

ON THE ROAD TO RATIFICATION

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by Mary Aileen D. Bacalso

The Voice of the Voiceless

"If a person is dead, s/he has to have a grave. Yet, where are my son and his fellow activists who disappeared more than a decade ago? Without commitment from this government, there would be no solution to our problems as families of the disappeared! Human rights violations have first to be resolved by this new Cabinet." Tireless, Ibu¹ Toti Koto² emphatically questioned the Minister of Justice in Indonesia, Mr. Patriales Akbar for the government's lack of progress in the case of the disappeared and giving an ultimatum to Pres. Susilo Bambang Yudhoyono (SBY) (who received a landslide victory as re-elected president of the Republic of Indonesia) to once and for all, find her son and all *desaparecidos* of the country.

"Seeing perpetrators roaming free without qualms, I feel revolted. If it were not for my faith in God, I would have wanted to take the law into my hands." Between despair and hope, Jose Menezes Serrao, a survivor of the April 1999 gruesome massacre in Liquiçá, Timor Leste, whose neck revealed a deep scar due to hacking, was furious that despite the realization of the East Timorese people's cherished dream for independence, justice remains as elusive as ever. At least 200 people were murdered at the

local Catholic Church, many of whom were dragged away by the perpetrators and never returned, thus, prompting the community to build a mock cemetery to preserve the victims' memory.

Five long years of searching for disappeared lawyer, Somchai Neelapaijit of Thailand have brought no resolution to the case and many other cases of disappearances in the south. The once ordinary wife-turned human rights defender, Angkhana Neelapaijit continues with her indefatigable search for her husband and accompanies many family members of *desaparecidos* from conflict-ridden Southern Thailand in their search for truth and justice. One of them was Panya Lausophafan, whose brother, Kamol, disappeared on 8 February 2008.

Colorfully dressed in Kashmiri *saris*,³ women from far-flung areas of Kashmir came *en masse* to participate in the Forum on the UN Convention For the Protection of All Persons from Enforced Disappearance (hereinafter referred to as The Convention) held in Srinagar on 20 December 2009. Etched in their pretty yet gloomy faces is an unfathomable pain which can only be assuaged by a revelation of the truth about the fate of their loved ones. Without words, their very presence spoke eloquently of their unyielding crusade for truth about their loved



Ibu Toti Koto with AFAD Chairperson Mugiyanto who was with her disappeared son, Yani Afri in secret detention in 1997.

ones' disappearance in order to attain justice. With their male counterparts, they uniformly wore the APDP hats designed with a shadow of the *desaparecido*.

In the Kathmandu valley of Nepal, families of victims of the ten-year old conflict organized themselves into a national group, named Committee for Social Justice Advancing the Rights of Victims. Believing in their inherent strength developed in the course of their sufferings, this newly formed group is determined to see a better future for themselves and for tomorrow's generations - never forgetting the past, but remembering those that should never be forgotten. They expressed their intention to belong to a large aggrupation, i.e. the Asian Federation Against Involuntary Disappearances (AFAD).

"Please help us, Madam. Our son disappeared. He was only catching frogs when he was forcibly taken. He did not commit any crime." Jose and Cleofas Sanchez, an Aeta⁴ couple from Mabalacat, Pampanga, in their native *Kapampangan*⁵, appealed to Pres. Gloria Macapagal-Arroyo (GMA) to help in finding their son, Nicolas, who disappeared on

18 September 2006. With tears of gratitude for having spoken to the highest official of the land and hopeful that something concrete could be done to find their son, the couple expressed contentment after the meeting with the Families of Victims of Involuntary Disappearance (FIND) and AFAD with GMA on 14 January 2010 in Malacanang Palace.

These are a small sample of the voices of families of the disappeared in the recent Asian campaign and lobby tour which the AFAD conducted in cooperation with the Latin American Federation of Associations of Relatives of Disappeared -Detainees (*FEDEFAM*) from August 2009-January 2010. For them and because of them and their beloved *desaparecidos*, the AFAD's advocacy has been conceptualized, is being carried out and is meant to win victories.

The tour was intended to complement the AFAD member-organizations' efforts in campaigning for signatures and ratifications from Asian states of the Convention and the enactment of domestic laws codifying enforced disappearance as a distinct crime.

Marching in Step Toward a Common Direction

The UN Convention has, to date, 18 parties and 81 signatories. This strong international treaty, whose substance stems from the poignant experiences of families of the disappeared in many parts of the world, will enter into force thirty days after the 20th instrument of ratification shall have been deposited in the office of the UN Secretary-General.

Asia, the continent that has submitted the highest number of cases to the UN Working Group on



Angkhana Neelapaijit and Puttanee Kankun emphasize the need to resolve cases of disappearances.



With President Jose Ramos - Horta of Timor Leste, the AFAD-FEDEFAM lobby team, contented with the promise of ratification, poses for picture.

Enforced Disappearances (UNWGEID) in recent years, has a dismal record of ratifications and signatures. So far, only Japan and Kazakhstan have ratified and India, Mongolia, Azerbaijan and Laos have signed. This irony all the more urges members of the AFAD to intensify its advocacy.

Thus, in a week-long meeting from 25-30 August 2009 held in Quezon City, Philippines, AFAD member-organizations, with the participation of representatives from Latin America, Euro-Mediterranean countries and Manila-based organizations, such as the FIND and *Karapatan*, charted an urgent strategy for the Convention's immediate entry into force for the remaining period of 2009 and the first quarter of 2010. Culling from the common as well as distinct problem of enforced disappearances in India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, the participants agreed to devise an Asian lobby tour to support existing activities carried out by the AFAD member-organizations to pressure their respective governments to accede to this international treaty and craft enabling mechanisms to ensure implementation.

Concrete Campaigning and Lobbying

Starting September 2009 and ending January

2010, the lobby tour was conducted by a team composed of representatives from the AFAD Council, the AFAD Secretariat, families of the disappeared in countries visited and a representative from the Latin American Federation of Associations of Relatives of Disappeared-Detainees (*FEDEFAM*). The lobby team spoke with heads of state and representatives of government agencies, held public events, organized meetings with families of the disappeared and conducted media interviews in Indonesia, East Timor, Thailand, India, Nepal and the Philippines. For security reasons, the planned visits to Pakistan and Sri Lanka did not materialize.

The first round of tour was done consecutively in Indonesia, East Timor and Thailand on 17-28 November 2009 resulting in the physical exhaustion of the lobby team on its 12th day of non-stop work.

Indonesia

Indonesia's seat of government was visited twice, first in September and again in November. The main reasons for giving priority to Indonesia was that in 2007, the Indonesian delegation promised before the High Level Segment session of the UN Human Rights Council to sign the Convention. The second visit was inspired



Indonesia's Prime Minister, Patriales Akbar, is asked by the media on the government's commitment to the Convention.

by the Recommendations of the House of Parliament's Special Committee⁶ to inquire into the Disappearance of the 1997-1998 Activists to re-elected President SBY urging him (among three other points) to ratify the Convention. While the first visit which included meetings with the House of Parliament, resulted in the above-mentioned recommendations of the said Commission on Inquiry, the second visit occurred at an unstable political situation when SBY was shook with a huge scandal involving an issue of corruption. Hence, what the lobby team received included an assurance that Indonesia had already ratified sixty-seven international treaties and an ambivalent promise by the Ministry of Justice to include the issue in the 2009-2014 Human Rights Action Plan and to raise the matter to the president's attention.

Timor Leste

"Every family in my country has someone disappeared. I myself have two brothers who disappeared." These were words of Nobel Peace Prize Laureate and Timor-Leste Pres. Jose Ramos-Horta in a meeting with the AFAD, whose local member is HAK Association and with the FEDEFAM. The president made a clear commitment that he would undertake all efforts to sign and ratify this international treaty before the end of 2009. He noted that had he been alerted earlier, the government of Timor-Leste could have been a state party.

The team asked the President to facilitate the possibility that Timor-Leste be one of the first 20 countries to ratify the treaty which provides, among other things, the right to truth and the right not to be subjected to enforced disappearances. The AFAD

Chairperson, Mugiyanto confirmed that the Indonesian and the Timor-Leste- governments established a Truth and Friendship Commission. The joint commission, which recommends the establishment of a Commission on Disappearances, will be guided by the treaty, if ratified.

Khurram Parvez of the AFAD member-organization in Kashmir greeted Pres. Ramos-Horta with admiration as the latter is considered as an icon by the Kashmiri people who are fighting for independence. Looking up to Pres. Ramos-Horta as an exemplary world leader, Parvez appealed to the president to ratify the treaty and to appeal to other Nobel Peace Laureates and other Asian heads of state to endorse the same. Pres. Ramos-Horta assured the group that he would write to other heads of state and Nobel Peace Prize winners.

Thailand

During the March 2008 session of the UN Human Rights Council, the Thai government expressed that it was seriously considering being a party to the Convention. Thus far, nothing had been realized to fulfil the promise.

In a meeting with the Ministry of Justice, the lobby team, headed by Ms. Angkhana Neelapaijit and her daughter, Pratubjit Neelapaijit, learned that a process is ongoing to conduct a research on the possibility of the government to ratify the Convention. However, possible conflict points in the treaty's provisions vis-a-vis domestic laws have prevented the government from fulfilling its promise. Moreover, insinuations expressed on the issue of justice, such as, for example in the punishment of perpetrators, were accordingly, major impediments to the government's signing the treaty.

The team also conducted a meeting with



The AFAD - FEDEFAM lobby team in a meeting with Timor Leste Member of Parliament Fernanda Borges.

the reconstituted members of the Commission on Human Rights who, being new, still had to familiarize themselves with the Convention. The Chairperson, Prof. Amara Pongsapich, Ph.D. assured the AFAD and the FEDEFAM of the Commission's support.

India

In the historic signing of the Convention in the French Ministry of Foreign Affairs on 6 February 2007, India had signed the Convention but thus far, has not yet ratified it. Hence, the AFAD deemed it important to make a breakthrough by visiting government authorities, especially the Indian Ministry of Foreign Affairs in order to see possibilities for ratification. The latter, however, did not give an appointment to the Federation accordingly because they feared that it would embarrass the government by mentioning the report on the 2,700 mass graves found in Kashmir, entitled, "Buried Evidence."

Nevertheless, the lobby team was able to make full use of its visit by conducting meetings with parliamentarians, members of civil society in New Delhi and families of the disappeared in Kashmir. (See related story, *Initial Breakthroughs in India*, pp. 53-55)

The lobbying resumed at the beginning of 2010 and the lobby team visited government authorities in Nepal and the Philippines.

Nepal

On 25-28 January 2010, the AFAD delegation accompanied by Atty. Gabriella Citroni, member of the Italian delegation of the then working group for



India's Central Chief Information Commissioner, Wajahat Habibullah looks into possibilities to support the AFAD in its work.

the drafting of the Convention, called on the interim government of Nepal to enact the long-awaited anti-enforced disappearance law and to sign and ratify the treaty. To note, Nepal submitted the largest number of cases of disappearances to the UNWGEID in 2004, thus, compelling the latter to visit the country twice.

In a public meeting organized by Advocacy Forum, the intervention of AFAD was supported by the head of the Nepali Human Rights Commission, Retired Chief Justice Kedar Nath Upadhyay. The country's commitment to be a party to the Convention would be an important confidence-building measure for the government to manifest serious commitment in dealing with human rights, a vital issue to ensure its transition from the violent conflict to peace and democracy.

The ratification of the Convention and the passage of an anti-disappearance law are important measures the government needs to undertake to ensure the full implementation of the Comprehensive Peace Agreement and the 2007 Supreme Court ruling on enforced disappearances.

Philippines

In the heart of Manila, Philippines, at the Malacanang Palace, Pres. Gloria Macapagal-Arroyo, who is ending her term in June 2010, promised to certify the fifteen-year old anti-enforced disappearance bill as urgent and to sign the Convention. The promise was made at a meeting with officers and members of the FIND and AFAD, held in the music room of the Malacanang Palace on 14 January 2010.



Pratubjit Neelapaijit (middle) taking notes in a meeting with the Thai Ministry of Foreign Affairs. At her left is Panya Lausophafan, brother of disappeared, Kamol Lausophafan.

Joint efforts of AFAD and FIND to follow



Nepal's Human Rights Commission Chairperson Kedar Nath Upadhyay (right) calls on the government to finally approve the domestic anti-disappearance bill and to ratify the Convention.

up the promise are done in cooperation with Commission on Human Rights Commissioner Cecilia Rachel Quisumbing. A follow-up letter was sent to remind the president of her promise while letters to the diplomatic community in Manila will soon be sent to request them to urge the Philippine government to sign the Convention without further delay.

During the last six months, series of AFAD-FIND information dissemination drive to different universities, religious congregations and urban poor communities in Metro Manila and neighboring Luzon provinces are conducted in order to make enforced disappearance a public concern and to get moral, material and political support from the general public.

Prospects

Since The Netherlands is certain to be the 20th country to ratify the Convention, the most immediate question now vis-a-vis the Convention is: Who will be the 19th country? Reviewing the above results of the tour, the AFAD is optimistic that Timor Leste be the 19th country. Doing so, it would serve as the champion in Southeast Asia that would certainly encourage more ratifications in the sub-region and in the whole of the Asian continent. But regardless of who the next country to ratify will be, the long-awaited entry into force of the Convention will be another stage in this long-drawn struggle to attain a world free from enforced disappearances.

Enforced disappearances occur in more than 80 countries. More states parties are necessary to ensure the universal implementation of this treaty, whose provisions stem from the painful experiences and years of struggle of the families of the disappeared.



The AFAD lobby team in Nepal poses for picture after a radio interview.

The struggle is long and lonely and the enemies are strong. Despite this, the inner strength of the advocates for a world free from enforced disappearances, urged by a love so profound for their dear *desaparecidos*, will undoubtedly conquer all the impediments of truth, justice, redress, reparation and memory.

The Truth shall set us all free!

1 *Ibu* is an Indonesian term for Madam.

2 Toti Koto is the mother of Yani Afri, one of the 13 Indonesian activists who disappeared in 1998 and is one of the leading family members of *IKOHI*, the association of family members of the disappeared in Indonesia.

3 A *sari* or *saree* or *shari* is a female dress in the Indian Subcontinent. It is a strip of unstitched cloth ranging from four to nine meters in length that is draped over the body in various styles. Accessed from <http://en.wikipedia.org/wiki/Sari>.

4 The *Aeta* (pronounced as "eye-ta"), *Agta* or *Ayta* are an indigenous people who live in scattered, isolated mountainous parts of Luzon, Philippines. They are considered to be *Negritos*, who are dark to very dark brown skinned and tend to have features such as a small stature, small frame, curly to kinky hair with a higher frequency of naturally lighter hair color (blondism) relative to the general population, small nose, and dark brown eyes. Accessed from <http://en.wikipedia.org/wiki/Aeta>.

5 *Kapampangan*, also spelled *Capampangan*, is one of the major languages of the Philippines. It is the language spoken in the province of Pampanga, the southern half of the province of Tarlac, and the northern portion of the province of Bataan. *Kapampangan* is also understood in some barrios of Bulacan and Nueva Ecija and by the *Aitas* or *Aeta* of Zambales. Accessed from http://en.wikipedia.org/wiki/Kapampangan_people.

6 The recommendations of the Special Committee includes, 1) The President should establish an *Adhoc* Human Rights Court; 2)The President and all government institutions and other relevant parties should take appropriate steps to immediately locate the whereabouts of 13 people cited as still missing by *Komnas HAM*; 3)The President should facilitate the rehabilitation and satisfactory compensation to victims and or the families of the disappeared;4) the Government should immediately ratify the International Convention for the Protection of All Persons from Enforced Disappearance.



Mary Aileen Diez-Bacalso is currently the Secretary-General of the AFAD. Her most outstanding contribution to the fight against impunity was her active participation in the three-year drafting and negotiation process of the UN Convention for the Protection of All Persons from Enforced Disappearance.