

Finally, the AFAD Secretariat in the Philippines commemorated on 16 December the 3rd anniversary of Sombath Somphone and launched its website on the campaign against enforced disappearances in the Philippines. The activity was highlighted with a video message from Shui meng Ng, who indefatigably continues to search for Sombath and uses all avenues to find the truth about her disappeared husband.

The AFAD Secretariat's fruitful 2015 culminated in a well-deserved Christmas party on 18 December.

Mary Aileen Diez-Bacalso is AFAD's Secretary-General.

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NEPAL: Janak Raut, Conflict Victims' Society for Justice (CVSJ)

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INDONESIA: Wanmayetti, Indonesian Association of Families of the Disappeared (IKOHI)

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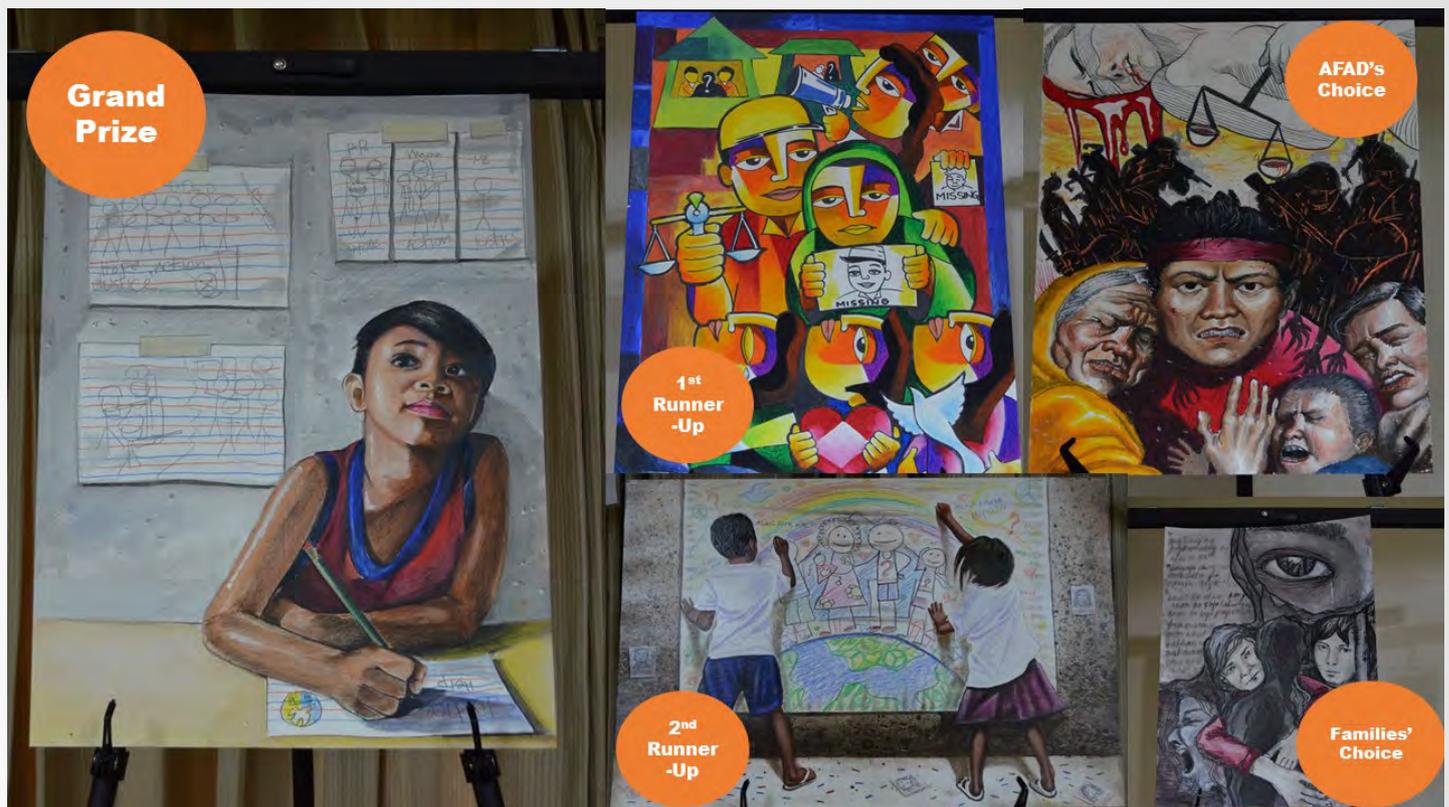
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SECRETARY-GENERAL: Mary Aileen Diez-Bacalso

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Winning entries from the on-the-spot poster-making contest titled: "Beyond Legislation: Hope, Action, Justice"

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