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AFAD

Strengthening AFAD as
it Completes its Second
Decade of Struggle
Towards a More Effective
and Enduring Response to
Disappearances in Asia



EDITORIAL

Stronger on its Way to Twenty:

SUSTAINING THE STRUGGLE TOWARDS A WORLD WITHOUT DESAPARECIDOS

by Khurram Parvez

The year 2018 brings forth the 20th anniversary of Asian Federation Against Involuntary Disappearances (AFAD). In a span of two decades, the tragic reason for which AFAD came into existence has not changed for the better, but in fact worsened. Indeed, AFAD's existence became even more and more a necessity as the scourge of Enforced Disappearance (ED) impacted more countries in Asia. In countries where the phenomenon of ED existed during the formation of AFAD, involuntary disappearances unabatedly continue. In few countries where such human rights violation is considered merely a crime of the past, the governments are yet to acknowledge their responsibility to it.



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On one end of the spectrum, the struggle against ED in Asia by the families of the disappeared through the platform of AFAD has been successful to an extent. Yet on the other end, the impact on the perpetrators and the governments shielding them remains to be very limited still. The families of the disappeared across Asia are still waiting for both emotional and legal closure. The culture of impunity is widespread in most Asian countries where AFAD members are working. Of all the countries where AFAD has member-organizations, Sri Lanka is the only State which has ratified the International Convention for the Protection of All Persons From Enforced Disappearance. Despite impunity, AFAD and its member organizations have made significant contributions in the legal struggle in several cases of ED. Likewise, member-organizations with the consistent support of AFAD have been able to engage in various campaigns. In doing so, even the families of the disappeared have been involved by using public platforms and media to highlight the phenomena of ED. These endeavors also put the issues faced by the families of the disappeared on the spotlight. Through these successful campaigns, AFAD and its member-organizations have fairly succeeded in mainstreaming the issue of ED in the public discourse.

Due to the political climate in many countries, State repression escalated against the human rights defenders who are associated with AFAD, as their work has led to the embarrassment of the governments. Former AFAD Chairperson Munir Sayed and APDP member Aasia Jeelani were killed for their activism. Several other activists associated with AFAD have been threatened, attacked or incarcerated. Persecution has not deterred AFAD and its member-organizations. The struggle, in fact, has got even bolder. There is an increased recognition of AFAD and the activists who are associated with it, as they have been awarded by various international organizations. Indeed, the visibility of AFAD's work has significantly increased.

AFAD and its member-organizations are now faced with the task of strategizing its efforts directed toward waging the struggle more effectively while keeping in view our strengths,

weaknesses and threats. We have, in the past, been able to create opportunities. But we need to be equally mindful of the opportunities, which are produced by shared understanding and focus of the global civil society. Fortunately, due to the explosion of the social media, people around the globe are now able to be enlightened on pertinent issues of concern without being dependent on mainstream media.

Identified weaknesses of AFAD include, among other things, limited funds, limited human resources and a complicated relationship with the state actors. AFAD should put in sustained efforts for fund-raising, as this is one of the most difficult tasks and a weakness of many NGOs. Strategies need to be devised to build the capacity of AFAD member-organizations and their staff. Regarding the relationship with states, members will be encouraged to use effective lobbying with international institutions, organizations and governments, which certainly will deter the States from harming the member-organizations and activists associated with them.

The struggle against ED was neither trouble-free in the past nor does it appear to be unchallenging in the near future. Achieving a world free from disappearances is not going to be without hurdles. The challenges with the progress of the movement are becoming brazen in countries like Bangladesh, India, Pakistan and Philippines. In Sri Lanka, Indonesia, Timor-Leste and Nepal, despite the transition in the conflict, the governments' delay in taking the necessary steps for ensuring justice and the right to truth of the families of the disappeared is getting more and more frustrating. In this context, AFAD, in the countries where it has member organizations, still has a long drawn role for empowering the families of the disappeared to continue the struggle against ED in a sustained manner. AFAD needs to build the capacity and further empower the families of the disappeared and the organizations fighting against the phenomenon holistically as a top priority. Empowerment of families of the disappeared will strengthen the member-organizations in different countries, which are at the core of AFAD's sustainability of the struggle.

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The whole delegation to the 6th AFAD Congress in Negombo, Sri Lanka.

The AFAD Congress remembers and honors rural development leader and activist Sombath Somphone on the fifth anniversary of his disappearance on 15 December 2017.

The 6th AFAD Congress:

PLANTING SEEDS OF HOPE AS AFAD EMBARKS ON ITS THIRD DECADE OF STRUGGLE

by Elyse Conde

Looking upon the future with fists raised and heads held up high, the Federation culminated its 19th year by holding its Sixth Congress in Sri Lanka last 12-17 December 2017 with the theme: *“Strengthening AFAD in its Second Decade of Struggle Towards a More Effective and Enduring Response to Enforced Disappearance.”* Held every three years, the Congress is a forum where AFAD member-organizations converge to discuss and evaluate their milestones and accomplishments. The highlights of every Congress serve to strategically pave the way for another three (3) years.

True to this Congress’ theme, the concerted efforts of all the AFAD members in the past three (3) years had effectively laid the foundation to further strengthen the Federation. Indeed, this collective work has now prepared the organization to respond more efficiently and consistently to the phenomenon of enforced disappearance (ED) as it enters its third decade.

A total of 24 delegates were present from nine countries: Bangladesh, Indonesia, India-administered Kashmir, Laos, Pakistan, Philippines, Sri Lanka, South Korea, and Timor-Leste. Also present were the AFAD Executive Council Officers and Members. Along with them, a representative from the ICAED Steering Committee Member in Peru, *Qatary Panituri*, attended the Congress as an observer.

Intentionally, Sri Lanka was chosen as the venue for the Sixth AFAD Congress to draw attention to the barefaced culture of impunity in the country, given the countless unaddressed cases of ED that were committed during the civil war that lasted for 26 years. From 1983-2009, an estimated number of 60,000-100,000 Sri Lankans were disappeared not only by the government but also by the militant organization Liberation Tigers of Tamil Eelam (LTTE).

In solidarity with the people of Sri Lanka, the Congress facilitated a significant public event titled **“AFAD In Solidarity with Families of the Disappeared: Never Again!”** where mothers and other loved ones of the disappeared from AFAD member-organization *Families of the Disappeared* (FOD) gathered to once again call their government to action in addressing the many cases of ED in the country.

Among those in solidarity with the victims of ED were the 6th AFAD Congress delegates, namely: AFAD Secretary-General Mary Aileen Bacalso; Odhikar Secretary Adilur Rahman Khan; FOD President Brito Fernando; staunch women’s rights activist and attorney-at-law Nimalka Fernando; and Manori Muththettuwagama, a renowned civil and human rights activist attorney. To foster objective discourse on the issue at hand, Speaker of the Parliament Karu Jayasuriya and Human Rights Commission Chair Dr. Deepika Udagama gave keynote speeches on behalf of the Sri Lankan government.

In his welcome remarks, Adilur Khan asserted that ED remains an urgent concern in repressive states such as Pakistan, Bangladesh, and Kashmir. Thus, he urged the democratic states to rise and take action against the despicable phenomenon of ED.

Shortly after, FOD facilitated a brief gathering with the mothers and loved ones of the disappeared, where AFAD officers and members Aileen Bacalso, Nilda Lagman-Sevilla, Shui Meng Ng, Amina Masood Janjua, Celia Sevilla, and Edita Burgos had shared stories of grief, courage, hope, and inspiration. It is deemed that through the conduct of such activities, the mothers and families of the disappeared in Sri Lanka will not only be encouraged to take action against the prevalent threat of ED in their country, but will

also be empowered to stand and fight against this cruel human rights violation.

Subsequently, member-delegates presented their respective reports to the Congress, advanced copies of which were already sent to AFAD member-organizations. Each report highlighted the disappointing state of human rights in each country while also giving focus on the significant efforts and activities that were undertaken by their respective organizations in the past three years. Bangladesh, Kashmir, and Pakistan remain under constant threat due to the perilous human rights situations therein, with both Khurram Parvez and Adil Khan facing persecution. On the other hand, despite the supposedly democratic form of government in the Philippines and Indonesia, the human rights situation continues to deteriorate as both President Rodrigo Duterte and President Joko Widodo foster a culture of impunity and violence as they continue the vilification of human rights advocates and defenders.

In Sri Lanka, the new regime serves as a beacon of hope to the families of the disappeared, as President Maithripala Sirisena vowed to attain justice for the victims of ED. However, many of the victims have increasingly become frustrated and disheartened by the fact that the government has not yet taken concrete action on this pronouncement since its election in 2015. For one, the ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance, the draft law against EDs have yet to be implemented. The Office of Missing Persons has not yet seen the light of day through its most awaited operationalization.

Meanwhile, an individual member of AFAD from Switzerland and an active volunteer of ICAED, Alan Harmer also submitted his report. He expressed his strong support to the Federation. He also informed the Congress that they have started the efforts of establishing a headquarters for ICAED in Geneva.

In contrast to the other member-organizations, the human rights situations in Timor-Leste and South Korea are relatively nonviolent. But still, the culture of impunity in Timor-Leste persists, as President Francisco Guterres wants to

“In some parts of Asia, [we] have the full-blown situation in respect of enforced disappearance like Pakistan; like Bangladesh, my country; Kashmir; and in some other parts of Asia. On this occasion, I think it’s the duty of the democratic states to rise and to stand and to say that, “Enough is enough.”

– Adilur Rahman Khan



Renowned civil and human rights activist attorney Manori Muththettuwegama speaks in front of the mothers and families of the victims of ED in Sri Lanka during the public event organized by AFAD through its member-organization FOD.

overlook the past and reconcile without any attempt to achieve justice and reparation for the victims of ED and other human rights violations. South Korea, on the other hand, maintains a difficult relationship with its northern counterpart, as North Korea continues to conceal the fate or whereabouts of the victims of abduction. Moreover, it has categorically denied its involvement in the crime of ED. Despite these challenges, South Korea remains positive and confident about the situation as more abductees come forward to share their stories.

ICAED Steering Committee member Mercedes Malpica Solorzano gave a report on the human rights situation in Peru as well. Primarily, she shared how the culture of impunity predominantly continues in her country, as evidenced by President Pablo Kuczynski granting pardon to former president and human rights violator Alberto Fujimori. Given these deplorable circumstances, families of the victims of ED in Peru continue to stand and fight against ED, knowing full well that truth and justice will be achieved through their ceaseless yet determined struggle.

To end her presentation, Mercedes passed around a ball of colorful yarn among the Congress delegates to illustrate how important unity and solidarity are. Using but a humble ball of string, she reiterated how vital it is to stand against the scourge of ED together because much

like the piece of string that they were holding together, their struggle will not gain much impact if they are not done in unity and solidarity of one another.

Afterwards, AFAD Chairperson Khurram Parvez presented a synthesis of the reports. The synthesis focused on the SWOT analysis of the situation and work of AFAD, and corresponding recommendations.

Essentially, the whole Congress realized that it must continue working together steadfastly to address the myriad challenges and difficulties that beleaguer not only their respective countries but the whole of Asia. The Congress recognized that now, more than ever, the Federation must remain determined to respond to the phenomenon of ED.

In addition to this, the AFAD Secretary-General presented the status and work of the Secretariat during the last three years. A video was presented to mark the milestones achieved by AFAD in its journey for the past three years. It aptly depicted both the successes and challenges the organization had faced, making AFAD stronger and more capable to undertake what lies ahead. The video can be viewed at <http://afad-online.org/galleries/videos>.

Apart from the foregoing, the results of the external evaluation of the Bread for the World project were also discussed and validated. The Congress gave comprehensive feedback on the recommendations given by the evaluators, Wolfgang Heinz and Fe Garcia.

“Disappearance is a continuing crime and a continuing sadness in our lives.”

– Nimalka Fernando

“My message is to never give up. For me, it is important for us to remain the face of this struggle. I do not know how many more years I will live, but my hope is that this doesn’t happen to future generations. We cannot let other people take our humanity.”

– Shui Meng Ng

Comprehensive planning sessions for South Asia and East Asia were also conducted by two workshop groups, which formulated strategic plans for the next three years. Both plans focused on optimizing AFAD’s resources to achieve its goals and objectives. As such, these were primarily focused on widening and fostering the influence, capacity, and advocacy of the organization throughout Asia for it to respond more strongly to the worsening phenomenon of ED in the region.

In conjunction with the foregoing sessions, AFAD’s policies, Constitution, and By-laws were also revised, refined, and finalized by the Congress.

The Congress also elected a new set of officers for the next three years. Once more, Khurram was elected as the Chairperson and Aileen the Secretary-General. Yati Andriyani was elected as the new Treasurer, while Nilda and Adil were elected as the Executive Council Members for East Asia and South Asia respectively. Aileen emphasized that she seriously would have wanted



During the public event, mothers and loved ones of the disappeared in Sri Lanka call on their government to address the phenomenon of enforced disappearance.



to step down from the said position considering her almost twenty years of service to AFAD in the same capacity. But with the absence of a successor, she agreed, that with the help of the whole Federation, she would have another term with the hope of not finishing the full term. She stressed that she formulated a sustainability policy which needs to be substantiated, approved by the Congress, and implemented for the long-term sustainability of the Federation.

“We must all be united in the struggle against Enforced Disappearance because much like this piece of string that we are holding together, our struggle will not gain much impact if they are not done in unity and solidarity of one another.”

– Mercedes Malpica Solorzano

To efficiently encapsulate the accomplishments and recommendations of the 6th AFAD Congress, a comprehensive press statement was published to ascertain that the issues and matters discussed throughout the conference are brought to light. A press statement honoring Sombath Somphone on the 5th anniversary of his disappearance was also published during the conduct of the commemoration event last 15 December. In conjunction with this, the Congress also viewed a film to remember and honor Sombath’s life and works in community development.

It is also worth mentioning that the Federation received a total of 34 solidarity messages from organizations all over the world, particularly from 22 countries, i.e., Argentina, Belarus, Bolivia, Chile, Cyprus, El Salvador, Indonesia, Italy, France, Germany, Guatemala, Hong Kong, Laos, Morocco, the Netherlands, Peru,

Philippines, Sri Lanka, Switzerland, Thailand, United States of America, and Venezuela. This not only signifies that AFAD’s work is recognized and acknowledged, but it also denotes how important its contribution is in the search for truth and justice for the *desaparecidos*. Nevertheless, AFAD is nothing but humbled by the overwhelming support by our peers, who remain our partners and allies in the journey to realizing a world without *desaparecidos*. As the Federation prepares to embark on its third decade of struggle, it remains ever more steadfast in its mission to not only realize a world without enforced disappearance but also to enlighten and empower the families of the disappeared toward a stronger, more robust partnership that will certainly secure the foundation of human rights for all.

AFAD officers and members Aileen Bacalso, Nilda Lagman-Sevilla, Shui Meng Ng, Amina Masood Janjua, Celia Sevilla, and Edita Burgos share stories of grief, courage, hope, and inspiration to encourage and empower the mothers and loved ones of the disappeared to stand against ED.



ICAED Steering Committee Member Mercedes Malpica Solorzano shows the importance of unity and solidarity in the fight against injustice and impunity using a simple ball of yarn.

Elyse Conde is a development writer and researcher with an academic background in communication and media studies. For several years, she has been able to develop and publish comprehensive academic papers and research publications on a diverse gamut of topics, from community resilience to human rights. Currently, she serves as AFAD’s Fundraiser and Assistant to the Secretary-General, yet she considers her involvement with the Federation also a meaningful opportunity to contribute in the attainment of its vision: a world without *desaparecidos*.

C[law]s of Infringement:

THE COST OF HUMAN RIGHTS ACTIVISM IN BANGLADESH

by Sazzad Hussain¹

Rights to freedom of opinion and expression and freedom of peaceful assembly and of association are essential elements of democracy in a country. Regrettably, in Bangladesh, such rights are being systematically violated by the incumbent government. The government imposed various repressive laws and policies targeted at dissenters. It is harassing the opposition political parties' activists, human rights defenders (HRDs) and people belonging to alternative beliefs. Journalists, HRDs, civil society actors, bloggers and online activists are accused of different criminal charges, including sedition and defamation for criticizing the [in]actions of the government. The government's imposition of restrictive policies, thereby putting pressure upon the media through different ways and means has become a regular practice. In effect, accurate and independent news reports from publications are barred. In most cases, journalists are forced to maintain self-censorship when publishing reports. There is no mechanism for the protection of journalists, HRDs; and victims and witnesses in the country. Furthermore, the government barred and attacked meetings and assemblies organized by various political parties, civil society organizations, victims' families and students. Such actions are a clear violation of the freedom of peaceful assembly and association guaranteed in Article 36 and 37 of the Bangladesh Constitution and Article 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR). From the perspective of the Special Rapporteur, the rights to freedom of peaceful assembly and of association have increasingly come under attack as incumbent or incoming regimes seek to retain or gain power at all costs.² It is feared that Bangladesh is no exception to this practice in the present context.

¹ The author is a Program Coordinator of Odhikar and the Campaign Staff and Council Member of AFAD. This article is written based on research and reports that have been prepared and disseminated by Odhikar.

² 'The exercise of the rights to freedom of peaceful assembly and of association in the context of elections (A/68/299),' http://www.ohchr.org/Documents/Issues/FAssociation/A_68_299_en.pdf



Local HRDs associated with Odhikar in Chittagong brings out a rally on the occasion of International Human Rights Day 2016.
Photo: Odhikar

Enforced Disappearances and Persecution of HRDs and the Families of the Disappeared

In the recent years, the commission of enforced disappearances (EDs) has dramatically increased in Bangladesh and government authorities have been so unwilling to investigate such cases. According to the information gathered by Odhikar, at least 414³ individuals were subjected to ED⁴ by various law enforcement agencies between 2009 and 2017. In 2013, before the 10th parliamentary elections held in January 2014, cases of disappearances became more frequent and many opposition leaders and dissident voices⁵ became targets of EDs. The next parliamentary

elections are scheduled by the end of 2018. There are fears that ED incidents will take place ahead of the upcoming elections and the human rights situation will deteriorate further amid increasing violence and ongoing impunity. Under the current administration, EDs have been used against targeted political opponents and to silence dissenting voices. The families of the disappeared and witnesses have repeatedly claimed that members of law enforcement agencies, or men claiming to be from such agencies, arrested and took away the victims but the authorities have denied taking them. Statements of many witnesses in this regard reveal that members of law enforcement agencies have been involved in committing EDs.

Law enforcement agencies often initially deny alleged abductions. Then, after sometime (which could take days or months), the police or security forces would expose abductees before the media as suspects in a criminal investigation or as those charged with a crime. In cases where bodies of victims are recovered, the police often attribute such deaths to ‘crossfire,’ ‘gunfire’ or ‘encounters.’⁶ Since 2009, only two cases of EDs have been investigated in Bangladesh.⁷ In one case, the perpetrators were prosecuted and found guilty of the disappearance and the killing of seven men in 2014.⁸ In another case, a judicial probe showed that members of law enforcement agencies were involved in the ED of a homoeopath doctor, but none of the perpetrators was prosecuted.⁹

3 Among them, 54 were found dead, 228 were released after being left blindfolded at a particular location or shown as arrested or produced before a court after several days or months following their disappearance. The fate or whereabouts of 132 persons remain unknown.
 4 Odhikar documented only the enforced disappearance cases where the families of the disappeared claim that members of law enforcement agencies allegedly picked up the victims.
 5 For more information, see “We Don’t Have Him, Secret Detentions and Enforced Disappearances in Bangladesh,” *Human Rights Watch*, at https://www.hrw.org/sites/default/files/report_pdf/bangladesh0717_web.pdf
 6 This has been repeatedly highlighted in Odhikar’s monthly reports spanning several years.
 7 On 16 January 2017, Narayanganj District and Sessions Judge Syed Enayet Hossain found 35 individuals, including 25 members of the police special force Rapid Action Battalion (RAB)-11, to be responsible for the disappearance and murder of seven men on 27 April 2014. In the judgment, 26 accused, including 16 RAB officers and members, were sentenced to death. On 22 August 2017, the High Court Division of the Supreme Court upheld the death penalty of 15 of the RAB officers and members. On 4 August 2016 at around 9:30 pm, Sub-Inspector (SI) Himel of Satkhira Sadar Police Station arrested Sheikh Mokhlesur Rahman, aka. Johny, and took him to the Police Station from the

Labony Cinema Hall intersection of the town where he had gone to buy medicine for his father. On 5-7 August 2016, the family members of Johny provided him food at the police station custody cell and also talked to him. They also spoke to the then-Officer-in-Charge of the Police Station Emdadul Huq and SI Himel regarding Johny. The police informed them that Johny had involvement with ‘Islamic extremists.’ They demanded for a huge amount of money for his release. On 8 August 2016, the family did not find Johny at the police station and the police refused to inform them of his whereabouts. Later, the family filed a case in this regard. On 4 July 2017, a Senior Judicial Magistrate of Satkhira, Habibullah Mahmud submitted an inquiry report to the High Court Division of the Supreme Court that found three high-ranking police officials to be involved in the arrest of homeopathic physician Sheikh Mokhlesur Rahman, aka Johny, and his subsequent enforced disappearance.
 8 ‘Death for 15, life term for 11: HC revises lower court verdict in sensational 7-murder case, upholds death penalty for 15 including expelled Narayanganj AL leader NurHossain, 3 ex-Rab officers,’ *The Daily Star*, 23 August 2017; <http://www.thedailystar.net/frontpage/narayanganj-7-murder-verdict-high-court-bangladesh-death-reference-appeal-death-15-life-term-11-1452607>
 9 ‘Cops involved with arrest, disappearance of Satkhira physician: judicial report,’ *New Age*, 09 July 2017; <http://www.newagebd.net/article/19321/>

The rights to freedom of expression, assembly and association are being curtailed by applying repressive laws. In the course of taking up ED cases for campaign, HRDs and the families of the disappeared face persecution and diversified challenges. Continuous intimidation, threats, followed by surveillance and harassment by State intelligence and law-enforcement agencies have become part of life for HRDs. For example, in 2015, the government stopped a program organized by Odhikar in collaboration with the Victims' Family, AFAD, ALRC and FIDH to commemorate the International Day of the Victims of Enforced Disappearance. The family members of the disappeared

victims were supposed to deliver their testimonials before the audience. Some members of victims' families who were supposed to attend the program had been threatened over telephone and were told not to participate. Law enforcement agencies in various districts also inquired about local HRDs associated with Odhikar and advised them not to conduct any programs in relation to the International Day of the Victims of Enforced Disappearance. Despite receiving threats, some HRDs were able to organize rallies and human chains in some districts of the country. Consequently, they had been inquired by the law enforcement agencies and faced harassment.

Furthermore, many victims and families of the victims are being regularly harassed and threatened by ruling party activists and law enforcement agencies. Families of the disappeared rarely hold press conferences or talk about disappearances due to constant threats and surveillance by the law enforcement personnel. Police officers are reluctant to register a complaint against their colleagues or other members of law enforcement agencies. The police insist that the complainants should exclude law enforcement agencies' name and that the allegation of disappearance should be changed to 'kidnapping by unidentified criminals.' The investigation of the few cases that were filed in the past nine years, have not seen any progress.¹⁰ Writs of *Habeas Corpus* filed by families often end up as futile litigation, as the Attorney General's Office defends the alleged perpetrators inside the law-enforcement agencies before the High Court. The failure of the judiciary to respond effectively leaves victims without recourse to judicial remedies or justice.



Odhikar and the Families of the disappeared could not hold a meeting due to state repression. Police surrounds the meeting venue at the National Press Club, Dhaka. Photo: The Daily Star, 31 August 2015



Police cordons the National Press Club where Odhikar organizes a public meeting to commemorate the International Day of the Victims of Enforced Disappearance.

Photo: Manabzamin, 31 August 2015

In many cases, instead of conducting prompt and thorough investigations, the authorities have repeatedly denied that ED incidents occur and instead, claimed that the victims were either kidnapped or had gone into hiding. For example, the Bangladeshi Home Minister claimed that many allegations of businessmen who disappeared were cases in which they had voluntarily gone into hiding after failing to repay their loans. He also asserted that some disappearances were actually cases of people going into hiding following extramarital relationships.¹¹ On 23 November 2017, Prime Minister Sheikh Hasina told the Parliament that the disappearance of people is a common phenomenon not only in Bangladesh, but also in developed countries like the US and the UK.¹²

¹⁰ Such information was collected from Odhikar's own fact-finding work and from its network of victims' family members who are constantly under pressure from the law enforcement agencies. If HRDs are silenced, these families will have no voice either.

¹¹ 'No, Bangladesh, The Truth is Not a 'Smear Campaign', Instead of Investigating, Authorities Reject Report of Enforced Disappearances,' by Meenakshi Ganguly, South Asia Director of HRW, <https://www.hrw.org/news/2017/07/07/no-bangladesh-truth-not-smear-campaign>

¹² 'People disappear not only in Bangladesh, but also in US, UK,' *The Daily Dhaka Tribune*, 24/11/2017, <http://www.dhakatribune.com/bangladesh/2017/11/24/people-disappear-not-bangladesh-also-us-uk>

Since August 2017, a new trend has emerged--numerous individuals including a university teacher, a politician, a former ambassador, a businessman, a journalist and a few students mysteriously went 'missing.' Some of them resurfaced and some of them were shown as arrested. Some victims, after their return, gave statements to the media. Their accounts contained many similarities and even their detention experience was almost the same.¹³ During this period, those who resurfaced after abduction have also reported that their abductors were well-organized and had the necessary resources to make victims disappear. Some members of law enforcement agencies were allegedly involved in these incidents. Such assumptions became stronger when a high-ranking police officer spoke directly on this matter. On 14 December 2017, Deputy Commissioner of Dhaka Metropolitan Police Biplob Kumar Sarkar admitted that police picked up people but could not admit that they did so for strategic reasons. He also mentioned the incident of the disappearance of doctor Shamim Khan¹⁴ who was abducted on 1 January 2016, and was found unconscious after 30 hours.¹⁵

Hindrance to Freedom of Opinion and Expression

“Interference on the media and freedom of expression, by the government and the ruling party members, increased in 2017. The incumbent government is severely suppressing people who criticize it and those who have alternative beliefs. The government controls most of the media; particularly the electronic media, which are mostly owned or controlled by supporters or members of the ruling party; and it closed down the pro-opposition electronic and print media since 2013.”¹⁶ Furthermore, attacks on journalists by criminals backed by the ruling party and its affiliated organizations occurred over the year, while the former gather information; and the government continues to file cases against journalists and detain them in jail. According to the information gathered by Odhikar from 2009 to 2017, 15 journalists were killed, 907 were injured, 277 were assaulted, 344 were threatened, 203 were sued and 26 were arrested.

In 2016, the government drafted several repressive laws that remain as a silent threat. If these laws are passed, they will further violate the human rights of the citizens. Surveillance and monitoring on social media by the government is

anchored on far-reaching and repressive laws. The Information and Communication Technology Act 2006 (amended 2009, 2013) and the Special Powers Act 1974 are imposed to gag voices critical of the decisions and activities of those in high positions of the government. HRDs, civil society actors and victim-families are intimidated, harassed and prevented by the law enforcement agencies from conducting any protest, rally or meeting. According to Odhikar, a total 104 persons were arrested under the ICT Act 2006 (amended 2009, 2013) from 2014 to 2017.¹⁷

On 29 January 2018, the Cabinet approved the draft of the 'Digital Security Act 2018' after revoking five sections, including the widely misused section 57 of the Information and Communication Technology Act 2006. However, the proposed law, if enacted, will be another repressive law as the revoked sections of the ICT Act have been incorporated into it. Section 57 of the ICT Act deals with defamation, hurting religious sentiments, causing deterioration of law and order and instigating against any person or organization through publishing or transmitting any material in websites or in electronic form. Now, the draft of Digital Security Act 2018 splits these offenses into four separate sections with punishments ranging from three to ten years of prison term.¹⁸

The families of the disappeared in collaboration with Odhikar organize a human chain to mark the International Week of the Disappeared.

Photo: Odhikar



13 'Mubashar, Utpal return, but what of the abductors', *The Daily Prothom Alo*, 23/12/2017; <http://en.prothomalo.com/opinion/news/168406/Mobashar-Utpal-return-but-what-of-the-abductors>. See also Odhikar's annual human rights report for 2017 at www.odhikar.org

14 Dr. Shamim Khan was picked up by law enforcement agency on the allegation of sheltering two accused who were involved in bomb blast in a naval outpost in Chittagong.

15 'Police officer says they cannot reveal all about anti-terror operations', *bdnews24.com*, 14/12/2017; <https://bdnews24.com/bangladesh/2017/12/14/policy-officer-says-they-cannot-reveal-all-about-anti-terror-operations>

16 The Annual Human Rights Report of Odhikar of 2017, please visit the link, http://www.odhikar.org/wp-content/uploads/2018/01/Annual-HR-Report-2017_English.pdf

17 The cases of arrests under the Information and Communication Technology (ICT) Act that are documented are those where the presentations/statements in question are considered critical against high officials of the government and their families.

18 'Draft of Digital Security Act Approved: Gag on freedom of expression', *The Daily Star*, 30/01/2018, <http://www.thedailystar.net/frontpage/draft-digital-security-act-approved-gag-freedom-expression-1527013>.



Local HRDs associated with Odhikar in Khulna bring out a rally on the occasion of International Day of the Disappeared 2017.

Photo: Odhikar

Hindrance to Freedom of Peaceful Assembly and of Association

“The incumbent government, using law enforcement agencies and its party activists, attacked and stopped many meetings and assemblies conducted by different political parties and organizations. Such hindrance and attacks are clear violations of Article 37¹⁹ of the Constitution of the People’s Republic of Bangladesh and Article 21²⁰ of the International Covenant on Civil and Political Rights.”²¹ The government has also made it mandatory to take permission from the police before holding any public meeting or rally. Several meetings and assemblies of the opposition parties were attacked and stopped by law enforcement agencies and the ruling party leaders-activists of this period. In fact, even the one that was conducted in the home of a BNP leader was not spared.²²

The current government has also politicized various national institutions in the last nine years. The government engaged in human rights abuses by using significant institutions, including the Election Commission, the Anti-Corruption Commission, the National Human Rights Commission and the Information Commission, that are subservient to it. At the same time, it is also bent on abusing human rights through enacting and imposing various repressive and abusive laws.

The Foreign Donation (Voluntary Activities) Regulation Act 2016 is extremely repressive and contrary to international law.²³ This Act created an environment that strictly regulates organizations which work on civil and political rights and are vocal against corruption and the undemocratic actions of the government. Indeed, Odhikar is the first victim of abuse of this law—that is to say, the government was already imposing its restrictions even before it was enacted into a law.

19 The right to freedom of assembly and the holding of peaceful meetings and processions are the democratic and political rights of every citizen.

20 The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

21 For details please see Odhikar’s Annual Human Rights Report 2017/ http://www.odhikar.org/wp-content/uploads/2018/01/Annual-HR-Report-2017_English.pdf

22 The Annual Human Rights Report of Odhikar of 2017, please visit the link, http://www.odhikar.org/wp-content/uploads/2018/01/Annual-HR-Report-2017_English.pdf

23 According to this law, the government officials will be able to inspect, monitor and evaluate the activities of the voluntary organizations (and NGOs). Under this law, persons belonging to the NGOs who individually or collectively receive foreign funds for implementing projects will come under constant surveillance. Section 3 of this law states thus: “Notwithstanding anything contained in any other law for the time being in force, an individual who is undertaking or operating any voluntary activity by receiving foreign donation or contribution, approval from the NGO Affairs Bureau must be taken.” As per section 10(1), the Bureau under this Act shall have the authority to inspect, monitor and evaluate the voluntary activities of an individual and the NGO and the progress of the NGOs it has approved. Under section 10(2), to serve the purpose of subsection (1), the Bureau shall have the authority to create a monitoring committee and if necessary, appoint a third-party evaluator. It is mentioned in section 14 that if any NGO or individual makes ‘inimical’ and ‘derogatory’ remarks on the Constitution and constitutional bodies or conducts any anti-State activity or involves in terrorism and financing, patronizing or assisting terrorist activities, it shall be considered an offense under this Act. For committing any offense under section 14, the Bureau may cancel or suspend the registration given to the said NGO or organization or close down the voluntary activities undertaken or operated by the said NGO in the prescribed manner; and it may take action against the concerned NGO or person for punishment, as per existing laws of the country.

“The government continues to harass Odhikar for being vocal against human rights violations and for campaigning to stop them. HRDs who are working fearlessly to gather information and carry out their profession impartially are harassed and victimized.²⁴ Furthermore, the NGO Affairs Bureau (NGOAB), which is under the Prime Minister’s Office, has withheld renewal of Odhikar’s registration and barred the release of any funds in order to stop its human rights activities. Despite numerous challenges the Organization is still operating, thanks to the volunteer services of grassroots level HRDs associated with Odhikar and its members and staff; more so, to their commitment to human rights activism.”²⁵

24 In March 2016, a journalist and human rights defender associated with Odhikar, Mohammad Afzal Hossain, was shot and severely wounded by police while he was observing the irregularities of a local government election in Bhola. In February 2017, another human rights defender associated with Odhikar, journalist Abdul Hakim Shimul, was shot dead by Shahjadpur Municipality Mayor and Awami League leader Halimul Huq Miru. Three HRDs associated with Odhikar from Kustia and Munshiganj – Hasan Ali, Aslam Ali and Sheikh Mohammad Ratan – were sent to jail in cases filed under the ICT Act.

25 For details please see Odhikar’s monthly report of January 2018/ http://www.odhikar.org/wp-content/uploads/2018/02/human-rights-monitoring-report-January-2018_Eng.pdf

LONG ROAD TO JUSTICE FOR ACEH

by Dimas Bagus Arya Saputra & Malik Feri Kusuma

“*Meunyo aneuk lon ka matee pat jeurat jieh, meunyo mantong udeep dipat jieh.*”¹

Since 1976 until 2004, military operations were launched in Aceh to eradicate subversive activities of the Aceh Free Movement (GAM). These operations caused several casualties and human rights violations against the civilians in Aceh. Approximately tens of thousands of people became victims of various acts of violence perpetrated by the military and police. These include murder, torture, rape and sexual violence, forced abductions and disappearances, arbitrary arrests and detentions, among other crimes against humanity.

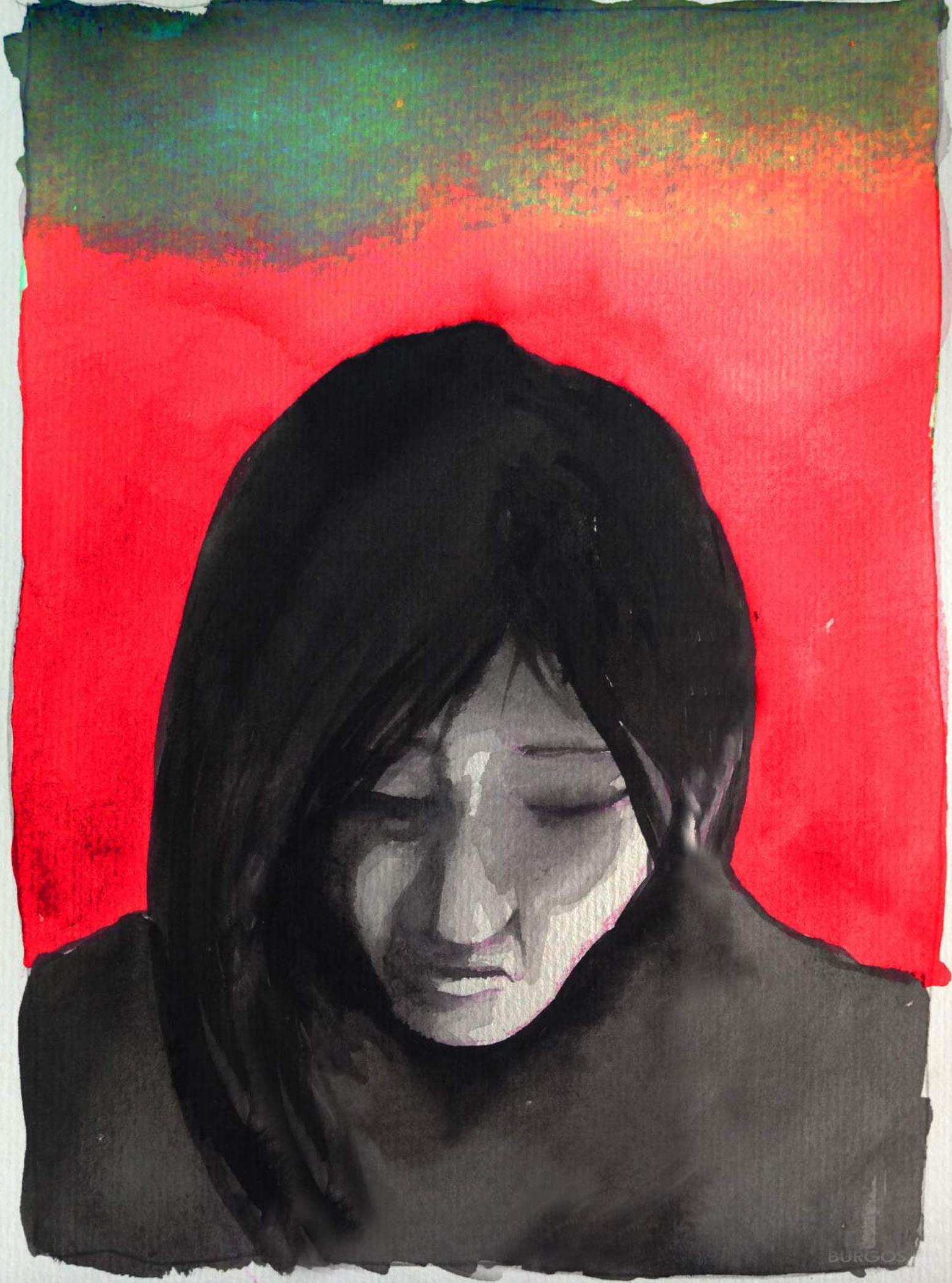
The abduction and enforced disappearance (ED) were among the most frequent actions that ensued military operations. This action was done systematically across various places in Aceh. Those targeted by the military ranged from civilians, students, activists and those accused of involvement in GAM. Abduction was usually done by military / police officers while doing sweeping [raids] on the highway as well as in people’s homes. People who were forcibly arrested were immediately taken to the military posts or other places undisclosed. Those victims experienced torture and other inhumane treatment while in captivity.

There have been different patterns of disappearance as experienced in varying ways from one person to another. One example was a case that inflicted Musliadi, a student activist. He was actively involved in the study and discussions about the development of national political situation. In particular, Musliadi dealt about regional issues related to the enactment of military operations in Aceh. Fueled by his concern for social and humanitarian issues, he decided to join the Human Rights Care Forum (FP-HAM). This group focuses on investigating and recording the victims of human rights abuses incurred during military operations.

Musliadi often staged a protest with his colleagues to oppose militarism and government policies that caused sufferings to the people of Aceh. They sought to build a community movement. There was a time when he participated in activities in line with the Anti-Military Campaign Week, from which the police finally subjected him to forced dissolution. He also experienced many repressive actions conducted by the security apparatus when being involved in an action led by the Anti-Military Regional Command Alliance (KODAM). This group particularly rejects the establishment of military regional command in Aceh. Before being rescued by his colleagues, Musliadi was interrogated and forcibly dragged by security forces that wore thug clothes as they delivered their harangue.

Due to his active role in building civil society movements in Aceh, Musliadi was elected as one of the civil society representatives to witness the signing of the Cessation of Hostilities Agreement (CoHA) between the Government of the Republic of Indonesia and GAM in Geneva in 2002. However, before his departure to Geneva, Musliadi was forcibly taken away from his home and disappeared. Eventually, he was found dead, violently scarred.

1 Acehese language, which means, “If my son is already dead, show me his grave; if he is still alive, show me where he is now.” These words were spoken by a mother whose son is a victim of enforced disappearance in Aceh.



Besides the cases that inflicted Musliadi, many other cases involved disappeared victims who were later found. In most cases, the victims were forcibly taken; several days later they were found to be corpses with wounds all over their bodies. Bodies of victims were commonly found on the roadside, in the bushes, or floating in the river. However, some of the victims of disappearance are still considered disappeared until today as the victims' families never heard any information regarding their whereabouts. Families of victims of EDs face difficulties in conducting search and finding victims. Authorities tend to refuse, disown, or simply not provide information and assistance to search for victims of disappearances. More frequently, the families of victims who sought for information from military or police office were also not able to return to their respective homes. Human rights activists connected with the Human Rights Care Forum (FP-HAM) recorded around 1,958 cases of EDs that occurred in Aceh; while the National Human Rights Commission (Komnas HAM) recorded 163 cases of EDs. KontraS, based on several investigations, recorded approximately 350 cases of EDs.

Cessation of Conflict in Aceh

There have been several attempts to create a peace situation in Aceh through peace treaties initiated by President BJ Habibie. His successor, President Abdurrahman Wahid also did so and even involved the international community. But the idea cannot be realized well, as it does not get the support of the military and police. The military opposes the President's policy

by continuing to mobilize troops, sweep and make a firing contact with GAM combatants.²

After a long process, in 2005, Helsinki, Finland became a historic place for a peace process between GAM and Indonesia after a protracted conflict of approximately 30 years. President Susilo Bambang Yudhoyono and Vice President Muhammad Jusuf Kalla initiated the peace talks. Hamid Awaluddin served as coordinator of the negotiating panel representing the Government of Indonesia. Meanwhile, Malik Mahmud Al Haytar and some GAM elites represented GAM. Martti Ahtisaari, former President of Finland, mediated the dialogue that began in early 2005. The peace agreement is often referred to as the Helsinki Memorandum of Understanding (Helsinki MoU) or also known as the Helsinki Peace Agreement.

| YEAR | TYPE OF PEACE AGREEMENT |
|------|---|
| 1999 | Joint Understanding (JU) |
| 2003 | Cessation of Hostilities Agreement (CoHA) |
| 2005 | Memorandum of Understanding (MoU) |

Table 1.1 Agreements secured as a product of peace negotiations between GAM and Indonesia

Among the points provided in the Helsinki MoU on the matter of Human Rights were:

[2.1] The Government of Indonesia will comply with the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights;

[2.2] A Human Rights Court will be established for Aceh; and

[2.3] The TRC will be established in Aceh by the Indonesian Truth and Reconciliation Commission with the task of formulating and defining reconciliation efforts.

KontraS considers that the points in the MoU become important modalities to bring restoration for Acehese people. Unfortunately, the aforementioned provisions were not substantially implemented. The central government does not seem to be sincere in purpose to actually realize these points. For one, the Human Rights Court which originally sought to resolve cases of gross human rights violations in Aceh, is still yet to be formed. Similarly, the establishment of TRC in Aceh faces an array of difficulties.³

Aceh TRC⁴ and the future of justice in Aceh

The Aceh TRC is an attempt to formulate a local level mechanism to address gross human rights violations committed in Aceh. The effort to establish the Aceh TRC is an alternative mechanism to solve serious human rights violations through non-judicial channels at the local level. This mechanism is implemented because judicial settlement is considered to be very difficult to materialize since many cases of past gross human rights violations were experiencing difficulties in the investigation and prosecution phase. This non-judicial mechanism is supposed to be complementary and inseparable from the judicial mechanism.

2 During the Megawati presidency in 2003, the Government of Indonesia re-established the military operation with the enactment of Presidential Decree No. 28/2003.

3 These difficulties included the absence of a national legal basis for TRC. In 2006, Indonesia Constitutional Court, revoked the Law No. 27/2004 regarding the TRC law because it was contrary to Constitution of 1945 (unconstitutional).

4 In general, the TRC is a model or commission that has the task of discovering and exposing past human rights violations by a government in the hope of resolving conflicts left behind from the past. Under various names, States emerging from times of internal upheaval, civil war, or dictatorship sometimes shapes this commission. Specifically, the Aceh TRC is an institution or commission model of TRC in general but is domiciled in the province of Nanggroe Aceh Darussalam as one of the mechanisms to solve the gross human rights violations that occurred in Aceh before the Law on Governing Aceh was enacted. About the understanding of the TRC and its models in different countries, one may refer to Priscilla B. Hayner, Seeking Roots and Joint Views: Comparative Study of the Fifteen Truth and Reconciliation Commissions in Various Countries, Jakarta: ELSAM, 2002.

5 *Qanun* is the specific name for Aceh's special autonomous region as an equation of the Regional Regulation.

Referring to the legislation, the establishment of the Aceh TRC is a mandate of Law Number 11 Year 2006 regarding Aceh Government (Aceh Government Law). This law was formulated as the manifestation of the Helsinki MoU to be implemented in accordance with the Indonesian constitutional system.

The establishment of the Aceh TRC became a reality due to the strong demand from victims and civil society elements. Since 2006, civil society continues to urge the Aceh House of Representative to discuss the regional law (*Qanun*⁵ /regional regulation) as the legal basis for the establishment of Aceh TRC. After a long process—in December 2013, the Aceh House of Representatives has enacted *Qanun* Number 17/2013 creating the Aceh TRC. Then in 2017, seven [7] people had been appointed to become Commissioners of Aceh TRC in accordance with the mandate of *Qanun* 17/2003. However, the presence of Aceh TRC is not without obstacles and challenges. One of the biggest and significant challenges is that Aceh TRC is still struggling to gain legal and political legitimacy from the central government. Weak political and legal support not only emanates from the central government, but also from the local government. The net effect thus was the hindrance to the working program (which seeks to bring justice for the victims in Aceh) arranged by the commissioners.

In carrying out its duties and functions in disclosure of the truth, Aceh TRC can make efforts through: 1) requesting for information and documents, 2)

decision-making on victims and parties related to human rights events, and 3) conducting investigations on certain events, if necessary.

Anchored on such premise, a collaborative effort between civil societies together with the Aceh TRC is essential as they focus on cases of ED in accordance with the following work steps:

A. Identification of information and documents

Information and documents can be obtained through State institutions that have conducted studies, research, and investigations such as National Commission on Human Rights. Other state or non-state institutions that have conducted research and studies on Human Rights Violations in Aceh can also be of help.

B. Interview of Victims of Enforced Disappearance

From information and documents, civil society can follow up by conducting a series of activities. One of these is interviewing victims' families related to the facts of events, motives, impacts on the families of the victims and the hopes of families of EDs. Then, the results can be communicated to the Government, both Acehese and national; as well as the international community.

Whereas, currently Aceh TRC has carried out the disclosure of truth by taking statements to victims and/or witnesses and parties related to human

rights violations in the region: Aceh Besar District, Pidie District, North Aceh Regency, South Aceh and various other areas in Aceh.

C. Reporting

Based on the information, documents and interviews with the victim's family, it is converted in the form of a full report to advocate at the national and international levels using existing mechanisms.

Furthermore, the Aceh TRC Commissioners (for 2016-2021 term) who have been inaugurated since 2017 have already acted to building the institutional capacity through drafting requisite documents e.g., strategic plans, internal rules/standard operation procedures; carrying out staff recruitment and searching for fund sources. Moreover, to strengthen external linkages, Aceh TRC Commissioner already establishes working relationship with other institutions, namely: National Commission on Human Rights, National Institution for protection of Civil and Witnesses and National Commission on Women. Cooperation between those institutions aims to facilitate the works of Aceh TRC, socialize Aceh TRC with the element of state institution, society, and also victims through formal or non-formal discussions in various places both in Aceh and in Jakarta. However, without serious endorsement from the central government-- both political and legal legitimacy and also financial support, we consider that the process of bringing justice and reparations to the victims still has to go a long, long way.

Dimas Bagus Arya Saputra & Malik Feri Kusuma are staffs/coordinators of AFAD member-organization KontraS (The Commission for the Disappeared and Victims of Violence).

SUPREME COURT

8,000 enforced disappearances – does it concern you?

6217 unmarked graves and mass graves – does it bother you?

70,000 Killings in 2 decades – not enough?

120 Extra-Judicial killings of 2010 – do you know?



Appeal to Judicial Conscience: APDP members urge the Supreme Court to serve the much-deserved justice for victims of enforced disappearances.



LEGAL ADVOCACY AND THE CHALLENGES IN THE FIGHT AGAINST ENFORCED DISAPPEARANCES IN INDIAN ADMINISTERED JAMMU AND KASHMIR

by Parvaiz Mata

Historically, the spike in violence in Jammu and Kashmir started in 1989 with the outbreak of armed uprising against the Indian rule. To date, the violence continues unabated. With the deployment of more than 700,000 Indian armed forces, Jammu and Kashmir inevitably became among the highest militarized zones of the world. The military and paramilitary forces sent out to suppress the indigenous movement fighting for the right to self-determination resorted to widespread and systematic violence against the civilian population in these Indian-administered areas. Human rights violations perpetrated in Jammu and Kashmir are not limited to enforced or involuntary disappearances, but include extra-judicial executions, torture, sexual violence, forced labor, arbitrary detention; crackdown on freedom of opinion, speech, expression, assembly and association.

As part of its counter-insurgency operations in Kashmir, the Indian army indiscriminately started harassing and suspecting the civilian population. This resulted in indiscriminate and arbitrary arrests and torture of thousands of non-combatant Kashmiris leading to the rise of the phenomena of enforced or involuntary disappearances (ED). People, irrespective of their socio-economic backgrounds and age groups, have been subjected to ED. Those who were forcibly disappeared also included political workers, activists, militants and their sympathizers. The phenomena of EDs did not end at those opposing the Indian rule, civilians working for the army as informers and counter-insurgent renegades were subjected to ED as well. The ED of persons, mostly civilians in Indian Administered Jammu and Kashmir, have been part of the larger policy of state repression. More than 8,000 persons have been disappeared in Jammu and Kashmir by the Indian armed forces since the beginning of insurgency. The armed forces are protected by laws such as the Armed Forces Special Powers Act (AFSPA) of 1990. This legislation shields the armed forces, providing them absolute impunity against accountability and prosecution; and exempts them from being prosecuted in civilian courts.

The armed forces gained prominence and the State

institutions either became dysfunctional or “militarized” *i.e.*, they ceased to carry out their functions to serve the interests of the armed forces. The judiciary, even at the peak of violence appeared to remain unaffected. The courts were mostly open, and judges continued to hear cases. In the midst of continuing turmoil, the judiciary appeared to be the lone institution that was ready to work as per the rule of law.

It is in the context of these circumstances that the families of victims of human rights violations, particularly EDs approached the courts. The families of the disappeared took the lead in approaching courts as ED is perhaps the only crime where the fate of the victim is not known. The urgency to look for the whereabouts of the disappeared person leads these families to courts fearing for the victim’s life, which could be under threat. Therefore, hundreds of families filed *Habeas Corpus* petitions at the Jammu and Kashmir High Court. Not all families of the disappeared could seek legal intervention as they had no access to lawyers and lived in remote areas. Approaching the subordinate judiciary at the district level was not an option as the lower courts lack powers for dealing with cases of life and liberty. The judges hearing and the lawyers pleading the cases face the dangers of confronting the powerful armed forces; many of

whom were threatened. These threats were grave for them to handle as retributive actions by the arms were common. Therefore, the High Court, situated in the capital of Kashmir, was practically the only option. More unfortunate was that some families did not even know about the possibility of approaching courts. For others, the legal recourse might not have seemed an appropriate choice as even then as like now there was skepticism that approaching one State institution for redress against the other would be futile. In a majority of the cases the very question of accusing the armed forces of a crime seemed unimaginable, and more importantly dangerous. For example, families who lost one son worried about the consequences on the rest of the family that legal recourse might invite.

Litigation against ED has led to the creation of APDP (Association of Parents of Disappeared Persons). APDP was founded in 1994 at a time when a large number of parents used to visit the High Court to file or to pursue the *Habeas Corpus* petitions. In pursuit of seeking justice, many relatives of the disappeared with similar grievances used to take individual efforts in a disorganized way. Then, Advocate Parvez Imroz, one of the leading practicing human rights lawyer and a human rights activist suggested that families institutionalize the struggle

and campaign against EDs. Eventually, various family members of the disappeared under the patronage of Parvez Imroz joined hands and formed APDP. It could be surmised, then, that the collective action came from the litigation experience. APDP since then has been vehemently campaigning against the practice of EDs and have consistently used the legal mechanisms for demanding truth, justice and reparations for the victims of EDs of Jammu and Kashmir.

Litigation normally involves seeking punishment (from registration of police case, to investigations and to prosecution) and seeking interim relief in the form of *ex-gratia* payments, or compassionate appointment from the State. In the case of disappearances, there was an additional demand—finding the disappeared (even just a simple meeting in detention). The courts often passed orders for judicial inquiries to adjudicate the contesting positions of the parties through an inquiry on facts based on which the court would pass orders on investigations. On occasions, the Courts and State Human Rights Commission (SHRC) directed for payment of relief.

Furthermore, the economic dimensions of disappearances are of considerable significance. The disappearance of the earning member of the family threatens the very survival of the whole family. Following the disappearance, the



Memorializing Truth: APDP holds commemoration activities in time for the International Day of the Disappeared on 30 August 2017.

APDP stages a rally at Press Enclave in consonance with the International Week of the Disappeared 2017. APDP members appeal for International Judicial and investigative intervention into the phenomenon of ED in Jammu and Kashmir.



'half widows,' (spouses of disappeared persons) are often thrown out of marital homes along with their children. They are forced to depend on their own selves or on their impoverished parents. This economic dependence affects the education and the future of their children. On one hand, the government is reluctant to acknowledge that the phenomenon of ED exists in Jammu and Kashmir. Still, on another hand, the government has no policy for the relief and rehabilitation of the families of disappeared persons. These factors escalate pain, as the relative families of disappeared continue to suffer socio-economically as well as psychologically.

Since long, APDP has been exerting efforts to rehabilitate and support the affected families. Through legal action, APDP has strived to seek truth, justice and reparations and has rendered persistent legal aid to each member of the association. By invoking local legal mechanisms, the families got engaged in the legal battle against disappearances. They also called for interim relief and other benefits guaranteed under law. Despite meager resources, APDP managed to provide legal aid to many families of the disappeared and enabled them to avail monetary benefits as provided for by the law. Over a number of years, the SHRC and the Courts have recommended and directed for interim relief of *ex-gratia* of rupees 100,000 in favor of many families of disappeared, while in few cases additional monetary compensation was given to the relatives. After receiving interim relief, a number of families of disappeared managed to organize means of livelihood for themselves and got equipped to secure educational needs for their children on top of fulfilling their basic necessities.

The struggle against enforced or involuntary disappearances has gained further thrust after engaging judicial and quasi-judicial bodies. Amid a lot of challenges, the legal aspect of the struggle has organized the victims' families and has further strengthened their resolve in the fight against EDs. Some of the experiences of legal action and advocacy comprehended by the members of APDP are illustrated below:

1. The judiciary served to be some sort of a check on the State even though till now, not a single disappeared person has returned (whether through the intervention of the courts or other means). Likewise, not a single accused armed forces personnel has been prosecuted and punished despite numerous cases where families fought for years based on reliable evidence. But, the struggle for justice (including and beyond the courts) has resulted in, although slow and gradual, but definitive reduction in the phenomenon of EDs in Jammu and Kashmir.
2. Litigation has developed into a form of resistance. The constant placing of the truth of disappearance before the courts has served as a resistance against the State. Therefore, notwithstanding the final intervention of the courts, the families of the disappeared have found a voice through the litigation.
3. One of the most important consequences of litigation has been that of documentation and memorialization of the truth. Court documents serve as the archive of ED in Jammu and Kashmir. Various human rights bodies, academics, scholars, journalists and activists continue to use this litigation material in their work. For instance, APDP itself has used these documents from its litigation in its work included in the 2015 report *"Structures of Violence: The Indian State in Jammu and Kashmir."*
4. Also, the legal action has served to highlight ED cases, particularly where the name of the accused person is known. In cases such as the disappearance of Ali Mohammad Mir of Brein area of Srinagar, the government-backed gunman Papa Kishtwari was accused. APDP initiated legal action along with an extensive campaign against him, which eventually led to his arrest (his trial continues today). Litigation has therefore served as a warning signal or deterrence to the perpetrators of EDs. Ironically, the slowness of the court process has allowed for a sustained campaign against the accused. The accused face difficulties at work (the accusations prevent promotions and other benefits) and in society the accused faces stigma and shame.
5. With regard to the alarming issue of the existence of more than 7,000 unknown, unmarked and mass graves in Indian-administered Jammu and Kashmir: it was the complaint of APDP before the State Human Rights Commission [SHRC] that led to the investigation and confirmation of the existence of such graves in Jammu and Kashmir. The state-run SHRC recommended to the government for a comprehensive forensic investigation including DNA testing of all the graves unearthed in Kashmir. The SHRC's acknowledgement about the presence of unmarked and mass graves created wider global attention on the ED issue and existence of mass graves in Jammu and Kashmir.
6. The legal proceedings of an issue like EDs also had its effect on other people like lawyers, judges, activists, journalists and people from different professions – who felt compelled to join the struggle. Movements for justice and truth often impact others and this can only be beneficial for the society at large. Certainly, in the courts there has been an increased engagement of lawyers who have involved themselves in this issue. This serves to generate a wider acknowledgement of the phenomenon in the society. So even though governments in New Delhi and Jammu and Kashmir continue to "ignore" the phenomenon, and refuse to ratify the Convention for the Protection of All Persons From Enforced Disappearance (and to legislate against the crime of EDs under Indian law), the litigation on these cases, and accompanying campaign, has created an acknowledgement in the wider society.
7. A strong perception has developed among the member families that invoking domestic legal mechanisms is an important step before approaching the international community. The efforts of families of the disappeared and their lawyers bear fruit when approaching international institutions including the United Nations and the UN Working Group on Enforced or Involuntary Disappearances. It is clear that families have sought domestic remedies that have failed or proven themselves to be inadequate or unwilling to act.

Despite the above mentioned achievements of using the legal course of action, there have certainly been very hard challenges along the way. The judiciary has proven to be a mirage to many. Time is perhaps the greatest enemy of the disappeared and their family. The wait for the return of the disappeared is such an integral part of the crime itself. The court experience has been particularly severe in this regard. Despite the filing of “Habeas Corpus” petitions, the courts have been delaying the justice delivery with the judiciary failing to control and to expedite proceedings. Even today, disappearance cases take many years only to move a few steps further. As a result, families are exhausted. Some died while seeking

justice and perhaps because of their own experience with the courts, the next of kin has chosen not to continue the litigation. Skepticism in the process has naturally grown.

Nonetheless, the value of litigation is evident as resistance continues. Moral indictment including of the judiciary itself remains important and litigation continues to be a vehicle and a voice for the families of victims to speak the truth and confront the all-powerful military State.

APDP believes that the legal intervention is the fundamental need in each case of disappearance. The legal intervention helps to generate some support for

the families in need and allows for monitoring the effectiveness of the domestic system of justice as well and the need for international intervention. The armed conflict has given many lessons for the families of the disappeared. One such learning has been the necessity to think about the long-term goals in the struggle against EDs and for justice. Perhaps not today, but tomorrow, or the day after, a time will come when justice will be served. History has taught us that nothing is permanent and the struggles of APDP – to campaign, to document and to litigate on the cases of the disappeared – will bear fruits in the future.



APDP demonstration at Press Enclave on 2 November 2017, as it welcomes the order by the State Human Rights Commission on unmarked graves and demands for the investigation of 7,000+ unknown, unmarked, and mass graves existing in Jammu and Kashmir.

Parvaiz Mata is a Human Rights Professional associated with APDP. For more than ten years, his advocacy stands firm: *In Search of the Truth Behind Enforced Disappearances, Justice to All Victims and Complete End to the Crime of Enforced Disappearances in Jammu and Kashmir.*

QUANDARY OVER TRANSITIONAL JUSTICE MECHANISMS: THE NEPAL EXPERIENCE

by Bikash Basnet

Incompetent Transitional Justice Mechanisms

Nepal's TJ process is at a crossroads. Victims of crimes perpetrated during the armed conflict are pushed into uncertainty; they increasingly doubt that accountability for serious cases of human rights violations will be ensured through the TJ mechanisms. The recent decision of the government provided in an ordinance to extend the mandate of the Truth and Reconciliation Commission (TRC) and the Commission for Investigation of Enforced Disappeared Persons (CIEDP) for another year (for the second time) has raised questions on the relevance and significance of the commissions. As the government failed to revise the TRC law in line with the Supreme Court verdict of 2015¹ and international standards, the commissions subsequently failed to exercise their mandate thus far. Therefore, the revision of the TRC act and reconstitution of the commissions is necessary to

make the TJ process result-oriented and productive. However, without political will and meaningful engagement of stakeholders, the mere extension of the commissions' mandate is futile, and worse, a betrayal of the conflict victims. Delay, derail and dividing tactics momentarily make the political leadership contented; however, the consequences of ignoring truth and justice are beyond their calculation.

Nepal's armed conflict claimed the lives of approximately 17,000 people. With the fate of more than 1,300 people still unknown; thousands were tortured, injured, raped and displaced. The CPA signed in November 2006 offered the promise of truth and justice to conflict victims. It was agreed to set up a sophisticated Truth and Reconciliation Commission as per mutual consensus in order to investigate the serious violations of human rights and crimes against humanity committed in the course of the armed conflict.²

This year marks the 12th anniversary of the Comprehensive Peace Agreement (CPA) between the Communist Party of Nepal (Maoist) and the government. The CPA formally ended the ten-year-long (1996-2006) armed conflict in Nepal, and one of its major components was to deal with past atrocities and human rights violations through transitional justice (TJ) mechanisms. Unfortunately, this continues to be a matter of dispute and remains practically unsolved. Lack of political will, failure to empower and meaningfully engage the victims in the process, lack of coherent advocacy and campaign strategy by civil society and a passive role of the international community, including the UN, are all contributing factors to the failure of Nepal's TJ process. Now, with over a decade's delay, the erosion of trust in the TJ bodies has peaked.



In continuous search for truth and justice: victim families of the disappeared in Nepal hold a candle lighting ceremony in memory of their loved ones.

On 25 April 2014, the Parliament of Nepal passed the Act on CIEDP and TRC (the Act), which in several ways breached international law and failed to incorporate the core concerns of the victims and the human rights community.³ On 10 February 2015, the Government finally established two Commissions to investigate the allegations of human rights violations during the ten years of conflict. Yet, like the underpinning Act, the two commissions were deeply flawed, favoring reconciliation and subsequent amnesties over prosecution and lacking clear guidelines for reparations and prosecutions. The commissioners were appointed in a non-transparent and politically-partisan manner, further adding to the poor credibility

of the commissions. Hence, the victims' community proceeded to adopt the stance of 'critical engagement.' Simultaneously, the human rights community adopted a policy of non-cooperation with the commissions, calling the TJ process flawed.

On 26 February 2015, the SC issued a landmark verdict on a petition by conflict victims challenging the TRC Act. The verdict held that controversial provisions of the TRC Act that gave discretionary powers to the TJ mechanisms for amnesty were unconstitutional. Furthermore, the SC ruled out, in general, amnesty for serious crimes; and made victims' consent for reconciliation mandatory, ordering the government to follow international standards.

The victims, the human rights community and the international community, including the Office of the High Commissioner of Human Rights (OHCHR), hailed the verdict of SC. As it appears, the verdict called for abolition of the provisions that had raised doubt that perpetrators of serious human rights violations would be prosecuted. The major stakeholders further demanded the revision of the Act in line with the SC verdict. But despite these numerous calls on the government from victims, the human rights community, including the National Human Rights Commission, the TJ bodies themselves and the international community, no legislative or administrative action has been taken to reflect the aspirations of stakeholders and decision of the SC. Consequently, the TJ mechanisms have become futile and have lost their significance as they have failed to address the core concerns of conflict victims and major stakeholders and fall far short of international human rights standards.

To date, victims have filed around 65,000 complaints before both commissions. However, due to persistent lack of political will, legal reform and resources, the commissions claim to have been unable to make significant progress with their work. Neither of the commissions has dared to interview a single perpetrator and the lack of knowledge and experience of the commissioners is glaring. The commissions, nevertheless, could have advanced substantial parts of their work if only they had the willpower to ensure truth and justice. Particularly, the commissions could make recommendations for reparation packages, institutional reform, broader victims and witness protection mechanisms and support for healing. Furthermore, with commitment to their mandate, the commissions could recommend cases for prosecution, (such as Dhanusha Five)⁴ where truth has already been established and the perpetrators already identified.



1 In 2015 two Supreme Court decisions called for the TRC act to be amended to prohibit amnesties for serious crimes. For more details, see the OHCHR position on the UN support to the CIEDP and the TRC: 16 February 2016. Available at: http://www.ohchr.org/Documents/Countries/NP/Nepal_UN%20osition_supportTRC_COIDP_Feb2016.pdf

2 http://un.org.np/sites/default/files/report/tid_188/2006-11-29-peace_accord-MOFA.pdf

3 <http://setopati.net/opinion/1740/TRC-Act-breaches-int'l-law-and-decisions-of-the-Supreme-Court-of-Nepal/>

4 The case of the Dhanusha Five, briefing note published in 2015

In May 2017 the TRC formed seven Investigation Committees, headed by deputy district attorneys at the provincial level, and assigned around 1,000 complaints for investigation to each of them. According to the press statement of the TRC, preliminary investigations have been completed on around 1,300 cases, and the CIEDP has carried out preliminary investigation on the complaints before it and started detailed investigations. Yet, questions pertaining to the credibility of the investigation process have arisen due to concerns about the technical expertise and capacity of the commissions as well as lack of confidentiality and protection of witnesses and victims. Moreover, there is an increased risk that forced reconciliations will be implemented due to the unclear process and the skewed power balance in favor of perpetrators. The future of the complaints filed before the commissions is thus uncertain, and doubt persists as to whether truth and justice can be delivered when there is no credible mechanism to investigate the complaints. Victims have reacted with a loss of hope that justice and truth will be established through the existing investigation mechanisms.

Lack of political will

Since the beginning, the TJ process in Nepal has been dominated by two opposing schools of thought: one favoring prosecution

and one, reconciliation. Meanwhile, other components of TJ have been deliberately ignored.

The political parties and alleged perpetrators have become defensive and extremely tactical when it comes to delaying and derailing the process. The major political parties and consecutive governments never prioritized TJ, but took it as a bargaining chip for power (formation of the government) and a weapon for political revenge. The Maoist party remains the most defensive (others too) due to fear of prosecution for their crimes committed during the conflict; they have been deliberately unwilling to resolve the issue of TJ while they were in power. They often advocate for reconciliation over prosecutions, which goes against the CPA and foils the peace process. The political leadership failed to revise the law in line with the verdict of the SC and provide the necessary resources for the commissions despite repeated appeals. Instead, the political parties and the government obstructed the justice process and denied implementation of court verdicts in conflict era cases (such as: Dekendra Thapa, Krishna Prasad Adhikari, Maina Sunuwar and Ujjan Kumar Shrestha). Hence, the level of frustration and agony of victims' families and other stakeholders has grown and their faith in the political leadership collapsed.

A Mother's Struggle: Gangamaya Adhikari, who has been staging hunger strike, demands that the murderer of his son Krishna Prasad Adhikari be punished.





Trust Deficit

One of the major objectives of a TJ process is to build trust and social harmony to overcome past hostilities. But since their formation, the commissions have failed to gain the confidence of the stakeholders. Neither the victims nor other actors of the TJ process have been consulted in any of the activities of the TJ bodies. No efforts have been invested to address the core concerns of victims and other stakeholders; and victims' persistent demands have been ignored with decisions taken unilaterally. The commissions have received the benefit of the doubt, but failed to win the confidence and constructive support from the main stakeholders at the national and international level. As a result, the TJ process has lost its legitimacy and credibility, as constructive and meaningful steps were not adopted to bring all actors in the same line of understanding.

Exclusion of victims and other stakeholders in the TJ process

The main hope for securing the right to truth and justice of the victims rests upon the capacities of the civil society and victims' groups to advocate for the implementation of a victim-centered TJ process. Tremendous advocacy efforts were undertaken by CSOs to activate the process for the creation of a Truth and Reconciliation Commission. However, the TJ process in Nepal is shadowed by political change and power sharing and the victims and major stakeholders were excluded from the process. Consequently, the climate for cooperation and coordination was unilaterally ended. The Constitution Assembly had impeded progress on TJ in the name of 'consensus,' and a fear over who could be accused. Meanwhile, the SC has twice rejected

the TRC Act because it contains flawed provisions that would deny justice to victims, reflecting concerns also expressed by the OHCHR.

Lack of coordinated and strategic advocacy of CSOs and victims

Ensuring that marginalized groups' voices are included in Nepal's TJ process is critical to securing long-lasting peace. TJ is one of the most sensitive topics in Nepali political life, and several CSOs active in this field are politically-branded or perceived as such. This limits their capacity to work with all victims' groups or to create effective coordination mechanisms. Victims' groups have varying levels of knowledge and expertise, with rural groups having largely been overlooked in favor of Kathmandu-based groups. This has made the development and implementation of a cohesive victims' TJ strategy difficult, if not impossible. The absence of vulnerable groups, including women, youth, persons with disabilities, and marginalized castes and ethnicities, such as the Tharu community and the Dalits in the Terai region, deprives TJ campaigns from essential voices of support and victims' perspectives. Due to lack of coordinated and coherent advocacy and campaign strategy, victim groups and CSOs failed to influence the political leadership and bring substantial improvement in TJ process. For a substantial period of time, the TJ related activities have not been carried out and the momentum gained in the past has been lost. However, there is positive indication that the victims and human rights community have now come together to voice out their demands of making the TJ process transparent and meaningful that ensures victims right to truth, justice and reparation.



A people's war day: conflict victims protest against Falgun 1.

The role of international actors

The OHCHR through its technical note on Nepal's TRC Act 2014 clearly mentioned that the Act does not conform to Nepal's obligations under international law.⁵ The UN and the international community have reiterated that in the absence of steps by the Government of Nepal to ensure that the enabling law and procedures of the CIEDP and TRC are in compliance with its international legal obligations, the UN would not be able to support these institutions. Therefore, the international community, particularly the UN, has to date not provided any technical expertise. Furthermore, the international donor agencies have limited their funding for TJ activities causing the victims' local movements to weaken and lose the momentum they had gained in the past.

The Way Forward

The major reason why Nepal's TJ process is likely to fail is the extreme juxtaposition of major stakeholders in favor of prosecutions on one side and reconciliation and amnesties on the other. The absence of government commitment to acknowledge and address victims' rights perpetuates impunity and increases the likelihood of repeated human rights violations in the future. In a political system characterized by collusion and competition, victims' groups, civil society and right activists must play a leading role in advocating for a fair and transparent TJ process that addresses victims' needs. Unless these needs are addressed, effective citizen-government engagement on TJ cannot happen.

The TJ mechanisms already in place must be made credible. The first step is to bring the legal foundation of the TRC and the CIEDP in line with the SC verdicts and international laws. However, amending the law on its own is not enough. The TJ bodies must exude willingness to consult all stakeholders of the TJ process and place victims' concerns, including witness protection, at the forefront. The newly elected government now has the opportunity to support the TJ process and ensure that court orders are implemented, in order to demonstrate to victims of human rights violations that truth, justice and reparations will be available to them in practice and without discrimination. A commitment to do so would provide a ray of hope for conflict victims, and allow the new government to honor the promise of the CPA and demonstrate commitment for human rights and rule of law.



Conflict victims stage a protest rally in front of the Truth Commission demanding progress on their complaints.



Conflict victims stage a protest rally in front of the Truth Commission, 2017

⁵ http://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIEDP_TRC_Act2014.pdf

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Man and Bird:

THE PARADOX OF FREEDOM

by Amina Masood Janjua

“Whatever we are going through--only God knows, or we ourselves do. Why is a doctor being treated like this? Do we live in a civilized country or a jungle where the powerful snatches away our kids?” These words were uttered by Sardar Siddique, a civil engineer engaged in real estate and construction business. Despite being a strong-nerved man, his condition was like a bubble at this moment.



Original illustration by Amina Masood Janjua

Fact is, his 26 year-old son Sohail, a medical doctor, had been picked up from Range Road area of Rawalpindi, a city adjacent to the capital. Thereafter, he was disappeared. A strong voice in his heart was urging him to make huge noise at the roadside and ask: What is happening in this country? How and why are kids being stolen from their parents? How could it be that cruelty roams in broad daylight? Yet, another voice was telling him to make himself composed during this delicate time. What would happen to his mother who was already experiencing spasms of unconsciousness due to extreme grief? How was he supposed to protect his kids who were already scared because of their elder brother's disappearance?

Above all, where was he supposed to turn to find Sohail? Listening to this other voice, Mr. Sardar's eyes turned dry and he assumed a false shell of bravery. Holding back his tears and burying his inner turmoil, he finally decided to struggle.

First, he came to my office to get the case of his son's disappearance registered. Soon after, I went to his office for further inquiry. Along the way, I even saw the place from where his son was picked. I could feel the depth of his sorrow and worry.

He told me that Sohail was a friendly and lively young man. He passed D-Pharma. After this, he went to Princeton University for MBA. While pursuing the degree, he also joined a

pharmaceutical company as product manager.

Every day, he would proudly drive the car provided by the company, on his way to work. Surely, he was a star of his mother's eye and a beacon of hope for his aging father. For his younger siblings, he was no less than a hero or an ideal. But never would he have thought that on this fine morning of 19 December 2017, fate would be waiting in ambush around the corner to attack him.

A black car tinted with black glasses and men in black clothes were waiting for him. They stopped his car at gunpoint; then took away his cell phone. They threw his car keys towards a man who was standing nearby in his commercial trailer and ordered him to move Sohail's car to one side. They pushed Sohail inside their car and sped away. Fortunately, this incident was recorded by a security camera installed nearby.

Within minutes, the road was blocked by the gathering of people from the neighborhood. All were stunned because of this armed robbery where a living human being had been stolen. Shopkeepers and passers-by were terrorized. They were astonished at how the light of a home could be disappeared so easily.

Later on it was revealed that a police car was near and its driver had even interrogated the men with covered faces. He was silenced by the latter saying, "Go away. We are (secret) agency people. Let us do our work."



Sohail and father Sardar Siddique



This was not the first time that I listened to such a terrible tale—a story of lawlessness despite the supposed existence of law; a story of misuse of power; and a story of repeated funerals of justice.

The day after, I was standing inside the Supreme Court. I have a bag filled with case files of disappeared person and another handbag which holds a small diary. This is the diary in which I take notes

when families of disappeared persons come to me and tell their stories.

On that day, Sohail's story was also written in this diary. Now this story would be converted into a file. A living human being would be metamorphosed into a court petition. Then, there would be proceedings in the court halls. His parents and siblings would be knocking at the doors of these halls in hope of justice. They would be roaming the same corridors where I have been wandering for the last twelve years.

They would face many kinds of people. Someone would frighten them and ask them to step back. Another would buck them up. Yet another would accuse that definitely Sohail must have done something wrong otherwise why would they pick him. Close relatives would shy away. Some would try to trick them and take advantage of their helplessness.

If Sohail's family turned out to be courageous, maybe they would have raised a flag of protest-- would have conducted a sit-in or stage road protest. Otherwise they would drown in a deep ocean of sadness and broken hope.

How long will this go on? How long will people of this country be ground in the mill of cruelty and injustice?

Then a voice rose in my heart. No matter what, we would not accept defeat. Trying to give myself courage, I strode briskly towards the parking lot. I just looked up. Sky was clear and weather, pleasant. Many kinds of birds were flying freely in the air.

Doves, crows, and larks were singing. One glance moved towards the towering building of the Supreme Court which was there, standing majestically. On the other side there was a long line of cars sparkling in noon shine.

Here and there, groups of lawyers were busy in chit chat. Police and court security officers looked busy in their neat uniforms.

Suddenly there appeared the sound of adhan. This is Islamic Republic of Pakistan. This country has everything. If anything is lacking, it is truth. Another missing element is justice.

I was looking at the flying birds with a sullen heart. How indulged and happy they were. They were not aware of the danger of sudden forced disappearance. How lucky were they? They had no idea how one's respect and position could be attacked. They had no fear of separation from their loved ones, no fear of enforced disappearance.

On the extreme side-- there were those who, despite being living human beings had been converted into mere diary notes. They were now just papers and ink in files. They could be found but only in the lines of petitions. These disappeared persons were now only court cases. Now, even to prove them as human beings was a herculean task for us. I was musing, were these disappeared person birds, they would have been free to return to where they came from. While thinking about all these, I steered my car out of Supreme Court compound. Lost in my dreams, I was engulfed by a fast moving road.

Note: This gentleman Sohail was released by the secret agency after 45 days, on 2 February 2018. His parents are thankful to the struggle of DHR and AFAD.

Amina Masood Janjua is the chairperson of the Defence of Human Rights (DHR), and Pakistani Council member of the Asian Federation Against Enforced Disappearances (AFAD). A Master in Fine Arts and a poet, she became a staunch human rights advocate after the disappearance of her husband Masood Janjua in 2005. She co-founded DHR along with victim families. Of the 2,500 disappearance cases they registered, 900 cases were resolved over a period of 13 years.

#YesToICED:

CAMPAIGN LAUNCH FOR THE ACCESSION TO THE CONVENTION

by Kristina Abigail A. Boado

Enforced disappearance (ED) is a crime against humanity. This act of terror—mainly used for stifling political dissent—strips off an individual’s basic human rights, and cruelly negates the rule of law and the right to *habeas corpus*. It leaves the families of victims in a state of immeasurable pain, endless longing, and hoping against all odds. Although popular discourse insinuates that ED is a crime of the past; an omen of history, linked with totalitarian regimes and military dictatorships of the later decades, social reality disproves this, highlighting that ED is a timeless tragedy that plagues modern societies up to date.



Ending on a high note: attendees of the YesToICED campaign launch held in Richmond Hotel, Ortigas on 21 November 2017.

International cooperation plays an integral role in dealing with a phenomenon as complex as ED. The International Convention for the Protection of All Persons from Enforced Disappearance (ICED) is a powerful, legally binding instrument that institutionalizes preventive measures and early warning mechanisms in criminalizing ED. The enactment of the ICED will increase a State Party’s national commitment, legal accountability, and will aid the latter in framing national policies in deterring ED.

At present, there are ten core international human rights instruments. Of these ten legal instruments at our disposal, the Philippines is State Party to all, but one— all except the ICED. As EDs remain unabated, and the existing legal mechanisms fail to put an end to ED due to inherent limitations and gaps, AFAD saw the pressing need to increase the clamor to call for the accession to the ICED.

On 21 November 2017, AFAD, in partnership with FIND and Amnesty International, launched one of its biggest campaigns for the year. The #YesToICED Campaign, held in Richmond Hotel, Ortigas, aims to intensify the call for the accession of the ICED in Asia, particularly in countries where AFAD has member-organizations; Philippines being the focal country. Said event was attended by representatives from the security sector, foreign embassies, the Commission on Human Rights (CHR), and civil society organizations. This multi-sectoral design is a strategic approach to consolidate inputs from the stakeholders, and to ensure the government’s commitment to the Convention.

The program began with a brief welcome remarks from Mary Aileen D. Bacalso, AFAD’s Secretary-General. Shortly after, CHR Commissioner Atty. Flora Atilano delivered a keynote speech in which she discussed the Philippine government’s imperative of acceding to the Convention. Atty. Atilano argues that she sees no logical explanation for the Philippine government’s non-committal to the ICED as there already exists a local law that criminalizes ED.

Following Atty. Atilano’s keynote speech was the screening of AFAD’s Regional Video for the #YesToICED campaign. It is a two-minute video presentation featuring families of the disappeared and campaigners from AFAD’s member organizations united in their call to end ED and the overall culture of impunity. The second keynote speech was conveyed by Atty. Neri Colmenares, an activist-lawyer, former Representative of a Party List, and co-author of the RA 10353 or the Anti-Enforced or Involuntary Disappearance Law.

“Not the substitution, but the complementation”

In response to the common argument against the ICED, Atty. Neri Colmenares strongly remarked that the Convention would complement the local law rather than substitute it. To strengthen his argument, he provided a list of some of the provisions of the ICED that would inherently strengthen and enrich the RA 10353. Atty. Colmenares reiterated that the Philippines’ accession to the ICED would pressure the government to properly and fully implement the local law.



FIND Co-Chairperson Nilda Lagman and Atty. Neri Colmenares during the open forum of the launch

Atty. Neri Colmenares and Aileen Bacalso at the YesToICED Campaign launch

TABLE 1. PROVISIONS IN THE CONVENTION THAT ARE NOT IN RA 10353

1. State Party's duty to Investigate and Prosecute

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.
3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:
 - (a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;
 - (b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.
4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

2. Training of State Personnel

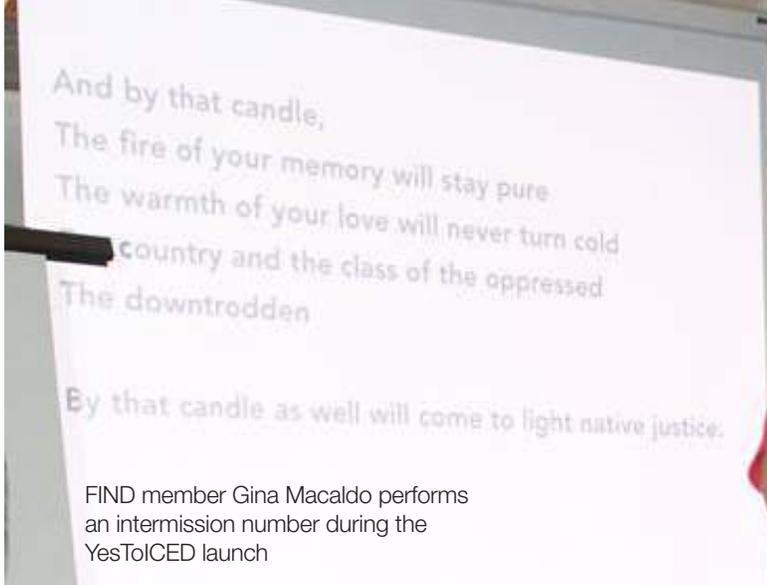
Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
 - (a) Prevent the involvement of such officials in enforced disappearances;
 - (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
 - (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.
3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

3. Provisions on Children and Minors

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:
 - (a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal



FIND member Gina Macaldo performs an intermission number during the YesToICED launch

guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.
3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.
4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

4. State Party's obligation to report through the Secretary-General of the United Nations

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.
2. The Secretary-General of the United Nations shall make this report available to all States Parties.
3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.
4. The Committee may also request States Parties to provide

additional information on the implementation of this Convention.

5. Visitation

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.
2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.
3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.
4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.
5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

TABLE 2. COMPLEMENTARY PROVISIONS IN RA 10353 AND ICED

| RA 10353 | ICED |
|---|---|
| <p>1. Right of Access to Communication</p> <p>SEC. 6</p> <p>It shall be the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition.</p> | <p>Article 17</p> <p>2. d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;</p> |
| <p>2. Duty to Certify in Writing</p> <p>SEC. 8</p> <p>In case a family member, relative, lawyer, representative of a human rights organization or a member of the media inquires with a member or official of any police or military detention center, the PNP or any of its agencies, the AFP or any of its agencies, the NBI or any other agency or instrumentality of the government, as well as any hospital or morgue, public or private, on the presence or whereabouts of a reported victim of enforced or involuntary disappearance, such member or official shall immediately issue a certification in writing to the inquiring person or entity on the presence or absence and/or information on the whereabouts of such disappeared person, stating, among others, in clear and unequivocal manner the date and time of inquiry, details of the inquiry and the response to the inquiry.</p> | <p>Article 23, no. 3</p> <p>3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.</p> |
| <p>3. Official Up-to-Date Register of All Persons Detained or Confined</p> <p>SEC. 10</p> <p>All persons detained or confined shall be placed solely in officially recognized and controlled places of detention or confinement where an official up-to-date register of such persons shall be maintained. Relatives, lawyers, judges, official bodies and all persons who have legitimate interest in the whereabouts and condition of the persons deprived of liberty shall have free access to the register.</p> | <p>Article 17, no. 3.</p> <p>Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:...</p> |

Table 1 indicates the provisions in the ICED that are inexistent in the local law; and Table 2 lists the complementing provisions of the two. These are the legal bases that legitimize the claim that ICED's accession would strengthen the local law, and the national legal protection from ED. Apart from this, Colmenares debunked the counter-arguments to the ICED's accession, such as the issue on weakening sovereignty, and universal jurisdiction and extradition.

The ICED's accession will not weaken the Philippine sovereignty because there already exists laws tailor fitted for the applicability of international humanitarian laws vis-À-vis local laws, such as the Republic Act 9851 or the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity." To note, RA 9851 also substantially addresses the issues on universal jurisdiction and extradition.

From the entire discussion, it was evident that the Philippines refuses to ratify the ICED due to heavy accountability of the state, issues of sovereignty vis-À-vis the mandate of the Committee on Enforced Disappearances, fear of international scrutiny and heavy reporting burden entailed in monitoring compliance.

It is also important to mention that on 8 May, during the Philippines' third cycle of the Universal Periodic Review in Geneva, more than 90 states spoke about the sorry state of human rights in the Philippines with emphasis on the phenomenon of extrajudicial killings. Moreover, more than 20 states spoke about EDs in the country and nine explicitly recommended the Philippines to sign and ratify this remaining

international human rights treaty to which the Philippines is not yet a State Party. The Philippine Government however officially responded by saying: "The Philippine Government continues to pose reservations given that effective remedies are in place, could be accessed and are being enhanced."

To represent the civil society, Nilda Lagman-Sevilla, AFAD Executive Council Member and FIND Co-Chairperson, reacted to the keynote speeches, and shared the collective difficulties regarding the implementation of the local law. Sevilla reiterated the need for judiciary reforms as integral to the proper implementation of the RA 10353. She argues that passage of the law is one victory; however, the implementation and translation of these policies to the ground is another battlefield altogether.

As the Philippines is not the only target country for the accession of the ICED, the representatives also needed to become keen of the large-scale problem of ED at the regional level. With that, AFAD Secretary-General Aileen Bacalso, provided an extensive discussion on the glaring situation of ED in Asia. Highlighting that Asia is the region that submitted the highest number of cases to the UN Working Group on Enforced or Involuntary Disappearance in the last decade, she shared the contexts in which EDs in Asian countries where AFAD member-organizations are based, such as poverty and social injustice, war on terrorism, dictatorial regime, struggle for independence and war on drugs. This was followed by an open forum which was facilitated by Jose Noel Olano, Section Director of Amnesty International. The program concluded

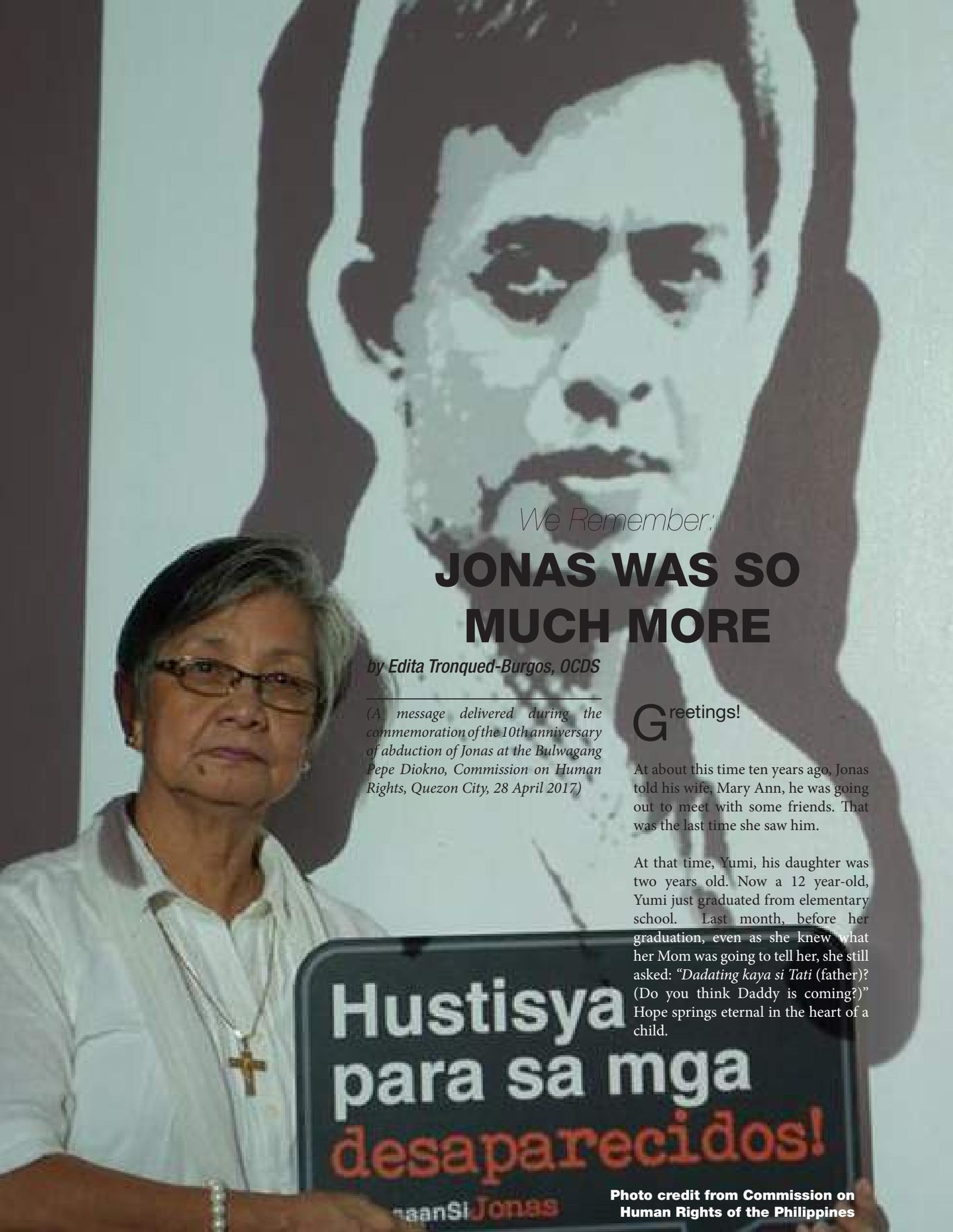
on a high note with a Call to Action and presentation of 2018 campaign plans, led by Kristina Boado, AFAD's Philippine Country Coordinator.

END IMPUNITY NOW

Now entering its 20th year, the Federation has proven time and time again of its unabated and undisputed ability to stand at the forefront of the struggle for a world without *desaparecidos*. However, the past two decades brought in unforeseen problems that have inevitably weakened the movement to some extent. The current trends-- societies regressing, dictatorships revitalizing, human rights deteriorating, and overall climate of impunity prevailing—altogether leave a little glimmer of hope toward what the future brings.

Despite such, the Federation can always find strength in its institutional structure. A strong network of human rights defenders, propelled by values of solidarity and philanthropy preclude impactful and meaningful outcomes. The depressing turn of events will surely do little to break AFAD's ranks. In this dark period for the plight of defending human rights, the Federation will remain true to its cause— to ultimately put an end to impunity.

Indeed, the points raised in the #YesToICED launch were all valid. If anything, these contemplations strengthen AFAD's position in its call for accession to the ICED. The challenge now, as it always has been, is to come up with strategies tailor-fit for repressive governments with little to no regard for human rights.



We Remember:

JONAS WAS SO MUCH MORE

by Edita Tronqued-Burgos, OCDS

(A message delivered during the commemoration of the 10th anniversary of abduction of Jonas at the Bulwagang Pepe Diokno, Commission on Human Rights, Quezon City, 28 April 2017)

Greetings!

At about this time ten years ago, Jonas told his wife, Mary Ann, he was going out to meet with some friends. That was the last time she saw him.

At that time, Yumi, his daughter was two years old. Now a 12 year-old, Yumi just graduated from elementary school. Last month, before her graduation, even as she knew what her Mom was going to tell her, she still asked: “*Dadating kaya si Tati (father)? (Do you think Daddy is coming?)*” Hope springs eternal in the heart of a child.

**Hustisya
para sa mga
desaparecidos!**

Marian Si Jonas

Photo credit from Commission on Human Rights of the Philippines



Edita Burgos (left) together with Jigs Clamor of Karapatan, Erlinda Cadapan (mother of missing Sherlyn Cadapan), and Concepcion Empeño (mother of missing Karen Empeño) after the court promulgation of the Jonas Burgos case in Quezon City, Philippines, 2017

When she heard that I was going to be interviewed over the radio she told me to mention her message: *“Salamat po sa lahat ng tumutulong. Salamat na di tayo pinabayaan ni God. Sana makabalik na sa amin si Tati.”* (Thank you to all of those who helped [in the search]. We are grateful that God has not abandoned us. I hope Daddy would return soon.) In the purity of this child’s heart, the longing for her father was expressed only after her gratitude was conveyed.

Like this child, we, the Burgos family, cling to the hope that comes from a higher source ‘That which is not allowed will not happen; and that our God is the God of the impossible’ – ‘What is impossible to man is possible to God.’ (Luke 18:27)

I have met, talked with and hugged victims who were disappeared for more than 18 years. Disappeared while they were in their teens and emaciated, now bearing the signs and scars of 18 years of hard labor and torture-- they were not immediately recognized by their own mothers and kin. But when we met, they were joyful, smiling, gentle and hopeful. This too is a source of light.

You who are here, those who are right now in front of Camp Aguinaldo demanding the surfacing of Jonas, bearing the heat of the sun; those who are attending mass and prayer services all over the country today, (Legaspi City, Iriga City, Naga City, Angeles City, Tuguegarao, Cagayan Valley, Makati City, Parañaque City, Quezon City, Jaro, Iloilo and Malaybalay, Bukidnon – to name a few) are a proof that our good God is providing for this family, for this cause, for this torture. Giving one’s time and attention and offering prayers is a generosity that cannot be measured.

I quote Mary Ann’s message here “We will always be grateful for the help that we have received in our search for Jonas. May God bless each and every one of you. May our case help the families of other *desaparecidos*. And may these efforts put an end to their search.” And I add “May the Lord reward you a hundredfold.”

The ten-year search within which was the more than eight-year legal battle, which remains unfinished to this day, has provided us with the pieces of a puzzle that the lawyer and the family were able to put together-- giving us a whole picture

of the whys and hows of the abduction. We have repeatedly made this known to the public. Jonas was an activist; he spoke strongly against oppressive policies that affected farmers. He engaged people who implemented these oppressive measures. He was vulnerable-- unarmed and alone. And so he was taken.

The only update I can give you on the case is that:

- The criminal case of kidnapping and illegal detention against Harry Baliaga Jr. filed in October 2013 has just been concluded. The fear that the case would be dismissed because a key witness still needs to be found, was well founded. After four years of hearings, on 12 October 2017, the judge dismissed the kidnapping and illegal detention case against Baliaga citing that we 'have not proven beyond reasonable doubt that Baliaga is guilty.' It is beyond this mother's comprehension how, a resolution of a lower court, the Regional Trial Court could be contrary to the findings of the Court of Appeals (March 2013), and the resolution of the highest court of the Philippines, the Supreme Court.
- The petition to cite in contempt officers of the Armed Forces of the Philippines (AFP) filed with the Supreme Court on 11 November 2014 has not been acted on.
- Meanwhile, the names of the main respondents of the case have been dropped (under questionable circumstances) and some of these personalities were promoted and appointed to high positions.

People know Jonas as an activist. But Jonas was much more than that. What people do not know is that:

- Jonas is a good son. He followed our wishes to finish his studies before serving the people. He even received a "Best Thesis" award when he graduated. He was respectful, thoughtful, affectionate and helpful to his aging parents.
- He is a good brother. When his sister was left to cope as a single parent, he stood as the surrogate father, attending to the needs of his nephew and niece. His two other brothers were his sparring partners where trading barbs was non-stop-- be they jokes, ideological, academic or political discussions. Jonas was their drinking buddy; with his brothers and sisters, they formed a band. His youngest sister looked up to him as a protector.
- He is a good husband. He was going the extra mile to please his wife, doing chores to make things

easier at home, always cheerful and hopeful. His home was a haven of laughter and song.

- He is a good father. Squeals of joy would punctuate his time with his daughter-- doing his tasks while carrying his daughter on his shoulders, fighting a 'wrestling' game with her, or just hoisting her up in the air and catching her, or teaching her how to float in water. He cherished the moments of being a father.
- He is a refined soul. He loved classical music. He played the saxophone and the guitar. He was gentle and sensitive.
- He is a true friend. He gave his share of harvest to the other farmers, tutored other farmers' children so they could pass their subjects, helped build a water system in a barrio so the households would have water, defended a Dumagat woman from abuse, to name a few. Giving the food on his plate to a neighbor was something ordinary and natural to him.

Jonas is so much more than being an activist. He is a true son of Jose Burgos Jr., the one who taught him and his brothers and sisters "to seek and live the truth and share a vision."

Thank you so much to you who have accompanied us in our journey. Those of you from different countries, who stand in solidarity with us, receive our gratitude through prayers. Thank you to the Commission on Human Rights for making this commemoration more significant and eloquent. Thanks to all of you for your generosity of coming and being with us. To those in the mobilization- thank you for enduring the sun and threats to your safety. Thank you for the prayers and masses. Thank you to Him who ordains all. To Him be the glory.

On this 10th year of search I wish to leave this thought with you-- a message etched in the Berlin wall: "There are small people in small places doing small things and they are changing the face of the earth." We may all be small in our own private lives. We may live in small places, especially us victims, defenders and ordinary people. Yet, we can help change the face of the earth-- doing what we must do, helping where we can help, searching for the lost, praying in our own small corners, being peaceful where there is strife, with constancy, fidelity and deep faith that in the end, good will triumph and then... peace will reign on earth!

A Doctor of Education, Edita Tronqued-Burgos has completely given up consultancies in the city to work as a farmer in the family farm. Her husband, Jose Burgos Jr., and her missing son, Jonas Joseph both loved the land and helped farmers. This is her way of continuing this legacy.

CIVIL SOCIETY RESPONSE TO THE RE-IMPOSITION OF THE DEATH PENALTY

by Nilda L. Sevilla and Celia L. Sevilla

Philippine President Rodrigo Roa Duterte's anti-human rights rhetoric against the United Nations, the United States, and the European Union as well as his continuous vilification of human rights defenders including the national Commission on Human Rights has distorted the concept of human rights more particularly its universality. His stripping criminals of their humanity to justify their getting killed among other human rights violations is a testament to his gravely erroneous perception of human rights as being exclusive to law-abiding people.

On this falsity, he anchors his endorsement of the re-imposition of the death penalty which, together with the daily killings, exacerbates the culture of violence. This value-aberration the people now accept as normal. But, definitely, civil society organizations (CSOs) are never waylaid. On the contrary, they have intensified their collective protest against the administration's commission of gross human rights violations with impunity.

The Philippines is recognized as having one of the most vibrant civil societies in the Asia-Pacific region. Underlying its sustained dynamism is the pursuit of interlinking civil, political, economic, social, and cultural rights that thousands of human rights defenders have struggled to protect and promote.

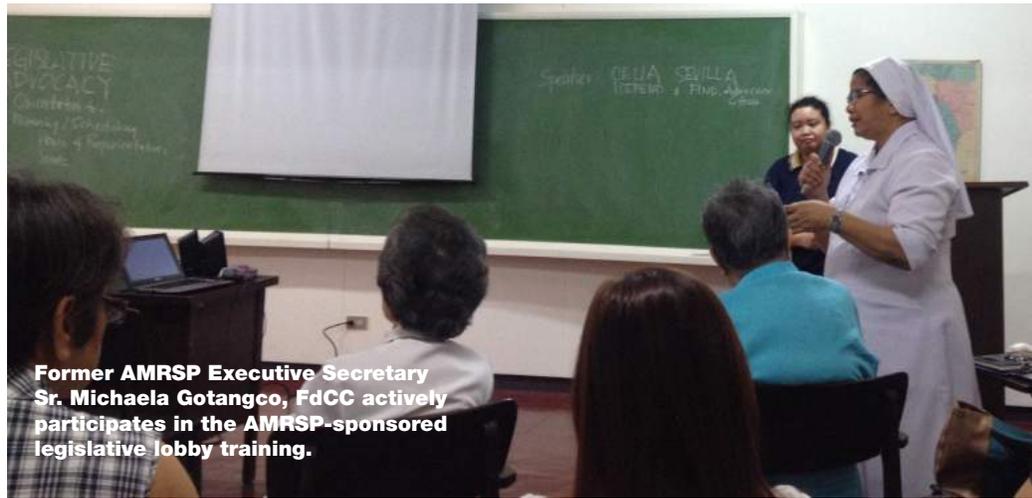
While it is true that human rights defenders are not exclusive to civil society as there are individual human rights defenders in government, not to mention the national human rights institution, it is undeniable that the bulk of committed and dedicated human rights defenders works in CSOs. Tempered by their collective and sustained struggle for freedom and democracy during the Marcos dictatorship, the martial law social and political activists chose to struggle for meaningful and relevant change by organizing or strengthening existing CSOs. One of these organizations is FIND, born three months before the EDSA people power uprising that ousted the dictator and installed Corazon Aquino as the successor.

Immediately upon Aquino's assumption of the presidency, FIND along with other human rights organizations urged the revolutionary government to institute reforms in governance and put in place safeguards to guarantee non-repetition of human rights violations that were massively and systematically committed by the preceding dictatorial regime.

Notwithstanding the failure of the revolutionary government to implement genuine transitional justice, it nonetheless afforded the people, particularly CSOs, some democratic space and opportunity to articulate



FIND Advocacy Officer conducts legislative lobby training to 42 members of the Association of Major Religious Superiors in the Philippines (AMRSP).



Former AMRSP Executive Secretary Sr. Michaela Gotangco, FdCC actively participates in the AMRSP-sponsored legislative lobby training.

relevant views and recommendations toward building peace based on justice, inclusive economic growth, and sustainable human development that are people-centered and human rights-oriented.

Thus, human rights defenders - organized or unorganized - strongly lobbied for the establishment of the Presidential Committee on Human Rights, the precursor of the Commission on Human Rights (CHR), and later for its creation under the 1987 Constitution.

The establishment of an independent constitutional national human rights institution was part of a package of measures aimed at defending human rights and human dignity that CSOs brought to the attention of the framers of the 1987 Constitution.

Of overriding significance was CSOs' campaign for the abolition of the death penalty.

Opposition to the death penalty actually antedated the drafting of the 1987 Constitution. However, organized campaign and lobby against the capital punishment by CSOs was heightened in reaction to the pro-death penalty members of the 8th Congress who

exploited the conditional character of the abolition of the death penalty provision of the 1987 Constitution.

Section 19, Article III – Bill of Rights of the Constitution reads:

SEC. 19 (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. **Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it.** Any death penalty already imposed shall be reduced to *reclusion perpetua*. (underscoring supplied)

Clearly, Section 19 abolishes the death penalty but gives Congress the prerogative to decide to reinstate it “for compelling reasons involving heinous crimes.” The Constitution neither specifies the compelling reasons nor defines heinous crimes. CSO anti-death penalty advocates maintain, however, that there are no compelling reasons to justify the re-imposition of the death penalty on any crime no matter how heinous it is for reasons that include the following:

1. Death penalty is a cruel, degrading or inhuman punishment, which kind is absolutely prohibited by the Constitution;
2. Its cruelty and inhumanity traumatize both the convict and his/her family even if no execution takes place;
3. It violates the basic human right to life which the faithful believe only God can end;
4. It victimizes the poor or those who cannot afford competent or good legal counsel;
5. There is no conclusive evidence that death penalty deters the commission of crimes;
6. Judicial records show high rates of conviction errors;
7. Death penalty forecloses rehabilitation and restorative justice; and
8. It violates the prohibition against the imposition of the death penalty under the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) to which the Philippines is a State Party.

During Gloria Macapagal-Arroyo’s presidency, anti-death penalty advocates successfully lobbied for the abolition of the death penalty, which was lamentably reinstated during the Fidel V. Ramos administration. Key abolitionist players were the Catholic church, CSOs more particularly human rights organizations, families of death row inmates, media, law groups, and the European Union.

In 2003, the Philippine Human Rights Information Center or PhilRights initiated the formation of the *Mamamayang Tutol sa Bitay* (Citizens against the death penalty) – Movement for Restorative Justice (MTB-MRJ) which was the broadest anti-death penalty network with more than 150 organizations working in major cities across the country. PhilRights and MTB-MRJ organized champions in the House of Representatives and the Senate that led to the formation of the Legislators against the Death Penalty that became instrumental in the eventual enactment of the law abolishing the death penalty in the country in 2006.¹

Today, after only a decade, with marching orders from President Rodrigo Duterte, moves to once again bring back the death penalty have been revived. Unfortunately, there is an unprecedented “supermajority” composed of the President’s allies in both houses of Congress. At the House of Representatives, the passage of the death penalty bill was meant to be railroaded from the very beginning, culminating in the Speaker resorting to arm-twisting, e.g., threatening to remove Deputy Speakers and Committee Chairpersons from their positions should they vote against the death penalty.

The most visible protests against these underhanded moves have been spearheaded by iDEFEND, the Legislative Lobby Committee of which is co-headed by FIND and the Children’s Legal Rights and Development Center. The iDEFEND is currently the largest formation of CSOs from various sectoral organizations, labor, women’s rights groups, children’s rights groups, lawyers, faith-based groups, members

of the academe, media practitioners, human rights organizations, and peace advocates in the Philippines.

The following are some of the initiatives by iDEFEND in response to the measures taken by government towards the re-imposition of the death penalty:

1. Developed a comprehensive technical paper on the death penalty and submitted this to the Committee on Justice of the House of Representatives (HOR);
2. Co-organized and participated in strategizing meetings of anti-death penalty legislators and advocates, most often with the CHR;
3. Conducted a legislative lobby training for 42 members of the Association of Major Religious Superiors in the Philippines (AMRSP);
4. Coordinated with the United Nations Office of the High Commissioner on Human



Hundreds of human rights advocates troop the session hall of the Philippine House of Representatives to protest the passage of the bill reimposing the death penalty.

Among the human rights advocates who filled the galleries of the session hall of the Philippine House of Representatives are from the religious community. Their keen involvement in the process, to an extent, is an offshoot of the AMRSP-sponsored legislative lobby training.



Mrs. Nilda L. Sevilla, sister of disappeared labor and human rights lawyer Hermon C. Lagman, is the Co-chairperson of the Families of Victims of Involuntary Disappearance (FIND) and a member of AFAD’s Executive Council. Ms. Celia L. Sevilla, her daughter, is the National and International Advocacy Coordinator of FIND and is a Council member of AFAD.

¹ Country Report on the Death Penalty in the Philippines prepared by the Philippine Human Rights Information Center (PhilRights) for the Second General Assembly of the Anti-Death Penalty Asia Network (ADPAN) on 20 July 2012 in Kuala Lumpur, Malaysia

1. Rights (UN OHCHR), the International Commission of Jurists, and academic experts from other countries to gather international support for the campaigns against the passage of the death penalty;
 5. Actively participated in public hearings and meetings of the HOR Committee on Justice on the death penalty bill;
 6. Analyzed profiles of HOR members to identify possible champions and prioritize whom to lobby first;
 7. Conducted room-to-room lobbying against the death penalty bill at the HOR, during which the legislators' stances were determined;
 8. Organized a roundtable discussion on the death penalty participated in by nine anti-death penalty legislators, representatives from the UN OHCHR, and three international experts on the death penalty in preparation for plenary debates at the HOR;
 9. Mobilized hundreds of advocates for protest actions and facilitated their entry into the session hall of the HOR during plenary debates on the death penalty;
 10. Met with Bishop Broderick S. Pabillo along with staff of Senators Francis Pangilinan and Risa Hontiveros to plan for the anti-death penalty campaign in the Senate. Met separately with the staff of Senator Leila de Lima for the same purpose.
 11. Lobbied with the Senate Committee on Justice and Human Rights Chairperson Dick Gordon to strengthen his stance against the death penalty;
 12. Held a press conference against the death penalty on International Women's Day; and
 13. Secured the support of Rep. Edcel C. Lagman, a veteran lawmaker and staunch human rights advocate, for the formation of the *Mambabatas para sa Karapatang Pantao* (MAKATAO) or Legislators for Human Rights.
- From the start, it was already a foregone conclusion that the death penalty bill would be passed on third and final reading at the HOR. However, the campaign and lobby activities of CSOs, particularly that of iDEFEND and its members did make an impact, including the following:
1. Passage of the death penalty bill was delayed. The leadership of the HOR made a public announcement that it would be passed before sessions adjourned in December, serving as the HOR's "Christmas gift" to the Filipino people. The bill was ultimately passed three months later, in March;
 2. More legislators voted against the reinstatement of the death penalty than were expected. As anticipated, an overwhelming majority of the HOR members ended up voting for the death penalty. Still, a total of 54 bravely voted against the measure despite the arm-twisting by the Speaker. The leadership earlier predicted that only around 30 would do so, a difference of 44.4%;
 3. Media outfits covered the protest actions against the death penalty as well as invited iDEFEND to television and radio interviews, contributing to heightened awareness of the general public on the issue. According to a Pulse Asia survey, the percentage of Filipinos who support the death penalty for heinous crimes went down to 67% in March 2017 from 81% in July 2016;
 4. Anti-death penalty advocates from the international human rights community voiced their opposition to the death penalty bill, with the UN OHCHR even sending a letter to the House Speaker and the Senate President on the issue;
 5. There was a palpable increased sense of solidarity in the local human rights community, especially during the plenary debates;
 6. Members of the AMRSP became actively involved in legislative lobbying, and consistently brought large numbers to make the presence of the religious community and its opposition to the death penalty felt during the plenary debates; and
 7. The Senate hearings on the death penalty have been suspended indefinitely, with the Senate President stating that the death penalty bill is not a priority.
- Blocking the re-imposition of the death penalty is clearly not an easy task. It is an uphill battle, and with the current composition of the Philippine Congress compounded by the culture of violence and death being espoused and encouraged by government, the hill sometimes feels as if it is made of quicksand. But we in the Philippine civil society will not shirk from this challenge, and deeply appreciate all the support being extended to us during these trying times for human rights.

The Journey towards the South Korean Ratification of The Convention Continues:

INTERNATIONAL AND DOMESTIC ADVOCACY ACTIVITIES OF NKHR

by Ji-yoon Lee

Throughout the third quarter of 2017, Citizens' Alliance for North Korean Human Rights (NKHR) has actively engaged in the international and domestic advocacy to press the South Korean government's long-awaited ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the United Nations General Assembly on 20 December 2006.

International advocacy work:
NKHR participates in the third cycle of the Universal Periodic Review on 9 November 2017 at the Human Rights Council in Geneva



On 30 January 2008, the National Human Rights Commission of the Republic of Korea (ROK; South Korea) recommended that the South Korean Minister of Foreign Affairs ratify the Convention. In addition, the representatives of the NKHR, the Asian Federation Against Involuntary Disappearances (AFAD) and the International Coalition Against Enforced Disappearances (ICAED) met jointly with the ROK's government agencies, including the Ministry of Justice, Ministry of Unification, and Ministry of Foreign Affairs, several times since NKHR became a member of AFAD and ICAED in 2012. During the meeting with the Ministry of Foreign Affairs in January 2017, we were informed that the internal legal review had already been completed. This review examines all the South Korean legislation, so that no laws conflict with the Convention when it is ratified and comes into effect. However, during its Universal Periodic Review (UPR) in November 2017, the ROK

government stated that it had not yet finished its internal legal review.

Even after finishing the legal review, there will be another exhausting process of inter-ministerial coordination and legal adjustment. A number of relevant legislation in conflict with the Convention, including the Criminal Law and the Criminal Procedure Law, must all be amended, or a separate special law must be enacted.

Despite any hurdles, however, it is crucial that South Korea ratify the Convention. South Korea is home to thousands of families of victims who have been abducted by the Democratic People's Republic of Korea (DPRK; North Korea). The North Korean government is responsible for the abduction of nearly 100,000 South Korean civilians during the Korean War, and over 3,800 South Korean citizens after the ceasefire, of which 516 remain unresolved. Through ratification, the South Korean government will be

able to call for domestic and international attention to the issue of enforced disappearances (EDs) by North Korea. This may pressure North Korea to take necessary actions such as: 1) clarifying the fates of the victims of ED; 2) allowing an independent assessment to determine whether those abducted willingly chose to remain in the DPRK; and 3) providing a line of communication between surviving victims and their family members in South Korea, who have experienced lifelong trauma, anguish, and sorrow caused by the abductions of their loved ones. Ratification will also prompt the South Korean government to classify South Korean victims of abduction as EDs, rather than naming them and their families as *'separated families.'* Proper classification is a significant issue as ED, unlike family separation, is considered an international crime.

Moreover, the Convention reflects the desire of the international community to promote human rights by preventing





NKHR promotes the South Korean ratification of the International Convention for the Protection of All Persons from Enforced Disappearance

EDs and breaking impunity for perpetrators of past disappearances. Through ratification, the ROK will be able to join the vanguard of States Parties which promote humanitarian values throughout Asia, the continent with the most reported cases of EDs.

The ROK's third cycle of the UPR took place on 9 November 2017 at the UN Human Rights Council in Geneva. In September 2017, the NKHR, AFAD and ICAED sent letters to foreign Embassies in Seoul and Geneva in order to promote the South Korean ratification of the Convention. A total of 107 governments in three groups were contacted.

- (1) States that recommended that the ROK ratify the Convention during previous UPR cycles;
- (2) Principal sponsors of the Convention; and
- (3) States which have already signed, ratified or accessed the Convention.

While extending our sincere gratitude to the governments, the co-signed organizations urged them to submit an official written question before the UPR, or an oral recommendation during the Session; and also to request that the ROK government clarify both the reasons behind the delay and its plan for signing.

NKHR also sent an advocacy letter to the UPR Info, an NGO in Geneva, to request the distribution of the letter to the missions in Geneva during the UPR Info's preparatory session on the Republic of Korea in October 2017.

NKHR has also followed up on the issue domestically, requesting that the National Human Rights Commission of the ROK re-address the issue with the Government. Letters were also sent to the relevant government departments including the Ministry of Justice and the Ministry of Foreign Affairs to urge ratification. Only the National Human Rights Commission have responded to these letters. The Commission informed NKHR that they have been raising the issue of ratification with the South Korean government every year and plan to emphasize the issue in the future. According to the Commission, no practical progress has been made towards ratification of the Convention.

Our international advocacy work was successful as nine countries recommended to the South Korean government that it should ratify the Convention during the ROK's third Universal Periodic Review, a significant increase in the number when compared to the first and second UPR which recorded only one and three recommending countries, respectively.

NKHR's continuous joint advocacy has led to encouraging developments in placing greater pressure the South Korean government to finally ratify the Convention. However, some disappointment lingers still. The ROK government, during the UPR session in November again repeated that, "we are currently conducting a review in terms of the consistency between the domestic laws and the domestic criminal justice system." The government also mentioned that inter-ministerial consultation will soon be conducted related to the issue. The legal review has been taking place for several years already, but the government never clarified the timeframe to finish the review.

Our stance remains firm: the South Korean government must not repeat its superficial responses to answer international requests from foreign governments, the National Human Rights Commission, and domestic civil society, to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Rather, it must join the movement to promote humanitarian values within the ROK and around Asia. The first step would be to take prompt action to ratify the Convention.

As a Program Officer for NKHR's Advocacy and Campaign team, Ji-yoon Lee is responsible for conducting research on the North Korean human rights situation, reporting North Korean abduction cases to the UN WGEID, developing program initiatives, and maintaining partnerships with domestic and international organizations. Prior to joining NKHR, Ji-yoon worked at Korea Trade-Investment Promotion Agency and the Embassy of the ROK in Washington D.C. She obtained a Master's degree in International Affairs from the George Washington University.

Back in the Arms of Love:

FAMILY REUNION OF STOLEN CHILDREN WITH THEIR BIOLOGICAL FAMILY IN TIMOR-LESTE

by Sisto dos Santos

After more than 30 long years, stolen children (SC) delight to breathe the air of the home of their infancy and childhood as they arrive in Dili, Timor-Leste.



The landmark milestone in re-unifying stolen children with their biological family takes place in November 2017. The picture below shows a big hug from the *Provedor*/ Ombudsmen for one of SC during the reunion family. Fourteen SC finally visit their hometown.





Hugs and kisses: nothing could be more heart-warming than a father's embrace, or a grandmother's kiss.



Accompanied by member Group from Jakarta and Dili, stolen children meet their relatives and stay with their family in the village for five days.

The longing certainly transcends beyond this world: a stolen child pays visit to his mother's and grandmother's grave.





An obligatory goodbye: stolen children prepare to leave Timor-Leste and head to Indonesia to be with the family who adopted them for years.



Solidarity works:
Government of
Timor-Leste and
CSO networks
(Timor-Leste and
Indonesia) join
hands to facilitate
the Family
Reunion of stolen
children with their
families. At least
15 Stolen Children
finally meet their
biological families.



POSITION PAPER ON THE IMPERATIVE OF THE PHILIPPINES' ACCESSION TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

*A Reprint of the Position Paper Sent to Department
of Foreign Affairs Secretary Alan Peter S. Cayetano
in October 2017*

Acceding to the International Convention for the Protection of All Persons from Enforced Disappearance (Convention) demonstrates solidarity with victims of enforced disappearances all over the world and affirms the Philippines' commitment to human rights. Doing so will give the Philippines the singular honor to be the first ASEAN state party to the Convention, thus, making it a model not only in Southeast Asia but also in the rest of Asia from where originates the highest number of cases of enforced disappearances submitted to the United Nations Working Group on Enforced or Involuntary Disappearances.

AFAD stands by the absolute right not to be subjected to disappearance regardless of circumstance even as it calls on the Philippines to fulfill its mandate to respect and protect this right not only through the effective implementation of the Anti-Enforced Disappearance Act of 2012 (R.A. 10353), but through accession to the only remaining international treaty that the Philippines has not yet signed - the Convention.

It is lamentable that the commission of enforced disappearance remains unabated in the Philippines. There is an urgent need to end the list of victims not only through full and strict implementation of the Anti-Enforced or Involuntary Disappearance Act of 2012 (R.A. 10353) but by acceding to and implementing the Convention.

A State should be accountable to its people and to the international community. Acceding to the Convention, which is a legally-binding normative instrument, will strengthen the State's obligation to respect, protect and fulfill human rights.

Accession acknowledges the gravity of the offense of enforced disappearance and the devastating consequences to the disappeared and their families. It will also help address pressing concerns of states regarding the human rights situation in the country. These concerns were raised during the third cycle of the Universal Periodic Review last May, where a total of ten states recommended that the Philippines ratify the Convention. Fourteen other states also recommended that the Philippine Government should address the phenomenon of enforced disappearance.

It is high time for the Philippines to accede to the Convention. As early as April 18, 2007, in a *Note Verbale* of the Permanent Mission of the Philippines to the United Nations in Geneva to the President of the United Nations General Assembly, the Philippines committed "...to strengthen domestic support for the signing and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance."

The Philippines has already taken the lead with the enactment of Republic Act 10353. To accede to the Convention would put the Philippines in a unique position to reassert itself as a leader in the region in promoting human rights, once again setting the precedent for fostering an environment conducive to the full eradication of enforced disappearances.

As a legal protection from enforced disappearance, R.A. 10353 still needs to be strengthened. The Convention is an essential complementary mechanism that provides a more comprehensive legal framework that deals with various aspects of enforced disappearance. Measures of protection are

strengthened if both the domestic law and the Convention can be used to guarantee non-repetition of the offense. Moreover, the Convention is more enduring than R.A. 10353, which is vulnerable to amendments and even repeal.

R.A. 10353 does not duplicate the Convention neither does the Convention substitute for the domestic law. They are complementary and mutually reinforcing.

There are certain provisions embodied in the Convention that are not in R.A. 10353 that can enhance protection from enforced disappearance. One such provision is Article 29, Para. 1, which acts as an accountability check because of the reporting requirement:

"Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned."

Moreover, the Convention provides another platform for empowerment of victims of enforced disappearances, as families may go straight to the UN Committee on Enforced Disappearances to report cases of disappeared people.

Article 30, Para. 1 provides: "A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest."

Additionally, the Convention also addresses the legal situations relative to social welfare, financial matters, family laws and property rights that are not expressly provided for under R.A. 10353. They are impliedly left to pertinent domestic laws that do not sufficiently address the unique features of enforced disappearance, e.g., absence of a death/disappearance certificate of a victim who remains missing but whose death is not established.

The Convention also addresses the cases of disappeared children and children who were born in captivity or during their mothers' disappearance. R.A. 10353 has no provision that specifically concerns this situation of children.

While R.A. 10353 embodies measures to protect the victims and their families' right to information, it does not categorically declare the right to truth of the victims and society as a whole. In this regard, the Convention is credited for introducing or

declaring for the first time in an international treaty the right to truth that goes beyond the states' duty to provide information. The right to truth implies that the state must acknowledge the human rights violations and wrongdoings and disclose all relevant information on the circumstances surrounding the enforced disappearance, the progress and results of the investigation and the fate of the disappeared.

The Convention enhances the right to truth by obliging authorities to conduct an investigation even in the absence of a formally filed complaint, and to continue investigating until the fate of the disappeared shall have been clarified. It further mandates the authorities to

prevent or punish acts that hamper the conduct of the investigation. This provision complements Section 16 of R.A. 10353 that mandates the State through its appropriate agencies to ensure the safety of all persons involved in the search and in the investigation and prosecution of enforced disappearances who shall likewise be protected from intimidation and reprisals.

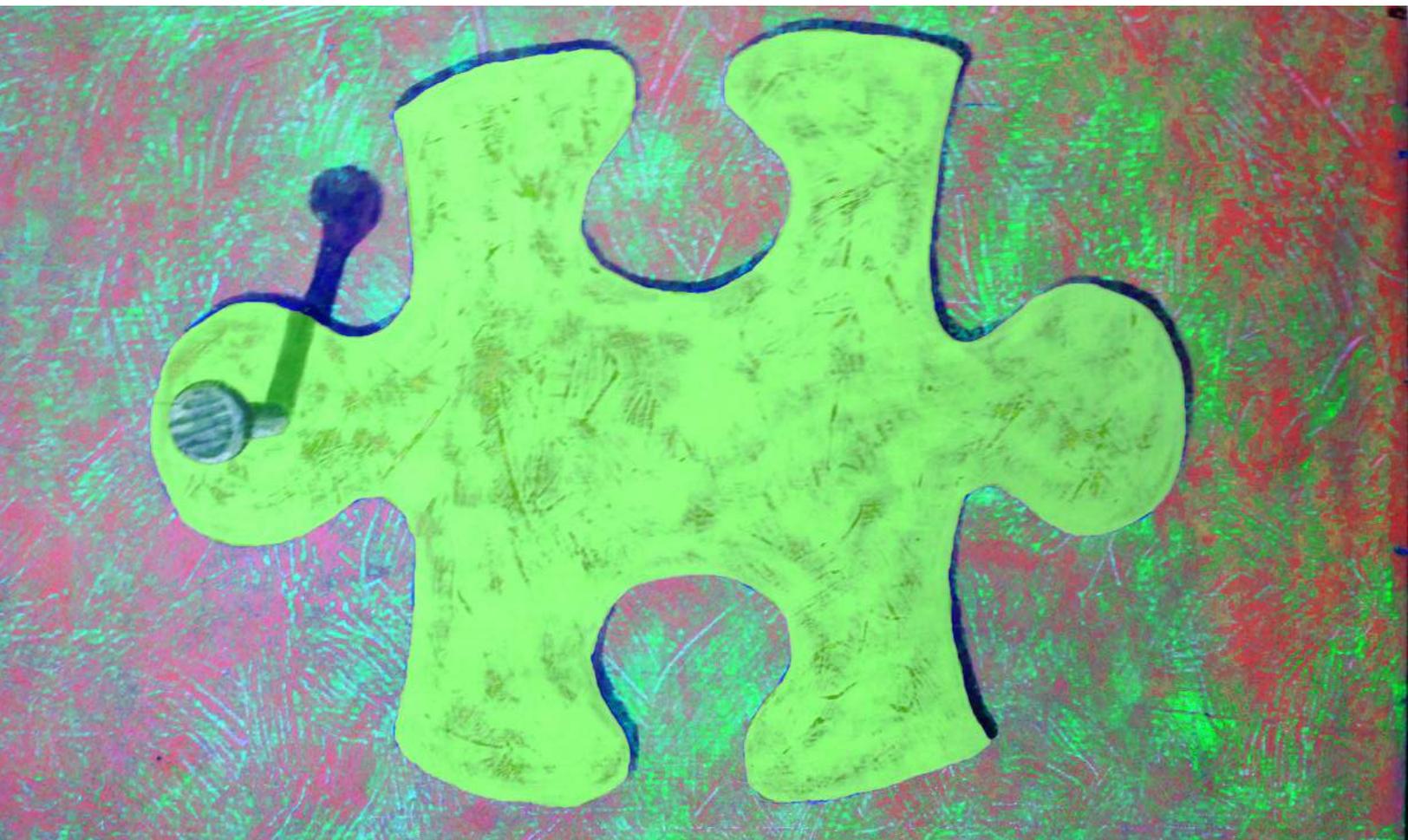
Accession has not been without opposition and reservation from government agencies. Despite this, one reason for having reservations is the issue of sovereignty. It is universally understood, however, that when a state binds itself to a treaty or convention, it voluntarily submits itself to

reasonable limitations to its national sovereignty; in this case, in order to strengthen the absolute right of its people not to be subjected to enforced disappearance.

Another reason cited for non-accession deals with Articles 9 and 13 of the Convention on universal jurisdiction and extradition, respectively. It is inconsistent to single out the Convention using Articles 9 and 13 given that these provisions are also found in other conventions and protocols which the Philippines has already ratified, namely: (a) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and (2) the Optional Protocol to the Convention on the Rights of

the Child on Sale of Children, Child Prostitution, and Child Pornography (CRC).

The complementarity and mutual reinforcement of R.A. 10353 and the Convention can be translated into best working practices only through their full and strict simultaneous implementation. More importantly, the Convention seeks to unite States in combating enforced disappearance and ending impunity. The Philippines should not temporize in forging international solidarity toward a world without *desaparecidos*. It should rectify the disturbing inconsistency between passing an anti-disappearance law and refusing to accede to the Convention.



THE SHATTERED DREAM OF LASTING HAPPINESS

(A Review of the Documentary on the Life of Sombath Somphone)

by Mary Aileen D. Bacalso



14 February 2018, Valentine's Day and Ash Wednesday - The AFAD Secretariat meaningfully commemorated both occasions with a viewing of a documentary on the life of Lao development worker Sombath Somphone, who disappeared on 15 December 2012. The enforced disappearance (ED) took place just a few days before the Republic Act 10353 or the Anti-Enforced or Involuntary Disappearance Act of 2012 of the Philippines was enacted on 21 December. The treacherous act of ED occurred right in front of the Lao police station and was caught by CCTV footage.

The treacherous act of disappearing Sombath was the most ungrateful act Laos could ever do to one of its brightest citizens. More so, the fact that he chose not a life of luxury in a foreign land but to return to his native country after a devastating war of independence—to contribute his skills and knowledge to its postwar reconstruction effort, and to serve his people.

Many fingers point to the Asia-Europe People's Forum, during which, Sombath gave a keynote speech. He expressed consternation over the country's development agenda which puts rapid development and external investments, especially on its natural resources, over the welfare of its people. Sombath cautioned that development should be balanced and should not be done at the expense of the environment and the long-term welfare of the people, especially the poor and disenfranchised.

The War Torn-Laos Opting the Path to Socialism

Directed by Rann Quinn, the documentary situates very well the ED of Sombath Somphone within the historical context of a country which, ravaged by the Vietnam War, resulted in massive diaspora of the Lao population. Traumatized by war, many students studying and living abroad did not wish to return to their country of origin. The documentary introduces Laos as a Southeast Asian country close to China, Myanmar and Vietnam. Its complex history dates back prior to the mid-14th century to the founding of the Lan Xang Kingdom. Later colonized by France, Laos was badly affected by neighboring Vietnam who waged the first Indo-China war against the French. When Ho Chi Minh finally defeated the French, Vietnam became independent from foreign influence. However, it was soon caught up with



Sombath Somphone with his colleague (behind camera), 1994



French Soldiers surrender at Dien Bien Phu, Vietnam, 1954



Pathet Lao Soldiers



Young Sombath—Sombath in Honolulu, Hawaii, 1977

the 2nd Indo-China War, this time against the US, which supported the right-wing Vietnamese leaders in South Vietnam. Laos was also caught up in the 2nd Indo-China War, with the pro-Vietnam Communist Pathet Lao Revolutionary Forces pitching against the US-supported right-wing forces based in Vientiane. In 1975, when the US lost its war against Communist North Vietnam and withdrew its forces from Vietnam, the Pathet Lao Forces also came into power in Laos. Thus, on 2 December 1975, the Lao People’s Democratic Republic (PDR) was established.

Yet, Laos’ chosen path to socialism did not solve the basic problem of poverty. Under the control of the Lao PDR, the government modelled it after the Soviet Union and Vietnam. Laos, predominantly a rural subsistence economy, did not have the conditions for creating a socialist economy like that of the Soviet Union or Vietnam. In 1985, it was proven that cooperativization of agriculture did not work. Productivity was affected. Foreign aid without conditions was welcomed with the simultaneous encroachment of foreign investments. Such scheme benefited powerful officials within the Party. The Party’s political patronage and economic monopoly became ways for the families of the ruling elite to benefit from the new “open-door policy.”

Against this backdrop, the ED of one of Laos’ best and brightest in the person of Sombath Somphone sadly occurred.

The Exemplary Life of Sombath Somphone

The documentary depicts the extraordinary character of the man. As a boy, he came from humble beginnings. Sombath was the eldest son of a farmer who lived close to

the Mekong River. Nonetheless, he had the opportunity to study in the US. After which, he came back to his beloved Laos to serve the poor, to teach and inspire the young, and follow his heart. Rarely does a man of his achievements come back from a foreign land to a war-torn country to share with his fellow Laotians what he believed he owed them. He could have lived a fairly easy life abroad like many of his compatriots. But he was not the kind of person who would turn his back to where he came from. Indeed, he opted for the path less trodden – working with the farmers; sharing his knowledge and experience as a trained agronomist; and teaching the youth the need to learn from actual practice. He instructed them to respect their culture and the environment which are the sources of support for the bulk of the people living off the land and the rivers of Laos. He also taught the young that they need to use their critical thinking and not just learn from theories of textbooks, which he felt was holding back the creativity and natural intelligence of the young.

In his last TV interview, Sombath introduced himself: “My name is Sombath Somphone. I am a son of an ordinary farmer. But I had the opportunity to learn, to think and to practice thinking...” The documentary presents Sombath as both a thinker and a doer. His development work for his country should have been seen by his captors to be beneficial both for the immediate and long-term future of this tiny beautiful country with the majority still struggling to get out of poverty.

Shui Meng recalls that Sombath was definitely a nationalist. “He was politically neutral and he was really proud to be a Lao. I remember when I visited his room at the University of Hawaii, he had a Lao flag on his wall. It

struck me as something quite unusual. Not only did he have a Lao flag, he himself made a sketch of the founder of the Lao nation, Kaysone Phomvihhan. He thought he should remind himself and other Lao people who come and visit him that they are all part of Laos and they should love this new country.”

“Sombath came back to Laos for the first time in 1978. He was given a ticket by the Lao government because the government was actively trying to attract overseas Lao students who were studying both in the US and France to come back to Laos. And he spent about three months in Laos. They were sent to a re-education camp where they had to study Marxism-Leninism and what the new government planned to do, what the government hoped to achieve... He said it was very boring because they were placed in a room and then were given long talks about Marxism-Leninism. The instructors were simply reading a text...but he just thought that some of them were very sincere...”

Shui Meng recounted that Sombath did not have a job when he first came back. “He had thought that with his background in agriculture, he would be accepted by the Ministry of Agriculture... It was difficult for him because he was trained in the US. And he felt that the government didn’t trust anyone who had studied in the United States ... the government continued to be suspicious of “American intentions.”

Sombath found support from the American Friends Service Committee, a US-based Quaker organization that opposed the Vietnam War. After the war, it was allowed by the Lao Government to continue its operation to work on post-war restoration projects. Sombath’s relationship with the American Friends Service

Committee gave him an institutional home for the development of an agricultural project. With the help of the Committee, he introduced some low-cost agricultural techniques that combined the growing of rice with fish and growing of vegetables and other crops which he named as Rice-based Integrated Farming System (RIFS). Even though it was never tried before, it was still welcomed as an aid project; though some officials continued to suspect there was a “hidden agenda.”

Portraying him as a genuine development worker with the heart for the people, the documentary shows Sombath working in Laos for decades. In 1996, he finally obtained a permit to open the Participatory Development Training Center (PADETC). He emphasized that development should be a participatory and consultative process so that the needs and aspirations of all stakeholders are taken into consideration. He believes that such would ensure the sustainability and ownership of the development process. Sombath also asserted that the ultimate goal of development is the well-being or happiness of the people which he believes is the basis of social and economic harmony in any society.

With the participation of the young and old alike, Sombath’s work for development won for him and his community many regional and international awards. The most prestigious of which is the Ramon Magsaysay Award, considered as the Asian Nobel Prize, which he received in 2005. In his acceptance speech, he recognized that the award was also given to his colleagues in PADETC, and also to the many young volunteers who carried PADETC’s teaching and training into their schools and communities.



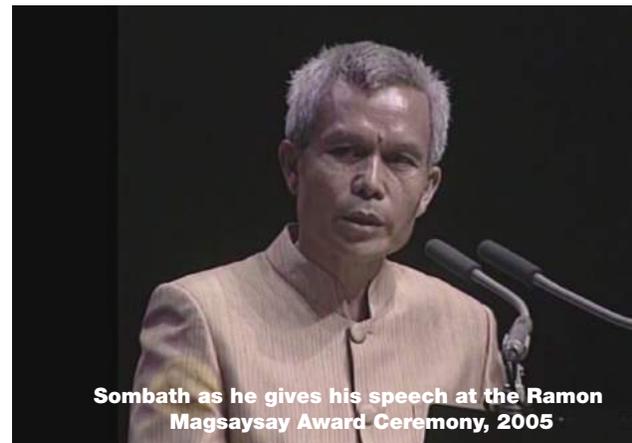
Shui Meng and Sombath, 1999



Sombath – one of his last photos taken before his ED, 2012



Shui Meng interviewed for the documentary, 2016



Sombath as he gives his speech at the Ramon Magsaysay Award Ceremony, 2005

Of Love and Tragedy

The documentary also relates a love story that started to bloom in 1976. Shui Meng recalls that she met Sombath when they were both students at the University of Hawaii. While Shui Meng acquired her doctorate degree in Southeast Asian Studies, focusing on Vietnam, Sombath earned a masters degree in Agronomy.

One wonders how a Singaporean lady in the person of Shui Meng, with a high level of education, was attracted to this man whom she describes in the documentary as “quiet, very small and serious young guy.” Sombath’s quietness may have been conspicuously noticeable because he was full of knowledge and wisdom, which attracted her to him. “Still waters run deep” and so was Sombath in his conspicuously quiet ways.

They became best of friends, fell in love and later decided to live together. Shui Meng vividly remembers how the love story went. “Sombath decided that he would come back and live in Laos. Because he knew he was coming back, he was not serious about having a relationship especially with a foreign woman, knowing that it would be very difficult to start a family in Laos. So, we were friends for a long time. Actually, he did not ask me to be with him. But I asked him what he wanted to do. We were hanging out for quite a while. I said why don’t we talk about this and be frank about this. I wanted to know exactly what his plans were. Then he said he wanted to go back to Laos and he didn’t feel that I would want to come back to Laos with him. So, I didn’t answer him. I thought about it for a while. Yeah, you know... Leave Singapore, go to Laos. I did not have any clue what Laos is. So, we left it for a while and I graduated. I came back to Singapore and we continued to correspond and he said, come and visit. So, I went back to visit him in Hawaii and he said, why don’t you consider to come to Laos.”

At the crossroads of their lives, Sombath and Shui Meng got married in Hawaii and moved to Laos in the early 80s. It was home for Sombath and a place to get used to for Shui Meng. Eventually, the couple realized that a normal life in Laos during that period was almost impossible with the war seriously affecting the country’s economy.

“Both Sombath and I, we had come from a generation of students which were anti-war. We were really appalled by the severe bombing which was going on. Our interest was to see peace returned to the people of these nations and it is up to them to build their nation. I guess we were idealistic.”

Their idealism was shattered...For unlike in fairy tales with happy endings, Sombath and Shui Meng, happy though they were in their togetherness, did not live happily ever after. Chilling indeed was Shui Meng’s testimony about how the tragedy occurred on that fateful night when both of them were driving each in their own vehicles. Suddenly she realized that Sombath was no longer following her. When Sombath failed to return home, she became worried. Hence, she had to report Sombath’s disappearance to the police. To their utter shock, a CCTV footage vividly captured the very act of Sombath’s ED in front of the police post. While the police did not originally give a copy of the footage to her, it allowed Shui Meng and family to record it.

One of Sombath’s colleagues shares that when Sombath disappeared, the whole society reacted in fear. People, even the young did not want to talk about it. The film emphasizes that “Sombath’s ED stunned the world.”

In the Universal Periodic Review of the UN Human Rights Council in Geneva in January 2015, many states and NGOs expressed serious concerns on the disappearance of Sombath and recommended to Laos to leave

no stone unturned to find the truth about the disappearance and to return Sombath safely to his family. The State of Laos, however denied responsibility for the disappearance of Sombath, and promised to conduct the necessary investigation as to what happened. To quote the representative of the Lao Government to the United Nations in Geneva: “The missing (sic) of Sombath Somphone is shocking news for Lao government. We have been wondering why he went missing exactly during this time. I would like to confirm that the Lao government has never had any negative attitude toward him. His missing (sic) is concern by the Lao government like the missing (sic) of any Lao citizen. Some organizations even made accusations that the Lao government might have been involved in the missing (sic). This accusation can be refuted by referring to the mere fact that the incident happened in front of a police CCTV camera and the police cooperated sincerely with his wife and relatives, allowed them to view and record the CCTV footage. I would like to give assurances that the concerned authorities of the Lao PDR are still seriously conducting their investigation and will continue to do so.”

Five long years have passed since the ED of Sombath. Despite the outrage from the human rights community at the regional and international levels, Sombath has not returned.

The Metamorphosis

From an ordinary citizen who was looking forward to happy retirement years with Sombath, Shui Meng has transformed herself to a staunch human rights defender who indefatigably continues to search not only for Sombath but also for thousands of other victims of ED in Asia and the rest of the world. Shui Meng’s own words reflect her conviction that she is not alone in the struggle. “In the eyes and faces of the family members of the victims, I see

myself. Their eyes reflect the same sadness, the same desperation; their faces etched with the same anxiety and worries – all of which probably unnoticed except by those who share the same experience. Yet, in each person's eyes, I see the same glint of determination to continue to seek answers for what happened to their loved ones, and information of their whereabouts and their status. And in their faces are etched the fearlessness of those who already have nothing left to fear, but only the courage and will to continue the struggle for truth and justice for their loved ones. When we are together, we don't need to talk; we just need to look at each other and hold hands and experience our common fate and common hope.”

This author is fortunate to be with Shui Meng in a number of occasions in Indonesia, Morocco, Philippines, South Korea, Sri Lanka, Switzerland, Thailand during these last three and a half years. Shui Meng is one of the most tireless family members of the disappeared the author has encountered. Parallel with the equally indefatigable *Madres de Plaza de Mayo-Linea Fundadora* and the *Abuelas de Plaza de Mayo* of Argentina, she is leaving no stone unturned first in the search for Sombath and later, for many other disappeared people in many parts of Asia. She is a very active individual member of AFAD who is contributing in large measure, to the collective fight for truth and justice.

The Documentary's Value in the Search for Truth and Justice

The documentary is dedicated to all the victims of ED. It is also a major contribution to revealing at least a part of the truth about the disappearance of Sombath. What really happened to him? No one knows but the perpetrators and the mastermind. The international community continues to storm

the State of Laos to bring Sombath back. But the latter remains deaf to the nagging question: Where is Sombath?. As the case of thousands of *desaparecidos*, it is unlikely that the truth will be known in the near future. But with the courage and determination of Shui Meng, as that of the other families of the disappeared, truth will eventually be revealed; justice will emerge triumphant.

The documentary imparts to people of all walks of life the cruelty of the crime of ED, which continues to occur in varying contexts: of poverty and social injustice; of dictatorships and other forms of authoritarian regimes; struggle for independence, of war on terrorism, war on drugs. In the case of Sombath, it was perpetrated in a communist state against a man who could have greatly made a further difference in the lives of the Laotian people, especially those of the farmers with whom Sombath identified.

When asked about the definition of poverty, Sombath said that its international definition is limited, i.e., if one has an income of less than two dollars per day, s/he is poor. For him, poverty means “poverty of the body, the heart and wisdom.” If our development can help people rid themselves of the three elements and achieve a balance, we will have happiness that is lasting; a culture that is stable and a development which is sustainable.” Had he not disappear, Sombath could have brought the Lao people closer to the realization of his dream of a lasting happiness. The documentary, therefore, presents how ED frustrates the individual dream of a person and the collective hopes and aspirations of the family, the community and the larger society.

Sombath's dream of lasting happiness has been shattered. It is for those who are left behind to bring back the broken pieces of this dream and realize it in the not-so-distant future for the sake of his beloved people of Laos.

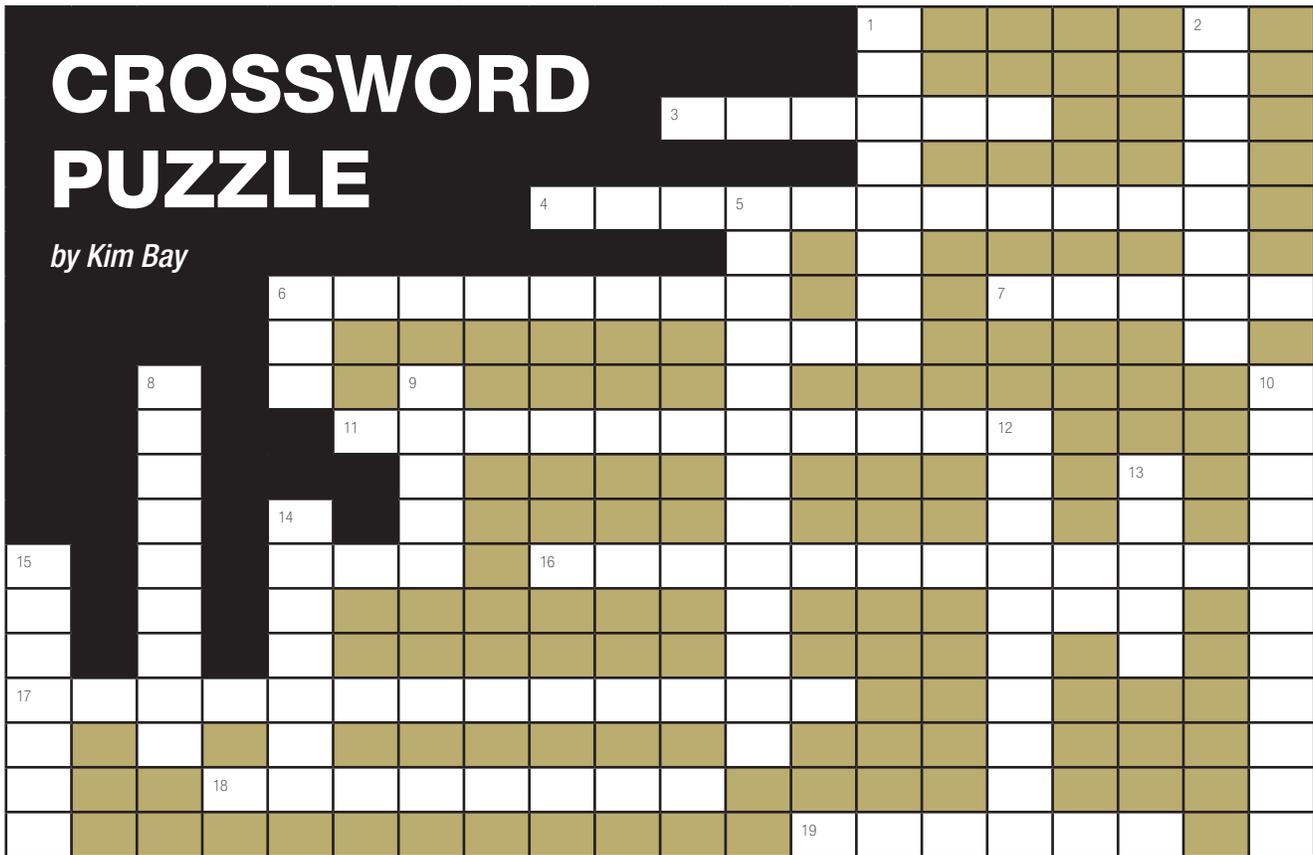
Mary Aileen D. Bacalso is the current secretary-general of the Asian Federation Against Involuntary Disappearances. As then Co-Chairperson of the Families of Victims of Involuntary Disappearance, she led the formation of AFAD in 1998. For her commitment to the cause of the disappeared, the government of Argentina awarded her the Emilio F. Mignone International Human Rights Prize in the *Palacio de San Martin*, Buenos Aires on 10 December 2013.

“When we are together, we don't need to talk; we just need to look at each other and hold hands and experience our common fate and common hope.”

– Shui Meng Ng

CROSSWORD PUZZLE

by Kim Bay

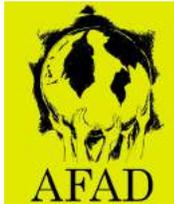


Across

3. The International Day of the Disappeared is on the 30th of _____.
4. AFAD regularly commemorates the International Week of the Disappeared, the International Day of the Disappeared, and the International Human Rights Day. These are known as AFAD’s _____ activities.
6. The International Convention for the Protection of All Persons from Enforced Disappearance is one among UN’s core international human rights _____.
7. The abbreviated name of the larger network of organizations that deal with enforced disappearances.
11. The AFAD _____ is based in Quezon City, Philippines.
16. Beyond legal reparations, victims of enforced disappearances are in need of _____ support.
17. The act of tallying cases and systematizing these data; important in the work for the cause of the disappeared.
18. One of the main programs of AFAD through which calls for justice are made in the public square
19. A city in Switzerland where most UN Human Rights Council Sessions are held.

Down

1. Number of AFAD Member Organizations
2. _____ of the disappeared are victims too, not just the disappeared themselves.
5. AFAD envisions a world without _____.
6. How many subregional councils does AFAD have?
8. In 2016, the Taiwan Foundation for _____ awarded AFAD in recognition of its work on human rights.
9. “Truth, Justice, and _____.”
10. Another term for ‘enforced’
12. Family reunifications have been a regular occurrence in the last three years in this country; this country is home to one of AFAD’s Member Organizations.
13. _____ Untold; From _____ to Courage
14. A city in Sri Lanka where the most recent AFAD Congress was held.
15. “Beyond Tears and _____”



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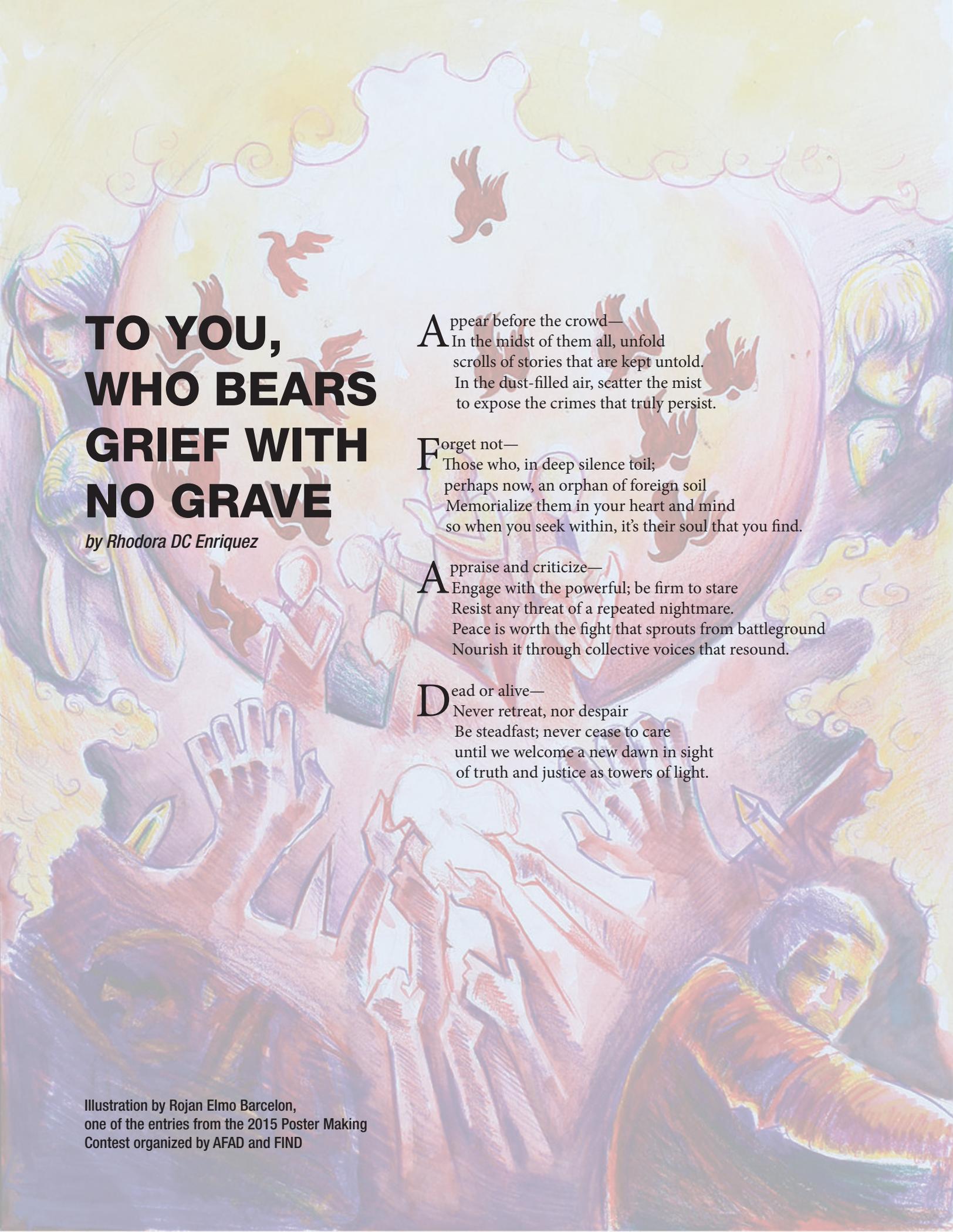
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TO YOU, WHO BEARS GRIEF WITH NO GRAVE

by Rhodora DC Enriquez

Appear before the crowd—
In the midst of them all, unfold
scrolls of stories that are kept untold.
In the dust-filled air, scatter the mist
to expose the crimes that truly persist.

Forget not—
Those who, in deep silence toil;
perhaps now, an orphan of foreign soil
Memorialize them in your heart and mind
so when you seek within, it's their soul that you find.

Appraise and criticize—
Engage with the powerful; be firm to stare
Resist any threat of a repeated nightmare.
Peace is worth the fight that sprouts from battleground
Nourish it through collective voices that resound.

Dead or alive—
Never retreat, nor despair
Be steadfast; never cease to care
until we welcome a new dawn in sight
of truth and justice as towers of light.

Illustration by Rojan Elmo Barcelon,
one of the entries from the 2015 Poster Making
Contest organized by AFAD and FIND