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ON THE ROAD TO RATIFICATION



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Editorial

Welcoming the Entry into Force of the Convention by Mugiyanto

Eighteen States have ratified the UN Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as The Convention). Of these eighteen States, only 5 have recognized the competence of the Committee on Enforced Disappearances (CED). Of the parties, only two are Asian, namely Japan and Kazakhstan. It signifies more work for the Asian Federation Against Involuntary Disappearances (AFAD) and the rest of the international movement against enforced disappearances not only to achieve the minimum number of 20 ratifications for the entry into force, but also to have more States recognize the competence of the CED and to put more Asian States on board. The ratification by Asian States is important because it is in their region where the highest number of cases of enforced disappearances has been submitted to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) in the last few years.

The AFAD, which conducted a lobby tour to some Asian countries such as the Philippines, Indonesia, Timor Leste, Thailand, India and Nepal during the last six months, received initial positive feedbacks. All government authorities that the Federation met, except for those in India, have been supportive and already undergoing initial processes of ratification. Indonesia and Thailand are formulating academic papers toward ratification. The Philippines and Nepal are in the process of adopting national legislation on disappearances to serve as enabling mechanisms for the treaty's implementation. In the Philippines, President Gloria Macapagal-Arroyo, whom leaders and members of the Families of Victims of Involuntary Disappearances (FIND) and AFAD met, promised to sign the Convention before her term would end in June 2010. Timor Leste, through President Jose Ramos-Horta whom the AFAD lobby team met in Dili in November 2009, said that had he been informed about the Convention earlier, Timor Leste would have been a party.

Although until now, Timor Leste has not yet ratified the Convention, some processes are being done toward ratification. Worth mentioning here is that Timor Leste is one of the few Asian countries which is a party to the Rome Statute of the International Criminal Court. The governments of Timor Leste and Indonesia are also in the process of negotiating the establishment of a follow-up institution as recommended by the joint Truth and Friendship Commission (TFC). It has been recommended that both governments establish a commission on missing persons to identify the missing and disappeared persons in Timor Leste during the Indonesian occupation. Moreover, on 28 September 2009, the Indonesian Parliament recommended the government to ratify the Convention.

If the situation develops accordingly, the Convention would enter into force within the first half of the year 2010. This, of course, requires the broad and active participation of civil society all over the world in promoting the Convention to States. When the entry into force of the Convention is achieved, the struggle against one of the worst human rights violations ever practiced, which "turns humans into non-humans" (as Jeremy Sarkin, chair of the UN Working Group on Enforced or Involuntary Disappearances said on the 30th Anniversary of the body's creation), will be entering a new stage. There will be a new source of hope for the *desaparecidos*, their families and the greater society.

The entry into force of the Convention also signifies that the long-drawn struggle against uncertainty and despair of millions of family members of disappeared persons in the whole world are getting closer to its direction. The world free from enforced disappearances shall be realized in the not-so-distant future.

More power to the families of victims!

Ratify the Convention NOW!

Greetings and Best Wishes for the New Year!

Many thanks for your August '09 edition of "The Voice." So full of the protest and struggle for a "world free from disappearances." The articles by Kopila Adhikari and Edith Burgos express the desperate situation of family members, especially the wives of forced disappeared. How cruel when society blames the victimized families.

You are tireless in pursuit of legislation to back up the justice of your and our cause and to preserve the memory.

Peace and love,

*Peter C. Hinde, O'Carroll, Betty A. Campbell, RSM and
Emelia Requenes, CT*

ON THE ROAD TO RATIFICATION

<http://gregrob.ca>

by Mary Aileen D. Bacalso

The Voice of the Voiceless

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

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

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

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

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



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

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

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

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

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

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

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

Marching in Step Toward a Common Direction

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

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



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



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

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

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

Concrete Campaigning and Lobbying

Starting September 2009 and ending January

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

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

Indonesia

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



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

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

Timor Leste

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

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

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

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

Thailand

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

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

The team also conducted a meeting with



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

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

India

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

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

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

Nepal

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



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

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

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

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

Philippines

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



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

Joint efforts of AFAD and FIND to follow



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

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

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

Prospects

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

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



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

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

The Truth shall set us all free!

1 *Ibu* is an Indonesian term for Madam.

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

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

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

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

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



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

Half Widows and Orphans

- A Way Forward in Islamic Jurisprudence

by Khurram Parvez

The International Day of the Disappeared is commemorated every year on 30 August. More than 8,000 people have been subjected to enforced disappearances in Jammu and Kashmir since 1989. The government acknowledged nearly 4,000 disappeared persons in the state.

The survivors, particularly half widows and orphans, are facing multiple problems. To deliberate over the plight and rights of half widows and to ponder over the orphans' inheritance rights, the Association of Parents of Disappeared Persons (APDP) held a seminar, entitled "**Half Widows and Orphans - A Way Forward in Islamic Jurisprudence and the International Treaty Against Disappearances**" held on the International Day of the Disappeared. Islamic scholars and civil society leaders were invited.

The personalities and Islamic scholars invited were Mufti Azam Bashir-ud-din Sahab, Moulana Yaqoob Sahab of Jamait-e-Ahlihaadees, Moulana Mushtaq Sahab of Baramulla, Molvi Yaseen Sahab of Budgam, Mr. Gautam Navlakha, Dr. Altaf Hussain, Dr. Mubarik Ahmad and other civil society members.

Mr. Zahir-ud-din, the moderator, stated that he requested different NGOs to take half widows under the

care of their organizations, but they refused by saying there are no such aims in their Constitution and By-laws which oblige them to help the half widows. He said that nobody is ready to help them. He prefixed a request in the program that the executive members of APDP with other personalities participating in the program constitute a committee for fund-raising in order to help orphans. He said that this is our obligation.

Molvi Mohammad Yaseen Sahab of Baramulla commenced the first session. He said: "When we observe Quran, there is not a single chapter mentioning widows and orphans. In Allah's book, it is clearly written that we should extend a helping hand. We will try to develop a consensus so that we can initiate a step for helping survivors. There are always debates about the victims but there should be something practical."

Prophet Mohammad (SAW) said, "If you keep your hand on an orphan, you have kept on me, if you are feeding an orphan in your home, you are feeding me."

Mufti Azam Bashirudin Sahab's Narrative on the Issue of Half Widows and Orphans

In view of the Quran and Sunah, it was discussed how Ulamas has projected Islam and has made society



On the 2009 commemoration of the International Day of the Disappeared, family members in Kashmir join the world's families of the disappeared in honoring their loved ones.



Maulana Showkat Sahab shares his wisdom regarding the half widows' problems. (©APDP)

abide by these norms. Then society accepted this as a law known as Shariah. This law mentions women's rights over men, minors' rights over parents, one brother's rights over another and one neighbor's rights over another. The Shariah has, in different perspectives, explained the norms of inheritance and norms of marriage and remarriage.

In our state, there is a burning issue of disappeared persons (Arabic = Maqood-ul-Khabar - means whereabouts of a person is unknown, whether the person is dead or alive, where is the person? what he is doing?). If a person has disappeared, he left his children behind and there is none who can take care of their well-being. Shariah said that we have to understand what is to be done to the destitute. About 95% of Muslims of the world who follow the directions of Imam-e -Azam Hazrat Umar-e-Farooq (RA), but some of his directions are not accepted by some people, not because they are wrong but because it is interpreted by other schools of thought like Imam-e-Shafi (RA), Imam-e-Malik(RA), Imam-e-Ahmad bin Hambal. These are basically four schools of thought which have interpreted Islam and have given their several interpretations of Shariah. By virtue of our obligation, we have to abide by all these schools of thought.

Imam Azam said that a woman has to wait for ninety years before she remarries if her husband has disappeared. But the other Imams question the length of the period. The Imam Maalik's school of thought provides that if a married person will be missing for 4 years and there would be no clue of the person's status even

after proper investigation, then, the Qazia Shariah or Mufti (religious scholar) will cancel the person's marriage and the person would be considered dead, even if the person might still be alive. When Qazi Shariah will declare the disappeared person as dead, then the half widow has to wait for four months and 10 days and after this, she can remarry.

In Jammu and Kashmir, enforced disappearances started in the 90's. Thousands of disappeared persons left behind their relatives, e.g. father, mother, brother, sister, wife and children.

"If the husband of any woman is disappeared, I request her to go to Qazi Shariah and seek permission for a second marriage. Unless or until a Qazi would not give his verdict about the whereabouts of the missing person after proper investigation, a woman cannot remarry.

However, there are state laws as Marriages Acts which provide that a woman has to wait for seven years since the disappearance of her husband. According to the Act, a disappeared is declared dead after 7 years of being disappeared. There is a contradiction between the State law and norms of Shariah, but according to our religion, norms laid down in Shariah will prevail over State Laws."

"As per the property of the disappeared person, it cannot be divided or distributed until after ninety years. But if the person would have children, then the property would be distributed among them. In case the disappeared person would be living with his father, under such circumstances, the power of distribution of property lies with the father. The children of the disappeared



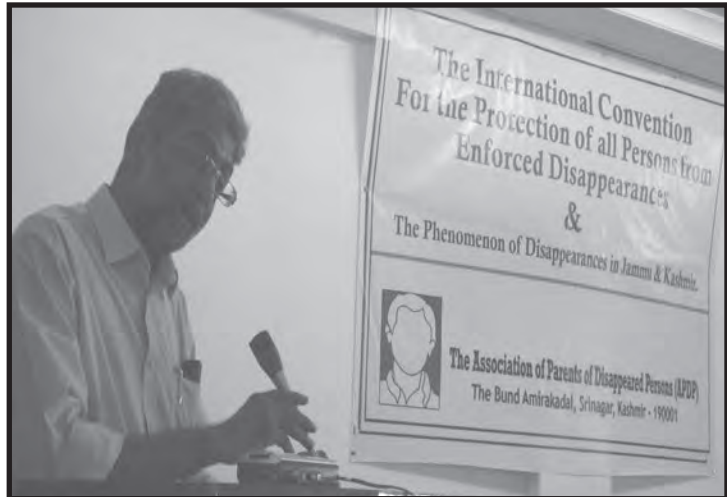
Muhammad Iqbal Kumhar contributes to the inputs on the topic of half widows. (©APDP)

cannot claim property from their grandfather. But if there would be involvement of other relatives, in that case, the issue of property would be kept pending.”

Bashir-ud-din further said: “If APDP constitutes a committee for the welfare of the survivors of the disappeared persons, we would appeal for people to come forward and donate for the welfare of the survivors of the disappeared.”

While speaking about the problems and inheritance rights of half orphans, Moulan Yaqoob Sahab said: “It is really great that people have the concern with the destitute. In the Islamic way of life, a person should not only be concerned with his problems but he should also look into his surroundings and be concerned with other people’s problems. A person should contribute to the resolution of the problems of the victimized. Sahab also appreciated the initiative of APDP in organizing such kind of seminars and in fighting for the rights of survivors of disappeared persons.

On inheritance of half orphans, he said: “If a person is disappeared and he left behind his children, the primary responsibility of taking care of these half orphans falls on their grandfather. Islam says that the grandfather has to look after his grandchildren and has to provide them with all necessary things including education. Ulamas says that even if the orphans are not entitled to the inheritance of their father’s property but under such complex circumstances, it is obligatory that a grandfather has to inherit something in favor of his grandchildren. But it is sad when their orphans’ grandfathers deprive them of everything and oust them from their families. This is



Gautam Navlakha presents his insights on the issue from the civil society’s point of view. (©APDP)

not permissible in Islam. The close relatives have to take care of the inheritance rights of orphans. If a half orphan’s grandfather is dead, the uncles have to look after and contribute to their education and ensure their good future.

OPEN FORUM

Question 1: Yaseen Malik of Zandfaran Baramulla and Ashiq Hussain of Natipora Srinagar asked: A half widow remarried 17 years after her husband’s disappearance. But if her first husband would return, would the woman be wife of the first husband or the second husband?

Mufti Azam Bashir-ud-din replied: If the half widow had approached Qazi Shariah and have sought permission for remarriage, then she would remain the wife of the second husband even if the first husband

would come back after the remarriage. But if the half widow has remarried without seeking permission from Qazi, the second marriage would not be valid. The woman would remain wife of the first husband. Seeking permission from Qazi Shariah is compulsory for remarriage, otherwise the remarriage would be invalid.

Question 2: Yousuf Kumhar of Banihal questioned: A half-widow with her two children, one daughter and one son lives with her two brothers-in-law. She has no source of income. Due to such conditions, the brother of the half widow wants his sister to stay at her maternal house until her son grows up. But the two sisters-in-law of the half widow argued that she would be deprived of the property of her husband if she migrates to her maternal house. Her sisters- in law argued on the pretext that they have



Kashmiri women, especially half widows, bear the brunt of the cruel effects of enforced disappearances. (©APDP)

to take care of the half widow's property if she stays at the maternal house.

I want the scholar's (Ulamas) decision on this matter. I want to know if the half widow will migrate to her maternal house, will she really be deprived of her property or not?

Mufti Azam Bashir-ud-din replied: If the half widow is young and insecure at her in-laws' house, she can stay at her maternal house along with her children. According to Shariah, the brother-in-laws of a half widow cannot deprive her from her husband's property, even if she prefers to stay at her maternal house.

Question 3: Sajad Ahmad of Alamgari Bazar, Srinagar asked: If a person has been subjected to enforced disappearance and his wife has waited for 4 years, 4 months and 10 days and would have remarried after seeking permission from the Qazi Shariah, but soon after the remarriage, her disappeared husband who would have been forcibly disappeared, would come back, can the disappeared person claim his remarried wife? How will he defend his case of enforced disappearance before Qazi Shariah?

Mufti Azam Bashir-ud-din replied: Imam Malik (RA) has said when 4 years would pass and the half widow has no clue about her husband's fate, she could approach Qazi Shariah and get a consent for remarriage. According to Shariah, if four years have passed since the disappearance of a person, Qazi Shariah could declare the person dead and then direct his half-widow to wait for 4 months and 10 days if she wants to remarry. Even though her husband would have been kept under unlawful detention or whether her husband would be alive at any place or would have died, her remarriage would be considered valid if she sought the permission from Qazi Shariah. If her disappeared husband returns after her remarriage, he cannot claim her as his wife.

Mufti Bashir-ud-din, while answering the question, added: "According to legal norms, a divorced woman remains the wife of the husband who divorced her until she remarries, but in Holy Quran, it is mentioned that the divorced woman remains wife of the husband for 3 months and is entitled to maintenance for the same period of time. Our courts in the matter of divorce rely on the case ruling of Shah Bano vs. Mohammad Ahmad, where it was said that a divorced woman remains wife of the first husband till she remarries. There is a contradiction between court orders and the Shariah decision. If a complication may arise in such



Sahil Turiq makes his transparent views and hopes to help the half widows. (©APDP)

circumstances, the Shariah decision would prevail and preference would be given to it."

Zahirudin suggested that Ulamas contribute a pamphlet containing norms on rights of survivors of disappeared persons. He suggested that the pamphlet be published by the Ulamas themselves because the APDP cannot afford the cost.

International Convention for the Protection of All Persons from Enforced Disappearance and its Relevance to the Phenomenon of Disappearance in Kashmir

The session started with the speech of Dr. Altaf, a renowned state pediatrician. Dr. Altaf said: "This part of the program is about the persons who were forcibly disappeared by security agencies. As we know from the last 20 years, 8,000 – 10,000 people were subjected to this crime. If a person disappeared, he leaves behind agonies to his family members. If he is alive, how is his physical, mental and spiritual condition? Does he get food? Is he away from calamities? If the disappeared is in bad health, does he get medication and other basic facilities? In case the family presumes the disappeared as dead, the family gets haunted as to how their beloved had died, if he had indeed, died or was killed, was he tortured, strangled or shot to death? Were his last rites performed or not?"

He further said: "If a person is killed, the suffering remains for a short period of time while if a person is disappeared, the survivors suffer endlessly and this fact continuously traumatizes them."

"A lot of work is being done internationally to bring an end to disappearances. A convention against

disappearances has been passed by the UN in 2006. India has signed this convention but has not ratified because if it ratifies, there would be pressures if more disappearances would occur. Internationally, India claims protection of human beings and zero tolerance to human rights violations. But in Jammu and Kashmir, India continuously disappears people who demand for their fundamental rights. We have to campaign so that the Convention would be implemented and there would be an end to disappearances." concluded Dr. Altaf.

Narrative of Mr. Gautam Navlakha, Editor of Economic and Political Weekly, New Delhi:

Twenty years of conflict have passed and nothing has been done about the phenomenon of disappearance in Jammu and Kashmir. It is only the APDP which is campaigning against the issue and is disseminating information about the disappeared.

In 2006, the UN Convention for the Protection of All Persons From Enforced Disappearance was adopted by in the General Assembly. The Convention provides us an opportunity to campaign more for justice. The convention explains what is enforced disappearance. How grave is this violation?

Enforced disappearance is a crime against humanity and the Convention provides protection from it. Unfortunately, the APDP cannot evoke this convention because in Art. 31, it is laid down that the committees constituted for campaigning against the disappearance cannot file a complaint or forward information against the country of their origin if the country would not be a signatory to the convention. But we should not lose hope because the Convention and other international norms provide us space to take our issue forward to the international community.

We should not forget that in the UN, the issue of Kashmir has been registered in 1948.

At that time, a resolution was passed providing that the Kashmiris can decide on their own future, which signifies the importance of Kashmiris in the UN. However, India will not agree on the Convention because it has been disappearing people continuously and have disappeared more than 8,000 Kashmiris in the last twenty years.

For more than fifteen years, the APDP has been demanding that the government hold an independent inquiry commission to investigate cases of disappearance in Kashmir in order to divulge their exact number and to let the family know the truth. So far, not a single ruling party has helped because the state government claims that it is an elected government but in fact, it works on the dictates of the central government. The state government can arrest or pick up anybody irrespective of age, involvement or association but cannot release a single person because the whole power lies in the central administration of India. Recently, the Home Department of State Government during the assembly session acknowledged 3,428 cases of disappearance in the state. There is a judgment which says that the government only claims and acknowledges those facts which it would have investigated and surveyed properly. So it is clear that the state government would be having the records of the 3,428 cases. We want it to provide information on the fate of these victims.

"Twenty years of conflict have passed and nothing has been done about the phenomenon of disappearance in Jammu and Kashmir..."



Parvez Imroz speaks about the meaning of The Convention Against Disappearances to the lives of Kashmiri people. (©APDP)



The treaty against disappearances also provides that a person, after arrest, must be presented before the court within twenty-four hours and a report must be lodged in the police station. But in Kashmir, people are arrested without any warrant. No reports are filed and the victims are not presented in court within the given period. Eventually they disappear.

Dr. Mubarik Ahmad, a social activist, also spoke over the issue of disappearance in the state. He encouraged the efforts and campaigning of the APDP.

Narrative of APDP Legal Advisor, Parvez Imroz:

India has signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007 along with three other Asian states, e.g. Japan, Mongolia and Azerbaijan, among other states in other regions. In India, disappearances have remained a national phenomenon. In north east states, e.g. Mezoram, Nagaland, Manipur, Assam, the insurgent groups have been, for decades, fighting for their political rights. India imposes on these states the Armed Forces Special Powers Act, which gives extraordinary powers and complete impunity to the army and security forces. In north east state in Punjab, violent uprising against Indian state has continued and thousands of members of Sikh community are being subjected to disappearance. In district Amritsar alone, more than two thousand Sikhs disappeared according to the Central Bureau of Investigation(CBI) which was ordered by the Indian Supreme Court to investigate on the matter. The CBI found that the bodies had been cremated but none of the perpetrators has been punished.

In Kashmir, more than 8,000 people have been subjected to enforced disappearances and the institutions like Judiciary, State Human Rights Commission (SHRC) and the National Human Rights Commission (NHRC) have failed to prevent it or identify and punish the perpetrators. The government of India has not allowed the UN Working Group on Enforced or Involuntary Disappearances and even Amnesty International to visit India or Kashmir. However, the Working Group on disappearances had been invited to other countries, e.g. Sri Lanka, Thailand, Philippines and Nepal.

The signing of the international treaty against disappearances is not enough unless the government ratifies it. India will not be willing to ratify unless there is sustained campaign. Only an international campaign can pressurize governments to ratify the convention and to give justice to all *desaparecidos*.



Khurram Parvez, an undaunted champion for peace, defends human rights in war-torn Kashmir, encourages young people to pursue peaceful approaches to change and advocates for families affected by the violence. While he was a university student in Kashmir, Khurram witnessed the distress and hostility of students accustomed to a lifetime of violence. He was a recipient of the 2004 Reebok Human Rights Award. He works for the AFAD as an alternate Council member representing the APDP.



Toward a Genuine Movement of the **Victims of Human Rights Violations**

by Ari Yurino

Since 1998, Indonesia has been moving into the democracy transition era. However, twelve years have passed, yet human rights enforcement has not yet been realized. Twelve years of democracy transition merely produces a more profound grip of neo-liberalism,¹ political power and continued impunity of human rights violators. Four presidents have occupied the palace and three elections have been carried out to appoint legislators. But it only means transfer of power, but does not provide benefit to the people..

During the last election, Soesilo Bambang Yudhoyono (SBY) was re-elected the President of the Republic of Indonesia (RI) for the second term with 65 percent vote. Competed political parties at the election subsequently support the SBY administration, with distributed ministry and other government posts as the reward. It is a reality taking place in Indonesia following such an aggressively promoted democratic election, which ends up in a regime revival. Certainly, no political parties would oppose the SBY regime, as they wish to play at the economically and politically comfort zone. It is the so-called CARTEL OF POLITICAL PARTY, a combination of political parties – similar to companies – having characters of economic and political monopoly as carrying capacity of a regime of neo-liberalism.

Apparently, the second chance of presidency has not yet provided assurance to pro-victims human rights

enforcement. This is reflected in the recommendation of *National Summit* carried out on 29-30 October 2009 in Bidakara Hotel, Jakarta soon after SBY was inaugurated as the President of the RI. The *National Summit* was a meeting to formulate Indonesia's strategic program planning both within the president's 100 days and the next five years. However, none of substance of the strategic plan includes the resolution of the gross human rights violations of the past. The *National Summit* only promised the making of new regulations and bureaucracy trimming or the creation of new bureau/agency planned to cover 15 areas, which include (1) eradication of judicial mafia; (2) revitalization of defense industry; (3) counter-terrorism; (4) power lines handling; (5) increasing food production and tenacity; (6) revitalization of fertilizer and sugar manufacture; (7) reform of complexity regarding the use of land and spatial; (8) increasing infrastructure; (9) increasing loan credit for micro, small, and medium businesses; (10) climate and environmental change; (11) funding; (12) health reform by changing the society's paradigm; (13) education reform; (14) disaster response preparedness; and (15) coordination of central and provincial government.

During the first five years of the SBY administration, completed cases of human rights violations investigated by human rights national committee ended up as piles of archives in the Attorney General's Office. During his last five years of power,



Victims-turned-defenders, Indonesian activists cry for justice.

none of the cases of gross human rights violations was brought to court. The trial of Munir's case, which attracted domestic and international public attention, resulted in the acquittal of the alleged perpetrators. Such facts show that the commitment to human rights protection and enforcement which become the government's rhetoric is merely a political cosmetic for the ruler's imaging interest, and not for fulfilling justice for human right victims and their families.

The enforced disappearance of activists in 1997/1998 urged the Parliament in its plenary meeting to come up with the following recommendations that contain: (1) To recommend to the President the establishment of an Ad-hoc human rights court; (2) To recommend the President and the entire government agencies and related parties to immediately search for the disappeared 13 activists; (3) To recommend the government to rehabilitate and compensate the families of the disappeared; (4) To recommend the government

to immediately ratify the UN Convention for the Protection of All Persons from Enforced Disappearance and support to stop forced disappearances in Indonesia. However, those recommendations, to date, are stagnant as no further follow-up actions have been conducted to implement them.

On the other hand, the pace of neo-liberalism hits the victims' families who have been impoverished by the human rights violation they have been through as well. Such a condition is worsened by the State's policy that blinds itself from the right to recover and rehabilitate victims. Legal procedures and laws that flow into the State's reluctance to fulfill its responsibility towards victims are real evidence of the government's anti-justice and anti-victims stance.

Experience fortifies organizations of human rights violation victims

A. The IKOHI Federation of organizations of victims of human rights violation and their families

From the above-mentioned facts, the State's power to hold its responsibility to fulfill justice for victims of human rights violation and their families in Indonesia is certainly needed. The *IKOHI* as organization of victims of human rights violation and their families in Indonesia continues to encourage the victims' awareness to get involved in organizations of human rights violation at the provincial level. In addition to the organization's reinforcement, capacity building of human rights violation victims and their families in running their organizations and laying a foundation of public support is also needed.

The *IKOHI* is an organization of victims of human rights violation and their families. At 7-9 December 2009, victims of human rights violations and their families who join the *IKOHI*, carried out the 3rd Congress. The Congress, participated in by victims of human rights violation across Indonesia, from Aceh to Papua, and Timor Leste, provided the agenda of organizational reinforcement and efforts to pioneer the victims' rights fulfillment, which were the main issue discussed within the 3 - day congress.

The *IKOHI* as organization of victims of human rights violation and their families in Indonesia has



Empowerment of families of the disappeared is *IkoHI*'s reason for existence.

limitations in managing and coordinating its network at regions. Issues on coordination and communication were of hot debate during the congress, considering that a developed communication between the *IkoHI* in Jakarta and district network of victims' organization is less effective. However, this was solved by the agreement to modify the organization - from an association to a federation. It impacts on its membership, which previously was based on individuals, now organizations. By this, it is also expected the clear upcoming coordination between *IkoHI* in Jakarta and network of victims' organizations at the regional level.

Other interesting matters occurring besides the modification of organization type was the enlargement of new contacts who are prepared to become part of the *IkoHI* or build victims' organization in their regions, such as Polewali Mandar (West Sulawesi), Samarinda (East Kalimantan), Kupang (NTT), and Palembang (South Sumatera). It is certainly complying with the effort to reinforce organizations of victims of human rights violations and their families in Indonesia in order to enlarge mass power.

In addition to the victims' organizational enforcement, it was also agreed that the *IkoHI* focuses as an organization of victims of human rights violations and their families in Indonesia. It is an effort to pioneer the fulfillment of the victims' rights. In this case, it refers to how recovery rights of victims and their families can be fulfilled. This will, at the end, distinguish the *IkoHI* from other organizations. To date, the *IkoHI* has actually possessed adequate means to attain recognition as organization of victims of human rights violation and their families that works

to independently fulfill recovery rights. Since 2005, the *IkoHI* has been providing counseling service to victims of human rights violation and their families to minimize the trauma resulting from human rights violations. This counseling service also refers to efforts of truth disclosure so that victims and their families are encouraged to reveal facts of what has happened during their incident regarding human rights violations.

Scholarship program to victims' families, in collaboration with AFAD, has become the *IkoHI* work focus for years. It is expected that the victims' families are able to continue their education to the highest level. Networks of victims' organizations in regions such as Aceh, Jakarta, Palu and Papua have received the benefit from this scholarship program.

Of all the discussion, the *IkoHI* has finally prioritized its works in 2 (two) programs - recovery and reinforcement and justice. Those programs are clearly familiar for the *IkoHI* based on its experience from 2006-2009. The *IkoHI* has always been focused on victims of human rights violations and their families.

Representation of victims in the *IkoHI* administration became a serious consideration in its 3rd Congress as well. This will clearly distinguish the *IkoHI* as organization of victims of human rights violations and their families from other organizations in Indonesia. In the 3rd Congress, Mugiyanto (chairman of the *IkoHI* 2006-2009 and survivor of activists who disappeared in 1997/1998) was reelected the Chairman of the *IkoHI* Federation 2009-2012. Wanma Yetty (family member of one of the Tanjung Priok victims) was elected General-



IkoHI members express camaraderie and commitment.

Secretary of the *IKOHI* Federation. It is expected for the incoming period that there be a larger composition of victims of human rights violation and their families within the *IKOHI* Federation. It is also the homework of the *IKOHI* Federation to build the capacity and capability of victims of human rights violation and their families to run their own organizations.

The 3rd *IKOHI* Congress was certainly expected to be a new beginning in improving and reinforcing the organization and pioneering rights of victims. It is not an easy task. High fighting spirit is needed in order for the *IKOHI* Federation to become the main driving force of the victims' movement in Indonesia.

B. Building organization of forced disappearance in Aceh

The previous similar experience was implemented in Aceh. As there are many cases of enforced disappearance taking place in Aceh during the period of military operation zone (*Daerah Operasi Militer—DOM*), martial law (*Darurat Militer—DM*) and civil emergency (*Darurat Sipil—DS*), there is a need to consolidate victims of forced disappearance and their families to fight for settlement of forced disappearance cases taking place in Aceh. From the very idea, the establishment of organization of victims of enforced disappearance and their families namely *Keluarga Ureung Gadoeh (Kagundah)* Aceh was realized. The meaning of the organization's name is: the families of the disappeared in Aceh.

The *IKOHI* attended the congress of the *Kagundah* establishment, which was carried out in 10-12 October 2009 in Banda Aceh. The congress was attended by 210 families of victims of enforced disappearance victims in Aceh, coming from 10 districts. The participants were so enthusiastic to attend and join in all congress sessions of the organization's establishment. It was due to the fact that the victims of forced disappearance and their families were not accustomed to join in organizations or even did not know about organizations. During the congress, they had the opportunity to learn, little by little, methods to establish and manage the organization.

The 3-day congress then decided Rukayah as Secretary General who will lead in 10 regions in Aceh in 2009-2012. To help coordinate from the central (at the province level) to district level, a presidium was established as representatives of each region and will become "the extension of the people's tongue" of regions.



Organizational strength lies in unity and solidarity.

The different organizations' establishment in each region was also decided, which will coordinate with its central organization at the provincial level.

In addition, it was also resolved that cases of enforced disappearance in Aceh be handed over to Aceh's House of Representatives (DPRA) for the follow-up actions. One of the *Kagundah's* proposition was to have the Aceh government immediately resolve cases of enforced disappearance taking place in Aceh.

It is certainly not easy to run this organization, considering the minimum experience of the *Kagundah* committee. However, their high fighting spirit and strong will to learn from other organizations will eventually write-off their weaknesses gradually. The *IKOHI* support to the *Kagundah* will not just end. The stronger region-level organizations of victims of human rights violation and their families will produce significant impacts to victims of human rights violations movement in Indonesia.

1 Neo-liberalism manages the State as free market for investment, the market for the use of workforce, to trade consumer goods, and hence change the function of the State's government only as the regulation maker which supports the free market. At the crisis, neo-liberal regime needs reformation of financial policy, free market management, and others through revision of regulation or the making of new regulations, followed by agencies establishment as guarantor and comptroller of regulations.



Ari Yurino is a member of the Staff of House of Justice of *IKOHI* Federation.

THE FIVE-YEAR OLD MUNIR CASE

Inadequate Progress Against Impunity

by Atty. Sri Suparyarti

The five-year efforts to resolve the case of Munir only show the lack of commitment on the part of the government to find out the mastermind. Now, after the acquittal of the last defendant, Muchdi Purwopranjono, he was released from prison through a court order on 31 December 2008. This problematic situation is also supported by the Attorney General who has not yet followed up the appeal for a case review.

After his release, Muchdi Purwopranjono filed a charge of defamation against *KontraS* Director, Usman Hamid. This charge was issued by the Indonesian Police Department. The charge letter mentioned that Mr. Hamid committed an act of defamation against Muchdi Purwopranjono for accusing the latter as the killer of Munir. Allegedly, Mr. Hamid has no right to tell the public who he believes as Munir's murderer, otherwise, he violates the Article 310 of the Criminal Code on Defamation.

Both issues are the new progress in the process of revealing the case of Munir in order to bring justice to the victim and his family and to the Indonesian society. The case of Munir is a test of our history, a test of other human rights violations which occurred in Indonesia in the past. The case of Munir has a strong relation with past abuses such as the 1997/1998 disappearance of activists and the massacre of Talangsari, Lampung in 1984. With the renewed mandate of the Indonesian president, will the Indonesian government pass this test?

This brief article attempts to look into the developments of Munir's murder and how far the government has concretized its avowed commitment to uncover the mastermind. Is the government serious in revealing the truth about the murder of Indonesia's strongest human rights defender? Is it really bent on resolving, once and for all, this internationally-condemned murder?

The Release of the Key Planner

After the punishment of the Garuda crew, Polycarpus, the pilot who was accused of administering the poison and later acquitted, was subjected to a case review by the Supreme Court. He was sentenced to twenty years of

imprisonment. While this conviction is a victory in the search for justice, it is not enough element to fully resolve the case, since the key planner still has to be punished. The other defendant was General Muchdi Purwopranjono, who, because of an alleged personal motive against the victim, was charged of killing Munir under the Article 55 point (1) 2 *KUHP* (Indonesian Criminal Code); of Article 340 *KUHP* or under Article 55 ayat (1) 1 *KUHP* of Article 340 *KUHP*.¹ To reiterate, the Attorney General hinted a personal motive of the killing due to an alleged personal revenge of Muchdi against Munir.² Then, in the explanation of this personal revenge, it was said that the murder was related to the activity of Munir when he was advocating the resolution of the enforced disappearance of activists in 1997 and 1998 where, at that time, Muchdi was one of the members of *Kopassus* (*Komando Pasukan Khusus* or Special Force Command) under the Rose team. Muchdi was known to be responsible for the action.³ Accordingly, when Muchdi was the Deputy V of *BIN* (*Badan Intelijen Negara* or State Intelligence Body), he was free to take revenge against Munir.⁴

The next role of Muchdi was to kill Munir. Polycarpus, a Garuda pilot, said to be a person known to Munir, was allegedly in the position to kill him. The relationship between Muchi and Polycarpus was identified from the position of Polycarpus as an organic agent who conducted intensive communications to



Muchdi Purwopranjono freed of all charges. (© Antara/ Ujang Zaelani)



Susilo Bambang Yudhoyono, 59, is a retired general and the president of Indonesia. In July 2009, he became the first Indonesian president ever re-elected, winning in a landslide. (© AP)

execute the murder plan especially on 7 September 2004. This, he did from the order of Muchdi that Munir be killed.⁵ As a non-organic agent, Polycarpus, of course would obey only with the handler.⁶ Then, Muchdi appointed Polycarpus as aviation security in Garuda in order to facilitate the execution of his plan to kill Munir.⁷ Besides, Muchdi also sent some money to Polycarpus which was taken from the funds of Deputy V of BIN.⁸

The letter of charge is clear in explaining the involvement of Muchdi to kill Munir. However, in the level of witnesses' examinations, some gave testimonies which were different from what they presented earlier when they were in front of the investigation team (*BAP* or police investigation files).⁹ Therefore, the credibility of the witnesses is questionable. In the process of examination by the police, it was clear that those witnesses were not under terror, intimidation or torture by the police.¹⁰ Unfortunately, the judges did not include the oral information about it as well as the audiovisual record which was produced by the team of investigators as part of their consideration when they conducted the witness examination.¹¹

Moreover, the judges tend to release some legal considerations to the advantage of the defendant. One of them could be seen from the fact that the judges could not consider the witness of Budi Santoso and As'ad who delivered their testimonies by reading the *BAP*. In fact,

their testimonies can supposedly be already considered and admitted as evidence by the judges to conclude that Polycarpus and Indra Setiawan are guilty. Additionally, when Muchdi told a different information regarding the meeting between Indra Setiawan, former president of Garuda¹² and the vice head of *BIN*, As'ad, the judges could not cross check those differences. A cross examination is relevant to adjust the information taken from Muchdi and Indra Setiawan.

SBY's Lack of Commitment

To note, during the first term of Susilo Bambang Yudhoyono (SBY) as president of Indonesia, he stated that Munir's case is a test of history, apparently showing a grand commitment to resolve the case. His act of establishing the fact-finding team to investigate the murder had facilitated the imprisonment of field

perpetrator, Polycarpus. It, however, took a long process before a case review could be reached. Perhaps, it could have been right when the next perpetrator was brought to the court that Muchdi Purwopranjono was convicted as part of the conspirators.

The so-called commitment of SBY in resolving the case diminished when the next perpetrator, Muchdi was brought to the court. The Indonesian president made a flimsy excuse that he had no control over court decisions. The trial against Muchdi started with poor quality of evidences shown by witnesses. The court rejected a number of witnesses who were already earlier covered in the front of the police (in *BAP*). There was no effort on the part of the judges to cross check the information coming from the witnesses and deeply uncover some important information from them.

It seems that the president does not want to intervene the court process. When Muchdi was released, there were no efforts on his part to review the case. Neither were there efforts coming from the Attorney General to appeal for a case review, unlike what was done with Polycarpus before. In the level of the police, little or no effort is being done to be active in the team of investigators in order to dig further new pieces of evidence to support the Attorney General to appeal for a case review. In this situation, it is expected that SBY



On 7 September 2009, exactly five years after the murder of Munir, Jakarta artist Toni Malakian published a cartoon to honor Munir. It depicts the late Munir, once again, inside a Garuda flight asking a flight attendant, "Sister, please give me another drink. This time, no arsenic please ..." (© 2009 Toni Malakian)

will supposedly order those institutions to conduct such efforts, since they are under his control.

During the second term of the presidency of SBY, having been reelected by a landslide majority, significant moves on his part to ensure the resolution of Munir's case could not yet be seen. First, there is no commitment in his speech inauguration as president of the country in front of the head of the People's Consultative Assembly (MPR) and People's Representative Council (DPR) regarding the issue of upholding human rights. Second, he did not make significant changes regarding the configuration of people in judicial institutions especially in the level of the Attorney General where there are several notes regarding the quality of letter of charge against Muchdi, especially on the quality of witnesses. Worse still, there is still no action from SBY to reactivate the team of investigators on the case at the level of the police.

On a positive note, there was an effort to examine and verify the evidence and the trial process of Muchdi's acquittal by the National Commission on Human Rights (*Kommas HAM*) in February 2009. The result of the examination showed that Mr. Muchdi's trial and the subsequent appeal by the Prosecutor had suffered from a number of misdeeds, including allegations of witness tampering; the prosecutor's unprofessional handling of the case; the failure of the district court judge to summon at least two key witnesses for the prosecution and the appellate court judge's lack of experience in reviewing criminal trials.

Defamation as a Consequence of Advocacy

Defamation as a consequence of advocacy of the case of Munir is used as a tool to stop one from speaking out about the case. A defamation case is being charged to Usman Hamid as the one who actively speaks about

the involvement of Muchdi in the murder. The case filed by Muchdi against Usman is based on the latter's alleged statement that Muchdi is the murderer of Munir.

In this context, defamation could be seen as a significant tool of the government to curtail the people's right to express their opinion. The police, as a government institution, uses the article in the criminal code (*KUHP*) to charge people of acts of defamation when they speak against other people who violate or are alleged to have violated the rule. It is regulated under the Article of 310 to 321 of *KUHP*. Regarding the case of Mr. Hamid, he is being charged under the Article of 310 and 311 of *KUHP*. With this, it is possible that he be punished for four years if the court so decides.



Usman Hamid, Executive Director of KontraS, accused of criminal defamation for seeking to investigate Munir's murder. (© AP)

It is clear that the trend of threatening human rights defenders has been changed from the kind of terror or intimidation to a criminal act of defamation. At the moment, it is not only Usman accused as an actor of defamation, but also the other human rights defenders who handle cases related to corruption. Two cases of defamation have already been released by the police against two staff members of Indonesia Corruption Watch (ICW) on their opinion regarding the corruption in the Attorney General's office.

While the case of Munir remains unresolved and impunity continues to loom in this country which boasts itself to be in a stage of transition from dictatorship to democracy, more human rights defenders are being persecuted. This is ironic considering that Indonesia is one of the founding members of the UN Human Rights Council and the seat of the Secretariat of the newly established UN Human Rights Body.

As SBY is mandated to be Indonesia's president for the second time, it is imperative for him to prove a breakthrough in the field of human rights.

1 See letter of charge of Muchdi Purwopranjono available at: <http://www.sahabatmunir.com/muchdi> (in Indonesian language).

2 See Monitoring of the court of Muchdi Purwopranjono available at: www.sahabatmunir.com/muchdi (in Indonesian language).

3 Ibid.

4 Ibid.

5 Op cit letter of charge of Muchdi Purwopranjono available at: www.sahabatmunir.com/muchdi (in Indonesian language).

6 Ibid.

7 Ibid.

8 Ibid.

9 The examination analyzes of statement of Muchdi, Kasum: p.1

10 Ibid, p.2

11 Ibid, p.3

12 Indra Setiawan is a former Director of Garuda who issued the letter for Polycarpus to board the plane taken by Munir from Jakarta to Singapore



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Hope's still alive for Disappearance Commission in Nepal...

After a chequered course of events jeopardizing the efforts to find the whereabouts of those disappeared during the decade-long conflict in Nepal and to provide victims retroactive justice and redress, the government of Nepal has once again shown a revived interest to form the much-hyped Disappearance Commission. In its latest efforts, the government, acting on some of the suggestions, put forward by a group of national and international human rights organizations, produced a revised version of the Disappearance Bill. However, the reservations of rights organizations still galore with the deliberate indifference of the government to make the bill on par with the 1 July 2007 verdict of the Supreme Court (SC).¹

The debate over establishing a disappearance commission in Nepal started immediately after the democratic renaissance of 2006. In the Comprehensive Peace Agreement signed between the then seven-party alliance government and the Maoists, both sides agreed to make public the whereabouts of those disappeared within 60 days from the day the accord was signed. Likewise in January 2007, the Interim Constitution of Nepal expressly mentioned "to provide relief to the

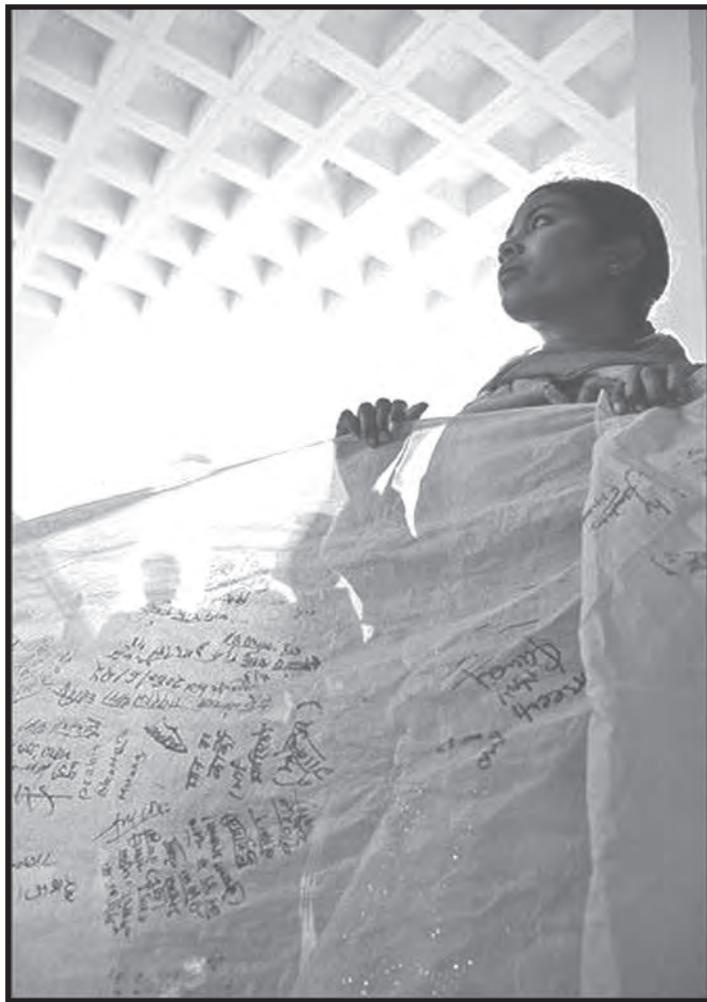
families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict." However, no concrete initiatives were taken to form the commission. Even after the momentous 1 July 2007 verdict of the Apex Court, the government made a half-hearted attempt in April 2007 to criminalize disappearance by registering a Disappearance and Abduction bill to amend the Civil Code in the Interim parliament. This step, according to the government, was a fulfillment of the Government's obligations under international human rights and humanitarian law, in line with the recommendations of the UN Working Group on Enforced or Involuntary Disappearance (WGEID) following its mission to Nepal in December 2004. However, the Bill was criticized by national and international human rights organizations on the grounds that it didn't fully meet applicable international human rights standards. Also the lawmakers of the legislature-parliament came down heavily upon the bill and put forward more than 130 proposals of amendments. Unfazed, the government constituted a three-member "High Level Investigation Commission on Disappeared Persons" headed by ex-justice Narendra Bahadur Neupane in June 2007.

Droit Ne poet pas Morier et disparaître

By Dhiraj Pokhrel

(Rights Cannot Die and Disappear)





A member of the delegation of human rights defenders, including families of the 'disappeared' holds the sheet that covered the fake 'body of justice', a symbol of Nepal's ailing justice system. The sheet was signed by those attending an event in Ratna Park, Kathmandu to mark the 5th anniversary of the killing of 15-year old Maina Sunuwar by members of the Nepal Army. (© 2009 Advocacy Forum/Robert Godden)

However, the commission became automatically defunct as various human rights organizations criticized the government's move as against the spirit of the 1 July verdict of the Apex Court.

Amid growing clamor from the victims and human rights organizations to establish the commission, the government formed a high-level coordination committee under the aegis of the Ministry of Peace and Reconstruction to prepare a draft bill on disappearances. However, the government again tried to double-cross victims and other stakeholders by deciding to establish the commission via an ordinance. Condemning the government's plans, Conflict Victims' Society For Justice (CVSJ – Nepal), the highest governing body of conflict victims across the country, submitted 1,460 signatures of victims nation-wide along with a memorandum to the Minister of Home Affairs and Peace and Reconstruction

Minister in March 2008. After the intervention, the government held the decision in abeyance leaving the victims as abandoned as ever.

As the government failed to rev-up the process for the formation of the commission, on the eve of the International Day of the Disappeared, the CVSJ-Nepal submitted a memo to the President of Nepal demanding immediate implementation of the momentous verdict of the Supreme Court in connection with the establishment of a Commission on Disappearances. Eventually on 15 November 2008, the Government of Nepal unveiled the much frantically-awaited draft bill on Enforced Disappearances (Charge and Punishment) Act 2008. The bill was formally publicized amidst a consultation program organized by the Ministry of Peace and Reconstruction (MoPR) in the presence of media, representatives from selected human rights organizations and family members of victims. Five days after, the Council of Ministers approved the bill to be finally tabled in the interim legislature for endorsement. In the meantime, Advocacy Forum (AF) and Human Rights Watch (HRW) sent a letter to Speaker of the Legislature-Parliament with a list of amendments to be made in the bill to make it in line with the relevant international standards. However, the government passed an ordinance on Disappearances on 5 February 2009 with the lame excuse to expedite the peace process. Ascribing the move to an undemocratic phenomenon, several rights organizations cried foul over the government's intentions. Even when the ordinance was promulgated by the President four days later, the controversy raged and even the Speaker of the Constituent Assembly and the Chairman of the National Human Rights Commission, the duo members of the "Commissioners Recommendation Panel", flatly denied taking their responsibility. Later in April 2009, the government submitted a "Substitute Bill" to Constituent Assembly Secretariat.

As the newly-produced bill was also weak and full of loopholes, a group of human rights organizations, including Accountability Watch Committee (AWC), Advocacy Forum (AF), Amnesty International (AI), Asian Federation Against Involuntary Disappearances (AFAD), Human Rights Watch (HRW), International Center for Transitional Justice (ICTJ), International Commission of Jurists (ICJ) and Informal Sector Service Center (INSEC) submitted a joint memorandum to Peace Minister Rakam Chemjong regarding some critical amendments



Putal Chaulagain holds a photo of her daughter, 17-year old, Subhadra Chaulagain, who was killed by the Nepal Army Soldiers on 13 February 2004. (© 2007 Nick Hogg)

to be made in the latest draft bill on the formation of a commission on disappearance at the latter's ministerial residence at Harihar Bhawan, Pulchowk, in the early hours of the morning on 30 August 2009. The memo-submission event was timed to coincide with the International Day of the Disappeared.

To make the legislation on disappearance in line with the Supreme Court verdict of 1 July 2007 and relevant international standards, the memo stressed on a host of amendments including:

- Defining 'enforced disappearance' consistently with the internationally recognized definition and recognizing that, under some circumstances, the act of enforced disappearance amounts to a crime against humanity;
- Defining the modes of individual criminal liability, including responsibility of superiors and subordinates, consistently with internationally accepted legal standards;

- Establishing a minimum and a maximum penalty for the crime of enforced disappearance as such and for the crime of enforced disappearance as a crime against humanity;
- Ensuring the independence, impartiality and competence of the Commission of Inquiry into enforced disappearances;
- Ensuring that the Commission of Inquiry into enforced disappearances is granted the powers and means to be able to effectively fulfill its mandate;
- Ensuring that all aspects of the work of the Commission of Inquiry into enforced disappearances respect, protect and promote the rights of victims, witnesses and alleged perpetrators;
- Ensuring that the recommendations of the Commission of Inquiry are made public and implemented.

Following the submission, the Peace Ministry acted promptly and incorporated some of



Jai Kishor Lal holds a photo of his 24-year old, Sanjeev Kumar Karna, who was allegedly arrested and killed by joint security forces in Dhanusha district, Nepal, in October 2003. (© 2007 Nick Hogg)

the suggestions put forward by the human rights organizations. The ministry also convened a consultation with human rights organizations to discuss the new bill. During the discussions, the issue of “definition,” “statutory limits” and “implementation of the commission’s recommendations” featured significantly. Questions were raised why the government is hesitating to define “disappearances” in line with the article of the 2006 UN Convention For the Protection of All Persons from Enforced Disappearance and the article 7(2) (i) of the Rome Statute of the International Criminal Court as suggested by the rights organizations in their memorandum. Similarly, there was much uproar vis-à-vis the statutes of limitation as the new revised bill also failed to regard “disappearance” as a continuing crime. Also the discussions focused on ensuring the effective implementation of the recommendations of the commission, in the absence of which the entire process would turn out to be a sheer anticlimax. The representatives of the Peace Ministry assured that they would make the necessary changes as suggested by the participants but were yet to produce the re-revised bill.

The family members of the victims and the human rights defenders all still waiting with their finger crossed for possible developments regarding the formation of the commission. Like the victims who are wading through the mire of injustice and state indifference with hope against hope for justice, redress and reunion with their loved ones, we, the human rights advocates, despite endless frustrations and unforeseen impediments, are marching forward with a torch of justice in our hand resounding the glossed-up dictum that “*Droit Ne Poet Pas Morier et disparaître*” (Rights Cannot Die & Disappear).

1 The Supreme Court’s verdict held that that the existing legal framework related to commissions of inquiry is inadequate to address the cases of disappearance that were systematically practiced during the armed conflict in Nepal. The order gave directives to the interim Government to introduce a new legislation to ensure the establishment of a credible, competent, impartial and fully independent commission. The order also stated that, in doing so, the Interim Government should take into account the Convention for the Protection of All Persons from Enforced Disappearance and the criteria for Commissions of Inquiry developed by the United Nations Office of High Commissioner for Human Rights.



Dhiraj Kumar Pokhel. A human rights advocate, Dhiraj works as focal person of Advocacy Forum-Nepal for the AFAD.

Celebrating Human Rights through

Poetry and Music

by Darwin B. Mendiola

The Awakening of Humanity

Human Rights Day is celebrated yearly across the world on the 10 of December, which marks the anniversary of the adoption by the United Nations of the 1948 Universal Declaration of Human Rights. Awakened from the nightmares of war, the community of nations put their act together and stood united in proclaiming the universality, indivisibility and interdependence of human rights and on the moral obligations of states to protect these rights. The 2009 Human Rights Day celebration was focused on the concept of non-discrimination, a theme central to the concept of human rights and explicitly stipulated in Article 1 of the Declaration that says, "ALL HUMAN BEINGS ARE BORN FREE EQUAL IN DIGNITY AND RIGHT."

Sixty-one years since the adoption of the Declaration, human rights violations are still rampant today. Millions of people all over the world continue to suffer from the curtailment of their basic right to life and liberty. For the majority of peoples in Asia in particular, human rights remain an empty promise, an elusive dream.

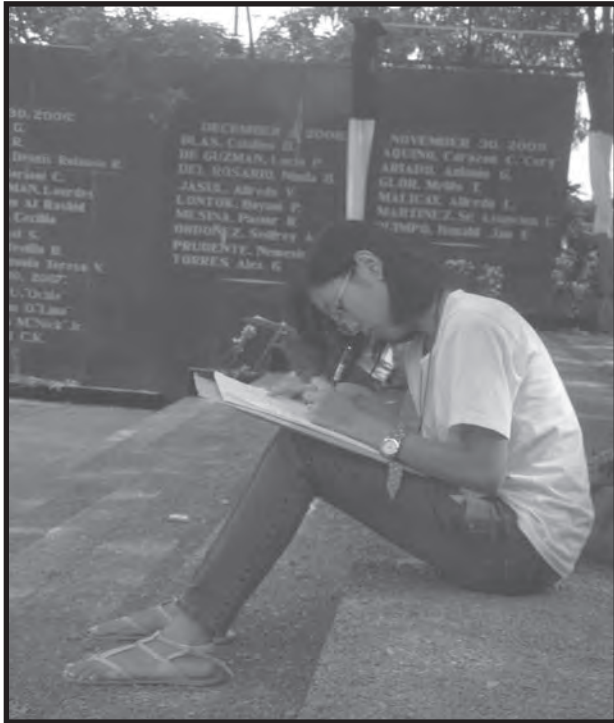
Asia, the world's biggest and most populated continent, earns the negative reputation as the most dangerous place to live in because of its notorious human rights record. In many Asian countries, human rights are not only blatantly ignored but are under severe contempt wherein political repression reigns under a climate of impunity. Everyday, countless transgressions of human rights occur while the vast majority of their abusers go unpunished and future violations are not remote possibilities. Concretely, Asia

is the continent which submitted the highest number of enforced disappearance cases to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) in recent years. For one, the Philippines is one of the countries with outstanding cases of enforced disappearances, a situation which had, in 2007, urged the UNWGEID to request from the Philippine government for an invitation for a visit to the country after its first visit in 1990. Such a request remains unanswered up to this day.

The very reason why six decades ago, the Declaration was crafted and adopted by the community of nations was to assert, promote and protect the rights of every human being. This reason still remains relevant, making it imperative for us to celebrate the Human Rights Day. Celebrating this day strongly reminds us that the struggle to make human rights a reality is not yet over. Everyone has the obligation to act in order to attain the full realization of human rights for all.

Speaking the Unspeakable

The Asian Federation Against Involuntary Disappearances (AFAD), a regional federation of human rights organizations working directly on the issue of enforced or involuntary disappearances, joined the rest of the world in commemorating the Human Rights Day



Third prize winner, Jan Joy Louise Crismo writes her piece.

by conducting the On-The-Spot Poetry Writing and Reading Contests entitled, **“Celebrating Human Rights through Poetry and Music.”** The AFAD believes that art is a universal language that connects humanity across time and space and can be used to serve as a voice of justice, peace and equality throughout the recent history. Through this activity, it aimed to educate especially the young people about the gravity of the crime and the urgency to combat this global phenomenon through a global response. The contest also served as a venue to springboard the direct and active participation of the youth in the AFAD’s human rights work by speaking, through poetry, the unspeakable situation of the Asian *desaparecidos* and their families.

Enforced disappearance, though considered as one of the cruelest forms of human rights violations, is not getting the public attention that it deserves. The AFAD, through its secretariat and its 9 member-organizations in 7 Asian countries, has been working incessantly for more than a decade to bring the issue of enforced disappearance in the international and national spotlight. Little is known that across the Asian region, thousands of people are made to disappear and their fate and whereabouts remain

uncertain while many cases of disappearances are still being reported daily. The depth of the sufferings of the victims and their family members is unfathomable. The *desaparecidos* are cut off from the rest of the world, placed outside the protection of the law and are often tortured or killed, but their remains are not returned. Many are never seen or heard of again. While their families are left with the uncertainty of searching and longing for the return of their disappeared loved ones, their struggle for justice is almost a futile exercise in a situation where there is an absence of legal mechanisms which consequently could have filled in the gap that prevents those responsible from being brought to justice.

It is in this context that the AFAD explored the use of the artistic and literary genres such as poetry and music as powerful tools to point out these societal ills; to call the public attention to act on what is happening and to awaken them on the need for a genuine social change.

Poetry, though, maybe considered by some as a drab and a mere abstract literary endeavor reserved and enjoyed only by a few eccentrics. But for human rights communities worldwide, poetry like any other literary genres has become a medium of advocacy. Poetry as an artistic form of expression conveys a message that ordinary people can relate to. There is no right or wrong way to write a poem. No one can tell someone what and how they are supposed to write about their feelings and views of reality because in poetry, one can express what is within him or her. Poetry appeals to one’s sanity and moral sensitivity to evoke the unspoken and serves as a voice of the universal conscience. It has the power to reflect the innermost sentiments of the



The contestants and the AFAD Secretariat pose for a group picture.

heart and the soul. Human rights in poetry are usually based on horrifying conditions. But poetry also serves to demonstrate the creativity and resilience of the human spirit. While depicting grief and pain, poetry can also bring with it the freshness of hope in the face of the oppression, injustice and cruelty.

Poetry is also a therapeutic instrument to express intense emotions caused by the traumatic experiences particularly of those who have suffered directly or indirectly from human rights violations. It can be an effective coping mechanism through an internalization of a tragic event and transcending from its devastating effects. Poetry penetrates the deepest recesses of one's being, thus could serve as an effective tool to generate support for human rights advocacy.

Vying for Honor, Joining the Cause

The poetry writing contest was held on 4 December 2009 at the **Bantayog ng mga Bayani** (Heroes' Monument) in Quezon City, Philippines. It was organized by the AFAD Secretariat which is based in Manila. This activity was part of the annual commemorative activity of the federation that was done simultaneous with the activities in the other member-organizations from six other Asian countries and was done in the context of the continuing campaign for the entry into force and eventual implementation of the UN Convention for the Protection of All Persons from Enforced Disappearance. Earlier on the same day, at the Executive Lounge of Quezon City Hall, a roundtable discussion on enforced disappearance was organized by the Families of Victims of Involuntary Disappearance (FIND) in cooperation with the AFAD, the Office of Councilor Janet M. Malaya, Chairperson of the Committee on Justice and Human Rights of the Quezon City Council.

The poetry writing and reading contests were open to young Filipinos who can write short poems in Filipino or English based on a given theme. Ten young men and women coming from different universities in Metro Manila eagerly participated. Three of them are family members of *desaparecidos*. The writing contest was divided into two parts. The morning session was spent in showing documentary films which provided the contestants with the valuable information on the issue. The actual writing contest was done in the afternoon.

Although the contestants were there primarily to vie for the honor and to win the prizes at stake, amounting to Php 7,000, Php 5,000, and Php 3,000 for the first prize, second prize and third prize respectively, it was made clear to them that the contest was more importantly a form of advocacy and that their works would become part of the AFAD advocacy materials. While the competitive atmosphere provided encouragement for the contestants to do their best, it was the act of sharing their talents for a noble cause that provided the motivation for them to produce *magnum opus* worth the recognition. Out of the ten contestants, nine of them wrote their literary pieces in Filipino and only one entry in English. All of them, albeit distinct in styles and moods, wrote about the common pain brought about by the crime of enforced disappearance and about the significant values of recognizing and protecting human rights as an integral part of development.



Award-winning poet, Jess Santiago, serenades the crowd with his songs.

A Night of Celebration

The AFAD's Human Rights Day celebration culminated with the poetry reading and the awarding ceremony held on 8 December at Access Point Resto Bar and Grill, Scout Borromeo St., South Triangle, Quezon City. More than sixty people coming from different human rights and civil society organizations, families of the disappeared, government agencies, diplomatic community and friends of AFAD were present to grace the event.

Mr. Jess Santiago and Ms. Dom-an Macagne-Manegdeg performed at various times throughout the evening. Human rights activist and musician, Santiago, who is also an award-winning poet himself having had his poems published in both national and international magazines and having been chosen as the Institute of Philippine Languages' Poet of the Year in 1978 and 1979, serenaded the crowd with a rendition of his 1990 popular song, *Halina* (Come). Ms. Florence Macagne-Manegdeg, also known as Dom-an, a nose flute player from Sagada and a widow of a slain NGO-church worker, Jose (Pepe) Rivalan Manegdeg III who was engaged in the peace and healing initiatives, rendered an instrumental music of the sacred breath by playing the flute. In the interlude, she told the crowd that she no longer dwelt in anger and sorrow for her husband's murder and in fact, had already forgiven the perpetrators. Through her own music and poetry, she shared her journey towards the peace and healing of the rest of humanity.



CHR Commissioner Mamauag delivers a strong message against killings and disappearances.

To elicit audience participation, the celebration provided everyone the opportunity to read poems. Commissioner Jose Manuel Mamauag of the Commission on Human Rights (CHR) delivered a strong message about the human rights situation in the Philippines. Ms. Ana Galindo of the Embassy of Spain took the center stage to read a poem in Spanish which she translated to English. Other representatives of human rights NGOs took turns in reading poems. Also present during the event was a representative from the Indonesian Embassy, Mr. Hadi Tjahjono.

Nevertheless, the evening still principally belonged to the contestants who came to the event in order to compete and to share their talents to the cause for the disappeared. When the poetry reading contest began, the contestants took turns in reading their poems with virtuosity, mindful or perhaps, unmindful that only one among them would be chosen as the Best Presenter.

Prior to the event, the AFAD Secretariat selected two panels of judges for the contests. The judges were chosen from the local human rights community and friends from the academe. They are not only known for their significant contribution to human rights but also for their talents in the field of the literary arts. The panel of judges for poetry writing contest was composed of Mr. Ed Gerlock, Executive Director of the Coalition of the Services for the Elderly (COSE); Mr. Joey Faustino, Council member of the Families of Victims of Involuntary Disappearance (FIND); Prof. Virgilio Rivas, Director of the Institute for Social History-PUP and Dr. Nymia Simbulan, Executive Director of the Philippine Human Rights Information Center (Philrights). Dr. Nymia Simbulan and Mr. Joey Faustino remained until the end of the program of the poetry reading contest. They were joined by Commissioner Mamauag for the selection of the Best Presenter.

When all was said and done, the evening came to a close with the announcement and awarding of winners by Dr. Nymia Simbulan, Dr. Emilia Aquino, AFAD Administrative Officer and Mary Aileen D. Bacalso, AFAD Secretary-General. The major awards for both contests went to Mr. Victor Guerrero Ferdinez, a son of a Filipino *desaparecido*, Mr. Victorio Ferdinez who disappeared in Marulas, Valenzuela City a year before the 1986 EDSA Uprising (Please see the translated winning piece



Best Presenter, Larry Clarinan reads the best poem.

mere fancy that passes for a flitting moment, but an attempt to tell the truth in a meaningful and fuller fashion. Others insist that ideas can change the world, yet poetry and music may not change the world. But as an art, they enable us to see life in its wholeness, with a greater clarity and deeper understanding of what we are and what we can become. Indeed, the great theatre of the world, according to John Holcombe in his article posted in www.textetc.com, is written in verse and its melody reconciles us to the manifest absurdities, injustices and cruelties of our times.



at the back cover of this publication). His mother, Ms. Sarah Ferdinez is a member of FIND and a volunteer of the *Bantayog ng mga Bayani*. Victor, who almost failed to make it that evening, appeared cheerfully to receive his award for his best poem, *Ang Patlang* (The Gap). His friend, Mr. Larry Clarinan, whom Victor requested at the last minute to read his piece, was named as the Best Presenter. The other contestants who were lauded with the well-deserved recognition were Mr. Rojo Guerrero Mallari and Ms. Jan Joy Louise Crismo for winning the second and third prizes respectively. Mr. Rojo Mallari, a senior student of the Polytechnic University of the Philippines is working as an intern for the *Bantayog ng mga Bayani*. Ms. Jan Joy Louise Crismo is a daughter of Mr. Louie Crismo, a former Secretary General of FIND and younger brother of Romeo Crismo who disappeared in 1980 during the dark years of martial law in the Philippines. Although, all contestants were awarded with certificates, the AFAD Secretariat deemed it important to give special awards to two entries. These special awards were given to Mr. Jan Merck Maguddayao, a student activist for the University of the Philippines and Mr. John Kenneth Macaspac, a student of TRACE College-Makati.

When everyone thought that the night was over, the lights dimmed and started to flicker. To the audience's delight, the resident band emerged and performed. They were later joined by the two contestants, Kenneth and his schoolmate, Casey Bautista who entertained everyone with their talents in music.

As the music continued, the mood and atmosphere further turned celebratory and went on until the dead of the night. Truly, poetry and music provide a message of celebration. The occasion was not just a

Darwin Mendiola is currently the Philippine Advocacy Project Coordinator of the AFAD. He has worked in various non-government organizations that engage the Philippine government in formulating and implementing policy reforms and institutional changes. Darwin is a former media liaison of the *Laban ng Masa* (*Struggle of the Masses*), a new Philippine Left Coalition under the leadership of ex-UP President, Dr. Francisco Nemenzo, Jr. As a former student leader in the Polytechnic University of the Philippines in the early 1990s, he remains an activist in his own right.

Voice from Thailand Calling for the Convention...

by Pratubjit Neelapaijit

Disappearance Case of Lawyer, Somchai Neelapaijit

Almost six years since prominent Muslim lawyer, Somchai Neelapaijit was forcibly disappeared by five police officers in central Bangkok on 12 March 2004. His disappearance is believed to be the consequence of his work as a lawyer in representing clients allegedly tortured by the police. To this date, there is still no substantial progress made regarding his case. Mr. Neelapaijit's disappearance has been accepted as a special case by the Department of Special Investigation (DSI) since July 2005. His fate remains unknown and no one has been held accountable for the crime. Worse still, the key witnesses to the case and their families have been subjected to intimidation and threats. The case, which received widespread national and international attention, is seen as emblematic of the difficulty of achieving justice vis-à-vis serious human rights violations in Thailand.

Somchai Neelapaijit was fifty-three years old at the time of his disappearance. He had practiced law for more than twenty years, was the chairperson of the Muslim Lawyers' Club and vice-chairperson of the Thai Human Rights Committee of the Lawyers' Council. Many of the cases he worked on were regarded as politically controversial. Since 1983, he had represented a number of clients charged with alleged terrorism-related offenses, many relating to the long-standing low-level insurgency in the southern border provinces of Thailand – Pattani Yala and Narathiwat. On 4 January 2004, there was a robbery of military weapons from an army camp in the deep south. In response to the gun robbery, the government of Prime Minister Thaksin Shinawatra declared martial law in the affected provinces. Somchai was asked to represent some of the suspects. He

NOW!

played a key role in collecting fifty thousand signatures to request that martial law be lifted. Based on the torture allegations, Somchai Neelapaijit issued a court petition requesting the release of the 5 detained men. The petition was rejected. On 11 March 2004, Somchai Neelapaijit submitted a petition alleging abuse to the Ministry of Justice, the Ministry of Interior, the Royal Thai Police, the Attorney General's Office, the National Human Rights Commission, the Prime Minister and the officer of the Senate. The following day, 12 March 2004, Somchai Neelapaijit was seen to have been forced getting into the other car and never returned since then.

The enforced disappearance of Mr. Somchai Neelapaijit is widely known as one of the key cases that has affected trust in the justice process and the rule of law in Thailand. So far, only the case of this missing human rights lawyer was taken to court. However, even in this prominent case, the government has continuously intervened in the investigation and obstructed justice as it implicates the high ranking police officers and therefore, very political.

In the process of seeking truth and justice, in the first court, the 5 police officers who stood trial were only accused of minor charges of coercion or robbery. Judgment was given on 12 January 2006. The court found Defendant (who was a policeman) 1 out of 5 guilty of abducting Somchai Neelapaijit and sentenced him to three years of imprisonment. Angkhana Neelapaijit recently petitioned the civil court to declare her husband missing so she could take control of his assets. The civil

court took up the petition and declared on 18 May 2009 that Somchai was a missing person as he had been missing for five years. It was also reported in the Bangkok Post on 19 May 2009 that the officer, Pol Maj Ngern Thongsuk of the Crime Suppression Division, who was sentenced to three years in jail in connection with Somchai's disappearance, is believed to have fled the country after having been released from jail while appealing the verdict. Earlier this year, he had reportedly gone missing in a flood. Angkhana requested the police at the time to investigate the whereabouts of the officer's body which, to this date, has not yet been found.

In the process of investigation and searching for the body of Somchai Neelapaijit, although several former government officials, including a former Prime Minister and the Attorney General, have publicly stated that they know that Mr. Neelapaijit was killed, until now, no substantial progress has been made. This case is being handled by the DSI. In over past four years that the DSI has accepted to take charge of this case, attempts have only been made to acquire evidence from the MaeKlong River, Ratchaburi province. So far, 4 two hundred-liter drums have been excavated and are believed to have been used for destroying the body of Mr. Neelapaijit. Some human remains were also found, but after a forensic test, it was found out that the bones did not match the genetic pattern of the disappeared lawyer. There have been further developments in the Somchai case. One of which is that Police Lt. Gen. Panupong, head of Police Region 7 (Ratchaburi province) withdrew from his post and Police Gen. Tanee, the chief investigator of the Somchai case within the DSI is now looking for new evidence and witnesses in the area. At the same time, the National Counter Corruption Commission (NCCC) is preparing to deliver their investigation results into the torture allegations brought forward by Somchai Neelapaijit before he disappeared. Meanwhile, compensation is commonly used by the Thai government to discourage further demands or actions



Justice for Somchai! Justice for all Desaparecidos! (© www.flickr.com)

by victims' families as was attempted in the cases from Southern Thailand. Despite this, Angkhana still persists in seeking for truth and justice for her husband.

On the witness protection, in the morning of 7 June 2009, the car which belonged to Somchai Neelapaijit, was broken. The Honda Civic was parked in front of the house of the Neelapaijit family in Bangkok. The small window on the right had the side of the car broken in order to unlock the door. Several of Somchai's belongings were moved within the car including a prayer's hat, an Al Qur'an, and a mobile phone charger, but nothing was stolen even if it contained valuables such as a radio-tape player. Angkhana Neelapaijit reported the break-in to the head of the DSI head, to the head of police as well as to the local police and her lawyer. The local police and a forensic investigation team arrived at the house quickly and took finger prints. An umbrella and broken window were subsequently found in a garbage opposite the house. At about 2 am of 10 June 2009, Angkhana Neelapaijit's car, Honda Accord with license plate Por Yor 8574, which parked in front of Angkhana's house at 73/5 Soi. Isaraphap 11, Isaraphap Road, Thonburi, Bangkok was broken in the same way as Somchai's car was broken into on 7 June 2009. Nothing inside the car was stolen but a little purse and cards were dropped in a trash bin opposite the house. Everything happened in the same way as Mr Somchai's car was previously destroyed. At that instance, the officers were investigating the finger prints and had not found any

matching finger prints taken during the investigation of the break-in into Somchai's car. Also, finger prints could not be matched to any person filed with a criminal record by the police. The police have set up a CCTV camera outside the house and assigned civil police officers to guard the house.

Angkhana Neelapaijit believes that this latest incident is a threat to her and her family due to the ongoing pressure and developments regarding the disappearance of her husband. She has had several meetings with high ranking officials, including the Prime Minister and Minister of Justice in order to lobby for greater action. In March 2009, the case was highlighted by the Canadian delegation during the reporting of the Working Group on Enforced or Involuntary Disappearances at the Human Rights Council at the time of the public commemoration in Bangkok of the fifth anniversary of Somchai's disappearance. Moreover, in a Joint Press Statement of the Secretary General of the OIC and H.E. Nitaya Pibulsongram, the Minister of Foreign Affairs in May 2007 followed by the Reports of the Secretary General on Muslim Communities in Non-OIC Member States submitted to the 36th session of the Council of Foreign Ministers in May 2009, the OIC urged the government to clear the cases of Tak Bai, Krue Se and Somchai's disappearance.

Furthermore, the disappearance of Mr. Somchai Neelapaijit is related to the alleged torture of the 4 January 2004 gun robbery suspects while being detained by several high ranking police officials. The case is being investigated by the National Counter Corruption Commission (NCCC). But due to slow justice process and inefficient witness protection, witnesses in this case and their families are living in fear and unable to live normal lives.

In November 2009, the Justice for Peace Foundation has recently received information that 3 of the witnesses are now being charged with making a false statement of torture by Pol. Maj. Gen. Chakthip Chaijinda. The police officer charged Mr. Suderueman Malae, with having made a false statement. The plaintiffs filed the complaint with the Bangkok Criminal Court which is now in the process of calling for evidence. At the same time, the plaintiffs have requested to obtain access to the investigation report from the NCCC which they have not yet made available. Again, this constitutes another tactic by police officers to abuse their powers and threaten victims to protect themselves. According to Mr Suderueman, these two police officers were among the group who allegedly tortured the five men. As a result of these developments, Angkhana Neelapaijit submitted a letter to Mr. Wicha Mahakhum, of NCCC in order to request the latter not to send the testimony of the

defendants contained in the investigation report to the plaintiffs due to the sensitivity of the information and protection of the defendants. The Justice and Peace Foundation sent an open letter concerned with the security of the defendants, their relatives as well as the lawyer involved in the case and therefore plans to observe the trial. It also called on the international community to raise these concerns with the Thai government, particularly the Royal Thai Police to ensure the safety of the defendants as well as fair process and trial.. On 9 November 2009, the NCCC refused to send the information to the plaintiffs.

Lately, one of the key witnesses of this case, Mr. Abdulah Arbukaree was made to disappear on 11 December. He had been waiting for years to testify as a witness in the Court. During late November, he has gone to his hometown in one of the southern border provinces and since then, disappeared for nearly two weeks now. Should the case of Mr. Abdulah Arbukaree later turn out to be an enforced



Angkhana Neelapaijit speaks to journalists in Bangkok in 2006. Angkhana, the director of the Justice for Peace Foundation (formerly Working Group on Justice for Peace- WGJP), has long spoken out about the abduction and murder allegedly by police of her husband, well-known human rights lawyer Somchai Neelapaijit. In March 2009 police raided the offices of WGPJ. (© 2006 Reuters)

disappearance, it shall inflict a horrendous threat to other witnesses in this case and those of other cases. Their confidence in their safety and trust in the efficiency of the justice system to hold the perpetrators liable will be gravely eroded.

On the fifth anniversary of the disappearance of human rights lawyer Somchai during the interactive dialogue with the Chairperson of the UNWGEID on the occasion of the March 2009 session of the UN Human Rights Council, the Canadian delegation raised the Somchai case in a question aimed at the working group, asking for details on the progress of the case. In response, the Thai government again reconfirmed its commitment to take all allegations of disappearances very seriously and put all efforts in addressing the cases in accordance with the rule of law and principles of justice. Regarding the Somchai case, the delegation mentioned that the new prime minister Abhisit had met recently with Angkhana to assure her that the Thai government is determined to do its utmost best to bring the case to a conclusion based on the rule of law. At the same time, newly appointed Prime Minister Abhisit Vajajiva announced the Government's intention to ensure swift and meaningful progress in investigating and bringing to justice the perpetrators of Mr. Neelapaijit's enforced disappearance.

One year had passed. Although the Royal Thai Government by the Rights and Liberties Protection Department, Ministry of Justice had done the research on readiness of Thailand in ratifying the Convention of All Persons From Enforced Disappearance and the government seems to have the political will to stop and prevent the problem of enforced disappearance in Thai society and intends to ratify the Convention, nothing concrete has so far, materialized in this regard because the government is still stuck with the problem of instability.

As a result of the continuing failure of the government to seriously address the issue of disappearances in Thailand and the ongoing culture of impunity, manifested by the lack of prosecutions coupled with the lack of remedies for the families, enforced disappearances remain a problem of the Thai society. While the number of cases seems to have dropped over the years, families continue to live in fear and poverty. According to the UNWGEID mandate, cases are considered closed when the whereabouts



After five years, Somchai is still nowhere to be found. (© Justice for Peace Foundation)

of the missing have been established. While Justice for Peace Foundation welcomes more cooperation by the government with the UNWGEID in responding to communications sent, it remains obvious that little action is done by the government to establish the truth and hold perpetrators accountable. Particularly under the current administration, a request for an official visit by the UNWGEID could support those within the government trying to move investigations ahead as they would be able to legitimize their actions. At the same time, an official visit would most definitely support those individuals and organizations working on the issue of disappearances and with victims' families in the same sense that it would add legitimacy to their work. The fact that the current government has announced publicly several times that it is seriously considering ratifying the Convention for the Protection of all Persons From Enforced Disappearance provides another ground for a visit of the UNWGEID to further promote the realization of this commitment.



Pratubjit Neelapaijit is the daughter of disappeared lawyer, Somchai Neelapaijit. Accompanying her mother and a number of victims of disappearances in the southern part of Thailand, she works for the Justice for Peace Foundation as the focal person of the AFAD in Thailand.



The First Asian Conference on Psychosocial Work in the Search for Enforced Disappeared Persons, in Exhumation Processes and the Struggle for Justice and Truth

A Report

*Lotus Garden Hotel, Ermita, Manila
8-11 November 2009*

by Katharina Lauritsch and Franc Kernjak

Introduction

The phenomenon of enforced disappearances was and unfortunately still is practiced in many countries to silence political opponents. The families of the victims not only have to face the economic and emotional consequences of the loss. They also have to cope with the impact of the insecurity about the destiny of their beloved ones, the social stigma and the resulting psychological problems.

Psychosocial support and a good coordination of all disciplines involved in the search for the enforced disappeared persons, in the struggle for justice and truth and in exhumation process is important to reach the common goal: **to support the families in the best possible way.** Psychologists, forensic anthropologists, lawyers, human rights workers, family organizations and family members of the disappeared have to do their acts together to reach this goal.

Background

The 1st International Congress on Psychosocial Work in the Search for Enforced Disappeared Persons in Exhumation Processes and the Struggle for Justice and Truth, was held in Antigua, Guatemala in February 2007. As a result of the Congress, a working group consisting of people from the different disciplines involved in the search for enforced disappeared, the struggle for justice and truth and in exhumation processes, worked together on a proposal for an **International Consensus on Minimum Standards for Psychosocial Work in Exhumation Processes of Serious Human Rights Violations.**

The need to continue the interdisciplinary debate and discussion both at the international and regional levels was the basis to organize the

1st Asian Conference in Manila, Philippines on 9-11 November 2009. This event was organized by the *Equipo de Estudios Comunitarios y Acción Psicosocial* (ECAP) - Team of Community Studies and Psychosocial Action from Guatemala (ECAP), and the Asian Federation Against Involuntary Disappearances (AFAD)– as the substantial regional partner in Asia – and GEZA. The Asian conference forms part of an international conference cycle that will culminate with the Second International Conference that will be convened in Bogotá, Colombia on 21, 22 and 23 April 2010. The idea is to present the rich Asian experiences and the outcome of the Asian conference to an international audience.

Preparations and Goals

To prepare the event, Ms Katharina Lauritsch was assigned to investigate the situation of families of enforced disappeared in the different Asian countries, search for Asian actors, contact experts working in the field and encourage them to comment on the validation form of minimum standards for the psychosocial work with families of enforced disappeared.

As the validation form was developed in the Latin American context, the proposed standards reflect to a certain point the experiences made there. The comments from the different Asian experts helped us continue to understand better the working context here and to incorporate the Asian perspective into the document.

The goal of the conference has been to learn from different experiences, discuss the present state of psychosocial support during the search for the enforced disappeared persons and in exhumation processes, work on the validation of proposed international minimum standards, strengthening the Asian network of professionals and family organizations and encourage the participants to document their work, giving the Asian experiences a strong voice.

Results

In the first Asian conference, 36 experts from 12 different countries participated.

On the first day, we had 17 presentations from psychologists, lawyers, forensic experts, family organizations and human rights activists. Each presentation lasted fifteen minutes and each block of 3

presentations was followed by time to ask questions and for discussion. We could catch a glimpse of the rich and diverse backgrounds and experiences the participants brought to the meeting. To see and feel the atmosphere of high motivation that made the conference room dense was rewarding.

Issues on the importance of religion and rituals, political education, special needs of children, forensic aspects, etc. had been discussed and the audience had been given the opportunity of exchanging and learning from different conditions. This first objective of the conference was highly appreciated by the participants. On the second day and half of the third day, the validation of the minimum standard in the Asian context took the center. We continued working in groups about psychosocial support for families of enforced disappeared, the role of the State, what alternatives in the support of families are there if exhumations are not possible and how the collaboration and coordination between the different actors involved in exhumation processes and already in the search for enforced disappeared persons can be improved.

The main arguments were:

- a) Even though in Asian countries, very few exhumations took place already, the minimum standards in exhumation processes are an important document that contributes to the systematization and of exhumation processes in the future.
- b) The most important issue in Asian countries is the struggle against enforced disappearances itself. The document is ambivalent, because it focuses on exhumations. From the Asian point of view, exhumations are



Participants seriously study the subject matter of the conference in an effort to fully give their share in the discussion.

only one of the many possibilities to find the disappeared persons. Therefore, in the minimum standards document, the search for the disappeared should be in the foreground.

- c) The cultural background should be a general condition itself and not only "to be taken into account" as one of the many points in the standards. The participants discussed for example the different implications for the work with families in countries with Hindu, Muslim, Christian and other religions as basic preconditions.
- d) One important point of the participants were the difficulties with understanding the terms used in the form. Many of them in the Latin American context probably make sense. However, in the Asian context these terms, while applied in some situations, are not very well-used (e.g. accompaniment, community, integral care, integral reparation, etc.). On the other hand, a central term like "exhumation process" is, in some parts, referred as forensic anthropological excavation and in other parts, as the whole process of search and struggle for truth and justice. A common point therefore was the need for a clear terminology and an extension of the glossary.
- e) The chapter in the minimum standards document about "the State" has deemed it necessary for an additional standard for social and political situations where the state doesn't fulfill his obligations. In the Asian context, the minimum standards are "maximum standards" in the sense that there is no trust in actual political systems, even if these are in the context of democratically-elected governments.
- f) As a special contribution to the validation, the participants discussed alternatives, in case no exhumations are possible.

A clear outcome was that enforced disappearance is world widely known as a Latin American phenomenon. Asian countries however, reported the highest number of cases to the UN Working Group on Enforced Disappearances in recent years, therefore the Asian contribution to




From various Asian countries, participants share their rich experience in the search for the disappeared.

the minimum standards and to the international discussion about the psychosocial support for families of enforced disappeared persons in general should be highly taken into account. Further on the third day, the participants wrote separate letters to the presidents of the Philippines and Indonesia, urging them to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Moreover, the organizers presented the idea to publish an Asian documentation about the working context and the experiences of professionals and families working with families of enforced disappeared persons.



Katharina Lauritsch is currently working in a research project on psychosocial support for families of disappeared persons in Asia. Having studied Latin American history and literature, she learned about the phenomenon of disappearances. She had the opportunity to spend 6 months with the AFAD office in Manila where she helped organize the first Asian conference on psychosocial work with families of the disappeared. Having worked as a teacher, she is also interested in the effects of violence on children, peace education and conflict management.



MISSING JUSTICE: IMPUNITY AND THE LONG SHADOW OF WAR

By Ram K. Bhandari

© Kiran Panday

The issue of justice and impunity is once more in the headlines because of the promotion of Toran Bahadur Singh, the in-charge of the infamous Bhairabnath base, and the army's attempt to prevent Niranjana Basnet from appearing in a civilian court.

Such blatant attempts to obstruct the path of justice have significantly weakened Nepal's human rights movement and have also given the Maoists an excuse to get away with their own abuses. The issue of transitional justice and truth has become a charade.

Government bodies and human rights groups currently dealing with missing persons also display a lack of seriousness regarding justice for the affected families. Perpetrators of war crimes, far from being punished, are being rewarded. Supreme Court verdicts and court directives have been ignored.

The families of the disappeared have been forgotten and their need for truth, justice and compensation have been deliberately ignored. Their uncertainty and pain is felt daily because they still don't know whether their loved ones are dead or alive. This trauma is accentuated by the psychological, economic,

social, political and legal problems that they have to bear.

The victims' movement is becoming increasingly disillusioned and weakened by political divisions and the interests of NGOs and donors. Transitional justice has been an elite discourse limited to urban centres. The affected rural families are unsure about how the process will work, the results being promised and whether it represents the fulfillment of their demands or not.

The Disappearance Bill drafted in Kathmandu, which was approved in late 2009, focuses largely on amnesty and reconciliation. But how can we have true reconciliation through a bill drafted by the movers and shakers in Kathmandu without a word of input from those affected by what the bill proposes to correct? The Bill itself will likely linger before the Disappearance and Truth Commissions, and with no timetable for its acceptance, the government is off the hook on ending impunity and delivering justice to the families.

The Disappearance Commission should have been formed after the peace accord if the political parties were really serious about it. Now the government is preparing to just go through the motions of performing



Family members of victims campaigning for justice in Kathmandu on 17 February 2009, the 5th anniversary of the killing of Maina Sunuwar by Nepal Army Soldiers. (© 2009 Advocacy Forum/Robert Godden)

a ritual to keep donors happy. And why do we need two commissions?

In the villages, a single family is often a victim of different cases involving disappearances, killings, torture and rape. Family members don't need to face two commissions and go through the excruciating trauma of publicly reliving their memories. If the government and political parties are serious, they should ask us, the victims, what we want.

A single commission to deal with the issue of disappearances and war crimes should be independent and have the power to prosecute those involved. Otherwise, negative history will be repeated as it was with the Mallik and Rayamajhi commissions set up to investigate past abuses.

Unfortunately, many families have lost hope for justice and reconciliation and feel marginalised by the peace process. Families and witnesses do not feel secure, and rights activists in the field like me face regular death threats.

The CDO, DSP and army major in Lamjung who were responsible for my father's detention and disappearance are still serving and have even been

promoted. The Toran Singh and Niranjana Basnet cases prove that impunity starts at the very top and sets a precedent for those in the districts.

We doubt the intentions of the government and the Maoists, and we fear that they want to return to war.

The movement to learn the whereabouts of Nepal's disappeared citizens is also at the crossroads. Seeking justice is an essential part of building a durable peace.



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Ram Kumar Bhandari, whose father was disappeared in 2001, is a human rights activist based in Lamjung.

GUATEMALA :

First Steps to End Impunity Over

45,000

Cases of Enforced Disappearance

by Atty. Gabriella Citroni

Introduction

From 1960 to 1996, Guatemala was ravaged by a bloody internal armed conflict, which left almost 250,000 people arbitrarily killed, around one million of refugees and internally displaced people and 45,000 victims of enforced disappearance. The great majority of victims belonged to the Mayan population.¹

The conflict from which disappearances arose in Guatemala began in the sixties when a small group of young army officers rebelled against the military government, accusing it of corruption. The rebellion was put down, and the young officers fled to the mountains of eastern Guatemala where they began a guerrilla war. These guerrillas soon turned into a Marxist movement (*URNG – Unidad Revolucionaria Nacional Guatemalteca*) whose objective was to overthrow the government and take power. It is important to highlight that the Guatemalan armed conflict occurred in the framework of the Cold War². On 29 December 1996, the government and the URNG signed an Agreement on a Firm and Lasting Peace.³

The final report presented in 1999 by the Guatemalan Truth Commission⁴ known as "Commission for Historical Clarification" concluded that:

In Guatemala, forced disappearance was a systematic practice which, in nearly all cases, was the result of intelligence operations. The objective was to disarticulate the movements or organizations identified by the State as favourable to the insurgency, as well as to spread terror among the people. The victims of these disappearances were peasants, social and student leaders, professors, political leaders, members of religious communities and priests, and even members of military or paramilitary organizations that fell under the suspicion of collaborating with the enemy. Those responsible for these forced disappearances violated fundamental human rights.⁵ [...] The ultimate scope of enforced disappearance of persons is the destruction of something - an organization, the diffusion of a political idea - using someone - the victim.⁶

The subject of enforced disappearances in Guatemala had been included in the Comprehensive Agreement on Human Rights signed on 29 March 1994⁷, under Commitment III, Commitment against Impunity, in which the State undertook to promote the legal amendments to the Criminal Code to describe enforced



A human skull appears as if it were screaming. A total of 27 bodies were exhumed from clandestine sites in Chontala last summer. The exhumation was carried out with information gathered by Conavigua, an organization of widows of indigenous Guatemalans. (© www.aliciapatterson.org)

disappearance as a crime of particular gravity. The Government likewise undertook to support recognition in the international community of the definition of systematic enforced disappearances as a crime against humanity.

On 14 July 1995, Legislative Decree 48-1995 was enacted, whereby article 201-ter was added to the Criminal Code, thereby criminalizing the conduct of enforced disappearance. Article 201-ter of the Guatemalan Penal Code, as amended by Decree 33-96 of the Congress of the Republic, approved on 22 May 1996, stipulates that:

[t]he crime of forced disappearance is committed by anyone who, by order or with authorization or support of State authorities, in any way deprives a person or persons of their liberty, for political reasons, concealing their whereabouts, refusing to reveal their fate or recognize their detention, as well as any public official or employee, whether or not they are members of the State security forces, who orders, authorizes, supports or acquiesces in such actions.

The Criminal Code provides for a penalty of 25 to 40 years of imprisonment and, in the event of the death or serious physical or psychological harm of the victim of enforced disappearance, capital punishment is envisaged.⁸

Ongoing Impunity

The Inter-American Court of Human Rights rendered a number of judgments⁹ on cases of enforced disappearance that happened during the Guatemalan armed conflict, where, besides declaring the international responsibility of the State for the violation of various human rights (right to life, right to humane treatment, right to personal liberty, right to a fair trial and right to judicial protection), the Court ordered the State, among other measures of reparation, to “exhaust all the procedures necessary in order to guarantee, within a reasonable period of time, the effective compliance of its duty to investigate, prosecute, and, if it is the case, punish those responsible for the facts [...], as well as ensure the victims’ right to a fair trial”¹⁰. The Court also added that “the result of the proceedings must be made public, so that the Guatemalan society can know the truth”¹¹.

Nevertheless, for almost 30 years, the majority of reported cases of enforced disappearance during the armed conflict remained unsolved.¹² Since enforced disappearance was codified as a separate crime under domestic penal law in 1996, the mentioned provision remained dead letter for more than 10 years. In fact, until 2007, there was not a single person arrested or tried for the commission of the crime of enforced disappearance. Only two cases made their way up to the stage of formulating an accusation. The two cases referred to enforced disappearances which had occurred between 1981 and 1984. The defendants invoked the principle of non-retroactivity of criminal law and claimed that they could not be charged with the crime of enforced disappearance as Article 201-ter had been introduced in the Criminal Code only in 1996 that is many years



Members of the URNG await to receive their certificates after completing a “demobilization” process, where they have obtained skills which prepared them for a civilian life on 1 January 1997. (© 1997 <http://www.unmultimedia.org>)



A Maya Indian woman burns incense over some of the coffins of massacred victims before their funeral on 18 April 2002 in Zacualpa, Guatemala. The remains of 100 Maya Indians who had been bludgeoned, shot or hacked to death were laid to rest 20 years after Guatemala's bitter 1960-1996 civil war. According to the Guatemalan Anthropology Forensic Foundation, the cemeteries where the bodies were found are part of 669 that have been located in the area as a result of the violence. (© Andrea Nieto/Getty Images)

after the events. The issue went to the Guatemalan Constitutional Court.

The Judgment by the Constitutional Court

In a groundbreaking judgment of 7 July 2009, the Guatemalan Constitutional Court found that, as the crime of enforced disappearance is a continuing (or permanent) one, it lasts until the fate and whereabouts of the disappeared person are established with certainty.¹³ Accordingly, there is no breach whatsoever of the principle of non-retroactivity of criminal law: as long as the perpetrators do not disclose the fate and whereabouts of the victim, the crime continues being committed, regardless of when the deprivation of liberty of the disappeared person originally occurred. The Court went on to find that in such cases, there is no retroactive application of the law even if the conduct commenced before the relevant article of the Criminal Code entered into force, given that it continued after that date.

The decision has, for the first time, opened the door to prosecutions for the tens of thousands of enforced disappearances in Guatemala and to an end to the impunity that has reigned to date.

The first Two Convictions for Enforced Disappearance

In 2003, relatives of six people¹⁴ who

were victims of enforced disappearance between 1983 and 1984 in the Choatalum village, filed a complaint against the former military commissioner Felipe Cusanero Coj, claiming that he was responsible for the mentioned crimes. He was charged with the crime of enforced disappearance as defined by Article 201-ter of the Criminal Code.

On 7 September 2009 the first conviction for enforced disappearance was eventually passed: Felipe Cusanero Coj was sentenced to 150 years jail (25 years of prison for every disappeared person).¹⁵ The sentence implied the immediate capture of Mr. Cusanero.

The judgment reiterated the permanent nature of the crime, which the Constitutional Court had already cleared up. Moreover, the judges based their decision on the evidence presented by the attorney for the government and the plaintiff. Amongst the pieces of evidence are the testimonies of the relatives who witnessed the arbitrary deprivation of liberty during those years; as well as forensic reports that proved the existence of a military detachment in the place; the Guatemala *Nunca Más* (Never Again) Report, the *Memoria del Silencio* (Memory of Silence) Report; and reports of the Inter-American Commission on Human Rights.¹⁶

Finally, the judgment refers to further prosecution proceedings that the public prosecutor shall institute, as names of two other allegedly involved military officials emerged during the trial.



A Maya Indian woman takes part in the wake for the 100 massacred victims on 19 April 2002 in Zacualpa, Guatemala. The remains of 100 Maya Indians who had been bludgeoned, shot or hacked to death were laid to rest 20 years after Guatemala's bitter 1960-1996 civil war. According to the Guatemalan Anthropology Forensic Foundation, the cemeteries where the bodies were found are part of 669 that have been located in the area as a result of the violence. (©Andrea Nieto/Getty Images)



A Maya Indian woman carries the coffin of one the 100 massacred victims on 19 April 2002 in Zacualpa, Guatemala. The remains of 100 Maya Indians who had been bludgeoned, shot or hacked to death were laid to rest 20 years after Guatemalas bitter 1960-1996 civil war. According to the Guatemalan Anthropology Forensic Foundation, the cemeteries where the bodies were found are part of 669 that have been located in the area as a result of the violence. (©Andrea Nieto/Getty Images)

On 3 December 2009, another Guatemalan tribunal handed down a second landmark judgment, sentencing Coronel Marco Antonio Sánchez Samayoa and the 3 military commissioners José Domingo Ríos, Gabriel Álvarez Ramos and Salomón Maldonado Ríos to 53 years in prison for the enforced disappearance of 8 people¹⁷ perpetrated in 1981 in the village of El Jute.¹⁸

Coronel Sánchez Samayoa, who was the Commander of the Military Zone of Zacapa, is the first high-ranking member of the military convicted for enforced disappearance committed during the internal armed conflict: the prosecutors successfully proved that, given his position and functions, he was aware of counter-insurgency activities carried out against suspected members of the guerrilla, including the disappearance of the 8 victims in the case.

This judgment is particularly important also because, in order to bring the case to trial, prosecutors and representatives of the victims successfully challenged a Court of Appeals decision of 2006, in which Coronel Sánchez Samayoa was granted an amnesty under the 1996 National Reconciliation Law. After a long legal battle, that decision was overturned, following a

Constitutional Court ruling which recognised that certain crimes, including enforced disappearance, are excluded from the ambit of the law.¹⁹

The judgment also orders to the public prosecutor to initiate an investigation against the former Ministry of the Defence Ángel Aníbal Guevara; the former Chief of Staff for the Defense Benedicto Lucas García; and other military personnel in service in the military base of Zacapa in 1981. Indeed, the judgment of December 2009 concretely opens the door to other significant results in the struggle against impunity. In fact, this historical achievement has not been welcomed by everyone: both the lawyers who represented the relatives of the disappeared people and the relatives themselves have been subjected to a harsh campaign of threats and harassment and are currently under a special regime of protection.

Conclusions

The judgments delivered after almost 30 years of impunity by Guatemalan tribunals as well as by the Constitutional Court provide a ray of hope for the families of the 45,000 victims of enforced disappearance from the



The former military man, Felipe Cusanero Coj, was condemned for 25 years of prison for each of the six women disappeared between 1982-1984. (© www.prensalibre.com)



The retired colonel Marco Antonio Sanchez Samayoa (at the background) together with three military personnel. (© www.prensalibre.com)

internal armed conflict, and set important precedents for prosecutors and judges to rely on in future cases to be brought before the courts, not only in Guatemala, but in all those countries where cases of enforced disappearance have occurred.

In fact, as a result of the continuing nature of the crime of enforced disappearance, those responsible for the crime can and must be subjected to legal proceedings and sanctions even if the law creating the separate crime of enforced disappearance is adopted after the initial act causing the disappearance, or if after the enactment of the law, the fate and whereabouts of the victim would continue to remain unknown.

It is still a long road towards accountability for these heinous crimes, but the Guatemalan experience shows that, even if it may take many years, impunity can eventually be defeated by truth and justice.

1 In its final report, the Truth Commission for Guatemala (Commission for Historical Clarification - CEH) concluded that in the context of the Guatemalan armed conflict acts of genocide were committed against members of Maya-Ixil, Maya-Achi, Maya-K'iché, Maya-Chuj and Maya-Q'anjob'al peoples. See Final Report of the CEH, *Guatemala: Memory of Silence*, Guatemala, 1999, Tome III, pp. 316-318, 358, 375-376, 393, 410, 416-423.

2 United Nations Working Group on Enforced or Involuntary Disappearance (UNWGEID), *Report on the Mission to Guatemala*, doc. A/HRC/4/41 of 20 February 2007, para. 9. In 1987 the UNWGEID had carried out another mission to the country: see doc. E/CN.4/1988/19/Add.1 of 21 December 1987.

3 The text is available at: <http://www.c-r.org/our-work/accord/guatemala/firm-lasting-peace.php>.

4 While the Commission for Historical Clarification was carrying out its mandate, a similar initiative was undertaken also by the Guatemalan Archbishop. For the final report of this other Truth Commission, see Archbishop of Guatemala, Human Rights Office, Guatemala: Never Again - Report of the Inter-diocesan Project of Recovery of Historical Memory, Guatemala City, 1998.

5 CEH, *Guatemala: Memory of Silence*, supra note 1, "Conclusions", chap. IV, para. 89.

6 *Ibid.*, para. 2061.

7 The text is available at: <http://www.c-r.org/our-work/accord/guatemala/human-rights-agreement.php>.

8 On the compatibility of the Guatemalan Criminal law on enforced disappearance with international human rights law, see UNWGEID, *Report on the Mission to Guatemala*, supra note 2,

paras. 28-34 and 99.

9 Inter-American Court of Human Rights (IACHR), Case *Blake v. Guatemala*, judgment of 24 January 1998; Case *Bámaca Velásquez v. Guatemala*, judgment of 25 November 2000; Case *Molina Theissen v. Guatemala*, judgment of 4 May 2004; and Case *Tiu Tojín v. Guatemala*, judgment of 26 November 2008.

10 IACHR, Case *Tiu Tojín*, supra note 9, para. 72.

11 *Ibid.*

12 See, inter alia, Inter-American Commission on Human Rights, Justice and Social Inclusion: the Challenges of Democracy in Guatemala, OEA/Ser.L/V/II.118 Doc.5 rev.1, 29 December 2003.

13 Constitutional Court of Guatemala, judgment of 7 July 2009. See also, inter alia, Constitutional Section of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, judgment of 10 August 2007; Supreme Court of Justice of Peru, judgment of 20 March 2006 (Exp. 111-04, D.D. *Cayo Rivera Schreiber*); Constitutional Court of Peru, judgment of 18 March 2004 (Exp. 2488-2002-HC/TC), para. 26; Supreme Court of Justice of Mexico, judgment of 20 July 2004 (P./J.49/2004); Constitutional Court of Peru, judgment of 9 December 2004 (Exp. 2798-04-HC/TC), para. 22; and Constitutional Court of Colombia, judgment of 31 July 2002 (No. C-580/02).

14 Lorenzo Ávila, Alejo Culajay Ic, Filomena López Chajchaguin, Encarnación López López, Santiago Sutuj and Mario Augusto Tay Cajt.

15 *Tribunal for Criminal Act, Narco-activity and Crimes against the Environment of the region of Chimaltenango*, Judgment No. C-26-2-2006, Of. III, 7 September 2009.

16 Inter-American Commission on Human Rights, *Report on the Human Rights Situation of Human Rights in the Republic of Guatemala*, doc. OEA/Ser.L/V/II.53 Doc. 21 rev. 2 of 13 October 1981 (Chapter II, Missing Persons); and doc. OEA/Ser.L/V/II.61 Doc. 47 of 3 October 1983 (Chapter III, Abductions and Disappearances).

17 Jacobo Crisóstomo Chegüen, Miguel Ángel Chegüen Crisóstomo, Raúl Chegüen, Inocente Gallardo, Antolín Gallardo Rivera, Valentín Gallardo Rivera, Antolín Gallardo Rivera and Santiago Gallardo Rivera.

18 Tribunal of Chiquimula (Tribunal Primero de Sentencia), judgment of 3 December 2009. More precisely, the accused were sentenced to 40 years of imprisonment for enforced disappearance and to 13 years and 4 months of imprisonment for illegal deprivation of liberty.

19 Constitutional Court of Guatemala, judgment of 23 December 2008. See <http://www.impunitywatch.org/en/publication/36>.



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Human Rights Trials in ARGENTINA

by Patricio Rice

Now in Argentina, almost 30 years after atrocious human rights crimes were committed, we have human rights trials going on which the practice of enforced disappearances is concretely investigated and perpetrators are brought before the courts. While other Latin American countries which went through similar experiences in the seventies and eighties, have preferred the road of national reconciliation, Argentina is at the forefront in prosecuting perpetrators and provides an interesting case study and a cause for hope among human rights activists around the world.

Background

Argentina is known as the world's granary because of its immense natural resources but really is on the margin of world affairs in the Southern Hemisphere despite its strongly European population, unlike Australia and New Zealand in Asia Pacific. However, it really is not different from other Latin American countries where a small oligarchic group came to own most of its wealth that was forcefully taken from the native peoples in Spanish colonial times. Even after the final extermination campaigns of native Argentines were ended in the Patagonia and the Tropical north, towards the end of the XIX century, that land was handed over to the traditional elite, and the immigrant population had no option but to stay in the cities. The country was destined to produce and export raw materials but not to industrialize or manufacture any goods. There were several attempts to break this deadlock through industrialization, the most famous being the government

of Juan Domingo Peron and his charismatic wife Eva in the late 1940s, but all ended with military coups and repression. Then in the sixties, Argentine youth, inspired by Che Guevara and other revolutionaries, many within the Peronist movement, organized to produce the social change that was needed to overcome longstanding structural violence. This way of revolutionary struggle was met by the violence of the State now known as 'State terrorism' which reached its pinnacle with the Junta Dictatorship (1976 – 83). The cornerstone of State terrorism was the practice of enforced disappearance, but it took many years before the full dimension of what was clandestinely going on was finally brought to the public light. The key players were the families of the disappeared, especially the *Madres of Plaza de Mayo*.

Why such a strong sentiment for justice in Argentina?

Certain events in recent Argentine history may explain the strong national sentiment towards justice.



Alfonsín receives the CONADEP report on the Dirty War from the president of the commission, Ernesto Sábató (center). (©www.wikipedia.com)



Trial of the military junta, from left to right, Videla, Lambruschini, Garffigna, Anaya, Agosti y Galtieri in 1985. (© <http://www.artnet.com>)

The first and most important element is the nature of the crime involved, i.e., enforced disappearance. Here, official cynicism was the order of the day as the demand to know the whereabouts of a loved one was routinely dismissed by the authorities, or relatives of the victim were blackmailed into giving money and property for information which effectively always proved to be without substance. Then relatives themselves became victims. This situation went on for many years and created such a deeply-rooted sentiment of resentment towards impunity that exasperates itself with the passage of time.

The second reason is that when the dictatorship was nearing its end, it decided in 1982 to initiate a patriotic war against the UK in order to recover sovereignty over the Falkland (Malvinas) Islands and to recover prestige. However, there were many losses. Argentina lost the war and people felt totally betrayed by the military. Since then, the Armed Forces lost their status in society. There is therefore, little sympathy when former senior officers are brought into courts.

From Human Rights Crimes to Impunity to Justice

1984: The CONADEP Commission - After the late President Raul Alfonsin became democratic president at the end of 1983, this presidential commission was appointed to investigate the case of the *desaparecidos*. The result was the "**Never Again**" report presented by writer Ernesto Sabato, which fully documented the enforced disappearances with

the different circuits of secret detention centers, clandestine cemeteries and military task forces.

1985: The Argentine Junta Trial - For the first time ever in Latin America, top military leaders, the Junta were charged before a civilian court and condemned to long sentences of imprisonment for multiple human rights violations, above all, the enforced disappearances. Due to the nature of the crimes involved, the Court recommended the prosecution of all perpetrators down the line of command.

1986 First Impunity Law - Final Point Law The military mobilized against those prosecutions and President Alfonsín gave in. A law was approved at the end of 1986 which gave a deadline for presenting new human rights cases. The immediate result was that hundreds of new cases were rushed into the courts to meet that deadline and many more military people were implicated.

1987 Second Impunity Law - Due Obedience Law The military began to openly rebel against the prosecutions, and to occupy military establishments in defiance of the democratic government. Finally, President Alfonsin negotiated and the Due Obedience Law was passed by Congress. That meant that only the top command structure could be charged for human rights violations and all the other cases had to be dropped. There was an exception – the case of disappeared children.

1990 Third Impunity Measures - Presidential Pardons. The new President Carlos Menem (1989 -1990)



Clyde Snow, an American forensic anthropologist at the trial of the Argentinean junta, 1985. (©Daniel Muzio)



Nestor Kirchner and wife Cristina during the Presidential Elections in Argentina in 2003. (© www.findtarget.com)

decided on a pacification process where reparation would be given to victims but penal prosecutions would be discontinued. There were a series of presidential pardons granted so that by the end of 1991, even those sentenced in the Junta Trials, were released.

1992 Argentine Trials in Europe and Universal Jurisdiction.

With impunity reigning in the county, families and the human rights organizations began to promote trials in European countries whose citizens had been victims of the Argentine dictatorship. As there was no possibility of prosecution in Argentina, those penal processes had become perfectly legal. So cases were opened in Sweden, France, Italy, Germany and above all Spain where Judge Baltasar Garzon began to also use the argument of universal jurisdiction whenever crimes against humanity were involved. According to universal jurisdiction, when impunity exists for a crime against humanity in a specific country, any other country can claim jurisdiction to prosecute perpetrators. Enforced disappearance is a crime against humanity. This led to Judge Garzon issuing an arrest warrant in 1994 against former Chilean dictator Augusto Pinochet who was visiting London. Pinochet was arrested and returned to Chile on humanitarian grounds. However, the UK House of Lords had recognized the Garzon petition as valid. Many new arrest warrants were issued against Argentine perpetrators so much that towards the end of the nineties, none could safely leave the country. However the Menem government absolutely refused to extradite

any military officer to Spain. Simultaneously both the Inter American Human Rights Commission and Court intervened and ruled that the Argentine impunity laws went against the principles of international law.

Prosecutions for the Disappeared Children Continue

In Argentina, the cases for the disappeared children could however, continue and it was successfully argued in court that such a practice had in fact been endorsed at the top command structure of the Armed Forces. In that way the Junta leaders found themselves back in prison under new charges.

Triumph of the Anti-Impunity Movement

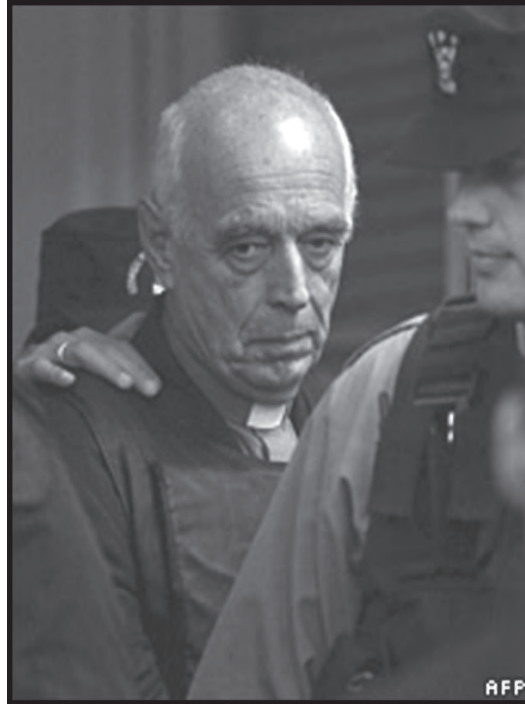
Between 2000 and 2003, Argentina went through a period of total economic collapse. Finally in 2003, Mr. Nestor Kirchner was elected President. He surprised many by taking a very strong pro human rights position and among other measures began to argue for the absolute nullity of the impunity laws and for the continuation of the human rights trials which had been halted in 1987. Finally, the military accepted that policy as they preferred to be prosecuted in Argentina rather than extradited to Spain. Meanwhile President Kirchner achieved an important reform of the Supreme Court. A law was approved by Congress nullifying all the impunity laws, and in a historic decision in 2005, the Supreme Court certified their absolute nullity. The human rights trials were reinstated.

How do the human rights trials work?

To begin with in these trials, those who have been personally affected by the crimes involved can participate as part of the prosecution. That means that victims are directly involved. Many human rights organizations have recruited young lawyers to work in the courtrooms to represent the victims.

According to the Argentine judicial system, there are two stages in the penal process. The **Instruction** stage is when a specific crime is investigated, perpetrators are identified and written testimonies taken from witnesses. All parts intervene and defendants may be imprisoned. A special prison was opened in Marcos Paz, Buenos Aires Province where perpetrators of human rights violations are held. Those who are older than seventy can be allowed the benefit of home arrest. This is also granted to those with serious health problems and some argue senility to avoid prosecution.

The Instruction finishes with the formal accusation which is handed over to a Federal Court where the **Public and Oral trial** takes place. This is the second and final stage which usually goes for several months. This process opens with the formal indictment of the defendants who must appear in court. It is then when families can see them for the first time. Then witnesses are called in to give their testimony and answer questions both of the prosecution (including representatives of the victims) and the defense. Forensic or other experts address the court and the defense may also call other witnesses. Finally there is the summing up of the parts. On the last day of the public hearings, the defendants are allowed to make their final statement and then the judges (usually three) give their verdict. About two weeks afterwards, the court is convened again when the full sentence is out. Finally the entire proceedings automatically go for review to the higher Cassation Court which makes a final legal ruling on the proceedings. That may take a year or more. The case can then be appealed to the Supreme Court but that has rarely, if at all, happened.



Fr. Christian Von Wernich showed no emotion as he was sentenced. (©AFP)

The cases involved refer to very specific crimes in the penal code such as homicide, illegal arrest, torture etc. (enforced disappearance or genocide is not listed). For a guilty verdict, criminal responsibility has to be proved beyond doubt. If not, the defendant will be acquitted. The sessions are public so anyone can attend the hearings and sometimes the media are allowed in, but in most cases, there are restrictions. It all depends on the court.

To facilitate the process, cases are divided according to the five military divisions of Argentina applied during the dictatorship. Usually cases are identified and grouped with specific secret detentions centers. Some secret detention centers are so big that the category of "mega cases" had to be created. These mega cases are sometimes divided down for trial purposes.

Completed Cases:

The following list of completed cases shows how the process is working:

2006: Buenos Aires: Former Federal police officer Julio Hector Simon was condemned for several human rights crimes.

2007: La Plata: Miguel Etchcolatz, former head of the secret police in the Province of Buenos Aires was condemned for 5 cases of homicide and torture. It was during his trial that an important witness, Julio Jorge Lopez (73), was disappeared and has never been heard of since. There is evidence that former police were involved. This incident highlights the risks facing witnesses and many other cases of harassment have been reported, although a witness

protection program is now in place.

2008: La Plata: Roman Catholic priest Fr. Christian Von Wernich, police chaplain during the dictatorship, was condemned for his role in the disappearance and assassination of a group of young people during the dictatorship. Despite the scandal involved, the Church has not sanctioned the priest who continues to minister to his fellow prisoners in Marcos Paz prison.

2008: Buenos Aires: The Fatima Massacre. That was the mass killing of thirty prisoners mostly trade union activists taken from a secret detention center in August 1976 and assassinated in Fatima, a small rural community near Buenos Aires. One of the defendants was acquitted on a medical alibi, the others were condemned.

2008: Tucuman: Former generals Domingo Bussi and Benjamin Menendez were condemned to life imprisonment for their role in the disappearance of senator Vargass Aignasse in 1976.

2009: Buenos Aires Province: Gral Olivera Rovere and other ranking officers were condemned for different cases but other defendants were given light sentences or acquitted.



Former Argentine Army Generals, Antonio Domingo Bussi (right) and Luciano Benjamin Menendez (left) listen to the verdict that condemned them to life imprisonment over the disappearance of a provincial senator during the 1976-1983 "Dirty War" dictatorship, in the northern province of Tucuman, 28 August 2008. Bussi, 82, who wept during Thursday's hearing, built a political career after democracy returned to Argentina in 1983 and was elected in 1995 as governor of Tucuman, a sugar- and citrus-growing province that is among the country's poorest. (©2008 Reuters)

There had been many cases in other provinces and cities around Argentina including two cases where military officers, who had adopted children of the disappeared, were indicted and condemned for the crime of suppressing the identity of those children.

Conclusion

Now many cases have completed the Instruction stage and are at the trial process.

One can say then that a characteristic of the human rights trials in Argentina is that many are taking place in different parts of the country and each one has its own characteristic. The trials are certainly historic as it is the first time that families and survivors have the opportunity of seeing perpetrators close up as they are escorted handcuffed into the courtroom. That is a major achievement. However, all seem unrepentant as they listen to the stories of their cruelties and one is left with many unanswered questions as to their motivations and mentality.

We also hear the stories from witnesses and relatives who go through the sufferings endured almost thirty years ago. The fact that most are now older folk with their grandchildren listening to their testimonies in the public gallery gives a special poignancy to the whole

situation. It is not easy to relive those situations but it is significant that witnesses seem to remember every detail of their traumatic experiences. Psychological assistance is offered and survivors have organized support groups.

At the end of the day, however, all seem to be worthwhile. There is a profound sense of achievement for witnesses and families with a definite sense of closure. Impunity has not had the last word. One has been able to tell one's story in a courtroom and in front of the perpetrators. The justice which is later handed down may be meek, indeed considering the crimes involved but it is justice and there is a definite sense that **Never Again** has become possible even with that justice. The Argentine population is certainly privileged to be able to finally break with impunity and live through

this judicial process. Hopefully, other countries will soon follow. That is what the struggle of the families of the disappeared is all about: Truth, Justice, Redress, Memory and Solidarity.



Patricio Rice was the Executive Secretary of FEDEFAM from 1981 -1987. He is also a witness in some of the human rights trials in Argentina.

Initial Breakthroughs in India

by Dr. Emilia Aquino

Moving on with new challenges in 2010, the Asian Federation Against Involuntary Disappearances (AFAD) remains positive for the final entry into force of the UN Convention for the Protection of Persons from Enforced Disappearance on the first half of the year. To date, while doing its continuing campaign, it is waiting for two more ratifications. If we look at this in the number's perspective, the entry into force of this treaty is surely not far from being attained considering that eighteen out of twenty states necessary for the entry into force have already ratified. The AFAD has directed its goal to make at least one of its members in South Asia and South East Asia to historically get at least one of the first twenty ratifications. As we vigorously project that involuntary disappearance is an Asian phenomenon, achieving the ultimate entry into force of this particular convention will give us a mechanism where enactment of a domestic law criminalizing enforced disappearance shall be facilitated and that the treaty's provisions be implemented. In this manner, people in states that ratified the treaty will be covered with protection from enforced disappearances, thus reversing the dreaded climate of impunity. The Federation trusts that a state's full compliance to the treaty shall stop enforced disappearances.

To this direction, the AFAD conducted a lobby tour in Indonesia, East Timor, Thailand and India during the last quarter of 2009. In India, lobby efforts were done with members of the Parliament and civil society organizations - the first time since the AFAD was born more than eleven years ago.

On 16 December 2009, activities kicked-off in a 9:00 a.m. meeting with Member of Parliament, Mr. Saifuddin Soz at his office in Akbar Road, New Delhi. Mr. Soz was non-categorical in his statement regarding the Convention. He was, however, concerned enough to refer us to other point persons in the government

whom he believed would be appropriate to approach as far as our agenda on the ratification of the treaty was concerned. He was particularly adept with Kashmir situation but quite reserved when told to comment on "Buried Evidence," a report of the Association of Parents of Disappeared Persons on mass graves of at least more than 2,700 people (See related article on pp 67-69).

Our brief audience with this former heir of the throne in the princely state of Jammu and Kashmir, Dr. Karan Singh, who is a very prominent person in the Indian political history, was made possible via the endorsement of MP Soz. Dr. Singh is also the Chairperson of the Foreign Affairs Cell of the Congress party. According to him, the ratification of the Indian government of the cited UN Convention was worth discussing with the Ministry of Foreign Affairs. We left his office in Jawahar Lal, Nehru Memorial Fund, Teen Murbi, Bhawan, richer with another parliamentary and personal referral.

On the second day, our activity started with a meeting with the Central Chief Information



In colorful saris, Kashmiri women listen to the discussion on The Convention and its relevance to their lives.



The AFAD-FEDEFAM lobby team with MP Soz.

Commissioner, Mr. Wajahat Habibullah in his office at August, Kranti Bhawan, Bhikaji Cama Place. His accommodation to the group was as good as his remarks about the limitations of his office to suitably act on our concerns.

Generally, the first round of visits which the AFAD team conducted in New Delhi was encouraging enough in the sense that everyone demonstrated openness to India's becoming a party to this treaty. However, the team did not obtain clear ground of concrete support given the powerful positions of the persons the team met in obtaining the Indian government's ratification. To note, the Indian government signed the Convention on 6 February 2007 when the treaty was first opened for signatures in Paris, France. Furthermore, the civil society organizations in New Delhi expressed pessimism on their country's ratification for varied reasons. Some members of civil society stated that even a strong persuasion of human rights organizations, both local and international, will be futile. They felt that their government cannot let itself be fried by its own oil vis-a-vis the enormity of its accountability to the grave and systematic human rights violations, particularly politically-motivated disappearances and the mass graves in Kashmir. For a country known to be the world's largest democracy, this overt negligence is indeed, revolting.

The last leg of the lobby in the capital brought us in Masjid Road, Jangpura, New Delhi, in a meeting with Atty. Colin Gonsalves of the Human Rights Law Network.

It was a very fruitful exchange surrounding human rights issues all over India as the network's main existence deals with lawyers and social activists dedicated to the use of the legal system to advance human rights, struggle against violations and ensure access to justice of everyone. The same pessimism on ratification was observed, but Atty. Gonsalves floated the idea of engaging lawyers and judges in a training-workshop dissecting the substance of the UN Convention for the Protection of Persons from Enforced Disappearance. In this way, the AFAD can possibly achieve organizing a small group of human rights defenders who will particularly assist the public in protecting people from the unimaginable harm of enforced

disappearance, taking into consideration that India has the moral obligation to abide by the treaty because it is a signatory. Well-taken, Mr. Colin: The AFAD will surely consider this in mapping out its future strategies.

Next to lobbying, our agenda was to draw insights from the people involved in coming out with the report, "Buried Evidence." Preparing this kind of documentation could have taken a lot of toll to the whole research team especially when all closely knew how tremendous the moral weight connected with it was. "Buried Evidence" is a preliminary report of the International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir (IPTK) released in public on 2 December 2009 in Srinagar. To reiterate, this report documents 2,700 unknown, unmarked, and mass graves, containing more than 2,943 bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir, based on applied research conducted between November 2006-November 2009.

Grossly, "Buried Evidence" unmasks faces of cruelties degenerating into barbaric acts from a repressive yet self-proclaimed civilized state. This reality is perhaps, unbelievable if one would try looking only at this beautiful valley from a narrow viewpoint. Kashmir is indeed a gem for the Republic of India. It has rich cultural practices and works of art, intricate handicrafts, numerous scenic places and warm-hearted people staying cool even at highly negative temperatures.

But this paradise evolves in countless struggles for universal enjoyment of human rights.

The Association of Parents of Disappeared Persons, an organization of families of victims of enforced disappearance based in Srinagar, Kashmir, one of the founding members of the AFAD, facilitated the whole lobby tour.

Award-winning human rights defenders Adv. Parvez Imroz and Khurram Parvez were the ones who kept the line burning at the top level from Srinagar to the AFAD Secretariat in Manila in order to perfect the lobby activities in New Delhi and Kashmir. The hard work of the APDP staff members was also translated into the well-attended forum held at the hotel in The Bund, Amirakadal, Srinagar. In the forum, at least a hundred family members of the disappeared were appreciated for their unwavering pursuit for justice. The panelist from the AFAD and the FEDEFAM took their turns in conveying to the audience what the federation has been doing to attain truth, redress and the reconstruction of the memory of their beloved disappeared. Particular of which was the campaign towards the ratification of this relevant UN treaty and its meaning to the lives of the families of the victims. In the same event, discussions among Executive Committee members of the APDP were done and the need to augment logistical support in the area of educational assistance was strongly forwarded. At the outset, I was impressed with the brave fronts of the women as they arrived in the assembly hall. These women are the mothers, half widows and daughters of the disappeared. Behind their bright smiles, I can imagine silhouettes of pain, of emptiness cascading into energies of continued collective battle until justice is served.

The five-day tour was a rich ground to derive profound insights. The appointments accepted by the members of the Parliament were good starting points for commitments. Abandoning this opportunity will block chances of success. Regardless of how resolute a government is in its position with international human rights treaty, it will not hurt if we cast even a glimpse of chance. The civil society organizations must not only be steadfast in their human rights agenda but also more attentive to the imminent public apathy towards



Atty. Parvez Imroz and the APDP members reflect on the importance of the International Treaty to Kashmir.

advocacies related to government's compliance and adherence to international human rights instruments. Moreover, solidarity with the suffering families of victims has always been a source of deep strength to go on and be continuously involved in keeping peoples' rights protected.

At this point, I would like to acknowledge the composition of the lobby team, Mugiyanto, AFAD Chairperson, Ms. Mary Aileen D. Bacalso, AFAD Secretary-General, Ms. Gimena Gomez, FEDEFAM representative, Mr. Ted Borrero, AFAD evaluator and yours truly. Our persistence and patience in sharing with the people in New Delhi and the Kashmiris are admirable. To APDP, sail on and keep the fire burning for justice and peace.



Emilia P. Aquino is a dentist by profession with a long engagement in the provision of direct health services to victims of human rights violations such as political detainees, victims of demolitions in urban-poor communities and workers on strike. She has worked with the Medical Action Group, Inc. (MAG) as Education Officer and presently the Administrative Officer of the AFAD.

The Power of Memory...

by Rosanna S. Contreras

A Reflection

The *Panti Waluyo Sejati*, a two storey house with three big rooms that stands at the heart of Indonesia's capital, Jakarta, has been a home for about twenty elderly people, mostly women and mothers whose ages range from sixty-six to eighty-four. The dwellers of this house are no ordinary senior citizens but survivors of what is considered to be one of the most horrifying crimes against humanity of the 20th century, Indonesia's 1965 Massacre.

The 1965 Massacre is a political slaughter that killed hundreds of thousands, if not millions of Indonesian people. Innumerable people were kidnapped and never seen again (disappeared), arrested, jailed without due process, tortured, raped, robbed of their pieces of property and discriminated against. All these cruelties happened because of the victims' alleged participation in the 30 September 1965 failed coup attempt, an allegation that boiled down to the victims' suspected affiliation with the *Partai Komunis Indonesia* or the *PKI* (Communist Party of Indonesia). The victims who survived the massacre were stigmatized by their

communities, not allowed to vote or even engage in any civic and social activities. Worse still, they are ostracized and deprived of the rights normally enjoyed by ordinary citizens. These series of violence and gross desecration of human rights were committed in just a year.

Forty-Five Years on and Still Counting....

After all these decades, one would have thought that the survivors would have received some form of compensation for the sufferings that they have endured. Sadly, the truth is, to date, nothing has been done about this issue. The rule of law does not work in Indonesia. Despite numerous domestic and international treaties and other instruments which the Indonesian government signed and ratified, there are still no fair legal remedies for the 1965 victims. Had the succeeding Indonesian leaders the political will to effectively address the issue, these treaties and laws could have very well provided comprehensive reparation including restitution, compensation and rehabilitation of the 1965 victims.,

All of the succeeding leaders, who assumed power after the leadership of the New Order, promised to bring about justice to the 1965 victims, but not one of them kept the promise. The whole truth about the occurrence of the 1965 massacre has not yet been revealed and the perpetrators have not yet been brought to justice. At present, no provision to significantly alleviate their miserable life has been extended to the 1965 victims. Those who are alive still bear the brunt of discrimination. Basic rehabilitation and compensation, or at least restoration of their good name and reputation has never been served.

Safe Haven

During the AFAD's Asia Lobby Tour in Jakarta, Indonesia on 17-20 November 2009¹, I was



The 1965 mothers are the living testimony to one of the world's acts of inhumanity.



An expression of solidarity: The AFAD lobby team poses for a picture with the 1965 Mothers.

privileged to personally meet the victims of the 1965 Massacre who are staying in *Panti*. As it appeared, I thought that this place was just an ordinary 'home for the aged.' I realized later that this is a special place. This house is a sanctuary for the 1965 victims where they live secured, free from any prejudice and comfortable with each other's company. This is a safe haven where they share the same dark shadow of the past, their common aspiration and conviction to bring about justice not just for the 1965 victims but to every Indonesian whose rights have been trampled upon. I admire them that at their age, they are active and steadfast to let younger people like us become aware of their horrible experience so that this will not happen again and for us to continue to become vanguards of human rights and justice.

In the sharing, I heard one of them say, "You can cut the grass off but it will keep on growing unless you cut it from its roots." Another one reiterated "they can kill us but not our ideologies - these keep our spirit up. We will keep on telling our stories to as many people as possible so that they won't forget the horrors of our life." Indeed, I cheered for their fearless principle, "Let us toss to that." The perpetrators might have thought that their transgression had restrained the struggle of the Indonesian people. They were absolutely wrong. The clamor for justice will persist for as long as the memory of injustice is told and retold. The case of the 1965 victims is a living proof of the liberating power of memory. While human bodies can be killed or 'enforced-ly' disappeared, memory should never ever be obliterated.

Every Thursday at four o'clock in the afternoon, inspired by the *Madres de Plaza de Mayo* of Argentina, the 1965 victims join hands with several other mothers of

the disappeared and with many human rights advocates in front of the Presidential Palace to shout and seek for justice.

An Enduring Saga

As the meeting went on, these courageous elderly women and men introduced themselves and told us brief but heart-rending stories of their past. *Ibu* Tin is the youngest at the age of sixty-six and Grandma Fuji, as she was fondly called, is the oldest at eighty-four. The common denominator of their individual stories is that all of them were suspected of being members of the *PKI*, arrested, tortured, robbed of their belongings, deprived from the company of their loved ones, and imprisoned for ages. The military men attacked their communities and started to shoot in all directions. Those who survived and captured were detained without any fair trial. Prison became their abode for more than a decade. While in jail, they were forced to provide not just for their own needs but also for the military officers who were the culprits of their untold miseries. Supapti Isnanto, eighty years old, recalled that it was her husband who served the longest year (thirty-three years) in prison. Her husband was displayed and about to be executed before the public. But fate changed. He was fortunately released, instead. Two years later, he died of old age.

The story that struck me most was that of *Ibu* Lestari, a mother of five children. She was imprisoned for fourteen years and 4 months. Her husband was also detained, tried and sentenced to death. She had never known the whereabouts of her children since she lost them during the military operation in their place in East Java. Information that reached her disclosed that her



Years of injustice and suffering have never deminished the 1965 Mothers' hope for truth and justice.

daughter, together with two others, were captured, tied, and thrown into the river. Determined, when released from prison, she tirelessly looked for her other children. Fortunate enough, she was able to find her youngest child, now thirty-seven years old and a teacher. However, the 'child' she ardently yearned to embrace and to live with for the rest of her life refused to be with her for fear of being tagged as a communist or an outcast like her mother.

As I listened, I silently empathized with them and imagined myself in their situation. I could not help but murmur a little prayer: "My Lord, please uphold them, keep them, strengthen them and continue to uplift their spirits. Please embrace them for me."

Sounds Familiar?

All of a sudden, a lucid parallelism occurred in my mind while listening to their stories. I started to remember my own mother's painful account of her past during the Japanese occupation in the Philippines in 1940, when she was about 8 years old. She shared this to me a very long time ago. Her story had already slipped off my memory. Had I not been given the chance to face-to-face meet and to hear the life of the 1965 victims who are themselves mothers, I could not have been led back to this poignant memory of a distant past.

My mother informed me how frightening the situation was during that time - the difficult life and the horror of being noticed and branded by the Japanese military and the *Makapili*² as a guerilla.³ Women were forced to be their wives and/or were raped. Because my *lolo*⁴ was a trader, he would take the whole family along with him in his business trips so that he needed not worry about them. One day, when they went back to their own house, a 'zoning'⁵ was declared and did happen in their place. Armed men started to search houses and demanded that all men go out and assemble to the plaza. Those who complained and disobeyed the order would be killed right there in their homes. My *lolo* was already sleeping then but because of fear, my *lola*⁶ asked him to go and he obeyed. From then on, he was never able to come back home. News from the neighborhood revealed that he was among those who were pinpointed by the *Makapili* as a guerilla and among those who were killed and buried somewhere in an unknown grave. Life became more difficult for my mother's family. They lost not just their breadwinner, but also the source of their strength.

My mother was left to the care of her elder sister as my *lola* forced herself to carry on with life and started to look for means to provide for their needs. Her siblings were not able to go to school. She grew up wondering where her father had been and feared about what was in store for her in the future. I cannot imagine how an 8-year old child could bear the pain of losing a very loving father



... and hopefully, they shall cry no more!

and at the same time worry about her future. I cannot not help but imagine what would life be had we grown up with my *lolo* around. What difference would it make to my mother's life and mine had we both experienced his support, cuddles and love? Perhaps, we could have become better persons, enriched by his love and inspired by his sweet memories.

At this point, I realized that the 1965 victims are, in a way, also my grandmothers. Their lives, their sufferings, their resolute aspirations and convictions are like those of my *lola's*.

Beyond *Panti*

On 20 November, the AFAD's Lobby Team proceeded to Bali on our way to Timor Leste, the second leg of the tour. It was, for me, a providential circumstance to meet a group of young men and women who are mostly grandchildren of the 1965 victims. They dream of a just and peaceful Indonesia. They regularly meet in a small plaza where they seemed to have forgotten, but not, the pain of losing their dear grandparents as they recollect memories of the past, study, sing, and share life together. I could identify with them. I saw myself in them. As I reckoned, I felt that they also suffer the consequence of that gap in life which I and my mother had with my *lolo*. I know that in our hearts, the memory of our grandparents will always remain.

Milan Kundera once said, "The struggle of man against power is the struggle of memory against forgetting." Let us not forget. The stories told by the mothers of 1965 victims and my own mother must be put on record. It should never be lost and disregarded. This is a universal story, not just in Indonesia and the Philippines. It also happened in Timor Leste, in Thailand and in every part of the world. If in their lifetime, our mothers may not achieve what they have dreamt of and fought for, the younger generation will pursue and realize it, not only for their mothers and their present generation but also for the next.

In Solidarity

I appreciate the AFAD's initiative to have the members of the Secretariat join the Asian Lobby Tour. Not only did it make me grounded to my realities and that of the *desaparecidos*, it also served as a relevant training for me. Lobbying is an effective way of directly giving information to the government people on the extent of enforced disappearances and the imperative of the Convention's immediate entry into force.⁷ Aside from doing finance work, lobby work is a venue for me to do

something concrete for the *desaparecidos*, as well as for my *lolo* and my mother. I would like to be in solidarity with all the victims in the struggle for truth and justice, for in solidarity, we shall overcome.

1 The AFAD Asia Lobby Tour: Campaign and lobbying is AFAD's core tasks. In view of the eventual entry of the Convention into force in the immediate future, the AFAD conducted a series of lobbying activities called the Asia Lobby Tour, to help convince the Asian governments where AFAD's member-organizations are based, to sign and ratify the Convention. The first tour started in September 2009 in Indonesia. The team was composed of the AFAD's Chairperson Mugiyanto, Treasurer Mandira Sharma, Secretary-General Mary Aileen D. Bacalso, and Ms Ruth Llanos, a representative from the *Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos* or the FEDEFAM.

On 17 November 2009, I was lucky to have joined the second round of the Tour which was composed of Mugiyanto, Mary Aileen Bacalso, Ruth Llanos, and Khurram Parvez, AFAD Council member and a representative of Association of Parents of Disappeared Persons (APDP-Kashmir). The team went to Jakarta to follow up on the recommendations of the Indonesian Parliament Committee Inquiring into the Case of the 1997-1998 disappeared activists and which had been submitted to President Yudhoyono. Unfortunately, since the President is faced with a serious issue of corruption known as the Bail-out Scandal involving an amount of 7 million dollars, the recommendations remain unimplemented.

The team proceeded to Timor Leste in November 20, where innumerable victims of human rights violations, including enforced disappearances during the East Timorese' struggle for independence, continue to cry for truth and justice. The *Percumpulan HAK*, the ninth and newest member of the AFAD, facilitated the lobby tour. The group was able to meet with President Luis Ramos-Horta and within a thirty-minute discussion, the team was able to get his commitment to sign and ratify the Convention soonest.

The last leg of the tour was in Thailand from the 26th day of November up to the 29th. The team also had meetings with the Ministry of Justice and with the National Human Rights Commission headed by Chairperson Professor Amana Pongsapich respectively. We were with the Working Group on Justice for Peace, AFAD's member organization in Thailand and three victims who submitted their individual cases to the Commission.

2 *Makapili* is a Filipino word for local informants whose service was used by the Japanese government to suppress the uprising of the Filipino people during their occupation of the Philippines.

3 *Guerilla* is a Filipino word for a member of the *Hukbong Mapagpalaya ng Bayan*, the Filipino people's army who fought for independence from Japanese invasion.

4 *Lolo* is a Filipino word for grandfather

5 'Zoning' is a community inspection regularly done by Japanese military together with the *Makapili* to monitor and curb *guerilla* activities.

6 *Lola* is a Filipino term for grandmother.

7 The United Nations Convention for the Protection of All Persons from Enforced Disappearance is "a treaty of universal scope, which will be legally binding for the States that ratify it. Its text was approved by the former UN Commission on Human Rights on 23 September 2005; was adopted by the UN Human Rights Council on 27 June 2006; approved by the UN General Assembly on 20 December 2006 in New York, USA. As of this writing, 18 states have already ratified the Convention. Two more ratifications are needed for it to enter into force.



Rosanna S. Contreras is the Finance Officer of the AFAD. She does her advocacy for justice and peace by engaging primarily in finance work, among other important tasks. She's a degree holder in AB-Sociology and BS-Accountancy

Reclaiming Our Dignity,

Reasserting Our Rights

8th Global Annual Learning and Learning Program on Human Rights-Based Development

1-10 December 2009

Zenderen and Amsterdam, The Netherlands

by Candy May T. Nabaunag

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The more people learn about and embrace the holistic vision of human rights and development, the better.

Ton Waarts

Chairman of the Board of Directors, Dignity International¹

Overview of the Global Learning and Linking Program on Human Rights-based Development

Human rights and development² worlds have run parallel to each other—each has its own history, constituency, strengths, weaknesses, successes, and failures. The more recent advances, such as the greater recognition of not only legal justice but also economic and social justice combined with increased work around economic, social, and cultural rights by the human rights community on the one hand, and the recognition of poverty as a human rights issue by the development

community on the other, have brought the two seemingly parallel worlds closer together.³

A step in this direction are the Rights Based Approaches (RBAs) which can be viewed as an attempt to initiate conversation between the two worlds of human rights and development. Given the similarities in the longer-term human rights and development visions to achieve human dignity for all, and in anticipation of future evolution of human rights and development work, it is possible to envision these two seemingly parallel worlds coming even closer.⁴



Mr. Jeral Joseph, Capacity Program Officer of Dignity together with the team of facilitators, gives a brief introduction of the program during the first day of the training.



Aye Aye Win, Executive Director of Dignity and Ton Waarts, Chairman of the Board, talk about the history and background of the host country, The Netherlands.

In early 2002, realizing the hunger for knowledge of human rights and how human rights relate to poverty eradication, Dignity partnered with quality and organized institutions to organize a learning program at a global level on economic, social, and cultural rights. Then, over the years, it provided more emphasis on the links between human rights and development, as it particularly tried to meet the growing demand for capacity building on human rights-based development.

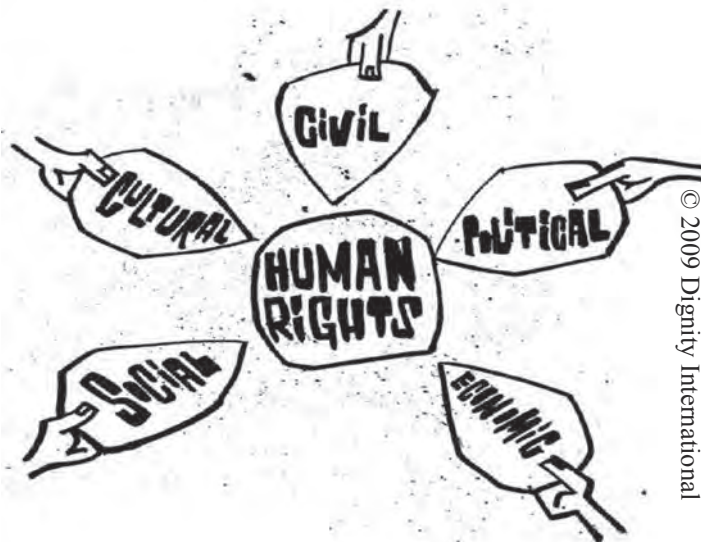
Now on its eighth year, Dignity has become an instrument to producing “global change makers.” Out of 400 applications from around the world, twenty-

two participants representing 19 countries (Armenia, Australia, Brazil, Burma, Cambodia, Egypt, Ghana, India, Indonesia, Kenya, Malawi, Nepal, Nigeria, Philippines, South Africa, Spain, Uganda, Ukraine, United States of America) were accepted by the 8th global program, which took place on 1-10 December 2009 in the Netherlands (Zenderen and Amsterdam). All came from various organizations and government offices that were involved in addressing issues concerning human rights, poverty, housing, health, discrimination, gender sensitivity, and education. This author, representing the Asian Federation Against Involuntary Disappearances (AFAD), was one of the twenty-two participants of the program.

The 10-day intensive training proved to be an enjoyable learning experience. Delegates were equipped with the knowledge of the key elements of human rights-based development through practical application. It fostered a sense of commitment among all participants to continue working for the development of human rights, onwards the vision of human dignity for all.

Program Methodology

The program was a learner-centered, creative, and participatory process. Drawing from the various experiences and expertise of the participants/learners, the program was also a multi-cultural exchange, engaging both learners and facilitators to bring out and understand the human rights basis to development. The general view is that these two realities (human rights and development) run in parallel but not together, and therefore, the aim was for the program to facilitate the participants’ deeper appreciation of the meaning of human rights and see its integration in development work that would translate it into concrete strategies



The Human Rights Flower clearly illustrates that human rights is indivisible and are all interrelated with each other.

and development programming at the grassroots and regional levels.

Dignity's training manual was divided into 13 modules:

- Module 1 Welcome and Introduction (Part 1 – Ice Breakers, Part 2 – Introductions, Part 3 – Program Methodology)
- Module 2 Understanding Human Rights
- Module 3 Understanding Development
- Module 4 Human Rights-Based Approaches: Links to Human Rights Standards
- Module 5 Human Rights-Based Approaches: Links to Human Rights Obligations
- Module 6 Human Rights-Based Approaches: Accountability and Redress
- Module 7 Human Rights-Based Approaches: Non-discrimination and Attention to Vulnerable Groups
- Module 8 Human Rights-Based Approaches: Participation
- Module 9 Human Rights-Based Approaches: Empowerment
- Module 10 Globalization, Development and Human Rights
- Module 11 Human Rights-Based Strategies
- Module 12 Human Rights-Based Programming Cycle
- Module 13 Conclusions and Closing

From Poverty to Dignity

Throughout the whole program, the work and interests of each participant have been used as bases for understanding development work and the need to link this work with human rights. Module 3 was designed specifically to understand and uncover these links and to understand the complexity and multi-dimensional nature of poverty. This module also gave *Participation, Accountability, Non-discrimination, Empowerment, and Linking* to human rights standards (**PANEL**) a new meaning and the participants were able to associate theoretical concepts and the realities on the ground. **PANEL** are the key elements of a human rights-based approach to development that would address the multiple layers of poverty.

The team of facilitators headed by Dignity's Capacity Program Officer, Jerald Joseph, made the program all the more enriching and engaging. They had made the dialogue and exchange between and among the participants simple and unique. They were able to extract diverse answers and solutions based on their knowledge of human rights.

One key feature of the program is a day of field visit to expose participants to the struggles of people living in poverty or facing discrimination. This year, the participants were divided into two teams. One team travelled all the way to Belgium to visit two organizations—Recht-Op, Antwerpen⁵ and Antwerp Institute for Community Development⁶. The other group was fielded in Utrecht and visited Street News (Straat Nieuws) Utrecht⁷ and The Tussenvoorziening⁸. It was another opportunity for the participants to gain experience and be able to see poverty in Europe—a place where they think it doesn't exist. Most of the organizations that were visited hoped to offer people living in poverty the chance to re-enter society by helping them develop a sense of responsibility. The participants were impressed by the way the communities were empowered. They have seen indicators that these people showed efforts to get out of poverty without asking for charity.

As final project, the participants were asked to draw up a campaign or project proposal based on a real case study. They were divided into 5 groups and each was



One of the members of the Board of Dignity reads a copy of the Street News during the participants' field trip in Utrecht. (© Inas Abdelatif)

given different case studies to work on. Each campaign was presented in a plenary session. All participants had the chance to act as a member of the Board of Directors who either approved or denied the proposed campaigns. The activity proved to be interesting as it reflected how much of the issues and ideas learned during the course were absorbed by the participants; more importantly, how they were able to implement the human rights-based approaches in their daily work.

The program culminated with activities for the International Human Rights Day. The participants started their day by attending an international roundtable on the "Global Financial and Economic Crisis—A Human Rights Perspective."⁹ The roundtable was opened by Professor Louk de la Rive Box, the Rector of International Institute of Social Studies. The speakers included Dr. Manuel F. Montes, from the United Nations; Prof. Dr. Nico Schrijver, Member of the UN Committee on Economic, Social, and Cultural Rights; Mr. Arjan Hamburger, Dutch Human Rights Ambassador; and Ms. Liesbeth van der Hoogte of Oxfam NOVIB.¹⁰

In the three hours of rich inputs and interventions, the roundtable highlighted the social, environmental, and human rights impact of the crisis of people living in poverty in Europe as well as in the global south. Ms. Quinta Ansem of the European Anti Poverty Network (EAPN) shared the impact of the crisis on the poor in Europe while Ms. Prossy Jonker of Raising Voices in Uganda focused her intervention on the impact of

the crisis on primary education programs in Uganda. Mr. Zeyar Lin of Foundation for Education and Development highlighted the worsening situation of migrant workers with examples from Thailand and Burma. Mr. Joy Tudu of the Church of North India outlined the human rights and environmental impact of the crisis on the indigenous communities and how these communities have become the "structural victims of internal colonialism."¹¹

After the roundtable, the EAPN-Netherlands, Dignity International and the participants of the program joined many other organizations to convene at Parliament Square in The Hague to celebrate the International Human Rights Day. True to the event's theme, "Reclaim our Human Dignity and Reassert our Rights," representatives from each continent—Africa, Asia, Americas, Oceania, and Europe lit the Human Rights Torch that symbolized justice around the world. Each also shared short solidarity and inspirational statements clinging to the hope that human rights bring and anticipating the challenge ahead to make this a reality. The happy crowd sang and danced to the pulsating music of BrotherHood4Real Band, which resonated throughout the square.¹²

The group was welcomed by Mr. Coskun Cöruz of the Foreign Affairs Committee of the Parliament, who pledged his commitment to do what he could to ensure that "all human rights become a reality for all, everywhere." Mr. Cöruz pointed out that the present Dutch government puts highest priority on human rights

in its foreign policy, not just in actions and diplomacy, but also by directly supporting human rights organizations and activists in many places of the world.

The Human Rights Day celebration was concluded with a social evening in Resto Van Heart¹³ where the participants ate and danced with members of the EAPN-Netherlands.

Conclusion

My journey in the human rights highway is still too short and fresh; there are still a lot more for me to see, learn and discover. Nonetheless, this training gave me an unparalleled experience. I will always treasure all the new feelings



Dr. Manuel F. Montes (left) from the United Nations in New York, gives his take on the human rights perspective on the global financial and economic crisis. (© Dignity International)



Participants of the training prepare for their march on the way to the Parliament Square in The Hague to celebrate Human Rights Day. (© Hazel Bolanos)

and approaches the training offered me. Not only did I acquire new ideas and skills in training and in human rights and development concepts, but I also did become a different person—more aware of the world, its peoples, and their intrinsic diversity. For that, I owe immense gratitude to Dignity International and its outstanding organizing committee, the EAPN, the AFAD and to all the participants, who are now my newest friends.

Together let us reclaim our dignity and reassert our rights!

1 Dignity International was founded in October 1999 largely by communities directly experiencing poverty and social exclusion who felt that there is a need for a global human rights movement that will promote and defend economic, social and cultural rights on par with civil and political rights – a human rights movement that will defend the human rights of the poorest and most vulnerable in our societies. Its aim is to empower the affected communities through human rights awareness and enrich the contents of human rights with their input; work with and affect change in the lives of the poorest communities through local, global campaign action; and advance the human rights framework in the overall debate on globalization. To know more about Dignity International, visit their website at www.dignityinternational.org.

2 Development has meanings in several contexts and there is no universally accepted definition. There has largely been an emphasis on economic development and the human dimension was not always present. In the program, development is understood as holistic and multi-disciplinary - encompassing human development, social development and sustainable development. In short, it is the enduring development of livelihoods and greater quality of life for human beings.

3 Dignity International, Hakijamii Trust, Nairobi, and People's Movement for Human Rights Education. *Information document: A New Global Linking and Learning Program on Human Rights in Development*. Accessed 1 February 2010 from http://www.pdhre.org/HRD_InfoDocumentFinal.doc.

4 Ibid.

5 One of the associations that have been established in Flanders that describes itself as an association in which the poor take the floor. It consists of groups of poor people and poor families that meet together with volunteers and, in some cases, also with professional social workers. Together, they organize leisure and cultural as well as educational activities. They work together to improve their situation, to better inform the broader public of their situation and to influence those people who can help them solve their poverty problem (social workers and policy-makers).

6 Advocacy channels for foreign people living in poverty in Antwerp and the Flanders.

7 Founded in 1994, its goal is to offer a daily spending activity to the homeless. The daily paper is edited in cooperation with the poor people. Its vision is to offer chances to re-enter this society by helping them to create a working experience by selling the newspapers.

8 Initiated in 1993, it is an innovative not-for-profit organization in Utrecht (The Netherlands). It provides shelter, support and assistance to homeless, roofless people and other marginalized groups.

9 For more information on the roundtable, visit http://www.dignityinternational.org/dg/RC/Dignitydocs/2009/roundtable_flyer.jpg.

10 Dignity International news <http://www.dignityinternational.org/dgi/news.php>

11 Ibid.

12 Ibid.

13 An independent organization who invested in social cohesion of the Dutch society. The goal of the restaurant is to help people to get out of social exclusion and to enhance the level of social cohesion within the neighborhoods and their cities.



Candy May T. Nabaunag. Previously working as an academic librarian for major universities in Baguio City, Candy opted to extend her horizons and shifted to NGO work. Her knowledge of the library profession is now fully realized through her stewardship of the AFAD Resource Center.



BURIED EVIDENCE:

Unknown and Unmarked Mass Graves in Indian-Administered Kashmir

A Preliminary Report

by Angana P. Chatterji, Parvez Imroz, Gautam Navlakha, Zahir-Ud-Din, Mihir Desai and Khurram Parvez

Buried Evidence documents 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir, based on applied research conducted between November 2006-November 2009.

Findings

The graveyards investigated by International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir (IPTK) entomb bodies of those murdered in encounter and fake encounter killings between 1990-2009. These graves include bodies of extrajudicial, summary, and arbitrary executions, as well as massacres committed by the Indian military and paramilitary forces.

Of these graves, 2,373 (87.9 percent) were unnamed. Of these graves, 154 contained two bodies each and 23 contained more than two cadavers. Within

these 23 graves, the number of bodies ranged from 3 to 17.

A mass grave may be identified as containing more than one, and usually unidentified, human cadaver. Scholars refer to mass graves as resulting from crimes against humanity, war crimes, or genocide. If the intent of a mass grave is to execute death with impunity, with intent to kill more than one, and to forge an unremitting representation of death, then, to that extent, the graves in Bandipora, Baramulla, and Kupwara are part of a collective burial by India's military and paramilitary, creating a landscape of "mass burial."

Post-death, the bodies of the victims were routinely handled by military and paramilitary personnel, including the local police. The bodies were then brought to the "secret graveyards" primarily by personnel of the Jammu and Kashmir Police. The graves were constructed by local gravediggers and caretakers, buried individually when possible, and specifically not *en mass*, in keeping with Islamic religious sensibilities.

Press Release

The graves, with few exceptions, hold bodies of men. Violence against civilian men has expanded spaces for enacting violence against women. Women have been forced to disproportionately assume the task of caregiving to disintegrated families and undertake the work of seeking justice following disappearances and deaths. These graveyards have been placed next to fields, schools, and homes, largely on community land, and their affect on the local community is daunting.

The Indian Armed Forces and the Jammu and Kashmir Police routinely claim the dead buried in unknown and unmarked graves to be “foreign militants/terrorists.” They claim that the dead were unidentified foreign or Kashmiri militants killed while infiltrating across the border areas into Kashmir or travelling from Kashmir into Pakistan to seek arms training. Official state discourse conflates cross-border militancy with present nonviolent struggles by local Kashmiri groups for political and territorial self-determination, portraying local resistance as “terrorist” activity.

Exhumation and identification have not occurred in sizeable cases. Where they have been undertaken, in various instances, “encounter” killings across Kashmir have, in fact, been authenticated as “fake encounter” killings. In instances where, post-burial, bodies have been identified, two methods have been used prevalently. These are 1. Exhumation; and 2. Identification through the use of photographs.

The report also examines 50 alleged “encounter” killings by Indian security forces in numerous districts in Kashmir. Of these persons, 39 were of Muslim descent; 4 were of Hindu descent; 7 were not determined. Of these

cases, 49 were labelled militants/foreign insurgents by security forces and one body that was drowned. Of these, following investigations, 47 were found killed in fake encounters and one was identifiable as a local militant

IPTK has been able to study only partial areas within 3 of 10 districts in Kashmir, and our findings and very preliminary evidence point to the severity of existing conditions. If independent investigations were to be undertaken in all 10 districts, it is reasonable to assume that the 8,000+ enforced disappearances since 1989 would correlate with the number of bodies in unknown, unmarked, and mass graves.

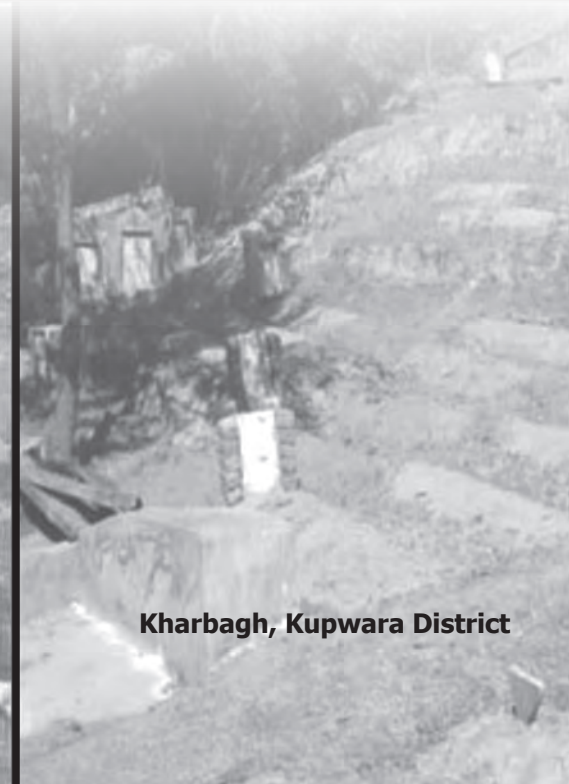
Allegations

The methodical and planned use of killing and violence in Indian-administered Kashmir constitutes crimes against humanity in the context of an ongoing conflict. The Indian state’s governance of Indian-administered Kashmir requires the use of discipline and death as techniques of social control. Discipline is affected through military presence, surveillance, punishment, and fear. Death is disbursed through “extrajudicial” means and those authorized by law. These techniques of rule are used to kill, and create fear of not just death but of murder.

Mass and intensified extrajudicial killings have been part of a sustained and widespread offensive by the military and paramilitary institutions of the Indian state against civilians of Jammu and Kashmir. IPTK asks that the evidence put forward in this report be examined, verified, and reframed as relevant by credible, independent, and international bodies, and that international institutions



Chehal Village, Uri Area, Baramulla District



Kharbagh, Kupwara District

ask that the Government of India comply with such investigations.

We note that the international community and institutions have not examined the supposition of crimes against humanity in Indian-administered Jammu and Kashmir. We note that the United Nations and its member states have remained ineffective in containing and halting the adverse consequences of the Indian state's militarization in Kashmir.

We ask that evidence from unknown, unmarked, and mass graves in Indian-administered Jammu and Kashmir be used to seek justice, through the sentencing of criminals and other judicial and social processes. As well, the existence of these graves, and how they came to be, may be understood as indicative of the effects and issue of militarization, and the issues pertaining to militarization itself must be addressed seriously and expeditiously.

The violences of militarization in Indian-administered Kashmir, between 1989-2009, have resulted in 70,000+ deaths, including through extrajudicial or "fake encounter" executions, custodial brutality, and other means. In the enduring conflict, 6, 67,000 military and paramilitary personnel continue to act with impunity to regulate movement, law, and order across Kashmir. The Indian state itself, through its legal, political, and military actions, has demonstrated the existence of a state of continuing conflict within Indian-administered Jammu and Kashmir.



NOTE: Released at a press conference by the IPTK, 2 December 2009, Srinagar, Kashmir. Report, photographs, video clips available at: www.kashmirprocess.org

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Advocate Parvez Imroz is Convener of IPTK and Founder, Jammu and Kashmir Coalition of Civil Society.

Gautam Navlakha is Convener of IPTK and Editorial Consultant, Economic and Political Weekly.

Zahir-Ud-Din is Convener of IPTK and Vice-President, Jammu and Kashmir Coalition of Civil Society.

Advocate Mihir Desai is Legal Counsel of IPTK and Lawyer, Mumbai High Court and Supreme Court of India.

Khurram Parvez is Liaison of IPTK and Programme Coordinator, Jammu and Kashmir Coalition of Civil Society.



Kichama Village, Sheeri Area, Baramulla District

URGENT APPEAL

PRESIDENT MAHINDA RAJAPAKSE

Socialist Democratic Republic of Sri Lanka
Office of the President
Temple Trees, 150, Galle Road
Colombo 3, SRI LANKA

Dear **Mr. President**,

The Asian Federation Against Involuntary Disappearances (AFAD), a regional federation of human rights organizations working directly on the issue of enforced disappearance in Asia, is deeply concerned with the report we received from the Asian Forum for Human Rights and Development (FORUM-ASIA) about the sudden disappearance of **Mr. Pattani Razeek**, a human rights defender and Managing Trustee of the Community Trust Fund (CTF) in Puttalam, Sri Lanka on 11 February 2010.

Mr. Razeek was last seen together with other staff members of CTF in Polonnaruwa on their way home from a mission when their vehicle was intercepted by a white van which is known in Sri Lanka as the preferred vehicle of groups responsible for abductions and disappearances. Although, Mr. Razeek opted to join the group in the white van peacefully and assured his colleagues that he would meet them later, CTF was informed the following day by Mr. Razeek's family that he did not arrive home from the mission. His family and colleagues have been searching for him since then. Despite the complaint filed by the victim's relatives before the police station in Puttalam and the information sent to the Human Rights Commission of Sri Lanka about his disappearance, there is no substantial progress so far regarding the investigation on his disappearance.

Mr. President, it is shocking to learn that under your administration, there are people particularly human rights defenders who are being abducted and made to disappear in public places in broad daylight, yet little attempt is made to ascertain the identity of the perpetrators and locate the victim's whereabouts. This alarming pattern of disappearances in Sri Lanka and attack on human rights defenders are aggravated by the absence of effective remedies for families of the disappeared to search for their loved ones. We believe that your government's peace efforts will be undermined if you will not take serious steps in recognizing and protecting the basic rights of all Sri Lankan people, whether Sinhalese or Tamil, and to bring accountability for human rights violations.

In May 2009, you promised UN Secretary-General Ban Ki-moon that the Sri Lankan government would investigate alleged laws-of-war violations. Since then, your government's only action to all accusations of human rights violations has been an automatic and sheer denial. The failure of your government to take seriously the allegations of human rights transgressions perpetrated by your own armed forces has allowed a culture of impunity to develop in increasing likelihood of further violations.

Your reelection for a second term as president on 26 January 2010 presents you with a momentous opportunity to improve the human rights situation in your country. We therefore, urge you to exercise your political will to exhaust all means possible to locate the whereabouts of the victims. The protection and assistance to their families must also be guaranteed as priority measures by your government. The victims' families must be actively involved and should be kept informed on the progress of the investigation. Addressing past crimes is also crucial so that the thousands of victims of human rights violations committed during the decade-long civil war will not continue to be denied of justice.

In view of the above, we call on your government to sign and ratify the UN Convention for the Protection of All Persons from Enforced Disappearance at the soonest possible time and urgently pass a law criminalizing enforced disappearance to demonstrate your government's serious commitments for human rights.

Respectfully yours,

SGD. MUGIYANTO
Chairperson

SGD. MARY AILEEN D. BACALSO
Secretary-General

Mrs. B: A Review

by Mary Aileen D. Bacalso

This piece dares to review the play *Mrs. B* which portrays the politically relevant and powerful role of a woman, who, by dint of her noble commitment to the cause of the disappeared, has earned for herself the implicit title of being an icon to the relatives of the *desaparecidos* during the Arroyo administration. This review simply attempts to tell the readers of the excruciating pain being suffered by all the families of enforced disappearances all over the world, personified by the mother of a Filipino *desaparecido*, Mrs. Edita Burgos.

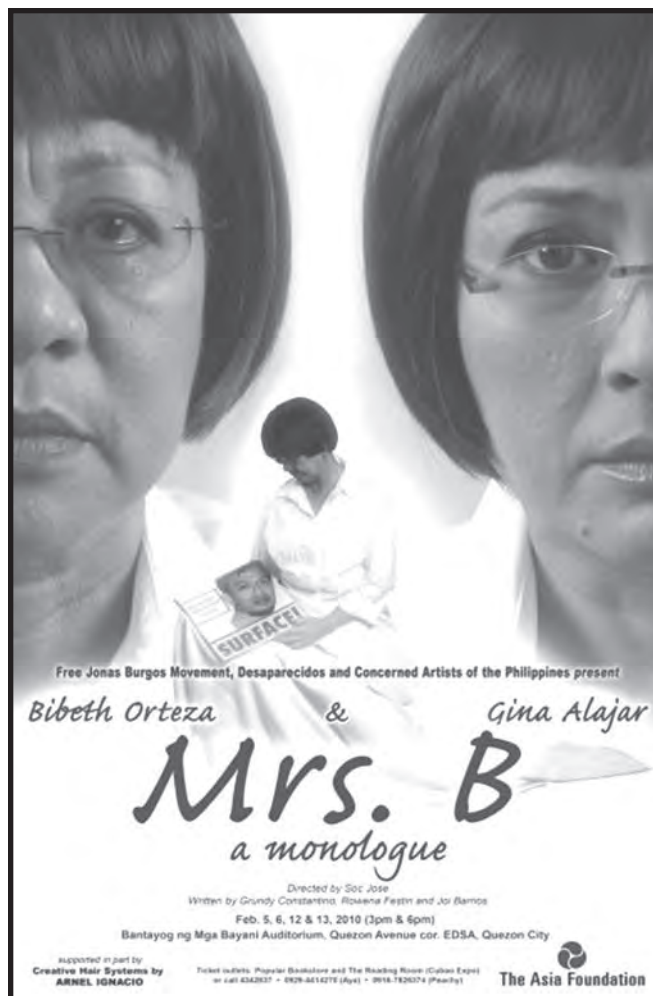
For certain, this review has not captured each and every detail of the story. But it hopes to convey the message about how cruel the crime of enforced disappearance is to the victim, the surviving family, the relatives and friends and the greater society. This review further hopes to tell the people that this issue is not a parochial concern of a family or a group of families of the *desaparecidos* but a social issue that necessitates a collective response. It is a crime that could happen to anybody.

The Curtain Opens

After a brief introduction by the Deputy Secretary-General of "*Desaparecidos*," Ms. Aya Santos, the curtain opened with a silhouette of Mrs. Burgos praying to the Blessed Virgin Mary with the heavenly background of *Regina Coeli*.¹

5 February 2009, Quezon City, Philippines

– In the audio-visual room of the *Bantayog ng Mga Bayani*² which accommodates barely a hundred people, a monologue, entitled "Mrs. B" was played. It depicted the formidable strength of Edita Burgos, mother of Filipino *desaparecido*, Jonas Burgos. Excellently portrayed alternately by actress, Gina Alajar and by director Bibeth Orteza, the presentation manifests Mrs. Burgos' courageous and determined search for her son and for many other *desaparecidos* in a country which has supposedly surpassed the tyrannical and rapacious



Marcos regime. Such inner strength is founded on her profound love for her son and her deep faith in her Creator.

A Wounded Narrative

It was Easter Sunday, the celebration of the feast of the Risen Christ. The main character started to tell her story as she was preparing for a special lunch for her children. Teacher that she is, she recalled the seven basic food groups. The favorite soup of her dear Jonas did not slip her memory. She went on thinking of *lechon*,³ one of Jonas' favorite dishes. Her facial expression alternated between joy and pain when she recalled in detail how she gave birth to baby Jonas; how he grew up as a happy child; how he and his brother destroyed their sister's dolls; how he was as a pupil -- assigned to erase black boards, physically active, jolly, and music-minded. She shared how Jonas later grew up as a mature person whose noble purpose was to help the peasantry in their struggle for land and life. She went on further to tell the audience



Photos of Mrs. B's search for her son and rallyists wearing the Jonas' mask. (©Carmela Lapeña)

about how they run the family through a Family Council where important concerns are discussed.

Suddenly, the audience heard the loud sound of a car. It was not simply an ordinary car normally parked and leaving, but it was her regular visitor, who had been keeping an eye on her every movement. As a joke coupled with sarcasm, she bade goodbye to the vehicle. This led her to narrate further her funny yet scary experience when she was tailed by a car in the Diliman campus of the University of the Philippines. While she was going toward the direction of the university shopping center, a lady wearing a skirt, oddly designed with yellow bell flowers, followed her to one of the small restaurants. Obviously pretending to be selling *sineguelas*,⁴ the woman got startled, and rushed away leaving the *sineguelas* cluttered all over the floor. She was taken a back at the comment: *Baka naman ma impierno ka na sa ginagawa mong 'yan!* (You might go to hell for what you are doing!) An ordinary vendor with a clean conscience would not have been bothered by this statement but the woman's reaction confirmed her questionable identity.

After the incident at the university with "Ms. Yellow Bell Flowers," Mrs. B went on to share about her late husband, press freedom fighter, Jose "Joe" Burgos. Joe and Edita had a mutual admiration for each other. Theirs was a whirlwind romance that immediately led to marriage in 1965, 7 years before the declaration of martial law. Because of the difficult security situation at that time, it was then that she learned by heart the rules to ensure safety and security. **Rule No. 1:** Be observant. When someone follows you, do not flee but observe the persons following you. **Rule No. 2:** Study the details of vehicles. The horrors of martial law flit back to her mind in kaleidoscopic vividness. Press freedom was curtailed. *We Forum* and *Malaya* were closed. There were rallies everywhere. It was then that her children involved themselves in these rallies. Concerned over her family's safety, she herself learned the "art of surveillance." She checked her husband and her children from afar... Her present predicament of being under surveillance by the military is not new to her. With Joe as her husband, she witnessed his life in prison during the dark years of the Marcos dictatorship.

It never occurred to her that years later, she would be, as some people would say, in a worse predicament. She surpassed the tests of martial law. While the experience of martial law was unfair to her as well as to any other victim of human rights violations, the nightmare of Jonas' disappearance in a government which boasts itself to be the champion of human rights in Southeast Asia, is all the more unfair and inhuman.

Mrs. B, who values silence, honesty, justice, courtesy and fortitude, never dreamed that years later, she would be asked by Marie Enriquez, the Secretary-General of KARAPATAN,⁵ to be the spokesperson of *Desaparecidos*.

She continued narrating about Jonas confiding to the Family Council regarding his work with the peasants. Her family would have wanted him to be just an ordinary agriculturist, but having been brought up with the value of helping the downtrodden; he could never be told by his family to turn his back on the poor. While reminiscing those good old days, the exasperated Mrs. Burgos, who was waiting for the *lechon*, grumbled: "*Lechon or no lechon, Jonas will not come!*"

Suddenly, in the background, a loud cry was heard: "*Aktibista lang ako, wala akong kasalanan.*" (*I am only an activist. I did not commit any offense.*) A reenactment of Jonas' ordeal was presented on stage. It was then that Mrs. B. poignantly recalled how she missed her son, vowing never ever to forget him for the rest of her life. Looking back, she remembered the last Easter Sunday that he was with her. The reenactment alternately presented Mrs. B telling about the last phone call of Jonas who spoke with garbled words. The phone call gave some indications that he was drugged. The incident led Mrs. Burgos to cite **Rule No. 3**: In times of surveillance, please make your message clear.

The climax of the story was when Mrs. B recalled the difficult search for her son -- how she and the rest of her family made all the efforts to find Jonas. They left no stone unturned -- they even looked over at some of the

"*taong grasa*"⁶ who could possibly be the disappeared son she is looking for. Not finding him, she turned furious and confronted the perpetrator to produce Jonas. With an angry tone, she cried: "*General Quintoy, ilabas mo ang anak ko!*" (General Quintoy, please surface my son!). Then Mrs. B showed Jonas' face sketched from the testimonies of witnesses. Furthermore, she expressed her wrath when she fearlessly accused the perpetrators of having been promoted in exchange for the life of her son. She went on to ask: "*May mga anak ba kayo, General?*" (*Do you have sons, General? I pray that what happened to my son does not happen to yours. But remember, the sins of the father will be visited on the heads of his children.*)

Mrs. B reached the point of no return and cited **Rule No. 4**: "*Huwag matakot, makibaka!*" (Don't be afraid. Dare to struggle!) Her citing this rule manifests Mrs. Burgos' transformation from an ordinary citizen to a courageous human rights defender. She confronted the perpetrators; wrote letters to national authorities; wrote to Pres. Gloria Macapagal-Arroyo, knocked at the doors of the United Nations and told the world of the disappearance of her son and of the many other victims of human rights violations. While all these efforts have indeed, effectively put across the message that the crime of enforced disappearances continues to happen in broad-day light in a supposedly civilized Philippine society, they miserably failed to physically bring Jonas back to the bosom of his family.

At the apex of her emotions, with faltering voice, Mrs. B cried and fell: "*Kahit gaano ka katibay, mababasag*



The audience is made to face reality with these posters of *desaparecidos*. (©Carmela Lapeña)

at mababasag ka rin...." (No matter how strong you are, you will also break down...) This statement reminds the author of Jesus praying: "Father, if possible, take this cup away from me." This scene reflects that human strength and weakness are not necessarily in contradiction. Overcoming weaknesses manifests formidable strengths that transcend human frailties. This is Mrs. B: a paragon of strength and a source of inspiration and encouragement to the other family members of the disappeared and the rest of society – a constant reminder that in the search for a world without *desaparecidos*, there is no turning back.

Towards the end of the monologue, Mrs. B. turned with admiration to the image of the Blessed Virgin Mary, which she described as characteristic of courage by literally stepping on a snake. Then she said, while this is a manifestation of Mary's courage, to her, what was more courageous for the Mother of Jesus was when she witnessed her son being severely beaten in the *Via Crucis*⁷ and his subsequent violent death and crucifixion.

A Personal and Collective Call

Raising her fist, Mrs. B made a brave promise: "*Ako ang magiging tinik sa lahat ng mga nangunguha ng anak...*" (I will forever be a thorn to all those who make children disappear ...) Linking arms with her were sons and daughters of the disappeared whose voices eloquently expressed their never ending search for their fathers. They took turns in reciting a litany of the search, to wit:

*"...Ibalik niyo ang bugbog, laspag na katawan.
Mapaghihilom ng bawat sugat.
Isauli niyo ang baliw ang isipan
Mapanumbalik ang katinuan.
Ibigay niyo sa akin ang pira-pirasong buto.
Ang gula-gulanit na laman,
At kahit pa ang bangkay na di na makilala...."⁸*

*(Bring me back the weak and beaten body
Each wound will heal
Return to me the insane mind
It will come back to its sanity.
Return to me the broken skeletons
The broken flesh
And even the corpse that is beyond recognition...)*

They made a call that resonated through the four walls of the venue: Surface the disappeared! Justice for all the *desaparecidos* and all victims of human rights violations. With the real Mrs. B on stage, they linked arms and made an appeal to the audience to join the struggle

to stop enforced disappearances and to put an end to impunity.

The audience noticed an eight-year old child who incessantly sobbed as she did her part in the play, "*Ako ang anak na nagmamaha!*" (I am the daughter who loves.) This author later learned that the girl is a niece of Jonas. Her father died when she was a baby and Jonas is her surrogate father.

The child's every tear should lead us not to cold apathy but to courageous participation in this long and lonely fight for a world free from enforced disappearances.

1 *Regina Coeli* is an ancient Latin Marian Hymn of the Christian Church, and one of the four seasonal Marian antiphons of the Blessed Virgin prescribed to be sung or recited in the Liturgy of the Hours at the conclusion of the last hours to be prayed in common that day, typically night prayer (Compline or Vespers). Accessed from Wikipedia, The Free Encyclopedia.

2 *Bantayog ng Mga Bayani* or Monument of Heroes is a place where victims of human rights violations gather for important occasions. In it is a wall where names of *desaparecidos* and other victims of human rights violations are engraved.

3 *Lechon* is a Filipino term for roasted pig which Filipinos eat during special occasions.

4 *Sineguelas* is another one of those "childhood memory fruits" that conjure up images of summer, beach holidays, or hanging out in a neighbor's backyard shooting the breeze and munching on these summer gems. *Sineguelas* (*Spondias purpurea*) or Spanish Plum in English, is a native to Mexico and the western coast of Central and South America. Accessed from <http://www.marketmanila.com>.

5 *KARAPATAN* is an alliance of individuals, groups and organizations working for the promotion and protection of human rights in the Philippines. Its founders and members have been at the forefront of the human rights struggle in the Philippines since the time of Marcos' martial law regime. Accessed from <http://www.karapatan.org>.

6 *Taong grasa* is a term given to beggars who are so dirty. Many of them have been left or have been abandoned by their families.

7 *Via Crucis* is Jesus Christ's Way of the Cross which depicts His passion, death and resurrection.

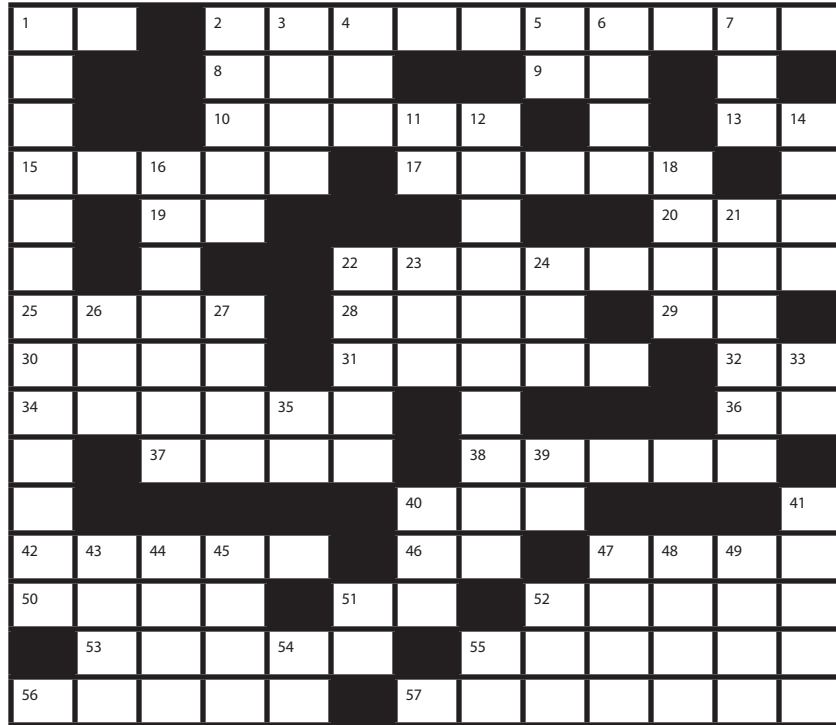
8 "*Litanya ng Paghahanap.*" Is a poem composed by Joi Barrios who was inspired by Edita Burgos' courage and dedicated the poem to her and to other mothers of the disappeared.



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

CROSSWORD

by Darwin Mendiola



ACROSS

- 1. District Attorney
- 2. Military rule
- 8. President Obama's realm
- 9. Funding Institution
- 10. Country in West Africa where UN special envoy Bob Fowler disappeared in early 2009
- 13. Preposition
- 15. A Kashmiri human rights activist who died on 20 April 2004 in a landmine incident
- 17. Country which submitted the highest number of cases to the UNWGEID
- 19. Human Rights
- 20. ____ of Reason
- 22. Popular name of 1992 People's Uprising in Thailand
- 25. Seldom
- 28. Paddles
- 29. Half an em
- 30. Wicked
- 31. (*Nunca Mas*) Never ____
- 32. Doctor
- 34. Demography
- 36. Greeting
- 37. Male

- 38. Indonesian Association of Families of the Disappeared
- 40. Also
- 42. ____ *Bantay Laya*, the anti-insurgency campaign in the Philippines
- 46. Preposition
- 47. Famous island in Indonesia where bombings occurred on 12 October 2002
- 50. *Terra firma*
- 51. Light switch
- 52. Ethnic group in Sri Lanka also known as Eelam
- 53. Mock
- 55. City where ex-Chief Justice Iftikhar Mohammad Chaudhry arrived to address lawyers waging a campaign against President Musharaff in 2007
- 56. Direct a course
- 57. Commission for the Disappeared Victims of Violence

DOWN

- 1. Spanish term for the "disappeared" people

- 2. AFAD Chairperson who was slain in a Garuda flight from Indonesia to Amsterdam
- 3. Continent which has the most number of disappearance cases
- 4. Banter
- 5. Advocacy Forum
- 6. City in South America where *FEDEFAM* Congress was held in 1982.
- 7. Aesthetic
- 11. Same as 29 Across
- 12. Indemnification
- 14. Follow
- 16. Healing Wounds, Mending Scars: First ____ Experiences of Asian Families of the Disappeared
- 18. Feeble
- 21. Led the nonviolent resistance movement against British colonial rule in India
- 22. Motivate
- 23. Delay
- 24. Crime Scene Investigation
- 26. Hail!
- 27. Option
- 33. Relief International

- 35. United Nations
- 39. Knockout
- 40. Chemical element with the symbol Sn
- 41. Documents
- 43. ____ Mortem
- 44. In the ____ of Fire
- 45. Sheltered side
- 47. Thai Currency
- 48. Latin for love
- 49. Italian Currency
- 51. Conjunction
- 52. Brownish
- 54. Emergency Room
- 55. ____ and Behold

30 August 2003 - 7 September 2004
AFAD Chairperson
- Muntir Said Thalib

"Human rights in the sense of human solidarity has created a new universal and equal language going beyond racial, gender,

Answer to CryptoQuote:

CRYPTOQUOTE

by Darwin Mendiola

CryptoQuote is a phrase or quote that has been encrypted by simple substitution cipher.

Direction: One number stands for a letter. In this Cryptoquote, **4 is A, 11 is E, and 5 is N.**

"	1	2	3	4	5	6	7	8	9	10	7	5	9	1	11	
10	11	5	10	11	12	13	1	2	3	4	5					
10	12	14	7	15	4	6	7	9	16	1	4	10				
17	6	11	4	9	11	15	4	5	11	18						
2	5	7	19	11	6	10	4	14	4	5	15	11	20	2	4	14
4	14	5	8	2	4	8	11	8	12	7	5	8				
21	11	16	12	5	15	6	4	17	7	4	14	,				
8	11	5	15	11	6	,	11	9	1	5	7	17				
12	6	6	11	14	7	8	7	12	2	10						
21	12	2	5	15	4	6	7	11	10	.	"					

- Munir Said Thalib

AFAD Chairperson (30 August 2003 - 7 September 2004)

S	A	R	T	N	O	K		R	E	E	T	S
E	R	O	H	A	L		R	E	E	N	S	
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F				O	O	T						D
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I	H				T		S	U	S	N	E	C
R	D		N	I	A	G	A		L	I	V	E
	N	E		S	R	S	O		R	E	A	R
Y	A	G	M	A	C	K	M	A	V			V
E	G	A			P				R	H		P
B		L	A	L	P	A	L		N	A	S	A
O	T		M		R	E	R		G	E	N	S
	R		I	F		S	A		U	S	A	E
									M	A	R	D
W	A	L	L	A	L	I	A	L	A	R	T	A

Answer to Crossword

The Voice is a bi-annual publication of the Asian Federation Against Involuntary Disappearances (AFAD). It is providing you with the latest on human rights with focus on involuntary disappearance issue within the Asian region. AFAD welcomes contributions but reserves editorial rights.

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The AFAD is a regional federation of organizations working directly on the issue of involuntary disappearances from Timor Leste, India, Indonesia, Nepal, Pakistan, Philippines and Thailand. Founded in 1998 to promote solidarity, lobby, communications, networking and advocacy among its member-organizations and network, the AFAD links arms with international, regional and national formations from other continents. For more information, you may write, visit or call us.

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Emptiness *

Victor Guerrero Ferrerdez

Where are you, my brother? Why can't you come home?

We have been waiting for you from the dead of night

The street is now restricted, off-limits for idlers,

Anybody can be accosted for just joining the protesters.

You didn't leave us, father, but you are not by our side.

Mother is praying, repeatedly asking

That you may come home

So we can kiss your hand once again.

Where are you, my son? Where did you go that night?

We are worried about the pervasive mass arrests.

Bothered by the news and rumors

That your body was found in a mass grave.

My Beloved, we waited for you to join us for dinner.

But not even your shadow can we find.

Your physical strength is our source of life.

Now, we, your children ask: how will our future be?

You are all forced to disappear

Husband, son, brother, sister and father.

Your families who are left behind will continue the struggle

To get justice is to fill in the emptiness.

*Translated from the original winning piece in Filipino titled, "Patlang."