



WHAT LIES BENEATH

7000

STOP GENOCIDE

stop disappearances

# BEYOND TEARS AND BORDERS:

## Tracking enforced disappearances

A compilation of country situation reports in nine countries in Asia

Asian Federation Against Involuntary Disappearances (AFAD)

Manila, Philippines  
2013

Only courageous hearts would have the daringness to publish these concrete accounts of disappearances. We feel the hunger for truth and the thirst for justice. Yet hope is the real message... that there is something we can all do --- to think, to feel, to cry and to pray in unity with the victims and their families. 'Faith that does nothing in practice, it is thoroughly lifeless.' (James 2:17 )

**EDITA T. BURGOS, Ed.D**

*Mother of Filipino desaparecido, Jonas Burgos*

***Beyond Tears and Borders*** bears evocative witness to the harrowing terrain of enforced disappearances. ***Beyond Tears and Borders*** records the effects of disappearances that tear at the social fabric, compelling our attention to those marginalized by conflict, war, neglect, and brutality across Asia. ***Beyond Tears and Borders*** is an acknowledgement of the sustained and inspiring work undertaken by families and communities that contend with the effects of involuntary disappearances of those they knew and hold dear, and that of allied groups, commissions, and institutions. In charting the requirements of justice and accountability, ***Beyond Tears and Borders*** offers a powerful reminder that those who have been forcibly disappeared have not ceased to exist.

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Her publications include, *Violent Gods: Hindu Nationalism in India's Present; Narratives from Orissa (2009); Contesting Nation: Gendered Violence in South Asia; Notes on the Postcolonial Present* (co-edited, 2013).

***Beyond Tears and Borders*** represents a systematic perspective of the phenomenon of enforced disappearance in the Asian region. It covers historical, legal and human aspects of the crime. Accurate data collected over the decades is intertwined in the book with stories of struggle against uncertainty and injustice. In the contemporary context where enforced disappearance has finally been acknowledged as the crime against humanity, and where the legal instruments of protection against are only starting to function, ***Beyond Tears and Borders*** represents a priceless source of background information.

An inspiring work of a dedicated team!

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The Asian Federation Against Involuntary Disappearances (AFAD) is a federation of human rights organizations working directly on the issue of involuntary disappearances in Asia. Envisioning a world without *desaparecidos*, the Federation was established based on the common phenomena of enforced or involuntary disappearances in many Asian countries and the imperative of regional and international solidarity in order to strongly respond to the problem.

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# Foreword

By Mary Aileen D. Bacalso

**“Beyond Tears and Borders,”** the fourth book of the Asian Federation Against Involuntary Disappearances (AFAD), is launched on the occasion of the 2013 commemoration of the International Day of the Disappeared. The book serves as a fitting tribute to all the *desaparecidos* of the world and their suffering families. It attempts to present the updated phenomenon of enforced disappearances in countries where there is an AFAD presence.

An integral part of the Federation’s Research and Documentation work, the book attempts to convey the message that enforced disappearances occurred and continue to occur in the vast Asian continent in the context of a poor human rights record worsened by the absence of strong regional human rights mechanisms for protection and where empowerment of the victims is found, sadly, wanting.

The book attempts to chronicle the history of enforced disappearances in Bangladesh, Jammu and Kashmir in India, Indonesia, Nepal, Philippines, South Korea, Sri Lanka, Thailand and Timor-Leste. Against the backdrop of internal conflict and post conflict situations, of post dictatorship and war against terrorism, each article presents the evil that is enforced disappearance and the concerned government’s contribution to resolve and/or aggravate the problem.

The scourge of enforced disappearance is reflected in the figures mentioned in each article; in the sufferings of the victims’ families amidst the callousness of the perpetrators; in the states’ explicit or tacit policies to stifle dissent and in the chilling atmosphere of impunity. Behind the statistics are precious lives of the *desaparecidos* and those of their surviving family members, a substantial number of whom are vulnerable women and children who bear the brunt of the crime’s devastating consequences.

A regional situation in Asia and a global phenomenon at that, the malady that is enforced disappearance presented in this book urged the United Nations to adopt the International Convention for the Protection of All Persons from Enforced Disappearance (Convention). The book elucidates that, except for Thailand and Indonesia which have both signed the Convention and are in the process of ratification, the rest of the Asian countries where AFAD has member-organizations and partners have not yet signed, much less acceded to it. It is notable, though, that on 21 December 2012, the Philippines enacted the first law against enforced disappearances in Asia, through the Republic Act 10353. On 12 February 2013, it promulgated the law’s Implementing Rules and Regulations. Such an exemplary development in Asia serves as an inspiration to other states to also penalize enforced disappearances within their domestic laws.

The substance of the book is part of building strongly the foundation for AFAD’s relentless campaign for the eventual revelation of the hidden truth, for the realization of the elusive justice, for reparation of a rather irreparable damage and for the reconstruction of a historical memory amidst the perpetrators’ attempts to obliterate it from history. A testament of the multiple violations of human rights, this book contradicts the nagging insistence for society to forget the past and to move on and attain reconciliation without justice.

BEYOND TEARS AND BORDERS:  
TRACKING ENFORCED DISAPPEARANCES

The substance of the book is but a microcosm of the global magnitude of the crime – a compelling reason to stop enforced disappearances NOW. It poses an imperative for Asian and other UN Member States to ratify the Convention and recognize the competence of its independent monitoring body, the UN Committee on Enforced Disappearances.

15 years since the Asian Federation Against Involuntary Disappearances (AFAD) was established, “**Beyond Tears and Borders**” was

conceived and has seen the light of day. During its decade and a half of accompanying the deeply pained families of the disappeared, the Federation has shed tears along with them. But to borrow from the words of the Mothers of the *Plaza de Mayo-Linea Fundadora* in Argentina, “*no hay dolor inutil,*” or there is no useless pain. Beyond these tears of pain and sorrow and beyond the borders of geographical distance and diversity between and among AFAD member-organizations and partners is the strong resolve to realize the envisioned world without *desaparecidos*.

# In the Name of National Security: Enforced Disappearances in Bangladesh

By Odhikar

Enforced disappearance is a cruel human rights violation. It is deeply rooted in an exploitative and oppressive system that breeds poverty and violation of basic human rights. It is an instrument of repression resorted to by a government whose policies are opposed or assailed by critical members of society. It is often committed on the pretext of maintaining peace and order and protecting national security from those conveniently labeled as 'enemies of the State.'

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) defines the crime as the "arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law."

Thus, the crime of enforced disappearance involves three cumulative minimum elements: (a) Deprivation of liberty against the will of the person concerned; (b) Involvement of government officials, at least indirectly; (c) Refusal to disclose the fate and whereabouts of the person concerned. Enforced

disappearances are only considered as such when the act in question is perpetrated by state actors, private individuals, or organized groups acting on behalf of, or with the direct or indirect support of the government.

Enforced disappearances are not new in the history of Bangladesh. During the Liberation War, many notable intellectuals were abducted and their whereabouts remained unknown until their bodies were found. After Liberation, the crime continued under various regimes, notable among them were the disappearances of renowned writer and film maker, Zahir Raihan just after the liberation of Bangladesh and of Kalpana Chakma, a women's rights activist from the ethnic minority community in Bangladesh in 1996. However, there are many more cases – reported and unreported.

In recent years, the instances of enforced disappearance increased in Bangladesh. People are abducted and disappeared in various places even in broad daylight by men claiming to be members of law enforcement agencies. The unfortunate ones are recovered as corpses.

In many cases, families of the disappeared allege that men claiming to be from law enforcing agencies picked up the victim, even though they were not uniformed. However, law enforcing agencies flatly refuse the allegation that the victim had been picked up by agents or strangers posing as agents of police or Rapid Action Battalion (RAB). Despite the denial of law enforcers of these allegations, in some cases they later produce the arrested persons in public or hand them over to police stations.

### **Some recent cases**

Odhikar documents cases of disappearance only when there is evidence that members of law enforcement agencies picked up the victim, or when witnesses or family members say that the perpetrators claimed that they were members of law enforcement agencies.

According to information gathered by Odhikar, 24 persons allegedly “disappeared” in 2012. Among them, 10 were allegedly taken by RAB, six by the police Detective Branch (DB), two jointly by RAB-DB police, one by Industrial Police, and five by unidentified persons. Odhikar also documented 77 cases between January 2009 (after the Awami League-led Grand Alliance Government came to power) and February 2013. These cases are clearly of the category, ‘enforced disappearance’ as defined by the ICPAPED.

On 4 April 2012 at around 7:00 p.m., labor leader Mohammad Aminul Islam was allegedly abducted by law enforcement agents. The next day, police recovered Aminul’s body on a road in front of a school at Tangail. His family claimed that law enforcers tortured and killed him. This case significantly harmed the government’s international image and proved the state of intimidation and repression suffered by garment workers.

Habibur Rahman Haoladar Habib, 48, is a fishmonger in the Gora, Katakhal area of West

Betbunia village under the jurisdiction of Morelganj Police Station of Bagerhat district. At around 5:30 am on 6 July 2011, the police of local station, Armed Police Battalion, and DB, with the help of some local people, arrested him in his house. His whereabouts are still unknown.

At around 12:30 p.m. of 18 February 2012, Mahfuzur Rahman was allegedly arrested by Dhaka DB, his whereabouts unknown. Nur Mohammad Noyon, nephew of Mahfuzur, was also confined and interrogated for seven days after he came to Dhaka in search of Mahfuzur, his family alleged. Mahfuzur Rahman was allegedly tortured for three months and four days after he disappeared while Noyon was interrogated in DB police custody for seven days.

On 25 February 2012 at around 7:30 p.m., 24-year-old Shah Alif Prince, son of Mohammad Shahjahan Ali and Fahima Khatun Jotsna, residing in Building 1, Road 13 of Nobinagar Housing under Mohammadpur Police Station, Dhaka, was allegedly picked up by plainclothes members of RAB-2 (Rapid Action Battalion) from the Shyamoli Shahi Mosque area. According to his family, his whereabouts were unknown for 44 days.

On 5 February 2012 at around at 1:00 a.m. Al Mukaddas, 22, a 4th year student of the Department of Al Fiqah, and Mohammad Waliullah, 23, a Masters candidate of Dawah from the Islamic Studies Department of Islamic University, were allegedly arrested and disappeared by some persons who identified themselves as RAB-4 and DB Police members from Savar.<sup>1</sup>

### **The Law**

Criminal Law in Bangladesh has no provisions for the crime of enforced disappearance. However, there are penal provisions for crimes such as abduction, wrongful confinement, and grievous hurt - acts which are perpetrated in the crime of enforced disappearance. The Code of Criminal Procedure lays down the process to ensure proper investigation and prosecution.

In the international arena, Bangladesh is a party to major international conventions, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic

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1 More fact-finding reports can be found in our website [www.odhikar.org](http://www.odhikar.org).

Social and Cultural Rights (ICESCR), Convention against Torture (CAT), and the Rome Statute of the International Criminal Court (ICC), which protect the rights of people from various crimes and injustices. The Government of Bangladesh has ratified CAT, but has yet to accede to the ICPAPED.

### **Significance of the Ratification of the Convention on Enforced Disappearance**

Bangladesh has a good record of signing and ratifying several international human rights instruments such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention for the Rights of the Child (CRC), CAT, and the UN Convention on the Protection of the Rights of Migrant Workers and their Family Members, etc. Bangladesh also acceded to the ICCPR and the ICESCR in 2000.

Bangladesh also has several good penal laws pertaining to crimes amounting to torture and wrongful confinement. However, when it comes to looking at actual law enforcement, many serious shortcomings still need to be addressed. In a number of international human rights treaties ratified by Bangladesh, the government has registered some declarations and reservations to particular articles of the treaties, reasoning that national laws already provide measures or that the provisions contravene personal laws. It is easier to understand why Bangladesh is seemingly reluctant to ratify the ICPAPED in this light. The government may argue that Bangladeshi legislation provides safeguards from various offenses that are linked with enforced disappearance or closely related crimes, such as abduction, kidnapping, unlawful detention, illegal deprivation of liberty, trafficking, illegal constraint and abuse of power, thus it is not necessary to ratify such convention. What the government does not admit is the ineffective implementation of national penal laws. This has been the trend for over four decades.

The key question for human rights defenders of Bangladesh since the adoption of the ICPAPED has been to design an effective campaign strategy to enhance public awareness so that the Government of Bangladesh accedes to the Convention. If it happens, the domestic law of Bangladesh will have to eventually synchronize with the norms suggested by the Convention.

As mentioned, Bangladesh is familiar with enforced disappearances, which were witnessed during the Liberation War in 1971. The Pakistan army and their local collaborators picked up people from their homes and were found dead later. Many never returned and their whereabouts are still not known.

Enforced disappearance also occurred during post-liberation periods. It is committed more or less by all regimes in Bangladesh. A growing concern in recent years is the increase in numbers of enforced disappearance and the role of law enforcing agencies, particularly RAB. It has been learned through fact-finding missions conducted by Odhikar that RAB and DB police registered the highest number of involvement in disappearance cases in recent years. Most of the victims of enforced disappearances were political opponents and petty businessmen. Meanwhile, some people who disappeared have criminal records.

The RAB and DB units claim that law enforcers are not involved in such abductions. However, there are strong suspicions that they increasingly resort to enforced disappearance, as this practice makes it harder to find those killed, identify the methods used to kill them, and search for those responsible for the disappearances.

Such suspicions are supported by the fact that when media and human rights defenders have attempted to document cases of enforced disappearance, they have been seriously intimidated, obstructed, and harassed by law-enforcement agencies and government officials. No state agent should engage in any act of intimidation or reprisals against those persons who contribute to the eradication of such a practice as enforced disappearance.

### **Conclusion**

Enforced disappearance is an international crime. If it is widespread, it will be considered a crime against humanity, implying that Bangladesh could become vulnerable to external humanitarian interventions. To combat this nightmare, in addition to reporting, campaigning, and protesting, it is essential that we engage in massive public campaign to make people aware of the heinous nature of the crime and demand its immediate stoppage. Odhikar has been campaigning for the accession to the ICPAPED. This is only a minimum

step by which we could begin addressing the pathological decadence of the present state of Bangladesh, the failure of the judiciary to deliver justice and the violent and confrontational mainstream political culture.

The government must thoroughly investigate each reported incident of disappearance speedily and efficiently and put in place a directive that security forces operate within the Constitution and the laws. Complaint mechanisms must be clearly established and freed from any kind of refusal, resistance, threats, and intimidation. Bangladesh has obligations under ICCPR and CAT to prevent cases of enforced disappearances. The Rome Statute of the International Criminal Court, which Bangladesh ratified in March 2010, also refers to the systematic

use of enforced disappearance as a crime against humanity.

At present, Bangladesh is under political crisis. General strikes have crippled the nation and caused deaths and destruction. Grave human rights violations are being perpetrated and Odhikar worries that if the confrontations continue, enforced disappearances may be a tool used to silence increasingly dissenting voices.

Odhikar reminds the Government of Bangladesh, since it has been elected for the second term at the UN Human Rights Council, that it has the duty to ensure the right to life and protection of the law. Regardless of who perpetrated the crime, it is the duty of the state to see that proper justice is delivered.

### ODHIKAR documentation on disappearances from 2009-2013

Years	Total number of disappeared persons	Found dead	Returned alive	Still no trace of their whereabouts
2013 (Jan-June)	14	0	8	6
2012	24	1	10	13
2011	31	5	1	25
2010	18	1	0	17
2009	3	1	0	2
<b>Total</b>	90	8	19	63



# A Grim Picture of Terror: Abductions perpetrated by the Democratic People’s Republic of Korea (DPRK) against citizens of the Republic of Korea (ROK)

Family members of  
abduction victims  
meet with Citizens’  
Alliance for North  
Korean Human Rights  
and AFAD.

By Lilian Lee

## Background

Approximately 3,835 South Korean citizens are reported to have been abducted and taken to North Korea since the Korean War ended in a ceasefire in 1953. According to the South Korean government, at least 517 of those abductees remain in DPRK.<sup>1</sup> The rest were sent back within one year of their abductions, with the exception of eight abductees who escaped DPRK decades after their abductions.<sup>2</sup> The majority of the abductees who remain in DPRK are fishermen taken by force while on their vessels. The others include office workers; passengers of a commercial Korean Air flight; vacationing teenagers; members of the South Korean Navy; Vietnam War prisoners of war (POW) wrongly repatriated to DPRK; and at least one government inspector. In almost all cases, guns or the threat of guns were used by DPRK forces to abduct ROK citizens.

According to the testimonies of captured DPRK spies and abductees who returned home, the abductees were investigated thoroughly upon their arrival in DPRK. Ideological indoctrination sessions followed the investigations and upon completion, they were either sent back to ROK or, in unfortunate cases, assigned to stay in DPRK.

1 South Korean Ministry of Unification, White Paper, 141 (2012) (Korean ver.); South Korean Ministry of Unification, White Paper, 117-8 (2010).

2 South Korean Ministry of Unification, *supra* note 8, at 141.

In the course of our research, Citizens' Alliance for North Korean Human Rights (NKHR) saw a trend in the DPRK in which the government retains younger abductees, presumably because they are believed to be more amenable for readjustment into DPRK society. In one incident, 22 crew members of the fishing vessel *Myeongdeok ho* were abducted on 20 November 1965. Less than three months later, DPRK returned the boat along with 13 crew members and never released the remaining nine abductees, who were all students with ages ranging from 16 to 20 years old.

Abducted persons whom DPRK presumably did not find useful enough to absorb into society but who they did not repatriate are likely being detained in various prison camps.<sup>3</sup> The National Security Planning Agency of ROK reported that 22 abducted persons from ROK were detained in a political prisoner camp.<sup>4</sup>

Decades have passed in most cases of the abductions, and the situation is getting more urgent. Of the 517 remaining abductees, 322 abductees are 70 years or older in 2013. Many of the spouses, parents, and children of the abductees NKHR tried to contact have already passed away not knowing the fate of their family members.

### **The situation in the Republic of Korea**

The majority of the abductions took place over three decades ago yet only within the past 15 years have the families of the abductees felt safe and secure enough to raise their voices with the ROK government.

Understanding this lapse requires a brief explanation of the political atmosphere in South Korea at the time of the abductions. The authoritarian government of President Park Chung-hee, which lasted from 1963 to 1979, set a tone of suspicion toward any ROK citizen with ties to the Communist North, including people who had the misfortune to be abducted. This attitude continued even after his regime. Additionally, the tense relationship between North and South Korea during President Park's regime made it so that the ROK government very rarely did much to bring back abducted citizens. The government's suspicion and inaction in turn influenced the public's view of the

abductees, and instead of being treated as victims, abductees were often seen as traitors or DPRK spies.

This attitude was further misdirected toward their families, who received nearly no support from the government following the abduction. In fact, the family members themselves were investigated for any connections to the DPRK and were often blocked from admission to the best universities and from government employment. In effect, the ROK government's wariness of any ROK citizens who came into contact with the DPRK created an enormous stigma surrounding abductions. This stigma, along with the loss of the family's main income earner, consequently fostered an environment in which communities ostracized and turned their backs on family members of abductees.

Even after the military authoritarian rule was over in ROK, the government was still very reluctant to address the abduction issue. This was particularly true during President Kim Dae-Jung's administration (1998-2003), whose "Sunshine Policy" prioritized smooth relations with DPRK over raising such sensitive issues as abduction and the succeeding Roh Moo-Hyun administration (2003-2008) was not very different from the former.

In more recent years, outspoken family members of victims have created organizations to advocate for their rights and to plead more vocally for their family members' return. Some of these organizations are: Abductees' Family Union (formed in 2000); 1969 Korean Air Abduction Victims Family Union (formed in 2011); and Federation of Post-War Abductees' Families (formed in 2012).

Family members of abductees have now received financial restitution and acknowledgement of loss from the ROK government. However, after many dialogues with the Ministry of Unification and the Ministry of Foreign Affairs and Trade, NKHR has concluded that the ROK government does not consider abductions a priority in their bilateral relations with DPRK and will not actively pursue the abductees' repatriation.

### **Attempted channels of communication - The Red Cross**

The DPRK government only acknowledges that ROK citizens are living in their country because

3 South Korean Ministry of Unification, *supra* note 8, at 507.

4 *Id.*

of divisions caused by the Korean War or because of voluntary defections. The ROK is, therefore, forced to categorize the abductees' family members separated by the Korean War in order to have any kind of dialogue about their fates and to seek reunions.

The International Committee of the Red Cross (ICRC) is not a viable option available to the families of abductees for obtaining information on the fate of the abductees, according to the information we have on the current activities of the ICRC. Further, using the forms provided by the ICRC to trace the fate of abductees would be challenging

due to DPRK's restrictions on the use of Internet.<sup>5</sup>

Previously, the family members interviewed by NKHR tried to request confirmation of life status through the ICRC when applying for a spot in the inter-Korean reunions for separated families. Since 2000, there were 18 rounds of separated family reunions, but most of the family members NKHR interviewed were denied a spot based on the response they received from the ICRC regarding their family member in the North. Under "Life Status" of the abductee, the ICRC form stated "Verification Not Possible."

### Engaging the UN Working Group on Enforced or Involuntary Disappearances

Cases submitted by NKHR to the Working Group as of February 2012

	Name	Submitted to WG	Transmitted to NK	Response from NK
1	Kyoung-sook Kin	2004.09	2004.09.16	Continuously
2	Won Hwang	2010.06.10	2010.06.16	2012.05.09
3	Dong-ki Lee	2010.10.08	2010.10.19	2012.05.09
4	Choi Jeong-Woong	2010.11.08	2010.11.09	2012.05.09
5	Won-mo Choi	2012.03.19	2012.08.15	
6	Jang-geun Choi	2012.06.26	2012.12.14	
7	Kyeong-shik Moon	2012.09.03	2012.12.14	
8	Jeong-yeol Nam	2012.09.03		
9	Mu-su Nam	2012.10.09		
10	Gwang-mo Jeong	2012.10.09		
11	Hyeob-ju Park	2012.10.09		
12	Min-kyo Lee	2012.11.26		
13	Seung-min Choi	2012.11.26		
14	Dal-young Kim	2012.11.28		
15	Gi-man Eom	2013.01.15		
16	Jang-won Kim	2013.02.15		

DPRK has failed to respond adequately to the requests for information by the United Nations Working Group on Enforced or Involuntary Disappearances (Working Group) on the cases of abduction. Its responses consist of outright denials or evasions and counter accusations. For example, in response to the three Korean Air hijacking victims' cases, a DPRK official wrote in May 2012 that they "are not cases of enforced disappearance. There is no person in my country who has been enforcedly or involuntarily disappeared or detained against his or her will."

The DPRK government also called cases submitted by the Working Group as "fabrications" and "the concocted plots of the hostile forces against the DPRK."<sup>6</sup>

5 Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, U.N.Doc. A/HRC/19/65, ¶ 19, at 6 (Feb. 13, 2012) ("The Special Rapporteur recognizes that an absolute replication of all forms of family tracing adopted by ICRC could be challenging in the context of separated families in the Korean peninsula, as certain modalities would require the affected families to have access to the Internet, which is lacking in the Democratic People's Republic of Korea.")

6 In the 97th session of the Working Group on Enforced or Involuntary Disappearances.



*High school friends Min-gyo Lee (left) and Seung-min Choi (right) were abducted together in 1977. They were 16 and 17 years old, respectively.*

Therefore, all cases remain outstanding, including cases from Japan.

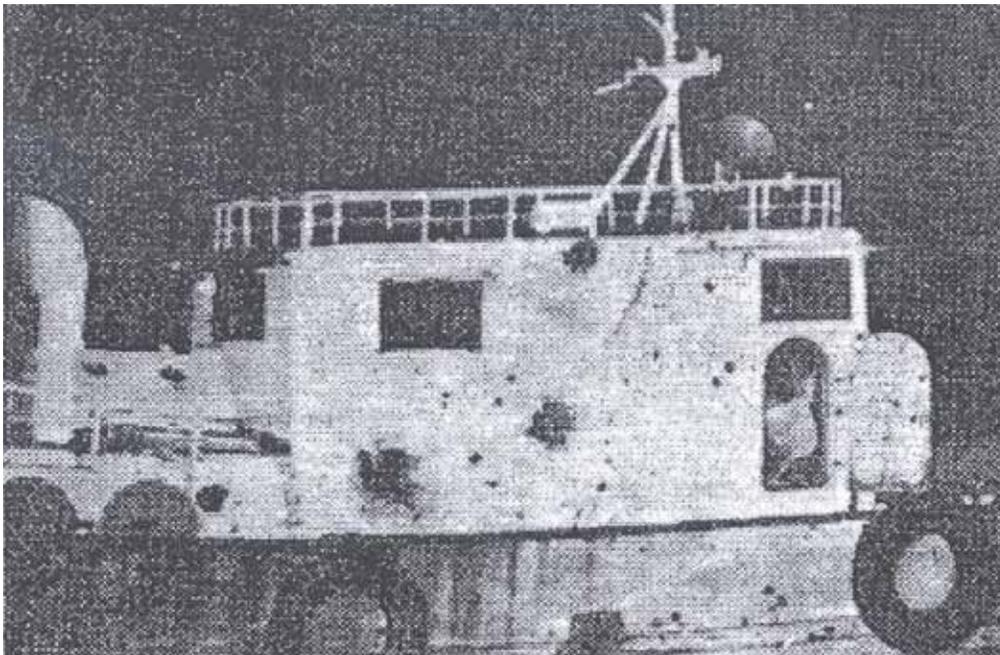
Nevertheless, families of the 517 post-war abductees are currently left with no recourse other than the Working Group to determine the life status of their loved ones because they are unable to communicate with the DPRK through the Ministry of Unification, the International Committee of Red Cross, or as individuals.

### **Conclusion**

NKHR has met and interviewed dozens of family members of abductees as well as two abducted

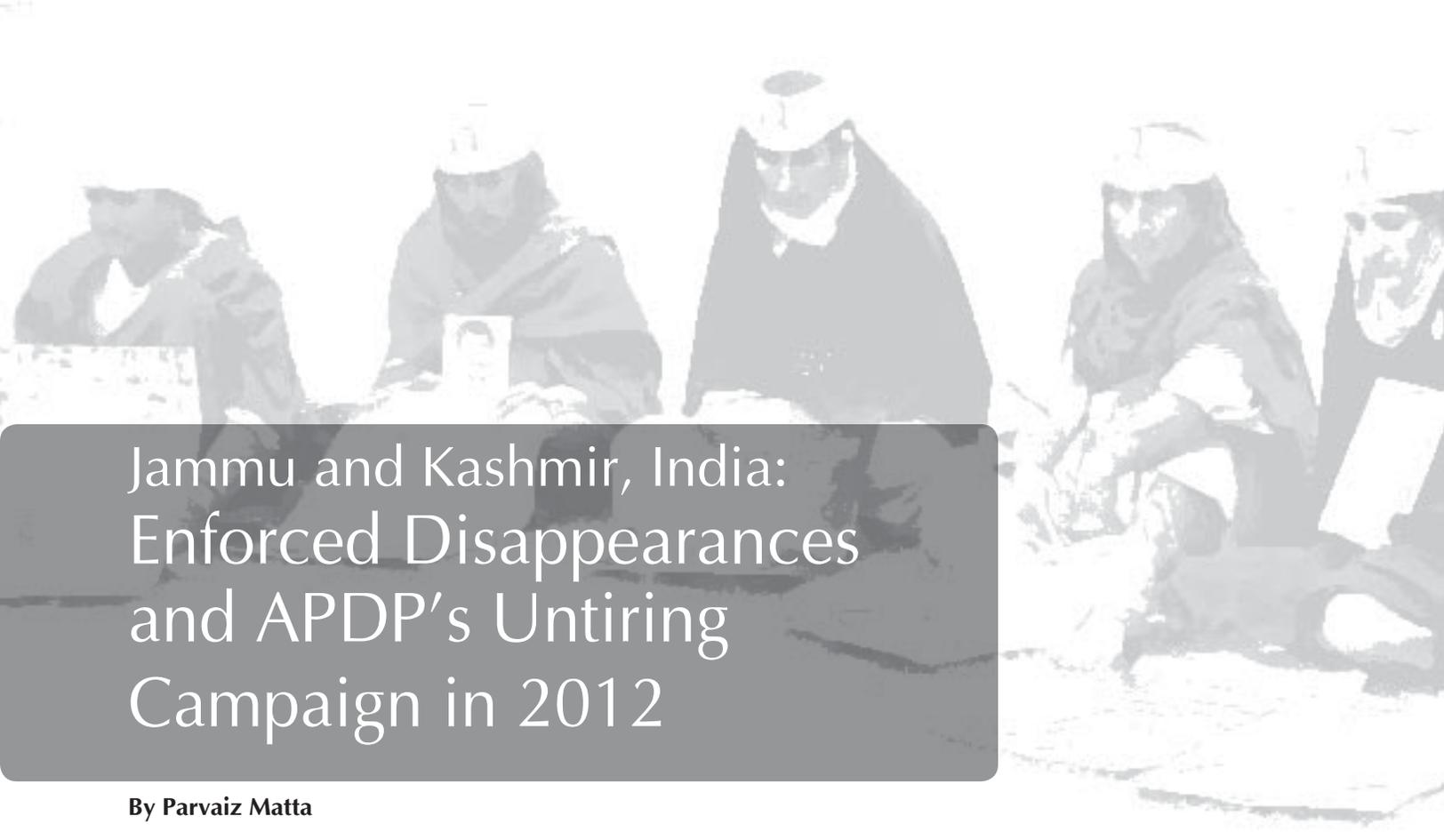
returnees. We have tried to demonstrate in detail how the abductions took place in previous cases submitted to the Working Group. During the hijacking of boats, forces acting on behalf of the DPRK government used guns, bombs, cannons, and other artillery on civilian fishing vessels. They carried out abductions not only near the Northern Limit Line in the Yellow Sea, but as far down as the southernmost tip of the Korean peninsula where territorial dispute is impossible. Individually, these stories are blatant acts of international abduction and hijacking. Taken together, these stories paint a grim picture of a systematic and decades-long operation by the DPRK government to terrorize and abduct ROK citizens on the seas, on land, and in the air.

Given that the families of the 517 abductees have already experienced trauma, anguish, and sorrow caused by the abductions of their loved ones and have endured “suffering that reaches the threshold of torture,”<sup>7</sup> the families deserve to know the fate and whereabouts of their loved ones who have been abducted. Decades have passed in most cases of the abductions, and the situation is urgent. Many of the spouses, parents, and children of the abductees NKHR tried to contact have already passed away not knowing the fate of their family members. Time is running out for both the remaining abductees and their aging family members waiting at home.



*The Tongyeong-ho returned to port after being attacked by two DPRK gun boats in 1977. The two boats fled after taking the Tongyeong-ho's chief engineer. Originally published in the South Korean newspaper, Donga Ilbo.*

<sup>7</sup> *Id.*, Gen. Comment 4, at 15 (1996).



# Jammu and Kashmir, India: Enforced Disappearances and APDP's Untiring Campaign in 2012

By Parvaiz Matta

## Current political situation

Amidst repeated claims of peace by the government, the past year portrayed a dismal picture of human rights in Jammu and Kashmir. Efforts for peace have proved more rhetorical than effective as seen by the situation that prevailed in 2012. Two cases of enforced disappearances were recorded by the Association of Parents of Disappeared Persons (APDP) until the end of the year.

Always, there remains the possibility that more cases of disappearances will follow, as people tend to be late, as shown in a number of precedents, in coordinating with the APDP. Among the killings, there were 35 civilians, 75 alleged militants, 36 armed forces personnel, a retired police officer, and an unidentified person. Out of the total 35 civilians killed, there were six children, nine women, and four tourists. The denial of their civil and political rights, absence of mechanisms of justice, heightened militarization and surveillance dominated the past year.

The government tried its best to maintain the image of peace in the state by citing huge tourist influx and decreased militant mobilizations. Government agencies ensured this by keeping themselves busy in neutralizing and jailing the dissidents. Few minors were booked by invoking the controversial

legislation Public Safety Act (PSA) for protesting and, in few cases, for pelting stones on deployed forces and police. There were cases where parents were held hostage or jailed for their children's role in pro-freedom protests.

Interestingly, the police took a u-turn on the killings of tourists who died in an explosion on 27 July 2012 at Bijbehara, Anantnag. Immediately after the incidents, the police labelled the incident as an accident caused by gas cylinder explosion. Recently, on 28 December 2012, the Jammu and Kashmir police said that the two militants killed in Pulwama encounter were responsible for the grenade blast on tourists in Bijbehara. The contradiction on the part of the police and government is nothing new. It became a routine for the state agencies to issue statements convenient to them. The government has adopted a habit

of stating contradictions on the phenomenon of enforced disappearances and has tried its best to confuse people on the issue under the debris of such conflicting statements.

### **Phenomenon of enforced or involuntary disappearances**

The APDP recorded two new cases of enforced disappearance that took place this year. One of the disappeared was identified as Mohammad Maqbool Khan, S/O Ghulam Nabi Khan, R/O: Drangbal, Baramulla, a 47-year-old man who disappeared mysteriously on 23 March 2012.

The other disappeared, Shabeena Begum, W/O Amir-ud-Din Naik, R/O Azamabad, Mandi, Poonch is a 40-year-old woman abducted by Jaswant Singh, a personnel of Army's 13th Sikh Light Infantry regiment.

The government, as usual, has failed to initiate any conclusive investigation into the matter while victims' families, despite tireless efforts, have so far failed to locate their loved ones' whereabouts.

In the case of Shabeena Begum, a First Information Report (FIR) has been lodged with the concerned police station and statements of the witnesses were recorded before the Magistrate, indicting the army men for their role in abducting women.

### **Government indifference and contradictions on disappearances continue...**

Instead of implementing proper mechanisms to probe over the 8,000 cases of enforced disappearances and to prevent future incidents, the government did not only make denials, but also contradictory statements to keep the lid shut on the issue. The new contradictory statement on 8 October 2012 came from the Chief Minister himself who put the figure of enforced or involuntary disappearances (EID) to only 2,305 persons since 1989. This only exposes the state's lack of seriousness on the issue.

In the past, we have documented a series of such conflicting statements coming from successive regimes. In 2002, the National Conference government said that 3,184 persons were then 'missing.' In 2005, the Peoples' Democratic Party-

led government claimed 3,931 persons were 'missing.' In 2009, the present National Conference led government divulged that 3,429 persons are missing in Jammu and Kashmir since 1989.

Pertinently, the APDP on 7 October 2011, applied for information under the Jammu and Kashmir Right to Information Act of 2009 from the State Home Department. It requested to be provided with all the lists of 'missing persons' as claimed by various governments. More than a year has passed, the state government has failed to provide any information regarding the contradictory figures of 'missing persons' divulged by various governments<sup>1</sup> on the floor of the Jammu and Kashmir Legislative Assembly.

In 2012, the APDP constantly asked the government to provide information about the total number of disappearances in Jammu and Kashmir. The association, under Jammu and Kashmir Right to Information Act – 2009, submitted many applications to the government seeking information regarding the phenomenon of disappearances and its various associated aspects. Moreover, invoking this Act, the association asked for reports of all missing persons filed in various police stations across Jammu and Kashmir. Despite the flood of requests, police authorities did not bother to provide information, prompting the APDP to take up the matter with the State Information Commission. A competent intervening body, the commission, after processing the case, directed police authorities to furnish information to the association. Despite this directive, the police so far failed to provide the requested information. The indifferent approach of the police clearly depicts the state of unaccountability and impunity in Jammu and Kashmir.

### **Documentation and monitoring of EID cases**

Continuing with its research and documentation, on the International Day of the Disappeared (30 August 2012), the APDP submitted 507 cases of enforced or involuntary disappearance to the State Human Rights Commission (SHRC). These cases were gathered from two districts, Baramulla and Bandipora, in North Kashmir. The list was the second of its kind submitted to the State Commission in the last two years.

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1 Governments or ruling parties that from time to time were in power and issued such statements.



*Women family members of the disappeared call for the ratification of the anti-disappearance treaty.*

The APDP urged the Commission to hold in-depth investigations into the causes and circumstances that led to the disappearances of the persons included in the list. Moreover, the association, in its petition, underscored the willingness of the relatives of victims to cooperate with any investigation aimed at establishing the fate of those disappeared. Consequently, the relatives have agreed to share DNA samples to the investigators. Related to this, there is a dominant belief amongst the relatives that the disappeared might have been dumped in unmarked and nameless graves scattered across the state of Jammu and Kashmir.

On the other hand, the association in 2012 has successfully documented over 100 case profiles of the disappeared from different parts of the state. It took lots of travelling and engagements of volunteers and interns (from different universities from within and outside Kashmir, who often sought help from the association in their internship assignments) to gather the testimonials from relatives. These will likely continue in 2013. The association has resolved to gather more and more information on the phenomenon of enforced disappearances.

Case profiling helps the association to ensure the accuracy of its previous documentation and to further authenticate its claim. At many far flung places, the association came across the families who have no idea of legal remedies or methods to highlight their sufferings. Hence, the exercise of reaching out to the victims' families helps them

in more ways than one. The families, besides highlighting their cases in the media, got access to the judiciary and State Human Rights Commission.

### **APDP's efforts on the campaign**

This year, the APDP sustained its efforts to strengthen the struggle and campaign against the phenomenon of enforced disappearances. The power of the association lies in the resolve of its members, who are relentlessly fighting for decades for truth and justice. The unwavering resolve of the members injects further strength into the campaign of the APDP. This year, the APDP expanded its campaign with visits to the almost inaccessible places to gather data on enforced disappearances. New families were involved in the campaign. New cases were filed before State Human Rights Commission and in courts. Non-seriousness on the part of the state and intimidation and surveillance from its agencies failed to prevent the APDP from continuing its campaign.

The APDP, to a large extent, has been successful in mounting pressure on the Government of India (GOI) and state governments<sup>2</sup> to end enforced disappearances in Jammu and Kashmir and bring the perpetrators to justice. If we analyze the last few years, there is a remarkable decline in the number of enforced disappearances. In 2012, the APDP reported two cases of enforced disappearances, a figure less than what the APDP used to record a few years ago.

<sup>2</sup> Governments referred to as different parties like NC, PDP and Congress who were ruling the state from time to time.

Also, the filing of *habeas corpus* petitions in the courts has only made the state and perpetrators edgy. The recently released stories of impunity in Jammu and Kashmir, “Alleged Perpetrators” published by APDP and International People’s Tribunal on Human Rights in Indian Administered Jammu and Kashmir (IPTK) discussed the role of perpetrators of human rights violations. The 60 cases of enforced disappearances unnerved the state and its agencies. There is complete silence on the government side as it has found difficulties in denying the contents of the report or label it as mere propaganda.

Having been shown evidence against its forces including the army, the state is shying away from establishing an inquiry commission under the Commissions of Enquiry Act of 1957. This was the long standing demand of APDP – for the state to probe into the cases of enforced or involuntary disappearance in Jammu and Kashmir. The association is pushing hard for the inquiry commission and in this regard, is strengthening the civil society inside and outside of state to press for the demand.

Another pressing challenge before the association is the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED), which India signed in 2007 but has not ratified to this day. As such, the association has decided to engage the civil society and opinion makers to demand for the ratification of this treaty.

In March 2012, the APDP had a meeting with Dr. Christof Heyns, UN Special Rapporteur on

Extrajudicial, Summary, and Arbitrary Executions of Office of the United Nations High Commissioner for Human Rights. Dr. Heyns, who travelled for a one-day visit to Kashmir, was apprised by representatives of the association about the phenomenon of enforced disappearances and extrajudicial executions. The association submitted a couple of dossiers and case studies to the Rapporteur.

In commemoration of the International Week of the Disappeared in May 2012, the APDP organized sessions of special prayers in solidarity with the victims of enforced disappearances. The APDP’s call was responded positively by the people in general and religious leaders in particular to mark the importance of the Week. During the commemoration, religious leadership held special prayers for disappeared people in their respective areas and *Masjids* (worship places). The major prayer event was organized at Srinagar Grand Masjid, where hundreds of people who travelled from far places gathered to pray for the disappeared.

During their prayers, religious leaders affirmed that people should question the government on the issues of enforced disappearance. They should hold the government accountable for the wrongs it has done to the people particularly to the families of those who disappeared. The leaders called upon the government to constitute an inquiry commission, which will look into the cases of disappearance in Jammu and Kashmir and bring out the truth about their fate.

Despite all obstacles, the APDP continues to organize its monthly sit-in programs on the 28<sup>th</sup> day of every month. Large numbers of affected families, including women and children, participate in these activities and are continuously pressing for their demands. From time to time, the association issued statements, counter-statements and appeals for the government to investigate all the cases of enforced disappearances in Kashmir. Furthermore, the member families of APDP reiterated their demands for comprehensive forensic investigation into all unmarked, nameless, and mass graves in Jammu and Kashmir.

Moreover, representatives of APDP consistently participated in different workshops and sit-ins in India, which are being organized by many rights



*Women family members of the disappeared call for an end to impunity.*

organizations across the country. During such programs, representatives from various states of India extend their support to the struggle of APDP in its pursuit to end other human rights violations perpetrated in the state of Jammu and Kashmir.

The APDP used these fora to convey its messages to people outside and apprise human rights groups across India about the indifference of the government toward human rights issues in Jammu and Kashmir. The programs and conferences provide a platform to lobby with some prominent rights activists of India. These meetings have so far, proved helpful in developing relations with many active civil society groups and other organizations working for truth and justice across India.

### **APDP's struggle on the issue of unmarked and mass graves (Partial acknowledgement of Jammu and Kashmir Police)**

A Right to Information application regarding unmarked graves in all districts of Jammu and Kashmir were lodged at the Jammu and Kashmir government. While initially rejecting the information as "threat to [the] sovereignty and integrity of India and also threat to security and peace," the government denied the information.

After the decision was challenged later on, the police issued Order No. PHQ/RTI-4/2012/76-77 on 23 March 2012. The First Appellate authority of the Police Headquarters conceded to APDP's arguments and shared 2683 FIR numbers pertaining to three districts of North Kashmir.

According to Jammu and Kashmir police, these 2683 FIRs are of those persons who, after their death, continue to be unidentified and buried in unmarked graves. So far, the police has not revealed the details in the other districts and the number of unidentified persons buried in unmarked graves registered in the 2683 FIRs.

### **Denial by government for forensic investigation**

On 13 August 2012, the Jammu and Kashmir governments submitted the Action Taken Report to the State Human Rights Commission (SHRC), wherein it is mentioned that the government would not carry out any DNA investigations on the unmarked and mass graves. According to them, it is an "academic exercise in futility," that has the



*On the 28th of every month, the APDP organizes a sit-in to ventilate the demand for justice.*

"potential of hurting the local sentiments" and can "become the trigger for serious law and order disturbances." It is also worth noting that in 2011, the SHRC, after endorsing the findings of APDP regarding the presence of unmarked and mass graves in north Kashmir, asked the governments of Jammu and Kashmir to carry out DNA tests and investigations into the unmarked and mass graves.

While keeping the options available for the families of the disappeared to carry out DNA tests with the government, the Action Taken Report submitted by the government to the SHRC has laid out the procedure for the families to coordinate the DNA tests with the Superintendent of Police of Human Rights Cell of Criminal Investigations Department (CID), who was assigned to act as the nodal officer for the tests.

Claimants family members of the disappeared were asked to identify the suspected graveyard and the particular grave of their disappeared relatives. Only then that the nodal officer would proceed with the DNA test on the specific grave to be matched with a claimant.

The assistance offered by the government was not effective. How would the family members of the disappeared know whether their relatives are dead



*A military man watches as victims silently convey their message to the Indian government.*

or alive and also if they are dead, where they have been buried? The APDP believes that the DNA tests of all the unmarked graves should be carried out first and only after that when the family members should be asked to give DNA samples.

### **Unmarked graves in Poonch and Rajouri districts**

So far, APDP has submitted the *prima-facie* pieces of evidence of 6,217 unmarked and mass graves in Kupwara, Baramulla, Bandipora, Poonch and Rajouri. The SHRC, for its part, has acknowledged the existence of 2,156 unmarked graves and mass graves in Kupwara, Baramulla, and Bandipora. During the multiple hearings of the case of unmarked and mass graves of Poonch and Rajouri, the Deputy Commissioner (DC) of the Poonch district submitted the factual report. The factual report from the DC of Rajouri is still pending.

While negating the presence of unmarked graves in Poonch and Rajouri, the Jammu and Kashmir Police, in its report submitted to SHRC, claimed that various anti-militant operations in these two districts had killed 3,431 militants, out of which 2,080 are unidentified.

The DC of Poonch, in his factual report, claimed that there were no unidentified or unmarked graves

in his district and that they have identified all the foreign militants as well. He furnished the list of all the encounters in Poonch and the total number of casualties of these encounters.

Surprisingly the document annexed to the Poonch DC's reply suggests that he was lying, as the 110-page annexure bore details of 1,685 unidentified bodies. It also reveals that there were no photographic pieces of evidence in most of the cases.

Said details are only about those cases where government claims they were collateral casualties, but there are many cases reported in the media over the last two decades where the police has recovered unidentified dead bodies from various places and were buried as unidentified persons, the details of which have not so far, been provided by the Poonch DC.

It appears that government officials at various levels are attempting to obfuscate the truth and confuse the matter on the issue of enforced disappearances and extrajudicial killings.

### **Challenges to the Association**

In August 2012, the APDP filed a complaint before SHRC against the defamatory statements made by the government about the patrons and caretakers of the association. Taking the defamation attempt seriously, the APDP made a fervent demand for investigation and appropriate legal action against the government. In its complaint, the association informed the SHRC that these statements, written and submitted as public document before the SHRC, and carried in news reports following their submission before the SHRC, are factually incorrect, irresponsible, and defamatory.

The government's statements against the APDP were misleading. The association considers the government statement as an open intimidation aimed at scuttling its sustained and on-going campaign. APDP is convinced that any measures that are not serious and responsible will be futile. APDP is resolved to continue its efforts for truth and justice.

And so the struggle continues.

# From the New Order to the Reform Era: Enforced Disappearances in Indonesia

By David Fau

In Indonesia, the occurrence of enforced disappearances heightened and received wide attention after groups of human rights organizations revealed the cases of pro-democracy activists who disappeared during the period of 1997-1998, along with the fall of the New Order. This crime ran parallel with the New Order regime to muffle the resistance movement against the result of the 1997 general elections and assassination of the seventh-term President Suharto.

*One of the bodies found on the street during the shootings of 1982-1985. The body had multiple gunshot wounds with the victim's hands tied and with no means for identification found on the body.*

In truth, the act of enforced disappearances occurred in 1965, at the turn of the regime of power from Sukarno to Suharto. However, this practice of enforced disappearances was obscure from 1965-1998 due to the successful terror mechanism of the New Order. The public was so terrified that it did not have the courage to report the disappearances that happened during that period.

In a general effort to document all practices of enforced disappearance, the acts are classified according to their commission within four periods, starting from the establishment of the New Order regime in 1965 until its fall at the end of 1998. This phenomenon continued shortly after the advent of the Reform Era. Here are the main cases of human rights abuses during those years:

## 1. 1965 - 1970

Massacre of suspected members of the Communist Party of Indonesia (*Partai Komunis Indonesia*-PKI).

## 2. 1980 - 1989

The discovery of mysterious bodies shot dead (1982-1985); Tragedy of Tanjung Priok (1984) and Tragedy of Talangsari (1989).

## 3. 1990 - 1998

These are the enforced disappearances that occurred during the Military Operation in Aceh, hereinafter referred to as DOM Aceh (1989-1998), the abduction and enforced disappearances of pro-democracy activists (1997-1998) and disappearances during the biggest riot in Indonesia in May 1998.

## 4. 1999 - 2005

These are the enforced disappearances that occurred after DOM Aceh (1999-2002), the first and second Martial Law regimes in Aceh, hereinafter referred to as DM I - II (2003-2005) and other conflicts in Poso, Ambon and Papua.

## Victims of enforced disappearance

From the period and events that occurred both from the New Order to the Reform Era, the crime of enforced disappearance was high in the first period covering 1965 - 1970 because the disappearances occurred across the country. Until now, the number of victims of enforced disappearance for this period is still difficult to ascertain.

Cases of enforced disappearance re-occurred in the country with a large number of victims in the Aceh region, ranging from the application of Military Operation Zone in 1989 -1998 (DOM Aceh), followed by the post-DOM Aceh (1998 - 2003), and the declaration of Martial Law and Civil Emergency in 2003 to 2005, commonly referred to as Martial Law I and II.

In the event of 1965-1966, KontraS documented and verified five victims of enforced disappearance in Blitar, mostly in the southern part of the area, during the military operation called Trisula Operation. Furthermore, through the information from the local organization, KontraS found an additional four cases in Palu, Central Sulawesi.

### Victims of enforced disappearances in South Blitar and Palu (1965 - 1970)

No.	Victim	Victims' activities
South Blitar (1968) <sup>1</sup>		
1	Husband of "IBE" <sup>2</sup>	Former teacher, member of Organization Pemuda Rakyat
2	Father of "YXX"	Civil servant in Education and Culture Department
3	Father of "XXY"	Unknown
4	XMTBM	Civil servant in the local government and member of PKI
5	Mangun Raharjo	Member of PKI in Sanan Kulon
Palu, Central Sulawesi <sup>3</sup>		
1	Abd. Rahman Dg Maselo	Leader of CDB PKI Central Sulawesi Periodic chief of National Front of Central Sulawesi
2	S. Chaeri Ruswanto	Vice leader of CDB PKI Central Sulawesi Member of Central Sulawesi Regional Parliament (1965-1966)
3	Sunaryo	Leader of Organization Pemuda Rakyat in Central Sulawesi Civil servant in Department of Public Works
4	Zamrud	Chief of PKI in Donggala regency Civil servant in Department of Society Development

In another part of Blitar, KontraS documented at least 31 more victims of apparent enforced disappearances and, after being unearthed from what appears to be mass graves, were later found to have been extrajudicially killed. Until now, there is no attempt by the government to exhume and identify the bodies in the mass graves found in Blitar.<sup>4</sup>

1 See the report of KontraS and ICTJ, *Menyusun Puzzle Pelanggaran HAM 1965: Sebuah Upaya Pendokumentasian*, 2012, page 37-38.

2 Names of the victims and witnesses are classified based on their recommendations and current social condition.

3 See the report of SKP-HAM, *Mengurai Benang Kusut-Untuk Rekonsiliasi Tragedi 1965/1966 di Sulawesi Tengah*, 2012, page 12.

In Aceh, based on the result of documentation, enforced disappearances had occurred since 1990, a year after the enactment of Aceh as the zone of military operation (hereinafter called as DOM). By 1990 -1996, KontraS documented 71 victims of enforced disappearance in three regions: North Aceh, East Aceh and Pidie. Since 1997 until the revocation of the status of DOM Aceh,<sup>5</sup> there were 54 victims of enforced disappearance in Pidie and other cases documented in North Aceh and Aceh Besar.

Enforced disappearances during DOM Aceh (1989 - 1998)

Period/time of event	Location	Number of victims	Total
1990 - 1996	Pidie	42	71
	North Aceh	18	
	East Aceh	11	
1997 - 1998	Pidie	54	63
	North Aceh	3	
	East Aceh	3	
	Aceh Besar	3	

The revocation of DOM status in Aceh was not able to reduce the number of victims of enforced disappearances. Based on the documents and information gathered, there were 251 victims from 1999 -2000. By 2001 and 2002, there were 36 and 82 persons respectively who are still disappeared. These events not only happened previously in three areas, but had spread to several other areas. Meanwhile, during DM I and II (2003-2005), at least 45 victims were recorded in Pidie, South Aceh, and Aceh Besar.

Enforced disappearances in Aceh after DOM until DM I-II (1998-2005)

No.	Status of Aceh	Period of events	No. of victims
1	Military Operation Zone	1989 - 1998	134
2	Post-DOM Aceh	1999 - 2002	369
3	DM I and II	2003 - 2005	45

Events of enforced disappearances had also occurred in conflict areas such as Tanjung Priok (North Jakarta), Talangsari (Lampung), Poso (Central Sulawesi), Papua, and Ambon (Moluccas). At least 68 victims in all conflict areas have been documented.

Enforced disappearances in Tanjung Priok, Talangsari, Poso, Papua, and Ambon

No.	Location	Time of event	Based on time Period	Number of victims			
				Male	Female	Unknown	Total
1	Tanjung Priok	1984	2 <sup>nd</sup> Period (1980 - 1989)	13			13
2	Talangsari	1989	2 <sup>nd</sup> period	12	18		30
3	Poso	2001 - 2006	4 <sup>th</sup> Period (1999 - 2005)	10		3	13
4	Papua	1998 - 2001	4 <sup>th</sup> Period	4	2		6
5	Ambon	2002	4 <sup>th</sup> Period			6	6

There are similarities in the backgrounds of the victims of enforced disappearances in Tanjung Priok and Talangsari, identified through their respective groups. The victims of Tanjung Priok came from a Muslim group led by Amir Biki while the victims in Talangsari were members of another Muslim group led by Warsidi.

4 Mentioned in the report of KontraS and ICTJ, *Menyusun Puzzle Pelanggaran HAM 1965 – Sebuah Upaya Pendokumentasian*, 2012.



*In a court decision in 1999, the Second High Military Court sentenced 11 members of the Rose Team of Kopassus (Special Armed Forces) for about 20 months in prison. However, after being released, four of them received military promotion.*

In Poso, the victims were taken randomly from 2001- 2006 when disappearances were more prevalent. In rural Toyado, members of the Indonesian National Army (TNI) abducted eight Toyado villagers. Among them, six were found dead after having disappeared for three days, while two others managed to escape.

In Papua, the disappearances occurred during the enactment of Military Operations Zone.<sup>6</sup> However, the events were quite far from adequate means of communication and occurred in far flung locations yielding only a few cases of enforced disappearance. There were five documented victims during the conflict between the civilian and military apparatus in Biak, Numfor on 6 July 1998. One victim, Aristoteles Masoka, disappeared on 11 November 2001. Masoka was the driver of Theys Hiyo Eluay, the leader of Papuan Presidium Council of West Papua.<sup>7</sup> A day before they disappeared, both of them were invited by the Kopassus (Special Armed Forces) to celebrate heroes' day in the latter's Headquarters. Eluay was found dead on the way back home. Masoka tried to return home to report what happened with Eluay, but disappeared on his way and remains missing to date.

Similar to the incidents that occurred in other conflict areas, the other documented cases of enforced disappearances happened in Ambon in 2002, where six people disappeared on 11 July 2002 in Tulunuo village. These victims were Tulunuo villagers abducted in their own homes. The other three victims disappeared on 21 September 2002 after the armed conflict.

The most known event of enforced disappearance is the abduction of several pro-democracy activists from 1997- 1998 and the riot in May 1998. From both events, there were 23 victims, ten of whom surfaced while the other 13 remain disappeared. Among the 13, nine were directly involved with political activities, especially in exerting pressure with the anti-Suharto movement and campaigning for an alternative presidential candidate.<sup>8</sup> The other four victims, meanwhile, reportedly disappeared during the riot in some areas in Jakarta on 14 May 1998.

5 The DOM Aceh was officially revoked on 7 August 1998, caused by the fall of President Soeharto and the New Order Regime.

6 DOM in Aceh was issued officially, but not in Papua. There was no official letter or military policy to deploy armies in Papua since and after the Act of Free Choice on 14 July to 2 August 1969. The military operation was intended mainly to reduce the movement of OPM (Free Papuan Movement) that was established in 1965. This operation is still on-going.

7 During the time of the downfall of Suharto and the New Order, the Papuan Presidium Council of West Papua began to speak out in the open about the political status of Papua and the right of the Papuans to self-determination. Theys H. Eluay was leading this movement.

### Victims' data based on pro-justice inquiry of the Indonesian National Human Rights Commission (hereinafter referred to as Komnas HAM)

Komnas HAM conducted pro-justice investigations on almost all of the events in the period covered. It started from the events of 1965 - 1966 until the riot in May 1998. These inquiry reports were then used as official references to find and identify the events and the victims of human rights violations, including those of enforced disappearances.

Enforced disappearances based on Komnas HAM's inquiry reports:

No.	The events	Time of events	Number of victims	Explanation
1	Massacre after G-30-S	1965 - 1968	37,774	Compiled from four locations
2	Mysterious Shooting	1982 - 1985	23	Occurred in Central Java
3	Tragedy of Tanjung Priok	1984	14	They were those found dead without any identity.
4	Tragedy of Talangsari	1989	no exact number	There were 235 dead bodies recovered in this incident.
5	DOM Aceh	1989 - 1998	163	
6	Abduction-enforced disappearances of pro-democracy activists of 1997-1998 and riot in May 1998	1997 - 1998	23	Ten victims had returned; 13 others are still missing

### Motives, patterns, and perpetrators of enforced disappearances

Motives of enforced disappearances in every event of human rights violations in the past can be seen from the background of each event. The fourth period had its own peculiarities, especially the background and the targeted victims. However, the motives are still interlinked, evolving from one period to the next.

The first is about the streamlining of the military for it to be involved in all aspects of life, including politics and economics.<sup>9</sup> This motive appeared in the first period from 1965 - 1970. There was also the personal ambition of Suharto to seize the power from Sukarno. The first period was the overturn of power from civil to military hands. The events of 30 September 1965 (G-30-S) marked as the starting point of the military movement. Referred to as G-30-S/PKI by Suharto, the government assumed that the PKI was the mastermind behind the killing of several military officers, as well as legitimizing the destruction of PKI and the massacre of numerous members and sympathizers of the party.<sup>10</sup>

The second motive is to strengthen the authoritarianism of the New Order by the public control system. Suharto ran this system by issuing a number of regulations, such as

8 There was a campaign for Mega-Bintang during 1997-1998. Most activists were supporting Mega as the new President.

9 General Abdul Harris Nasution triggered the military doctrine called *dwi-fungsi* Indonesian Republic Armed Forces -ABRI (the dual function of ABRI), in which ABRI not only played a role in the defense sector, but was also involved in social development. Thus, the New Order regime implemented this military doctrine. In 1971, Ali Murtopo, a military officer at the time, discussed said doctrine in a paper entitled, "The Acceleration and Modernization of 25 years' development." The law of 5/1094 about the local government was instrumental in establishing the involvement of the military. The military assumed the position of the Governor and conducted a number of military business, resulting in the exploitation of natural resources. This law of 5/1094 that combined the dual function of ABRI, gave freedom to the military to play the role of local leaders, such as Governor, in any area of Indonesia. The military was also allowed to control the natural resources and to run business and multiple security foreign companies that work in some areas such as Aceh and Papua.

10 Jhon Roosa, *Pretext for Mass Murder: the September 30th Movement & Suharto's Coup D'Etat in Indonesia*, Institute Sejarah Sosial Indonesia dan Hasta Mirta, 2008



*The families of the disappeared visit the Indonesian National Army (Tentara Nasional Indonesia-TNI) headquarters in Jakarta. The late Mami Tuti Koto (3rd from left), holds the picture of her son, Yani Afrie, who remains missing.*

Presidential Decree No.11/1963 (the Anti-Subversion Law), which was used against the critics of Suharto; the national censors to suppress press freedom; and article numbers 134-137 and the criminal law that ensnares persons of entities suspected of spreading hatred against the New Order.

The incident of mysterious shootings and the discovery of mysterious dead bodies, commonly called as Petrus (1982-1985), was one of the apparent forms of implementation of the said system. This event was called by Suharto as "Shock Therapy." The victims of Petrus were found on the edge of the street or other public places without any identification. The tragedies of Tanjung Priok and of Talangsari, meanwhile, were a display of disappointment to Muslim groups opposing the New Order. At that time, Suharto, on the way to strengthen his regime, controlled all the groups of society, including Muslim groups, by pushing the ideological uniformity of society and political parties with the ideology of Pancasila as the sole basis.<sup>11</sup>

The third motive is to maintain the continuity of military activities for the strengthening of the authoritarian New Order. Military business was conducted in several locations such

11 Muslim groups, who, in the beginning had tried to defend the enactment of the Jakarta Charter stating the use of Syariah Islam, refused the idea of Suharto about Pancasila as the sole basis for social and political ideology. The first sila of the Jakarta Charter states, "Believe in the Almighty God with the obligation for its Muslim adherents to carry out the Islamic law with Syariah." On 18 August 1945, the Committee for the Preparation of Indonesian Independence changed the formulation of the first sentence of Pancasila by removing the words "with the obligation of its Muslim adherents to follow Syariah," thus, the first sila became "Believe in One and Only God (*Ketuhanan Yang Maha Esa*)," Pancasila then became the official philosophical foundation of the Indonesian state. Suharto imposed this philosophical idea of Indonesia-Pancasila in the social and political context to eliminate other ideologies such as the religious ideologies of Partai Pembangunan dan Persatuan. This unification caused an outrage from Muslim groups, which compose the majority of Indonesia.

as Aceh, Poso, and Papua, in cooperation with the foreign investors. The characteristics of military business in all three areas are quite similar, except in Papua, wherein the military prefers handling security services for foreign companies such as the Freeport. The reaction of the people in Aceh, Poso, and Papua was shown in the form of uprising caused by the mismanagement of natural resources in these areas. The New Order's response and approach to the people's dissent was through further militarization. The military intervened to dampen the movement of the intruder security called *Gerakan Pengacau Keamanan*.<sup>12</sup>

In Poso, this appeared in the conflict between Christian groups and the Muslim community, when the military intervened to reduce the conflict. Besides that official reason, the military operated military business, i.e. the arms trade, catering to both sides. As such, the conflict did not end. Instead, various human rights violations occurred during the military intervention, even after the declaration of Malino and the ceasefire and peace agreement in Poso in 2001.

The abduction and enforced disappearances against pro-democracy activists in 1997-1998 and the riot in May 1998 which coincided with the massive demonstration of several students resulted in the downfall of Suharto and the New Order. It was also triggered by the economic crisis in Indonesia at the time, which accumulated further disappointment against the New Order.

The overall patterns of enforced disappearances and targeted victims in the fourth period have few similarities. These patterns include:

1. **Arrest of the victims at home, hiding places, or other public places:** The victims are either disappeared up to this day or were found dead. In the case of 1965-1966, the victims were allegedly buried in some mass graves.
2. **The victims were arrested and detained in a military/police station and disappeared:** Some victims were found dead in different places such as rivers, lakes, cliffs, and the sea.
3. **The victims were arrested and detained in different places and disappeared in transit.**
4. **The information about the identity of the dead victims and pieces of evidence of their existence were removed to obscure information or to avoid the search of the victims.** This happened in the Tragedy of Tanjung Priok.

The victims share quite similar backgrounds within the period. The classification of the backgrounds and positions of the target victims can be summarized as follows:

1. Leaders of the targeted group - This category occurred in almost all of the periods.
2. Members or sympathizers of the targeted group
3. Communicators or couriers between organizations<sup>13</sup>
4. Relatives or friends of the alleged targeted group. The disappearance mostly happened in Aceh, Poso, and Papua.
5. Ideologues, intellectuals, and academics
6. Women and children
7. Residents around the locations of events, who generally do not have any connection to the targeted groups.

12 This case happened in Aceh and Papua. The groups, Aceh Independent Movement (GAM) and Papua Independent Organization (OPM), for the military, are called as Intruder Security Movement. The OPM in Papua was generally called a separatist group.

13 This happened to Petrus Bimo Anugerah during the abduction and enforced disappearances of pro-democracy activists in 1997-1998. Bimo was an information courier of organizations affiliated with *Partai Rakyat Demokratik* or People's Democratic Party (PRD), which is a democratic socialist party in Indonesia that was founded in 1996 in Jakarta. The party grew from student movements in the late 1980s in Java, Bali and Lombok. This party was established to protest against aspects of President Suharto's authoritarian New Order regime.

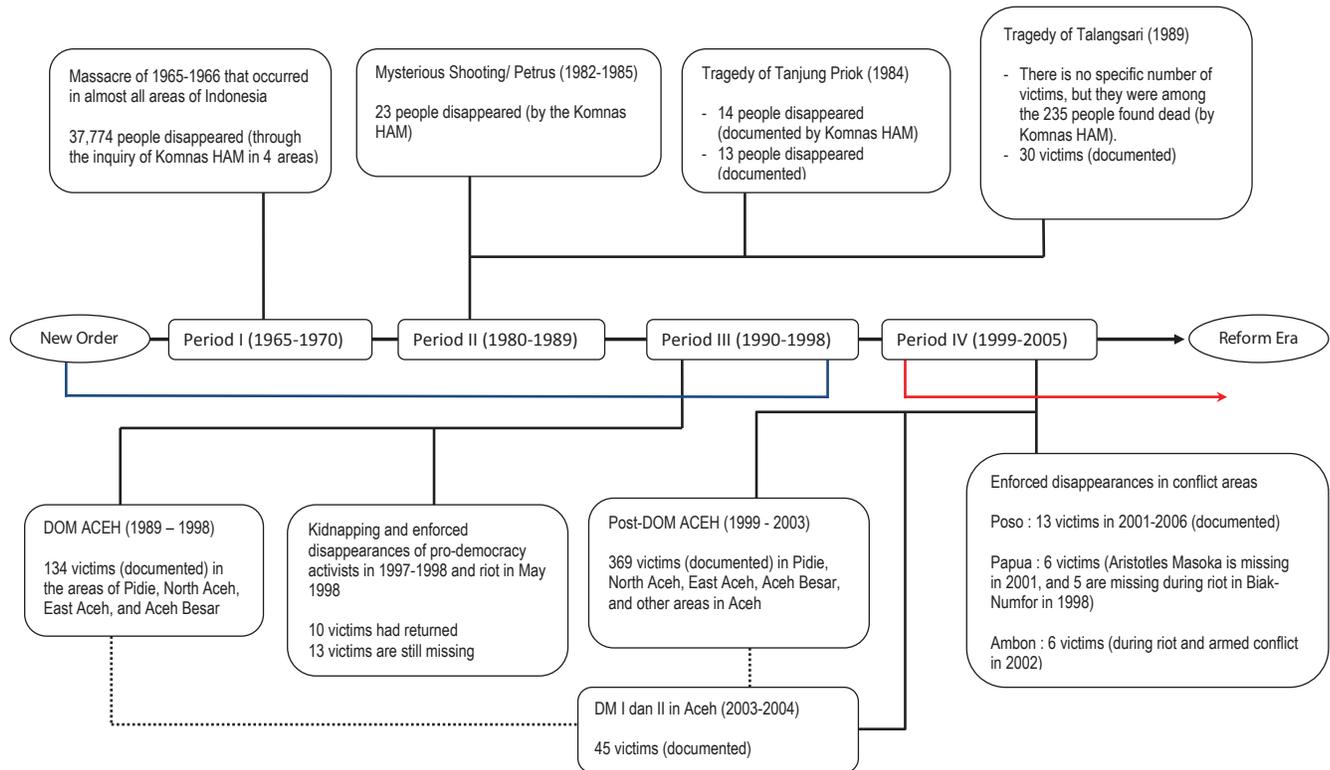
The perpetrators from all the events were dominated by the military apparatus, which had so much power during the New Order regime. The police apparatus came second. Civilian groups were also reportedly involved in several events of enforced disappearances.

The perpetrators of military and police apparatus can be divided into three groups:

1. Field officers, who ruled as the direct perpetrators of enforced disappearances
  - Generally, they come from the military or police units directly involved in the implementation of other forms of violence, including enforced disappearances.
2. Heads of military or police units
3. Staff in the national military or police headquarters

### The present development of cases of enforced disappearances in Indonesia

Below is a graph of events of enforced disappearances in Indonesia starting from the New Order regime until the beginning of the Reform Era.



In general, the development of the settlement of cases of enforced disappearance in Indonesia has not progressed. The perpetrators who were brought to court were all the perpetrators who ruled in the field or those responsible in military unit commands. The trial failed to reach those responsible for the policies of violence.

Komnas HAM had submitted its inquiry reports of the 1965-1966 Massacre and mysterious shooting in 1982-1985 to the Attorney General in the middle of 2012. However, these two reports were returned to the Komnas HAM for lack of information, with the completeness of inquiries questioned. Thus, the group was unable to follow up and assert deeper investigations. There was even a statement from the Coordinating Minister for Political, Legal

and Security, Mr. Djoko Suyanto, who justified the massacre of civilians in the 1965/1966 event on the grounds that sovereignty was rescued from the insurgency of the Communist Party.<sup>14</sup>

The perpetrators of the Tragedy of Tanjung Priok, meanwhile, had been brought to the *Ad Hoc* Human Rights Court. Lt. Col. RA Butar Butar (former Commander of Kodim 0502 North Jakarta) was sentenced to ten years in prison; Capt. Sriyanto (former section chief of security operations of Kodim 0502 North Jakarta) and Col. Pranowo (former Commander of PM Kodam V) were acquitted; and Sergeant Sutrisno Mascung (former commander of Team III Yon Arhanud 06) along with his ten members were sentenced to three years in prison. However, all of them were subsequently acquitted by the Supreme Court.

The military court sentenced the 11 members of Rose Team of Kopassus involved in abduction and enforced disappearances in 1997-1998 in April 1999. They were imprisoned for the kidnapping of nine activists who were surfaced. The second highest military court No. PUT.25-16/K-AD/MMT-II/IV/1999 sentenced Major Infantry Bambang Kristiono (commander of Rose Team) to 22 months imprisonment and dismissal from the military service. Infantry Captain Nugroho Sulisty Budi and Infantry Captain Yulius Selvanus were sentenced to 20 months imprisonment and a similar dismissal from the military service.

Other eight privates were sentenced to imprisonment but were still recognized as members of Indonesian National Armed Forces (*Tentara Nasional Indonesia* - TNI) Infantry Captain Fausani Syahril Multhazar (vice commander of Rose Team) and Infantry Captain Untung Budi Harto were sentenced to 20 months in prison; Captain Dadang Hendra Yuda, Infantry Captain Djaka Budi Utama, and Infantry Captain Fauka Noor Farid, one year and four months in prison; and Chief Sergeant Sunaryo, Chief Sergeant Sigit Sugianto, and First Sergeant Sukadi, one year in prison.

Despite the sentences, four of them received military promotion. Those who received military promotion were: Infantry Captain Fausani Syahril Multhazar promoted to Commander of Military District Command 0719/Jepara with the rank of Lt. Colonel; Infantry Captain Untung Budi Harto promoted to Commander of Military District Command 1504/Ambon with the rank of Lt. Colonel; Infantry Captain Dadang Hendra Yudha promoted to Commander of Military District Command 0801/Pacitan with the rank of Lt. Colonel; and Infantry Captain Djaka Budi Utama promoted to Infantry Battalion Commander 115/Macan Lauser.

Meanwhile, former Lt. General TNI Prabowo Subianto was dismissed from military service, and former Maj. General TNI Muchdi Pr and Maj. General TNI Chaerawan were temporarily discharged from military service. However, the court was not able to open the issue of the whereabouts of the 13 persons who remain disappeared.

To date, the four recommendations of the Indonesian Parliament on enforced disappearances in the period 1997-1998 that concern the establishment of an *ad hoc* human rights court has not yet been implemented by the President Yudhoyono. The other three recommendations that have not yet been implemented by the Yudhoyono administration are: the immediate search for 13 persons who are still declared disappeared by the Komnas HAM; the rehabilitation and compensation of the families of the disappeared; and the immediate ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) as a commitment and support to end enforced disappearances in Indonesia.

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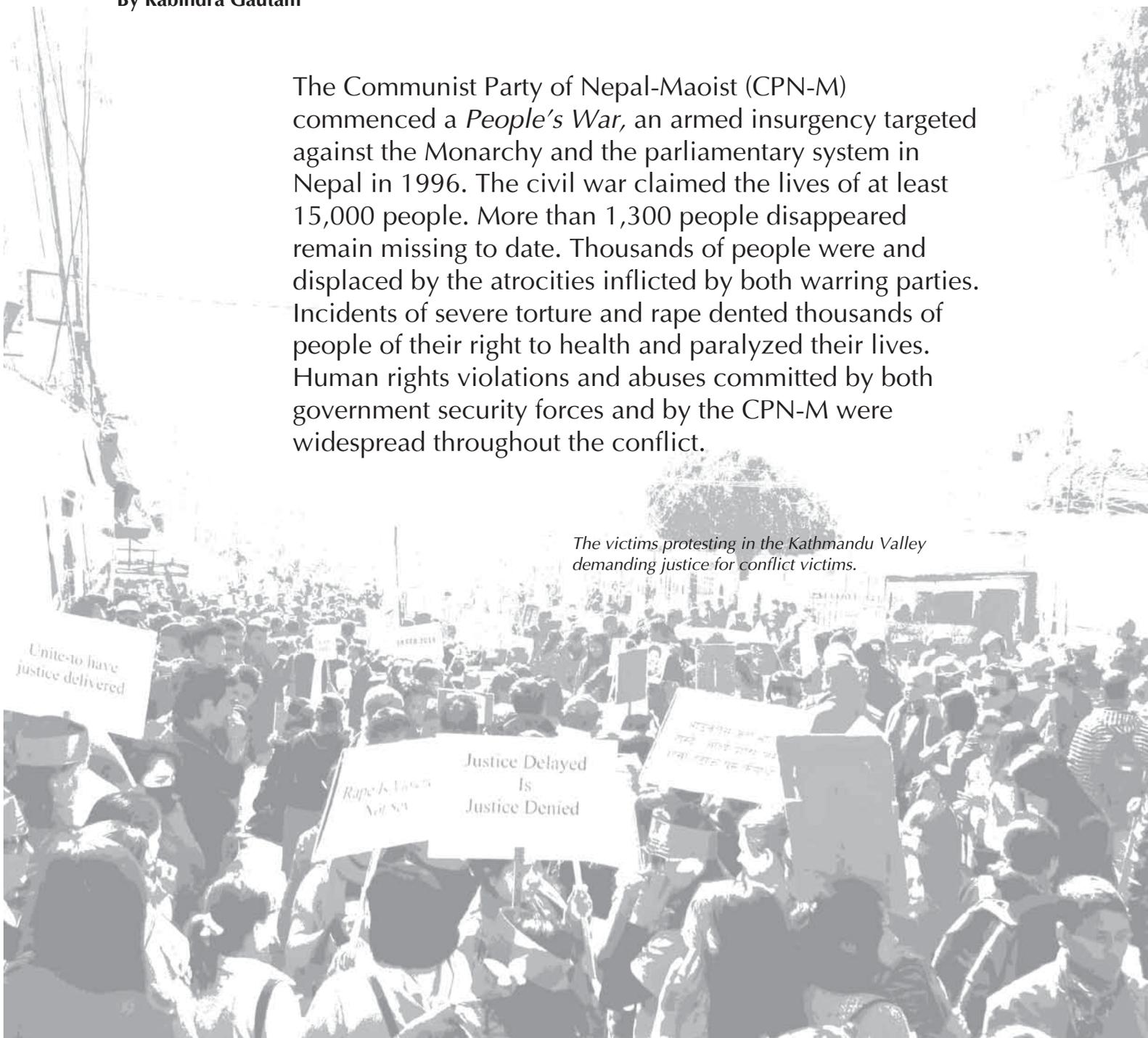
14 Djoko Suyanto's statement: "Define gross human rights violation! Against whom? What if it happened the other way around? This country would not be what it is today if it did not happen. Of course there were victims [during the purge], and we are investigating them." See: <http://www.thejakartapost.com/news/2012/10/01/1965-mass-killings-justified-minister.html>

# Ugly Scars of Enforced Disappearances Amidst Nepal's Dismal Political Situation

By Rabindra Gautam

The Communist Party of Nepal-Maoist (CPN-M) commenced a *People's War*, an armed insurgency targeted against the Monarchy and the parliamentary system in Nepal in 1996. The civil war claimed the lives of at least 15,000 people. More than 1,300 people disappeared remain missing to date. Thousands of people were and displaced by the atrocities inflicted by both warring parties. Incidents of severe torture and rape dented thousands of people of their right to health and paralyzed their lives. Human rights violations and abuses committed by both government security forces and by the CPN-M were widespread throughout the conflict.

*The victims protesting in the Kathmandu Valley demanding justice for conflict victims.*



In addition, thousands of people were directly and indirectly affected by the conflict. As the then King announced a state of emergency and mobilized the army forces in 2001, incidents of human rights violations, particularly extrajudicial killings and enforced disappearances committed by security forces, increased. According to the figures of the International Committee of the Red Cross (ICRC), there are 1,378 persons who remain missing to date. Similarly, the conflict situation report published by the Office of the High Commissioner on Human Rights (OHCHR) indicated that 12,686 individuals were killed during the conflict. Nepal had the highest number of incidents of enforced disappearances in 2002, according to the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID). This was almost equaled in 2003 and 2005.

Enforced disappearance was among the most serious human rights violations committed during the conflict in Nepal. Such incidents with sufficient grounds proved that the practice of enforced disappearance was widespread and systematic. The incidents of arbitrary arrest followed by disappearances escalated significantly between 2000 and 2005 and were instigated by both parties to the conflict. Several reports indicate that security forces are implicated in the majority of disappearance, though the CPN-M is also involved in a significant number of cases of disappearance following abduction. In effect, either sympathizers or opponents of CPN-M had to be abducted, tortured, and forcibly disappeared. Nevertheless, both parties to the conflict have made clear and repeated commitments to address and clarify disappearances allegedly committed by them and to ensure justice for the victims. However, no person has been prosecuted in a civilian court in connection with enforced disappearance despite various investigations and considerable documentation efforts carried out by national and international human rights organizations.

The successive governments, after the Constituent Assembly (CA) election in 2008, have forgotten the promise Nepal made during its Universal Periodic Review (UPR) that the government is "fully committed to establishing Constitutional supremacy, ensuring rule of law, good governance, and human rights, as well as providing positive

conclusion to the peace process by eliminating insecurity and addressing impunity." Contrary to these assurances made before the UN Human Rights Council Session in Geneva<sup>1</sup>, there have been systematic moves in further strengthening impunity in Nepal.

Recently, the government has withdrawn cases pending in the district police office and court against people implicated in serious breach of human rights violations, which include many cases of attempt to murder and homicide allegedly committed by Maoists during conflict. Worse, the government claimed these to be necessary steps to promote the peace process and fully implement the Comprehensive Peace Accord (CPA). In this way, Nepal has witnessed the unremitting failure of the government to investigate cases of human rights violations and to prosecute perpetrators - a reality that undoubtedly depicts the persistent culture of impunity, which has remained the norm that has thoroughly and systematically been deteriorating the rule of law and law and order situation in the country.

In 2006, the CPA held between the Seven-Party Alliance and the Maoists brought an end to a decade-long insurgency. Since then, Nepal is in a period of transition to establish the rule of law and democratic governance. Several efforts have been made to reform the Constitution and state institutions to implement and guarantee basic principles of democracy and human rights, but significant human rights violations persist even after the peace agreement and victims of past human rights violations continue to be denied justice.

Nepal is found to have committed grave breaches of its international human rights obligations to hold perpetrators accountable and provide prompt and effective justice to victims of serious international crimes, including torture, rape, extrajudicial killings and disappearances both during and after the conflict.

Advocacy Forum (AF), one of Nepal's leading human rights organizations, condemns the government's act of case withdrawals against people implicated in serious human rights violations and has been mobilizing national and international human rights organizations, which include diplomatic agencies, in order to immediately

## BEYOND TEARS AND BORDERS: TRACKING ENFORCED DISAPPEARANCES

pressure the government to retract its decision. Despite national and international pressures, the government continued withdrawing cases. AF has strongly challenged the legitimacy of the government's decision, being in the periphery of national and international obligations abided by laws and conventions.

The CPA, signed on 21 November 2006, set out the parties undertaking to clarify the fate of those disappeared within 60 days. In December 2007, in a month, the government set up a commission to investigate the alleged disappearances. Such commitment has been repeated in several agreements between the political parties, most

future is now even more far-fetched because of the dissolution of the Legislative Parliament in May 2012.

Disrespecting the already established precedents, the government in August 2012, merged the much-awaited two commissions - Truth and Reconciliation Commission and Commission on Inquiry of the Disappeared – into one. Even more, the bill has its core intention to provide amnesty to the perpetrators and to coerce the victims to reconcile.

The rights activists including AF decried the government's ordinance and its aim of blanket amnesty to the perpetrators of grave human rights



*The victims' families from Bardia District, Midwestern Region of the country protest to make the regional strike successful in demanding victims' rights to justice.*

recently in the 7-point agreement of 1 November 2011. But to date, the Commission is still not established.

There are precise provisions in CPA and in the Interim Constitution of January 2007 to establish a Truth and Reconciliation Commission and the Commission of Inquiry into the Disappeared. In addition, the Supreme Court also issued a directive in June 2007 to establish a Commission of Inquiry into enforced disappearances. However, the efforts have been slow and the prospect of any effective mechanisms materializing in the immediate

violations. Due to national and international pressure, the ordinance currently remains pending before the President.

Discussions to set up transitional justice mechanisms in Nepal were intensified after the arrest of five suspects in a murder case of journalist Dekendra Thapa. The arrest took place immediately after AF filed a petition demanding a mandamus order to the police for prompt investigation and prosecution of the case on 12 December 2012. Similarly, under universal jurisdiction, the arrest of army colonel Kumar Lama in early 2013 in the

UK, compelled government to seek avenues for the remedies in conflict era cases at the domestic level. On one hand, due to these developments, the government seems ready to adopt corrective measures especially in the Truth and Reconciliation and Enforced Disappearance ordinance while on the other, the level of direct and indirect threats to victims and their families as well as to AF has increased. This calls for further strengthening in order to face the challenges of advocating for the protection of human rights.

It is possible to file First Information Reports (FIRs) of the alleged disappearance followed by killings; however it does not create the likelihood of adequate redress for the disappearance and does not reflect the gravity of the crimes committed. Furthermore, filing a case of murder without proof of death (i.e. without a body) is unlikely to succeed. In the experience of AF, filing a case of a conflict-related crime in Nepal is highly unlikely to succeed.

Since 2006, AF has helped victims and families of victims file FIRs for cases of alleged extrajudicial killings and disappearances (where there is evidence that the person has died) committed by security forces, as well as FIRs for cases of alleged killings by members of CPN-M. During the armed conflict, the police would refuse to file FIRs for human rights violations and people were too afraid of retaliation for even just trying to file an FIR. Since 2006, some relatives have been able to file FIRs, but in most cases, for these FIRs to be filed, it involves a long process of several attempts, strong support of civil society, and court petitions to order the police to investigate. Up to now, a total of 65 FIRs filed with the assistance of AF have been registered while 50 are still awaiting registration.

It is therefore impossible, under the Nepalese legal system for families of the disappeared to seek redress for the disappearance of their loved ones as the existing legal system lacks the necessary mechanisms to allow the families to submit a complaint before competent authorities. However, this does not mean that they remain without taking



*The public in Baglung District, Western Region of the country, expresses solidarity in the signature campaign launched against the amnesty provision that the former government announced.*

any action. They take all the measures available such as filing a *habeas corpus* petition in the Supreme Court and complaining to the National Human Rights Commission (NHRC).

Other than the legal and moral obligations of government, failure to investigate and prosecute enforced disappearances would result in the absence of a deterrent to prevent military or security forces from carrying out the same violations in the future. Furthermore, if past human rights violations remain unpunished, the rule of law and the fundamentals of new democratic institutions will be destabilized.

Perhaps, the clearest manifestation of the longstanding culture of impunity in the country for both conflict and post-conflict crimes of human rights violations is the successful defiance of court orders by both the Nepal Army and CPN-M. Despite their public commitments, constant attention from the human rights community and judicial intervention, both armies have stood their ground in refusing to cooperate with investigations of any of their personnel, even those at the lowest levels.

Moreover, instead of allowing perpetrators to be brought to justice, the army and CPN-M authorities promote and appoint them to coveted positions in society. The best example of this concern is the UCPN Maoist member Agni Sapkota (now the spokesperson of the party), who is suspected of disappearing Arjun Bahadur Lama. Despite bearing a suspected criminal record denying him his United States and Australian visas, he was appointed as Minister of Information instead of being handed over to the authorities for questioning.

Even more, the Dr. Baburam Bhattarai-led government arbitrarily decided to shelve the FIR filed against Maoist ex-Minister Agni Sapkota and other Maoist leaders implicated in the alleged disappearance and subsequent murder of Arjun Lama. In order to stop all pending investigations on the case and provide immunity to its leaders, the government violated the relevant law and the Interim Constitution. Moreover, the Supreme Court decided to shelve the case.

The issues of accountability and impunity were heavily questioned in October 2012 when the Government of Nepal decided to promote Colonel Raju Basnet – then commander of Bhairavnath Barracks in 2003-04, to the rank of Brigadier General of the Nepal Army. He was involved in the arbitrary detention, torture, and disappearance of 48 individuals. Similarly, the same government decided to promote Mr. Kuber Singh Rana to Inspector General of the Nepal Police despite being accused of disappearing and murdering five students of Dhanusha District during the conflict.

Hence, the ongoing political development led to an analysis of how the recent dissolution of Nepal's Constituent Assembly (CA) and Legislature-Parliament and subsequent political instability will negatively impact the rights to truth, justice, and redress of victims of gross human rights violations and international humanitarian law.

After the dissolution of the CA in May 2012, as the major political parties failed to forge a consensus on the contentious issues of federalism and of setting up transitional justice mechanisms, the promise of promoting and protecting human rights by establishing accountability in the crimes committed during the conflict has all the more been unrealized. The persistent political instability left downbeat ramifications on the human rights situation in the country and the rule of law.

Since the conclusion of the ten-year internal conflict, families of the disappeared and other victims – with the support of Advocacy Forum and the Asian Federation Against Involuntary Disappearances (AFAD), as well as other national and international human rights organizations and the UN Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) – have fought tirelessly for truth, justice and reparation for the families of the disappeared. These efforts have been waged primarily through filing petitions for writs of *habeas corpus* with courts under the criminal justice system and through advocacy for the establishment of inclusive and effective transitional justice mechanisms.

AF has witnessed the serious upheaval in its mission to establish the rule of law in Nepal by promoting and protecting human rights, upholding international standards due to the government's systematic move against the norms and values of human rights. Families of the disappeared have been disrespected in the years after the CPA, which further caused distress and anguish in their lives, thus diminishing the hope that law and order will work for them. AF has documented more than 500 cases of disappearances perpetrated during the conflict.

Protesting such move of the government, AF and AFAD have jointly released several press statements condemning the activities of the government. AF has visited the President, political parties, and diplomatic communities in order to seek immediate interventions on such systematic steps that have been promoting the culture of impunity.

In connection to establishing accountability and to ending impunity for the crimes of human rights violations committed during the conflict and afterwards, AF keeps on reminding the government via several meetings of its promise for 'zero tolerance for impunity' and for 'prompt action to establish the transitional justice mechanisms' among international communities. Similarly, AF keeps on highlighting the importance of enacting a national law criminalizing enforced disappearances and of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) in order to prohibit acts of enforced disappearances. Though government representatives told AF that they would be fully committed to implement the recommendations in combating impunity and

in establishing transitional justice mechanisms, nothing has been consolidated yet.

The AFAD has been collaborating with AF in different levels in terms of advocacy to enact laws criminalizing the acts of enforced disappearances, ratification of the ICPAPED and empowerment of the families of disappeared. Because of this, AF, with support from AFAD, has developed a documentary on enforced disappearance that is continuously being shown to various audiences.

To raise the issue effectively, four different cases of disappearances committed during the conflict of Nepal, representing the plight of the families of the disappeared, have been featured in the video. Along with the voices of the victims' families, the documentary critically depicts the indifference of the government in addressing the demands of the victims' families, the urgent need to enact national law, and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. Similarly, with the view of preserving pieces of evidence and of corroborating the crime in order to establish criminal accountability, AF has initiated series of video documentation of the cases of disappearances as well as the identification of burial sites of the conflict period.

Getting in the forefront and marching ahead, thus leading the human rights organizations in Nepal, AF and AFAD have continuously been working to put the issue of enforced disappearance in their main agenda – not only by empowering families of the disappeared but also by reminding state stakeholders about the plight of the families of disappeared and the state's corresponding obligations.

Lobbying the international community, AF and AFAD held a side event at the United Nations Human Rights Council in Geneva in July 2012 and discussed the need to capacitate the Council's jurisdiction to enable the effective protection of human rights. The event was basically focused on the challenges that the international human rights system faces in order to effectively address the chronic human rights situation.

The permanence of political volatility, disarray and mismanagement of the transitional phase makes the country likely to face serious human rights abuses than before. Thus, impunity for the crimes committed in the past and the present remains intact. As such, it is high time for political leaders to at least, minimize their petty polemics and act upon the popular mandate of peace, democracy, and the rule of law as envisaged by the People's Revolution and by national and international laws.

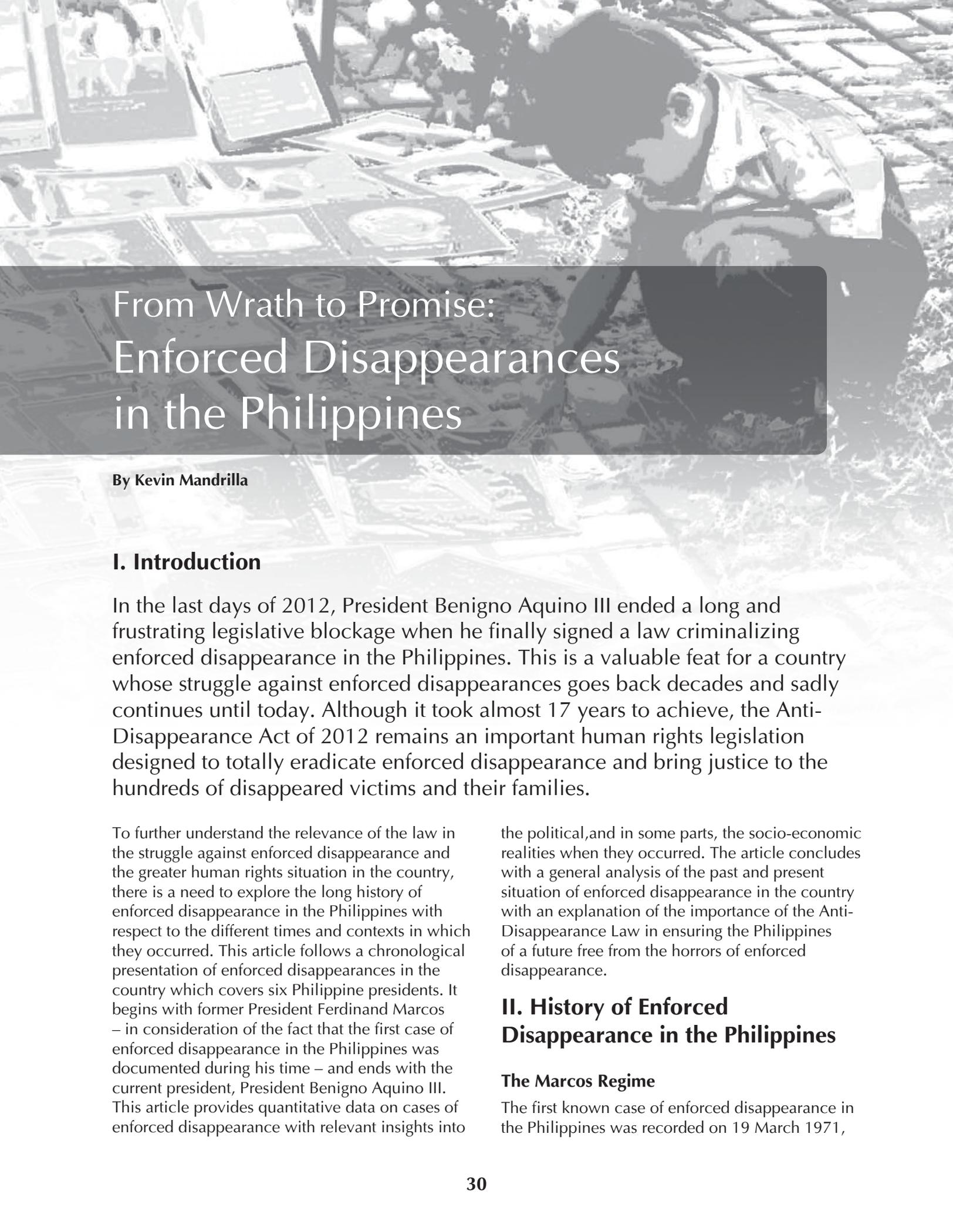
### Conclusions

The lack of establishment of transitional justice mechanisms (the *status quo* in Nepal for over six years now) or their possible adoption in ways that do not conform to international standards have the same effect – to deny access to truth, justice, reparation, and guarantees of non-recurrence – to victims of gross violations of human rights and international humanitarian law and their relatives. This amounts to an ongoing violation of several of Nepal's obligations under international law.

In this scenario, AF recommends the following to the government of Nepal:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Enact the long-promised law to criminalize the acts of enforced disappearance.
- Review and reform antiquated legislation granting state agents wide powers to use lethal force and allowing arbitrary arrest and detention.
- Amend laws to require the military and police to cooperate with investigations of civilian authorities and implementation of court decisions.
- Review the ordinance of transitional justice mechanism and make it at par with international standards and best practices, with the motive to provide justice to the victims of the conflict.

1 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review on Nepal', UN document: A/HRC/17/5, 8 March 2011, para. 51.



# From Wrath to Promise: Enforced Disappearances in the Philippines

By Kevin Mandrilla

## I. Introduction

In the last days of 2012, President Benigno Aquino III ended a long and frustrating legislative blockage when he finally signed a law criminalizing enforced disappearance in the Philippines. This is a valuable feat for a country whose struggle against enforced disappearances goes back decades and sadly continues until today. Although it took almost 17 years to achieve, the Anti-Disappearance Act of 2012 remains an important human rights legislation designed to totally eradicate enforced disappearance and bring justice to the hundreds of disappeared victims and their families.

To further understand the relevance of the law in the struggle against enforced disappearance and the greater human rights situation in the country, there is a need to explore the long history of enforced disappearance in the Philippines with respect to the different times and contexts in which they occurred. This article follows a chronological presentation of enforced disappearances in the country which covers six Philippine presidents. It begins with former President Ferdinand Marcos – in consideration of the fact that the first case of enforced disappearance in the Philippines was documented during his time – and ends with the current president, President Benigno Aquino III. This article provides quantitative data on cases of enforced disappearance with relevant insights into

the political, and in some parts, the socio-economic realities when they occurred. The article concludes with a general analysis of the past and present situation of enforced disappearance in the country with an explanation of the importance of the Anti-Disappearance Law in ensuring the Philippines of a future free from the horrors of enforced disappearance.

## II. History of Enforced Disappearance in the Philippines

### The Marcos Regime

The first known case of enforced disappearance in the Philippines was recorded on 19 March 1971,

when professor and left-leaning activist Carlos “Charlie” Del Rosario was abducted by a military unit<sup>1</sup>. His disappearance would soon be followed by hundreds more as the Philippines plunged into darker times.

The Philippines in the early 1970s was a country beset by a dwindling economy, an emergent communist insurgency, and a secessionist movement in the south. These realities fueled the growing doubts and social resentment against the rule of the late President Ferdinand Marcos, who was first catapulted to power with the image of being a strong nationalist leader.

Determined to maintain power at all costs, Marcos imposed martial law on 21 September 1972 after a series of violent events which he attributed mostly to communist insurgents. He conveniently used these incidents as clear justifications for military rule and would later write in his recollections that imposing martial law was an easy decision to take as it was the country’s last defense against leftist and rightist radicals and secessionists from Mindanao.

Before day break of 23 September 1972, the Philippine armed forces did the unthinkable. They occupied the nation’s media outlets, which include newspaper offices, radio and television stations. They stormed both the Senate and House of Representatives and suspended sessions. Arrests by the hundreds were made involving journalists, activists, church people and opposition leaders including prominent senators Jose Diokno and Benigno Aquino, Jr. The day ended with Marcos having absolute political control. It was, in his own words, “intended to primarily reform our society and eliminate the communist threat.”

Martial law under Marcos would continue to be uninterrupted for more than a decade. Marcos’ absolute rule resulted in unprecedented gross and systematic violations of human rights, disastrous economic policies, billions of dollars of accumulated foreign debt, and a heightened resistance among the

public against the dictatorship. This was far from the envisioned “New Society”<sup>2</sup> that Marcos and his loyalists had romanticized. The communist insurgency, contrary to what Marcos planned, only grew as more people became disillusioned with the repressive regime and saw armed struggle as a worthy sacrifice to make for the ailing Filipino people (Pedrosa, 1987).

Iron fists met the growing resistance as the dictator struggled to keep his tight grip on power. He was so determined to crush the insurgency that he, through his armed forces, arbitrarily imposed draconian measures against those who were suspected of having even the slightest connection with the communist movement. The privilege of the writ of *habeas corpus* was suspended and the government was not legally obliged to disclose the whereabouts of the detainees, much less bring them to court. This situation allowed human rights violations, a pattern of behavior which would be institutionalized and plague the military for years to come (Amnesty International, 1992).

Among the worst crimes of the Marcos dictatorship were the hundreds of enforced disappearances committed against suspected rebels or terrorists, militant critics of government, left-leaning activists and dissenters, partisan oppositionists, sectoral and mass leaders, human rights defenders, social reformists, and revolutionaries (Sevilla, 2007). Marcos used executive issuances as defined by decrees, such as, for example, the Arrest, Search and Seizure Order (ASSO); the Presidential Commitment Order (PCO), which was later renamed as the Preventive Detention Action (PDA).

**Table 1:**  
**FIND’s statistics on disappearances in the Philippines**  
**by regime and case status from 1971 to 2013**

Regime	Reported victims	Documented victims	Still missing	Surfaced alive	Found dead
Ferdinand E. Marcos	878	878	613	138	127
Corazon C. Aquino	825	614	407	109	98
Fidel V. Ramos	94	94	46	38	10
Joseph Estrada	58	58	16	39	3
Gloria M. Arroyo	339	182	58	107	17
Benigno C. Aquino III	20	12	7	4	1
<b>TOTAL</b>	<b>2,214</b>	<b>1,838</b>	<b>1,147</b>	<b>435</b>	<b>256</b>

1 Allegedly, the Philippine government military unit Task Force Lawin abducted and liquidated him. Del Rosario, Estelita. “Charlie del Rosario, The First Documented Filipino Desaparecido.” *Beyond Disappearance, Chronicles of Courage*. Quezon City: The Families of Victims of Involuntary Disappearance (FIND), 2006

2 According to Marcos’ book, *Notes on the New Society*, he envisions a movement urging the poor and the privileged to work as one for the common goals of society and to achieve the liberation of the Filipino people through self-realization.



*Pictures of the disappeared relieve the desaparecidos' memory. Offering flowers and lighting candles are ways of honoring them.*

As an apt response of families of the disappeared, a nationwide organization, the Families of Victims of Involuntary Disappearance (FIND), was formed on 23 November 1985.

As of 2013, FIND has documented 878 cases of enforced disappearance committed during the Marcos regime. Out of these, 138 victims surfaced alive, 127 found dead and 613 persons still disappeared up to this day.

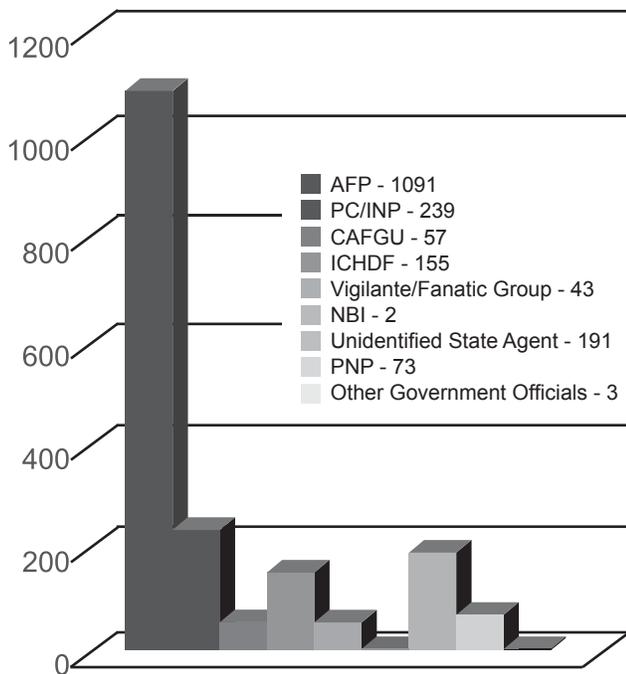
### **The Corazon Aquino Government**

The 20 years of Marcos incumbency, the longest in Philippine history, met its inevitable end through the so called “bloodless revolution” known today as EDSA People Power I. Marcos and his family agreed to go into exile<sup>3</sup> to Hawaii, allowing a new government to form and take power. At the helm of this transition was Mrs. Corazon “Cory” Aquino, wife of Senator Benigno Aquino Jr., whose controversial assassination<sup>4</sup> aroused millions of Filipinos to rise up and oppose the Marcos dictatorship.

Mrs. Aquino’s presidency was well received inside and outside of the Philippines, for she was expected to lead in the restoration of a genuine democratic government that respects the rights of its citizens. Her government did act swiftly by placing sweeping democratic reforms. Her first acts to restore democracy included the restoration of the privilege of *habeas corpus*, the release of all political prisoners, the abolition of the 1973 Constitution and the institution of a new one through a constitutional convention. The resulting 1987 Constitution was primarily designed to prevent another dictatorship and guarantee the promotion and protection of human rights. The resulting changes engendered a wider democratic space which encouraged the formation of different cause-oriented groups. They would later become moving targets for the military as the government declared the “unsheathing of the sword of war” against the apparently bigger communist movement.

3 Marcos died in Honolulu on 28 September 1989 of kidney, heart, and lung ailment.

4 The assassination took place on Sunday, 21 August 1983, at the Manila International Airport (presently the Ninoy Aquino International Airport, or NAIA).



**Table 2:**  
**FIND's statistical graph of suspected perpetrators**

The ceasefire and peace talks between the Government of the Republic of the Philippines and the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF) also started during Mrs. Aquino's presidency. The whole process, however, collapsed when a group of farmer-demonstrators were massacred on 22 January 1987 as they attempted to enter the vicinity of Malacañang,<sup>5</sup> demanding genuine land reform. This dark day, which left 13 demonstrators dead, is remembered as the "Mendiola Massacre."

This event, together with the "differences between the frameworks presented by both sides to address socio-economic and political issues,"<sup>6</sup> resulted in the utter failure of the talks and the resumption of armed conflict. What was earlier seen as a promising new start for the Philippines had totally changed. President Aquino's government would soon be responsible for hundreds of documented enforced disappearances and other human rights violations which, in number, almost equaled to that of the Marcos regime. This phenomenon was

later explained by Amnesty International in its 1992 human rights report on the Philippines. According to the report, flagrant human rights violations under Aquino continued largely because of two factors:

- the practice of "red-labeling" or targeting alleged critics and opponents of government as "subversives" or communists (allegedly of the CPP and its armed wing New People's Army) sympathizers;
- the creation of and reliance on an ever-widening network of official militia and semi-official paramilitary forces which were poorly trained and disciplined.

Considering the military's 20 years of absolute servitude to Ferdinand Marcos, earning the loyalty of this same military became one of Mrs. Aquino's greatest challenges. As a matter of fact, between 1986 and 1991, her government was beleaguered by six attempted military coups. Although unsuccessful, these coups compelled the Aquino government to concede to many political demands of the military establishment which led to, among other things, a reinforced counter-insurgency campaign operated with almost complete autonomy by the military (Amnesty International, 1992).

The military introduced the "Total Approach" to counter-insurgency which 1) provided considerable autonomy to regional and local military commanders; 2) created poorly trained militia forces; and 3) encouraged the practice of "red-labeling." Once again, the country was subjected to a highly militarized environment, especially in the countryside, where arbitrary arrests and detention, extrajudicial killings, and disappearances became a day-to-day reality again. Despite this, the Aquino government tried to improve its human rights record to some extent. For one, it invited the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID) which came in 1990 for its first and only visit to date to the Philippines.<sup>7</sup> The said UN body conducted an investigation and released a report which confirmed that there were indeed cases of enforced disappearance during both the Marcos and Aquino times. The Aquino government would later decry said report and demand the reconstitution of the UN WGEID.

<sup>5</sup> Malacañang is the official residence of the President of the Republic of the Philippines.

<sup>6</sup> Highlights of the GPH-NDF Peace Negotiations (Retrieved from: <http://opapp.gov.ph/cpp-npa-ndf/highlights>)

<sup>7</sup> Martial Law Was No Dinner Party (Retrieved from: [http://www.afad-online.org/healingwounds/bk\\_martial\\_law\\_was\\_no\\_dinner\\_party.htm](http://www.afad-online.org/healingwounds/bk_martial_law_was_no_dinner_party.htm))

## The Years Under Fidel Ramos and Joseph Estrada

Unlike her predecessor, Mrs. Aquino was able to hand over power through democratic means in 1992. She was replaced by Fidel Ramos, a military man who served as Philippine Constabulary Chief during Martial Law and subsequently as the Secretary of National Defense under Aquino. It was during his administration that FIND documented a sharp decline in the number of enforced disappearances. Out of 94 documented cases, 38 surfaced alive, 10 were found dead and 46 are still disappeared.

Considering Ramos' background in the military, many progressive groups were surprised by the relative political stability during this time (Isaac, 2008). Ramos projected his administration as a serious advocate of human rights and made efforts to promote human rights and curb human rights abuses. He is credited for reviving the peace process negotiations with various armed opposition groups which produced major agreements, including the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL). After a year in office, he issued a memorandum creating an investigative body called the Fact-Finding Committee on Involuntary Missing Persons under Memorandum Order Number 88 dated 8 February 1993. Despite its best intentions, this effort later proved to be futile as the committee became defunct after just two meetings without any report to speak of. Despite this, however, records show that the Ramos administration did relatively well in abating enforced disappearances.

Under the Ramos administration, the Families for *Desaparecidos* for Justice (*Desaparecidos*), another group of families of the disappeared was formed in 1994.

This situation during the Ramos administration would spill over into the next administration led by Joseph Estrada, an actor-turned-politician who was unable to finish half his term<sup>8</sup> due to massive protest actions known as EDSA II<sup>9</sup> that was sparked by plunder allegations in connection with illegal gambling operations. FIND records show that 58 cases were documented during Estrada's time. To

conclude that this number might have gone higher had he been able to complete the full six years in office is not far-fetched.

Significant to note is that another main actor in the struggle against enforced disappearances, the Asian Federation Against Involuntary Disappearances (AFAD) was established in response to the imperative of regional and international solidarity vis-à-vis enforced disappearances. On 4 June 1998, the Federation was established in Manila, Philippines and started with a core of three organizations from the Philippines, India and Sri Lanka. The formation was graced by *Sra.* Yanette Bautista, then president of the Latin American Federation of Associations of Relatives of Disappeared–Detainees (FEDEFAM).

## The Arroyo Administration

The downward trend observable in incidences of disappearances turned dreadful in the government that followed Estrada. Gloria Macapagal-Arroyo or GMA, then the vice-president, assumed power through a constitutional mandate<sup>10</sup> after Estrada's ouster. She enjoyed support among many members of the intelligentsia and the middle class at the onset of her term. Things changed after she achieved a questionable win during the subsequent national elections in 2004. Alleged corruption and electoral fraud plagued her early years in office as the new president – a prelude to six more years of an obscene abuse of power.



*The Association of the Children of the Disappeared in the Philippines performs a theater presentation depicting their fathers' disappearance.*

8 For a more detailed account of the Estrada impeachment, see Amado Doronila, *The Fall of Joseph Estrada: The Inside Story*. Anvil Publishing, Inc., Pasig City, 2001.

9 EDSA II is the four-day revolt that peacefully overthrew President Joseph Estrada from 17-20 January 2001.

10 The vice president is the first in the presidential line of succession as mandated in the 1987 Constitution.

SECTOR	NUMBER / ID	RANK
Farmer	854	1 <sup>st</sup>
Worker	268	2 <sup>nd</sup>
Youth	151	3 <sup>rd</sup>
Professional	70	4 <sup>th</sup>
Women	64	5 <sup>th</sup>
Fisher folk	27	6 <sup>th</sup>
Student	32	7 <sup>th</sup>
Children	20	8 <sup>th</sup>
Urban Poor	23	9 <sup>th</sup>
With incomplete records	345	

**Table 3:**  
**FIND Statistics on Disappearances by Sector**

At first, FIND and AFAD were particularly hopeful about the GMA administration. They had a dialogue with the then newly installed president on the eve of the International Day of the Disappeared on 29 August 2001. Mrs. Arroyo made a commitment that there would be no case of enforced disappearance that would occur during her administration and promised to help expedite the process of enacting an anti-enforced disappearance law.<sup>11</sup> GMA would later finish her term in 2010 without fulfilling any of these promises. Gloria Arroyo struggled to maintain legitimacy as more allegations of corruption surfaced, prompting her to have the armed forces more involved in her administration. This unholy partnership would soon ravage hundreds of civilian lives in an effort to break up a strongly critical opposition in the guise of a counter-insurgency campaign.<sup>12</sup> The military, with the backing of the President, would increasingly refuse "to distinguish between armed and unarmed leftists, between those in the underground guerilla movement and those in the open legal struggle<sup>13</sup>." This would result in an ominous multiplication of extrajudicial killings and disappearances of activists, labor and peasant leaders, human rights defenders, journalists, and development workers. Throughout her regime,

FIND reported 339 cases of disappearances, more than the total combined number of disappearances from the Estrada and Ramos administrations.

According to FIND, the top two sectoral groups with the highest number of victims of disappearance are farmers with 854 followed by workers with 267.

What started to be a hopeful start of the Arroyo administration turned out to be an utter indignation as the Philippines was marred with huge number of cases of extrajudicial killings and enforced disappearances, a consequence of the government's counter insurgency policy of eradicating the Communist Party of the Philippines, codenamed *Oplan Bantay Laya* (Operation *Bantay Laya*).

Mr. Philip Alston, then the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, visited the Philippines upon the official invitation of the government. The time of his visit in the country in February 2007 can be considered as the peak of the incidences of extrajudicial killings (EJKs) and enforced disappearances (EDs). Alston produced a very comprehensive report critical of the government. While the report centered on EJK, the thin line between EJKs and EDs resulted in the necessary highlighting of ED. The result of the Alston visit and report embarrassed the government prompting it to take a very defensive position on both national and international levels. This compelled the Supreme Court to use its extra-ordinary powers by convening a National Summit on Extrajudicial Killing and Enforced Disappearances on 16 to 18 July 2007 participated in by various sectors, including victims of human rights violations.

The human rights situation was exacerbated by oppressive state policies such as Presidential Proclamation 1017 of 2006,<sup>14</sup> Human Security Act of 2007,<sup>15</sup> and Executive Order No. 197.<sup>16</sup> To a certain extent, these setbacks were countered by a handful of advances such as the Supreme Court's

11 Interview with AFAD Secretary-General Mary Aileen D. Bacalso

12 *Oplan Bantay Laya* was an official government policy of eradicating the insurgency of the Communist Party of the Philippines officially sanctioned by the government of Gloria Macapagal-Arroyo. ([http://www.atimes.com/atimes/Southeast\\_Asia/IB13Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/IB13Ae01.html))

13 Docena, Herbert. "Killing Season in the Philippines," in *Activist School*. 12 September 2006, p. 4

14 A declaration of state of emergency

15 The "Human Security Act of 2007," or Republic Act No. 9372, is a law that Congress enacted "to protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country ... (Jose Manuel Diokno, 2007. [http://opinion.inquirer.net/inquireropinion/talkofthetown/view\\_article.php?article\\_id=76703](http://opinion.inquirer.net/inquireropinion/talkofthetown/view_article.php?article_id=76703))

16 An executive order that instructs military officers to observe safeguards against the disclosure of military secrets and undue interference in military operations inimical to national security (Isaac, 2007)



*Children of the disappeared are a beacon of hope for a world without disappeared people.*

order for the judiciary to implement prerogative writs of *Amparo* and *Habeas Data*, which was conceived to solve the extensive human rights violations in the country. The declaration of these writs were results of the above mentioned national summit convened by the Supreme Court.

The government attempted to respond to local and international criticisms, such as the creation of the Task Force Usig, aimed to examine media killings; the creation of the Melo Commission, aimed to investigate extrajudicial killings and enforced disappearances during the Arroyo administration; and the establishment of human rights offices in the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). These were seemingly impressive moves, yet they failed to substantially resolve the problem. In the first round of the Universal Periodic Review for the Philippines before the UN Human Rights Council, international attention focused on the Philippines' dismal human rights record, especially in as far as extrajudicial killings and enforced disappearances were concerned.

Gloria Macapagal-Arroyo had to step down, being labelled at home and abroad of having a notorious reputation for corruption, flagrant violations of human rights committed in an atmosphere of impunity.

### **The Promise of Reforms of President Benigno Aquino III**

The demise of democracy icon former President Corazon Aquino sparked an enormous public outcry for her only son, Benigno Aquino III, to

join the next presidential contest. Aquino III, now known by the monicker PNoy (contraction of his nickname "President Noy"), was voted into power by capitalizing on the ills of the Arroyo administration in his campaign. One of his promises included the end of human rights violations committed by the military.

Data produced by FIND and other human rights organizations show the contrary. In one statement released in 2011, Human Rights Watch said that "several key institutions including the civilian and military justice systems remain weak, and the military and police still commit human rights violations with impunity."<sup>17</sup> Out of the 20 cases of enforced disappearance reported by FIND during the length of his term, one has been found dead, four have surfaced alive, and seven remain disappeared.

One of these cases was that of the three Muslim students who were abducted on 3 January 2012 before they could board a plane for Sudan for a scholarship grant. The PNoy administration is also being challenged to bring the long awaited justice to disappeared victims of previous administrations. The most prominent among these is the case of Jonas Burgos, an activist who disappeared more than six years ago during the Arroyo administration. Just recently, a photo of Burgos allegedly in detention was released by the media.<sup>18</sup> This intensified the pressure for the PNoy government to act accordingly and solve the case.

The government responded to these cases by creating, under Administrative Order No. 35, a human rights superbody called the Inter-Agency Committee on Extrajudicial Killings, Enforced Disappearances, and Human Rights Violations, whose primary goal is to prosecute masterminds of past and current cases of extrajudicial killings and disappearances. The effectiveness of this superbody still remains to be seen. Many are hopeful but some have already expressed their doubts including House Deputy Speaker Erin Tañada, who believes that the superbody only duplicates the mandates and job of existing law enforcement agencies. Instead, the President should "tell law enforcement

17 Universal Periodic Review Submission: The Philippines November 2011 (Retrieved from: [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/HRW\\_UPR\\_PHL-S13\\_2012\\_HumanRightsWatch\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/HRW_UPR_PHL-S13_2012_HumanRightsWatch_E.pdf))

18 New Evidence in the Jonas Burgos Case (Online Article: <http://www.rappler.com/newsbreak/25220-new-evidence-in-jonas-burgos-case-supreme-court>)

agencies to do their job. That would also give them a clear mandate.<sup>19</sup>

Human rights policy achievements of this administration, on the other hand, are worthy of commendation. In a little less than three years in office, the PNoy administration ratified the Rome Statute of the International Criminal Court; the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT); and two landmark laws, the Anti-Enforced Disappearance Act of 2012 and Human Rights Victims Reparation and Recognition Act. Both of these laws languished in the Philippine Congress for many long years, especially the measure against disappearances, first proposed in 1995.

### Synthesis

The Philippines has one of the longest running insurgencies in the world. These conflicts of almost half-a-century may have been the reason for unprecedented, gross, and systematic violations of human rights against civilians, mostly suspected of being sympathizers of non-state armed opposition groups. This is caused largely by a deeply institutionalized practice of “red-labelling” and political intolerance among the AFP and PNP – perceived by rights group as the top human rights violators among government agencies. Combine this practice with repressive state policies and an entrenched culture of impunity, what results is an environment conducive to the wanton disregard of justice and human rights.

Statistics show that the occurrences of disappearances are high whenever the government declares an all-out war against so-called insurgents. This can be attributed to the reality that during such times, local military and police commanders are given increased autonomy and loaded with a heightened pressure from their superiors to produce results. Such setting encourages arbitrary arrests, killings, detentions and enforced disappearances. This has been most pronounced in rural areas because from the time of Marcos until the present, majority of disappeared victims are farmers.

The continued occurrence of enforced disappearances in every administration is an

indication that state security forces perceive it as one of the most convenient ways to silence suspected “enemies” and staunch critics of the government. As enforced disappearance violates not only the rights of the disappeared but also the families they left behind, its every instance is a testament to the ills of the country’s government, particularly its military and security establishment. The list of victims is long and justice remains elusive for most of them. For which reason, in the last six annual reports of the UN WGEID, the body has repeatedly requested for an official invitation from the Philippine government. As of publication time, these invitations have all been ignored.

The advances made in improving the normative and legal framework for the protection and promotion of human rights are laudable. However, the worth of these instruments can only be truly tested through effective implementation and resulting prosecutions which, to this day, remain abysmal. The role of vigilant public and committed human rights organizations like AFAD and FIND is very important in ensuring that these good human rights laws will not end as mere legislative decorations. We must work together to guarantee that justice will be served for the crimes of the past, for a future without disappearances. Eradicating the very roots of enforced disappearances and human rights violations remains a huge challenge.

### The Anti Disappearance Act of 2012

The Anti-Enforced Disappearance Act of 2012, with its Implementing Rules and Regulations promulgated on 12 February 2013, is the first of its kind in Asia. A strong tool in the struggle for a Philippines free from enforced disappearances, it adopts the definition of enforced disappearance from the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) and has several strong provisions that would facilitate the attainment of truth, justice, reparation and guarantees of non-repetition.

The Act, which makes enforced disappearance criminal under national law, “contains a number of positive provisions, such as: the broad definition of a victim, the prohibition of secret detention, the non-applicability of amnesty to those suspected

19 EU continues to be concerned with extrajudicial killings in the Philippines (Online article: <http://www.interaksyon.com/article/49584/eu-continues-to-be-concerned-with-extrajudicial-killings-in-the-philippines>)

of criminal responsibility, the inadmissibility of a superior orders defense, the non-derogability of the right not to be subjected to enforced disappearance, the requirement of a periodically updated registry of all persons in all detention centers, and compensation, restitution and rehabilitation for victims and their families." (Amnesty International, 2012).

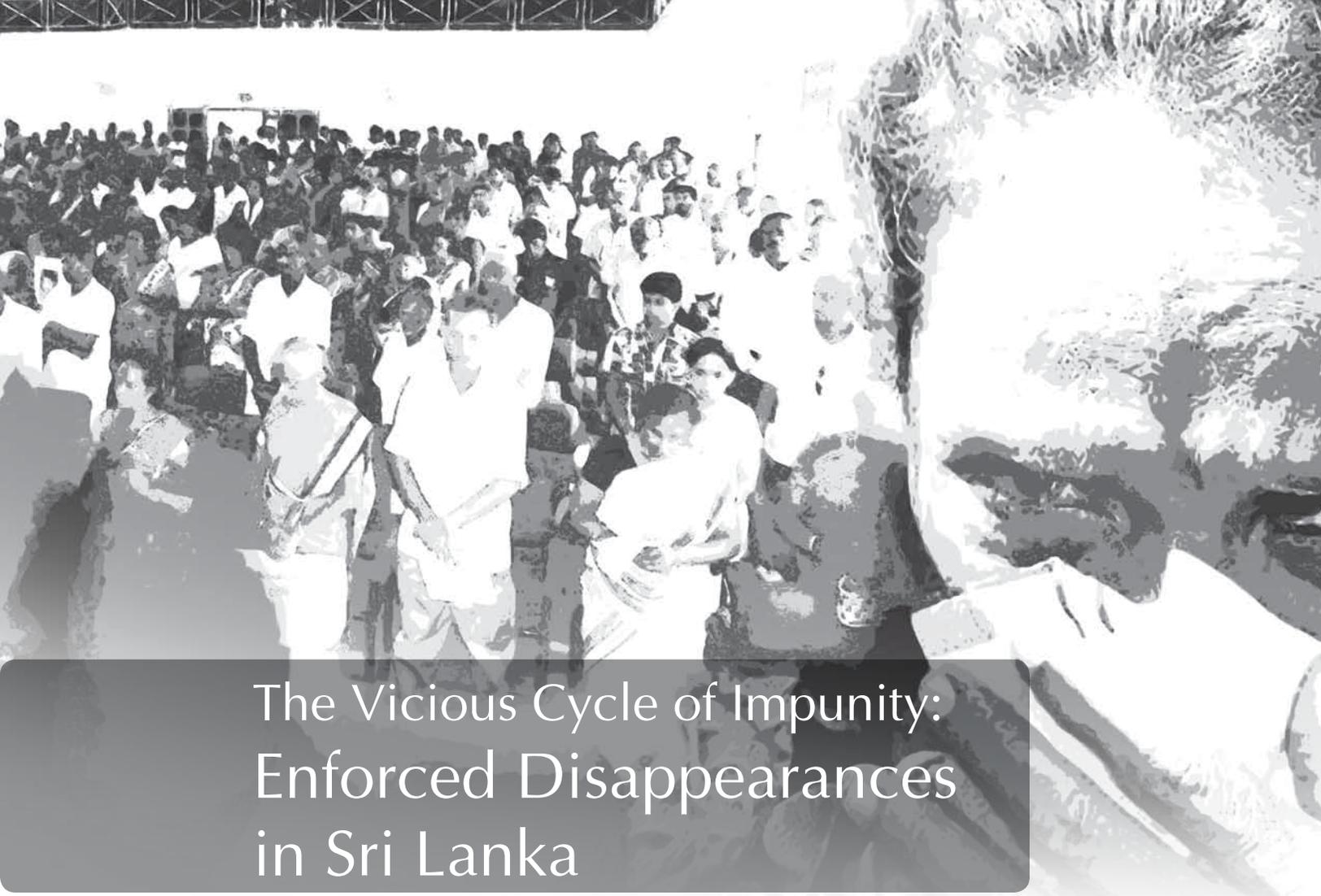
FIND has reported a total 2,214 cases of enforced disappearance since 1971. While it is bewildering that hundreds should disappear before a measure such as the Anti-Enforced Disappearance Act be realized, it is still very much a concrete and highly relevant development in the promotion and protection of human rights. It ensures that no one can be arbitrarily and secretly detained, thereby preventing further human rights violations. It recognizes the pain and struggle of the families of the disappeared, having provisions for rehabilitation, compensation, and restitution. It seeks to, at least, decrease impunity by extending the definition of a perpetrator to commanders, not just subordinates. It is indeed a clear testament to a growing commitment to human rights and ensures a future wherein, regardless of political climate or head of state in power, absolutely no one can be subjected to enforced disappearance.

Of course, the remaining challenge is the effective enforcement of the law. In a country known for making good laws but falls short in effective implementation, the general public, especially human rights defenders should remain vigilant and ensure accountability of duty-bearers who are supposed to protect and promote the rights of its citizens at all times. After all, FIND and the *Desaparecidos*, are mandated by the law to jointly promulgate its Implementing Rules and Regulations with relevant government agencies.

Moreover, to complement the national law and to fulfill its international obligations, the government has to immediately sign and accede to the ICPAPED and recognize the competence of the UN Committee on Enforced Disappearance – two important actions which many governments recommended the Philippines to do during its first and second rounds of Universal Periodic Review.

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# The Vicious Cycle of Impunity: Enforced Disappearances in Sri Lanka

By Brito Fernando

The practice of enforced disappearances in Sri Lanka has been deeply ingrained in the country's history of uprisings and conflicts. Historically, the Sri Lankan government brutally suppressed uprisings by the People's Liberation Front (JVP) in 1971-72 and 1987-89. The country also faced war atrocities upon the government's effort to win the war between the Tamil separatists in the North and East, with the Liberation Tigers of Tamil Eelam (LTTE) in its lead.

In 1971, the JVP organized an uprising nationwide. On 5 April, the cadres of JVP attempted to instigate a revolution. The country at the time was facing high unemployment and also high state repression which had curtailed activities of left-wing or any youth organizations. The JVP uprising attacked more than 70 police stations but failed once the army became involved. During this period, disappearances had also occurred but were not able to attract much attention.

Another set of uprising started in 1987 to 1989 with the conflict heightening around 1989.

### **Enforced Disappearances and the Rule of Law in Sri Lanka**

In 1989, 4,700 cases of enforced disappearances were transmitted to the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID) while in 1990, 4,623 cases were reported.<sup>1</sup> Between 1980 to 2013, a total of 12,473 cases were transmitted by the UN WGEID to the Sri Lankan government with 5,676 outstanding cases.<sup>2</sup> To note, more cases were received in earlier reports of the UN WGEID. However, due to inavailability of the source for reasons of displacements caused by militarization, there was an absence of response to further inquiries from the UN WGEID.

In 2012, the disappearance rate was reported as one disappearance every five days in Sri-Lanka's post-war condition. In a report by Watchdog published online in Groundviews, there was a total number of 57 cases of disappearance reported to the media from 1 January 2012 to 9 July 2012.<sup>3</sup>

There were several attempts by the Sri Lankan government to inquire into the widespread disappearances. A series of Commissions of Inquiry were established in Sri Lanka which sought to give light to human rights violations including enforced disappearances. In January 1991, the former President Ranasinghe Premadasa formed a Commission of Inquiry to look into the "involuntary removals of persons," however, the commission's mandate focuses only on disappearances that occurred after its establishment. Three succeeding Commissions of Inquiry were also created in 1993 and 1994, however, the mandate also merely sought to look into cases that transpired after the creation of the commission. From January 1991 until 1994, the Commission was able to submit reports of at least 142 cases of disappearances to succeeding presidents.

The said Commissions were soon revoked by President Wijetunga and following the revocation was the creation of a new commission known as the Wijetunga Commission. However, the mandate of the Commission was to look into the disappearances from 1991 to 1993, again refraining from handling the massive disappearances that happened between 1987 to 1990.<sup>4</sup>

During the governance under Chandrika Bandaranaike Kumaratunga, three zonal commissions were created to investigate the involuntary removals and disappearances from the year 1988. The three Commissions were strategically classified as the Central Commission<sup>5</sup>, the North East Commission<sup>6</sup> and the Southern Commission.<sup>7</sup>

The Zonal Commissions received and investigated more than 27,000 complaints, out of which the Commissions established over 15,000 cases of disappearances. An "All Island" Commission further noted proofs of 4,473 disappearances apart from the previously documented cases by other commissions.<sup>8</sup>

As a result of the Commissions created, temporary death certificates were issued to the families and with measly amounts of compensation. However, families still continue to grieve for their disappeared loved ones.

The strong movement and the campaign against disappearances decreased slowly and met a natural death after 1994, as the families believed that the Government which consisted of leaders of the campaign as cabinet ministers will do justice. Justice never happened and disappearances started to take place again.

All the opposition political parties were divided by offering ministerial portfolios to the opposition members, withdrawing court cases against them or by threats and intimidation.

1 Report of the UN WGEID on 2013 accessed at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.45\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.45_English.pdf)

2 *Ibid.*

3 Watchdog. A disappearance every five days in post-war Sri Lanka. Published on 20 August 2012. Accessed at <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>

4 From Amnesty International Report: Twenty years of make-believe: Sri Lanka's Commissions of Inquiry. Accessed at <http://www.amnesty.org/en/library/asset/ASA37/005/2009/en/c41db308-7612-4ca7-946d-03ad209aa900/asa370052009eng.pdf>

5 Covers the Central, North Western, North Central and Uva Province.

6 Northern and Eastern Provinces

7 Western, Southern and Sabaragamuwa Provinces

8 Commissions of Inquiry in Sri Lanka. United States Institute for Peace accessed at <http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>

The difference is when the disappearances took place (mainly Sinhalese) in the South in 1988 to 1992 period, the campaigns in the South was a main factor in defeating the Government in the general elections after 17 years in power. When disappearances continued in the North and East against the minority Tamil community, the South supported the government which is being accused of perpetrating the disappearances.

The international focus on this issue has increased. In the United Nations Convention Against Torture (UNCAT), Universal Periodic Review (UPR) during the UN Human Rights Council (UNHRC) sessions, enforced disappearances in Sri Lanka has become one of the main controversial issues. This international pressure was one of the main factors in directing attention on the issue even in the Lessons Learnt and Reconciliation Commission (LLRC) report, which was appointed by the government itself.

During the LLRC consultations, families of disappeared LTTE cadres and civilians provided their accounts. Family members testified that their loved ones disappeared after arrest and those LTTE who crossed over army-controlled to surrender have not been seen since then. On 18 May 2009, accounts of family members reflect thousands of surrenderees who were accompanied by Father Francis Joseph<sup>9</sup> to Mullaittivu.

Among the recommendations of the report are the (1) the proper investigation of “allegations of *abductions, enforced or involuntary disappearances, and arbitrary detention*”; (2) the appointment of a Special Commissioner of Investigation who will lead the investigation of the disappearances and provide the results of the investigation to the Attorney General for the necessary criminal proceedings; (3) the development of a centralized data collection system nationwide which will contain all data regarding missing persons and; (4) the creation of a domestic legislation that will declare enforced disappearance as a crime.



*Families of the disappeared during the 2012 International Day of the Disappeared commemoration in Vavuniya.*

The LLRC report has very openly taken a clear stand against the disappearances. However, even with all these international discussions and the result of the LLRC report, the Government did not act on the recommendations and still does not show any signs of taking a step toward that direction.

While the LLRC recommendations have yet to be acted on, another Commission of Inquiry is created. In Proclamation No. 1823/42, President Mahinda Rajapaksa formed a Commission of Inquiry on 15 August 2013 to inquire into disappearances committed from the period of 10 June 1990 to 19 May 2009. The Commission of Inquiry will specifically look into pieces of evidence of the disappearances, fate and whereabouts of the victims, identities of perpetrators and will recommend legal action to the responsible parties, including measures to ensure non-recurrence of disappearances, and relief to be provided to the families and dependents of the victims. The Commission is led by Maxwell Parakrama Paranagama as the Chairman and is mandated to report the results of the inquiry six months after its creation to the president of the country.

### **The GOSL war against the LTTE**

When President Mahinda Rajapaksa became the president and declared open war against the Liberation Tigers of Tamil Eelam (LTTE), the number

9 Father Francis Joseph accompanied LTTE cadres who surrendered and to date his whereabouts are unknown.

## BEYOND TEARS AND BORDERS: TRACKING ENFORCED DISAPPEARANCES

of disappearances started increasing in alarming proportions. His government was able to build up a strong supportive ideology in the Southern society in continuing the war and in perpetrating disappearances.

The study conducted by The Social Architects (TSA) entitled, *The Numbers Never Lie: A Comprehensive Assessment of Sri Lanka's LLRC Progress* indicates that *"More than 22% of surrenderees have not been released and are missing or disappeared. This would suggest that the GoSL's stated number of surrendered LTTE cadres is considerably lower than the actual figure. The survey findings suggest that approximately 13,200 ex-LTTE cadres surrendered at the end of the war. Consequently, it is possible that more than 1,000 surrenderees remain unaccounted for. (Those statistics roughly coincide with the number of cadres the LTTE was estimated to have had at the end of the war.)"*

The results of the survey showed that 23% of the respondents *"have had a member of their immediate family"* and 45.5% of the said cases disappeared in the final stages of the war – between September 2008 and May 2009.

Meanwhile, 30% of the said victims, according to the family members, disappeared after arrest. 77% alleged that security personnel were involved in these disappearances.

### **Repercussions for human rights defenders working on enforced disappearances**

In the course of establishing truth and bringing forth justice to the victims, the Government's antagonism was directed mainly to media, civil society and the opposition political parties.

It seemingly tamed the media by threatening and attacking media persons. Threats of disappearances and killings were also a perennial situation the members of Sri Lankan media are faced with.

The civil society groups especially involved with human rights were branded as traitors or non-patriotic and accused of working according to the funds contributed by international organizations.

Two human rights defenders documenting cases and campaigning against enforced disappearances have also disappeared themselves. Lalith Weeraraj and Kugan Muruganandan disappeared on 9 December 2011. Before their disappearance, Weeraraj and Muruganandan

have both been arrested and questioned for their work. The disappearance of both, most specifically that of Weeraraj, was primarily traced to his documentation and campaigning for the disappeared Tamils in Trincomalee, Mannar, Vavuniya, Killinochchi and Jaffna Districts.

Premakumar Gunarathnam and Dimuthu Attygala from the Frontline Socialist Party (FSP) were disappeared on 7 April 2012, a day before the party will be officially launched. Both of them were released on 10 April. Gunarathnam, also an Australian citizen, believed that the Australian government's response aided in his release. He further stated that he was tortured and might have been killed.

Another clear example is how Sandya Ekneligoda, wife of the disappeared journalist Prageeth Ekneligoda, was harassed and intimidated in various official gatherings, the most prominent of which was during the UNHRC Session on 19 March 2012. She was accused of travelling to Geneva with a smiling face which indicated to some groups that she did not seem to act like a victim. She was also branded as being motivated by funds from different international groups. On 26 March 2012, upon Sandya's return to Sri Lanka, she attended a hearing for an inquiry of plea to summon then Attorney General and now current Chief Justice Mohan Peiris which sought to discuss the statement made by Mohan Peiris to the UN Committee against Torture on 9 November 2011. He claimed that Prageeth Ekneligoda did not disappear but was residing out of the country. In the gathering, Sandya was questioned about the sources of her funds during international travels, who supported her trip to Geneva, among other issues.

On 27 October 2012, a gathering of members of Families of the Disappeared and Right to Life was conducted in Negombo. As the participants of the event were leaving the venue, local police started detaining some family members and leaders of Right to Life. They were held in a police vehicle and were questioned over a video documentary depicting the struggles of families of disappeared victims. After other human rights defenders argued for their release, the police was forced to free the group after more than an hour.

One of the organizations working against enforced disappearance was also intimidated and faced surveillance. Sundaram Mahendran, the secretary

of the Committee to Investigate Disappearance (CID) was with a colleague when he went inside a computer shop to avail of copying services. After the task was finished, his friend was nowhere to be found. Later he was told by the same person that he was taken by an unidentified person asking about the work of Mahendran and was soon released after.<sup>10</sup>

On the first quarter of 2013, the Association of the Families Searching for the Disappeared Relatives organized a rally in Colombo wherein families, in a symbolic gathering, submitted a petition to the UN office. A mobilization of 600 persons travelling to join the Colombo rally was halted in Vavuniya by the Sri Lankan police and prevented from travelling to Colombo. The families were joined by members of the clergy and other human rights defenders.

A pattern emerged and peaked in 2012 when persons are abducted by unidentified men using a white van. A journalist of the Sri Lanka X News website Shanta Wijesooriya, managed to escape the attempted abduction on 5 July 2012 in Nugegoda. He recognized one of the three abductors from previous court visits and meetings. Wijesooriya believed the man was from the security division of the government. Prior to the failed abduction, he worked for Lanka-e-News and Mawbima newspaper with articles highly critical of the government. In 2011, he was arrested and detained at Mahara prison and was subjected to beatings by a prison guard. In the same year, he and his family received calls and visits from intelligence agents of the military as well as Criminal Investigation Department (CID) officials, warning him to stop writing for the Mawbima newspaper.

Even the Tamil National Alliance (TNA), the majority political party in the North, its activities were also disturbed with several members of Parliament attacked.

The North is still under heavy military surveillance and the military never allowed the families of the disappeared to commemorate the disappearance of their loved ones as a public event. Every campaign was harassed and disturbed.

The government obviously wants the people to forget what happened during the war and after the war. Whoever tries to find out the truth or help the families to find the truth will be in trouble.

### **Challenges in the campaign against enforced disappearances**

The Families of the Disappeared (FOD) is faced with varying practical problems in organizing the families and continuing the campaign against the disappearances. The challenges can be summarized in the following:

- The presence of military and their involvement against the campaigns.
- The threats and campaign against the human rights defenders in the South.
- The branding of international engagements, human rights defenders and their work as forms of betrayal against the country.
- The families of the disappeared in the South's decreasing initiative or interest against the disappearances in North and East.
- The insufficient resources to sustain the campaign against enforced disappearances.
- The language difficulties in working in the North and East Sri Lanka.<sup>11</sup>

But amidst all these obstacles, FOD has started building up networks and organizing the families in the Northern districts of the country. With the efforts by FOD and the Mannar Citizens' Committee, the families in Mannar took the initiative and formed an organization. The Association of the Family Members Searching Disappeared Relatives was created on 10 December 2012, the International Human Rights Day.

At present, the association has organized 5 districts in the North. The FOD is looking for new ways and new tactics in building up solidarity in the South. Thus, the year 2013 has been named as "Year of Campaign Against the Disappearances".

<sup>10</sup> From the statement of Sundaram Mahendran forwarded to AFAD and other human rights organizations.

<sup>11</sup> Tamil is the language used in the said areas.

# Tales of the victims' disappearances

## Fr. Jim Brown and Mr. Vimalathas

Among enforced disappearance cases in the North of Sri Lanka were those of Fr. Jim Brown and his assistant Mr. Vimalathas. At the height of the warfare in Jaffna between the Sri Lankan government security forces and the Liberation Tigers of Tamil Eelam, the two disappeared on 20 August 2006. Fr. Jim Brown and Mr. Vimalathas were last seen riding a motorcycle at the Allaipiddy checkpoint controlled by the Sri Lankan forces.<sup>12</sup>

## Prageeth Ekneligoda

Prageeth Ekneligoda is a journalist and a political cartoonist. He worked with the Lanka News website of articles supporting the presidential candidate of the opposition party during the period leading to his disappearance.

He was on his way home on 24 January 2010 when he called his driving companion and informed him that he would travel using a different transportation heading toward Koswatte. His family has not seen him since.<sup>13</sup>

## Lalith Weeraraj and Kugan Muruganandan

Lalith Kumar Weeraraj worked in the North and East of Sri Lanka as the Jaffna Coordinator of the Movement for People's Struggle (MPS). The movement mobilizes people to stand against state repression of the Tamil community.<sup>14</sup>

He was travelling back and forth to his home and the northern areas during the conduct of his work. His father, although expressing alarm and concern, satisfied himself with asking Lalith to call every



9:00 a.m. Lalith agreed and updated his father of his work and well-being.

Lalith travelled to Jaffna on 9 December 2011 and needed to organize a press conference for the MPS for the International Human Rights Day on 10 December. He was with Kugan Muruganandan, a close colleague. Both were seen to have left Muruganandan's place at Avarangal around 5:00 p.m. They have not been seen since.<sup>15</sup>

12 Prior to the disappearance, Fr. Jim Brown offered the church to the people during the intense shelling on the night of 12 August 2006. The church however was not spared from the shelling. The following morning 13 August, more than 20 people were reportedly killed and others were injured. During this time, Fr. Jim Brown led the people to a more secured area and begged the Navy to allow the people to flee. However, the Navy branded him as an LTTE supporter and further threatened him.

13 Before he disappeared in 2010, Prageeth was previously abducted on 27 August 2009. He was blindfolded and chained by unidentified persons under the command of a superior. He was released after the abductors confirmed he was not a target person. Meanwhile, Prageeth's workplace, Lanka-e-News Website, was not spared from threats. The office was searched by a group of unidentified men on 28 January 2010. During the election period, the website was also blocked by authorities.

14 He devoted his time campaigning against human rights violations of civilians and human rights defenders in the North. He assisted the issue of Internally Displaced Persons (IDP) as well. But most notably, Lalith extended support and worked on the issue of disappearances. The formation of several committees of families of the disappeared was attributed to his efforts in the districts of Trincomalee, Mannar, Vavuniya, Killinochchi and Jaffna.

15 Allegations that the Sri Lankan army was behind the disappearances increased when Lalith's engagements with the army were made public –these started before he disappeared. He was previously abducted by men claiming to be members of the army as he was putting up posters on 25 March 2011 in Mannar town. The posters demanded the government to release information on Sri Lanka's disappeared. He was then blindfolded and detained overnight.

Another incident occurred on 10 April 2011 when the Vavuniya police arrested him and a friend for putting up the same posters. Two months later, the officers of the Killinochchi Army (Depo Junction) abducted him and he was interrogated for six hours. On 14 November in Jaffna, he was severely injured due to extensive beatings by unidentified men at a rally with the families of the disappeared.



# A Deeper Look at Enforced Disappearances in Thailand

(An excerpt from the Justice for Peace Foundation Report on Enforced Disappearances in Thailand)

*Angkhana Neelaphaijit calls for truth and justice for her disappeared husband, Somchai Neelaphaijit, and all victims of disappearances in her country.*

**By Justice for Peace Foundation**

## **The history and context of enforced disappearances in Thailand**

Thailand has a decades-long history of state violence and authoritarianism. Enforced disappearances take place in this context and cannot be divorced from the border, often violent, political context. Since at least 1950s, enforced disappearances have taken place alongside a range of very serious human rights violations such as extrajudicial killings, arbitrary detention, torture, threats and intimidation. Enforced disappearance should therefore be viewed as one manifestation of the violent methods employed by the Thai state to stamp out dissent or to eliminate suspected criminals outside of the rule of law.

Laws codifying immunity of state officials, a politicized and sometimes weak criminal justice system (including the police, the Department of Special Investigations and the Judiciary) and a concerning lack of political will have resulted in impunity for security officials who are directly responsible or bear responsibility through chain of command for these serious crimes. Decades of impunity have created a context in which

administrative and security officials know that their illegal actions are condoned by the state and the likelihood of punishment is extremely low. They are therefore free to use extra-legal methods in their implementation of government policies or to settle more personal detention, torture, threats, and intimidation, which have become legitimized as necessary and appropriate extra-legal methods of policing the Thai state.



Enforced disappearances have been recorded since the 1950s. Teiang Sirikhan, member of the House of Representatives of the Sakolnakorn province, has sympathized with Pridi Banomyong and was a member of the Free Thai Movement during the Second World War following the occupation of Thailand by Japan, was disappeared on 12 December 1952. His car was found at a forest in Kanjanaburi province. The investigation report of Royal Thai Police, after the term of Prime Minister, Pol. Gen. Pao Sriyanond, stated that police had taken him to a house and tortured him until he died. A witness reported that his body was burnt and buried in Ladya, Kanjanaburee province and left his car in that area.<sup>1</sup> Five police officials were accused of murder: Pol. Maj. Gen. Pad Tungkhasamit, Pol. Maj. Gen. Thom Jitwimon, Pol. Lt. Jamrast Yimlamai, Pol. Lt. Thanu Pukjaidee and Pol. Sgt. Nab Nimrat. The court verdict in 1961 sentenced three of the accused to death: Pol. Maj. Gen Pad Tungkhasamit, Pol. Maj. Gen. Thom Jitwimon, and Pol. Sgt. Nab Nimrat. Pol. Lt. Jamrast Yimlamai and Pol. Lt. Thanu Pukjaidee were acquitted.

In 1954, Porn Malitong who was a politician in opposition of Pol. Gen. Pao Sriyanond's administration was disappeared on 24 March 1954. Chit Wiparttawat wrote that Porn had been detained at a house in Bangkok, where he died and that Porn's body was thrown into the Chaopraya River with his car.<sup>2</sup>

In 1954, Haji Sulong Tomina was disappeared, allegedly drowned by police officers from Phao District in Songkhla lake in southern Thailand. Haji Sulong Tomina had studied in Mecca for 20 years and on his return to Thailand in 1927, he founded an Islamic school and became a religious and cultural leader opposed to the cultural policies of Thailand's then Prime Minister Field Marshall Pibunsongkhram.<sup>3</sup> In 1947, he submitted a seven-point plan on governance in southern Thailand which related to self-governance and religious and cultural freedom. He was found guilty of treason and detained between 1948 and 1952, after which he was released but kept under constant surveillance by the police. In August 1954, he and his eldest son, who was his translator (as Haji Sulong could not speak Thai), were invited to meet with Police Lieutenant General Boonleurt Leurtprecha, the Songkhla Chief of Police.

He has not been seen since the date of the meeting, 13 August 1954, when he was last seen in the company of an armed policeman at a mosque in Hadyai district of Songkhla, by the caretaker of the mosque. There has been no police investigation into the suspected enforced disappearance of Haji Sulong and his son.<sup>4</sup> The Government officially refused to accept responsibility. However, after Haji Surong and his eldest son were disappeared Prime Minister Field Marshall Pibunsongkhram's wife, Lady La-eaid Pibunsongkhram, visited Haji's wife and gave 5,000 Baht compensation per month and scholarships to his children.<sup>5</sup>

In the 1950s and 60s, the Thai Government suppressed the Communist Party of Thailand (CPT). For example, Jit Phumisak, leftist intellectual, who joined the CPT in 1965 was shot by police in Sakon Nakhon in 1966 on the side of a road.<sup>6</sup> The suppression of alleged communists continued into the 1970s. Suppression of villagers and CPT activities had been underway for many years prior to the period of *thang daeng* (red barrel) killings which took place in Phatthalung, in southern Thailand, and allegedly in several other locations

1 Chit Wiparttawat, *The Confession of Pol. Gen. Pao*, Prea Pittaya Press, Pranakorn, 1960, 205-456.

2 Chit Wiparttawat, *The Confession of Pol. Gen. Pao*, Prea Pittaya Press, Pranakorn, 1960, 355-388.

3 Baker, C, Baker, C.J., and Phongpaichit, P., *A History of Thailand*, Cambridge University Press, Cambridge, 2009, 297.

4 Thanet Arpornsuwan, *History of the Theory of Separatist Movement in Southern Thailand*, Southeast Asian Study Program, Thammasat University, 2006, 113.

5 JPF interview with Dr Petchdow Tomena, (Haji Sulong's granddaughter), February 2012.

6 Baker, C, Baker, C.J., and Phongpaichit, P., *A History of Thailand*, Cambridge University Press, Cambridge, 2009, 297.

in the south beginning in August 1972. Using interviews and analysis of archived news reports from the 1970s, Haberkorn reveals the abuses that took place.<sup>7</sup> In 1971, Field Marshall Praphat Jarusathien stated that all traces of communists and communism would be eradicated from Thailand. A village defence volunteer in Patthalung used this order as cover for creating the impression that communist activities were rife in the area. Villagers were then asked to inform which of their neighbours and colleagues were communists. Simultaneously, sweep operations took place in which large numbers of villagers were arrested. Once detained the villagers were accused of plotting or committing crimes against the Thai state, interrogated and frequently tortured. Some detainees were then placed in oil drums, covered in oil and burned alive. The security officials denied the detentions and destroyed the physical evidence of the person. Students and villagers estimate that 3,000 people were killed in this way in Patthalung alone. The selection of those to be arrested, detained and killed was arbitrary. Those who worked for justice and drew public attention to the killings, received serious threats. However, their efforts led to an investigation under the new democratic government in 1975, which found that Thai security officials were responsible for the murder of 300 Thai citizens. However, no action was taken, citing the need to maintain morale of the security forces.

Haberkorn<sup>8</sup> also documents state violence in the north of Thailand in the 1970s. Following the protests of October 1973, which ushered in a new democratic order, space opened up for political participation by a wide range of previously silenced actors, including farmers. As a result of their activism, a Land Rent Control Act was introduced in 1974. However, as farmers demanded its implementation, they found themselves targeted by the state which used strategic assassinations to instill widespread fear. Haberkorn finds that, "[b]etween March 1974 and September 1979,

thirty-three farmer leaders were assassinated, eight were seriously injured and five were disappeared'.<sup>9</sup> Assassinations were particularly high in Chiang Mai province. Many believe that a right-wing para-state group – Nawaphon, was responsible for the assassinations, though, bar one, no assassin has been named and no prosecutions have taken place.

Not only were the killings in Patthalung and Chiang Mai themselves serious violations of human rights, but the impunity that followed served to weaken the rule of law in Thailand and has created the environment today, in which security officials view the killing of civilians as a legitimate method of policing.

The killings in the north and south took place in a period of political unrest, as right-wing officials sought to retake control of the Thai State. In September 1976, students and others protested the return of Field Marshal Thanom Kittikachorn who had been a military ruler ousted in 1973. On 6 October 1976, state and para-state forces attacked the protestors arresting up to one thousand, injuring hundreds and reportedly killing up to 100 people.<sup>10</sup> A military coup took place simultaneously. No one has been held accountable for these killings and the events of 6 October remain veiled in silence. A memorial has been established on Ratchadamneonnok Road to commemorate the events of 14 October 1973 by the Government, under the 14 October Foundation.

Periods of military rule and military coups continued to dominate Thai politics. It was under the National Peace Keeping Council-military government that in June 1991, Tanong Pho-an was disappeared. At the time of his disappearance, Tanong Pho-an was a senator, President of the Labour Congress of Thailand and Deputy Chairman of the International Council of Free Trade Unions Asia-Pacific Regional Organisation and was campaigning against the military-government's dissolution of state enterprise labour unions.<sup>11</sup> Prior

7 This section summarizes the findings of Haberkorn, Tyrell, Forthcoming 2012, *Getting Away with Murder: State Violence and Impunity in Phatthalung*, in *State Violence and Transition in East and Southeast Asia*, Edited by Sung Chull Kim and Narayan Ganesan. Lexington: University Press of Kentucky.

8 Haberkorn, T., An Unfinished Past: Assassination and the 1974 Land Rent Control Act in Northern Thailand, *Critical Asian Studies*, 41:1 (2009), 003-035, Routledge.

9 Haberkorn, T., An Unfinished Past: Assassination and the 1974 Land Rent Control Act in Northern Thailand, *Critical Asian Studies*, 41:1 (2009), 003-035, Routledge.

10 Puey Ungphakorn, Violence and the Military Coup, *Bulletin of Concerned Asian Scholars*, Vol. 9, No. 3, July-September 1977.

11 *Bangkok Post*, Tanong Mystery, 21 November 2001.

to his disappearance, Tanong received threatening phone calls, told colleagues he believed he was being followed and was ordered by the Ministry of Interior to not attend the annual meeting of the International Labour Organisation in Geneva. He was last seen by a colleague leaving his office on the evening of 19 June 1991. Tanong was an insulin-dependent diabetic and did not have his medication with him at the time of his disappearance. The following morning his car was found parked at a strange angle on the curb in front of his office with what appeared to be footprints of army boots on the backseat. Tanong has not been seen since. The then-military government denied any involvement in his disappearance. In 1993, the Thai Parliamentary Committee on Justice and Human Rights, which reviewed the case and heard testimony from academics and police witnesses concluded that the probable cause of Tanong's disappearance was his conflict with the military-government but said it found no new information and refused to make its report public. The Parliamentary Committee on Labour and Social Welfare also conducted an investigation but it was not made public. In June 2000, access to these two reports was requested under the Official Information Act but access was denied on the grounds that release of the information would have an impact on others. In October 2001, the Government of Thaksin Shinawatra ordered the newly established Independent Committee for Investigating Missing Persons and Paying Compensation to the Victims of the Black May Events of 1992 to also investigate Tanong's disappearance.

One year after Tanong's disappearance, mass protests against the National Peace Keeping Council took place in Bangkok. After General Suchinda Kraprayoon, leader of the February 1991 military coup, was appointed Prime Minister in April 1992, pro-democracy protests began and continued to grow in size.

After negotiations between the Government and opposition parties broke down on 17 May, a large opposition rally took place. The security forces followed a policy of use of excessive force in their response to the rally. National and international

human rights organisations active in Thailand at the time documented summary executions, unnecessary and disproportionate use of lethal force, violations of medical neutrality and removal of bodies without proper inquest or autopsy procedures.<sup>12</sup> Officials reported that 56 people were killed, 696 injured and 175 remained missing, however, unofficial reports were considerably higher.<sup>13</sup>

There is no evidence to suggest that the missing were being held in secret army detention. Rather, there is evidence indicating that officials piled dead bodies onto trucks and disposed of them in a clandestine manner. Despite rumours and some solid leads, 20 years later the remains of those missing after the crackdown have not been located. The failure to locate the remains and to attribute responsibility for the deaths, is largely due to efforts by various Governments and individuals to ensure the truth is not revealed. The UN Working Group on Enforced or Involuntary Disappearances has accepted 31 cases of enforced disappearances which took place during the violent crackdown by security forces in May 1992.<sup>14</sup>

Several governmental, parliamentary and non-governmental investigations took place. Dr. Pradit Charoenthaithawi, who was responsible for investigating the missing, wounded and killed under government investigation stated that he had been told by military officers that the bodies were buried at military bases. He and his family received serious threats and he resigned. None of the official reports appointed individual responsibility. This, along with the amnesty decree issued by General Suchinda on the eve of his resignation, made truth seeking and prosecutions impossible. The new Prime Minister Anand did however remove the three top military officials from active positions and also abolished the Internal Peace-keeping Law.

A Committee, the Independent Committee for Investigating Missing Persons and Paying Compensation to the Victims of the Black May Events of 1992, was established in October 2001, under the democratically elected Prime Minister Thaksin. The Relatives of May 1992 have tried to encourage the Government to establish a memorial monument for the events of 1992 on

12 Amnesty International, *The Massacre in Bangkok*, September 1992 and Physicians for Human Rights and Asia Watch, *Bloody May: Excessive Use of Lethal Force in Bangkok: The events of May 17-20, 1992*, October 1992.

13 Amnesty International, *The Massacre in Bangkok*, September 1992.

14 UN Working Group on Enforced and Involuntary Disappearances, E/CN.4/2002/79, 18 January 2002.

Rajchadamneonok Avenue near the lottery building. They were provided with land by the Government but no budget to build the monument. While families have received some compensation, the relatives of the missing continue to await truth, justice and reparation.

This brief historical overview of state violence in Thailand's recent history reveals patterns of killings, detention, torture, disappearances and threats, which continue to be used today by Thailand's security forces. Individuals and communities who challenge the government's policies and laws, find themselves threatened, detained, tortured and sometimes killed or enforcedly disappeared. Excessive force is used against peaceful protesters resulting in killings, injuries and rendering large number of people missing and disappeared. Arbitrary decisions by security forces regarding an individual's association with groups challenging the government led to arrest, detention, re-education, torture and death. These actions are all violations of human rights. This history of ignoring the rule of law has created an environment where the rule of law has little value in Thailand; human rights violations are condoned and impunity is entrenched.

### **Contemporary victims of enforced disappearances**

In the past decade, there are two official state policies which have directly contributed to the creation of an environment in which enforced disappearances, and other serious human rights violations, take place. These are (i) the highly militarized counter-insurgency approach adopted in southern Thailand by various governments, beginning in 2001 under the Thaksin Administration; and (ii) the war on narcotic drugs policy implemented by Prime Minister Thaksin in 2003, and having lasting impacts well beyond the end of the official policy period.



*AFAD in partnership with the Justice for Peace Foundation and the Relatives Committee of the May 1992 Heroes conducts a seminar-forum entitled "The Value of the Thai Government's Accession to the Convention on Enforced Disappearance." Photo shows AFAD secretariat members with leaders of the Justice for Peace Foundation after the Forum.*

### **Counter insurgency in southern Thailand**

Political violence in the south began once again to take place around 2002. This coincided with the appointment of Prime Minister Thaksin and his change in policy toward the management of the south, including the dissolution of special administrative arrangements and increasing the security role of the Royal Thai Police. The attack on the military barracks in

Choirong district in Narathiwat and the associated gun robbery on 4 January 2004, is frequently referred to as the beginning of the current period of violence in southern Thailand, though violence had begun to recur in the years before.

Since then, insurgents have used armed violence to weaken and challenge the Thai state. The state has responded with military force that is frequently abusive. The insurgents are frequently responsible for very serious crimes including homicide. While violent incidents were more frequent in the first two years of the insurgency; the numbers of injured and killed have as remained reasonably stable, with significant peaks in 2004 and 2007.

In March 2005, Prime Minister Thaksin established the National Reconciliation Commission with a mandate to give recommendations to the government on policies, measures and mechanisms conducive to reconciliation and peace in the three southern border provinces. The NRC made its conclusions public in May 2006, and identified a series of measures to put an end to violence in the southern provinces, including the need to engage with the militant groups; establish an unarmed peace unit to work on peace building; address impunity for human rights violations; increase autonomy for local resource management; increase economic opportunities and address unemployment; reform and improve the administration of justice; improve quality and diversity of education; promote cultural diversity; and establish bodies to ensure local participation in decision making. However, few

of these recommendations have been seriously implemented.

After the 2006 military coup, the military-government established a new structure involving ISOC, SBPAC and the joint Civilian-Police-Military (CPM) taskforce in the region, making ISOC and the National Security Council responsible for security. From 2007, abuse of power and violations of human rights once again began to rise, as did complaints to local lawyers and NGOs who themselves have reported an increase in threats and attacks.

The policies employed in the south in response to the violence have been similar under all governments since the resurgence of the violence in the south. Three of these policies have specifically contributed to an environment in which disappearances take place: (i) the emergency legislative framework; (ii) surrender programmes; and (iii) militarized responses including creation of civilian defence forces.

### **JPF's Report on Enforced Disappearances: Summary and Findings**

JPF's research on enforced disappearances that have taken place over the past decade in Thailand reveals patterns in regard to government policies that have directly contributed to enforced disappearances, groups of people that are permanently vulnerable to enforced disappearances, the methods used to disappear a person, the additional violations the enforcedly disappeared person experiences, and the Government's failure to provide remedies, both judicial and non-judicial.

JPF has personally documented 40 incidents that involved the enforced disappearance of 59 people. Analysis of these incidents reveals that men from minority ethnic groups, such as Malayu or Hill Tribe communities, are disproportionately more vulnerable to enforced disappearances. Around 94% of the victims were male and around 86% were from ethnic minorities. JPF found that disappearances have taken place in all regions of Thailand, though specific policies in some areas appear to have resulted in increased enforced disappearances in some regions during particular time periods. Of the 59 enforced disappearances documented by JPF, 12 people were from northern

Thailand, five people from western Thailand, seven from Isaan (north east), 33 from southern Thailand and two people were from Bangkok.

JPF found that two specific government policies had resulted in increased enforced disappearances. Firstly, the highly militarized counter-insurgency approach adopted in southern Thailand by various governments, beginning in 2001 under the Thaksin Administration accounts for around 55% of the cases of enforced disappearances documented by JPF. All of the victims are Malayu Muslim men.

Peaks in disappearances in the south took place in 2004 /5 and 2007, which account for 42% and 24% of southern disappearances documented by JPF, respectively. Renewed counter-insurgency policies were issued from Bangkok preceding both periods of increased disappearances. Young men are targeted in the south with nearly 80% of victims under 40 years of age and 45% under 30 years of age. Security legislation in force in southern Thailand that allows security officials to bypass the usual safeguards related to detention has directly contributed to heighten numbers of enforced disappearances in southern Thailand.

The second government policy which has directly resulted in increased disappearances was the War on Narcotic Drugs policy implemented by Prime Minister Thaksin in 2003. This policy has had lasting impacts on the practice of enforced disappearances and extrajudicial killings, well beyond the end of the official policy period. At least 10 of the enforced disappearances documented by JPF are related to suspected or alleged drug use or dealing. Enforced disappearances associated with drug use are difficult to document as the families experience high levels of fear. JPF suspects that the real number of disappearances in which the victim is alleged to be involved with drugs is far higher than documented.

JPF documented in detail a very violent implementation of the War on Narcotic Drugs Policy in one area of Chiang Mai province affecting victims from Chiang Rai and Chiang Mai provinces. JPF has documented reports of patterns of arbitrary detention, systematic torture, extrajudicial killings and enforced disappearances perpetrated in the north of Thailand from mid to late 2003.

In addition to these two policies, JPF has found

that particular categories of people are vulnerable to enforced disappearances throughout Thailand. Firstly, people with close relationships with officials/ police/army and/or people who come into conflict with these officials are vulnerable. While these relations frequently involve illegal activities such as drugs, people smuggling or illegal lotteries, this does not justify an official's use of extra-legal methods, such as enforced disappearances.

Sometimes the relationship may involve the individual providing information to the authorities or may involve a personal conflict between an individual and an official. In 25% of the cases documented by JPF, the victim had some type of relationship with officials prior to the disappearance.

Secondly, activists are at risk of enforced disappearances. JPF documented five enforced disappearances that were a result of the individuals' human rights, political or anti-corruption activism. JPF also found that environmental and land rights activists were vulnerable to extrajudicial killings and murder.

Thirdly, witnesses of crimes or human rights violations are vulnerable to enforced disappearances. JPF documented four enforced disappearances that directly relate to the victims' status as a witness. In four incidents, as many as eight people may have been enforcedly disappeared because they witnessed the killing or disappearance of the person they were with.

Fourthly, migrants are vulnerable to enforced disappearances in part because of the lack of legal protections afforded to them and also because they are viewed by some officials as a threat to the nation. Methods of disappearing a person follow three patterns throughout Thailand. The first, and most common method, involves officials, sometimes in uniform and sometimes in plain clothes, taking the victim(s) from the street forcing them (and their motorcycle) into another car or truck and driving away. These cases are often witnessed, but are usually not in the immediate vicinity of the victim's home or workplace. 68% of enforced disappearances documented by JPF followed this pattern. The second method is to arrest the victim, usually without a warrant, from his home or other location that is regularly used by him such as the workplace, mosque or local

teashop. The arrest is conducted by officials. 22% of enforced disappearances documented by JPF began with this form of arrest. A third – though less common – method of enforced disappearance involves inviting the victim to meet with officials at a specific location. 12% of enforced disappearances documented by JPF began with such an invitation.

There is evidence to suggest that those who are enforcedly disappeared also experience other human rights violations including arbitrary detention, torture and extrajudicial killings. Testimony provided by detainees in southern and northern Thailand province in 2003, indicates that these violations were taking place at the time and in the area from which the victims were disappeared. In regard to northern Thailand, JPF has documented witness testimony indicating the arbitrary detention, torture and extrajudicial killing of two individuals who were disappeared in that area. JPF believes that other victims of enforced disappearances have also been the victims of arbitrary detention, torture and in many cases extrajudicial killings. Recovery of the remains of the victims would assist in securing evidence of these violations.

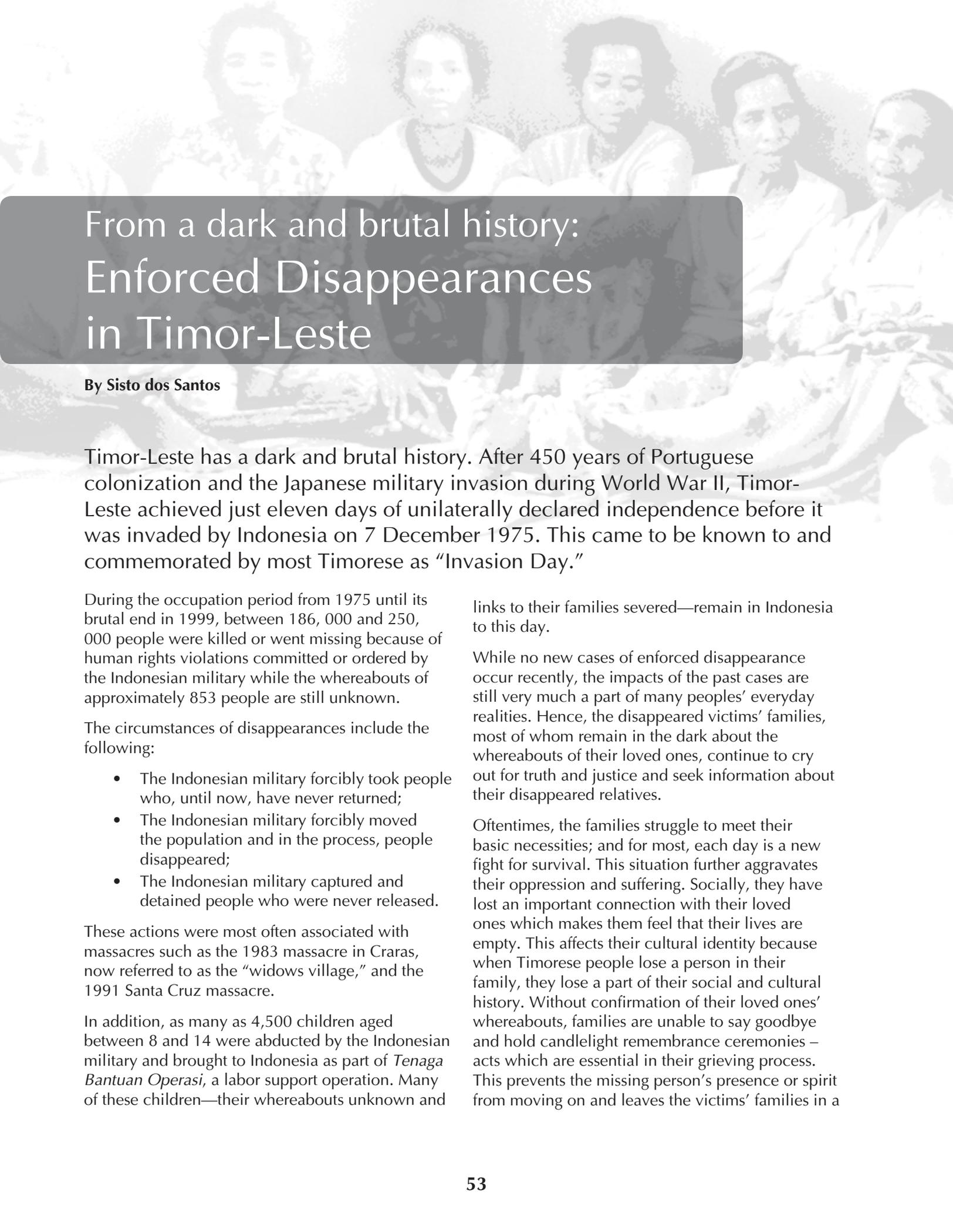
Judicial remedies, the right to truth and the right to reparation for enforced disappearances remain largely denied by the state in Thailand. The failure to define 'enforced disappearance' as a crime in Thailand stands in the way of prosecutions. Compounding this is weak investigatory and prosecution bodies that lack independence. In no case has there been an appropriate prosecution of the perpetrator of an enforced disappearance in Thailand. Right to truth is systematically denied as government agencies seek to hide rather than reveal the truth about enforced disappearances. Exacerbating this is the weakness of the National Human Rights Commission which does not have offices outside of Bangkok and has taken little initiative to actively seek the truth in cases of enforced disappearances.

Reparation for enforced disappearances has been extremely limited. In a small number of cases in southern Thailand, 100,000 Baht was paid to the relatives by the Government on recommendation of the Government-established National Reconciliation Commission. The recent recommendation by the Prime Minister-established Committee for Compensation of People Affected

by Unrest in the Southern Border Provinces, recommended the Government pay reparations to several cases of enforced disappearances from January 2004 to 30 September 2011. In other regions of Thailand there has been no progress on reparations. Various governments have also failed to ensure cessation and non-repetition of enforced disappearances.

**Summary of recommendations:**

1. The Government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED).
2. The Government should adopt legislation that criminalizes the act of enforced disappearance, creates appropriate investigation mechanisms and ensures the full rights of the victims and their relatives.
3. The Government should amend existing legislation relating to witness protection, detention, good faith' clauses and destruction of evidence.
4. Investigation and prosecution procedures should be improved, including immediate filing of first information reports, immediate investigation, rapid referral to Department of Special Investigations (DSI), involvement of independent forensic experts, provision of witness protection, and respect for the rights of the relatives.
5. Where necessary commissions of inquiry should be established into particular categories of enforced disappearances and other human rights violations such as (i) ongoing disappearances related to suspicion of involvement with drugs; (ii) human rights violations in northern Thailand in 2003; and (iii) killings and disappearances of activists.
6. A national level reparations mechanism should be established. Until this is established in all cases of enforced disappearance, relatives should receive interim compensation.
7. The National Human Rights Commission of Thailand should play a significantly enhanced role in establishing the truth and ensuring justice and reparations.
8. In all known cases of enforced disappearances there should be independent and thorough investigations leading to prosecutions and sentencing of the perpetrators.



# From a dark and brutal history: Enforced Disappearances in Timor-Leste

By Sisto dos Santos

Timor-Leste has a dark and brutal history. After 450 years of Portuguese colonization and the Japanese military invasion during World War II, Timor-Leste achieved just eleven days of unilaterally declared independence before it was invaded by Indonesia on 7 December 1975. This came to be known to and commemorated by most Timorese as “Invasion Day.”

During the occupation period from 1975 until its brutal end in 1999, between 186,000 and 250,000 people were killed or went missing because of human rights violations committed or ordered by the Indonesian military while the whereabouts of approximately 853 people are still unknown.

The circumstances of disappearances include the following:

- The Indonesian military forcibly took people who, until now, have never returned;
- The Indonesian military forcibly moved the population and in the process, people disappeared;
- The Indonesian military captured and detained people who were never released.

These actions were most often associated with massacres such as the 1983 massacre in Craras, now referred to as the “widows village,” and the 1991 Santa Cruz massacre.

In addition, as many as 4,500 children aged between 8 and 14 were abducted by the Indonesian military and brought to Indonesia as part of *Tenaga Bantuan Operasi*, a labor support operation. Many of these children—their whereabouts unknown and

links to their families severed—remain in Indonesia to this day.

While no new cases of enforced disappearance occur recently, the impacts of the past cases are still very much a part of many peoples’ everyday realities. Hence, the disappeared victims’ families, most of whom remain in the dark about the whereabouts of their loved ones, continue to cry out for truth and justice and seek information about their disappeared relatives.

Oftentimes, the families struggle to meet their basic necessities; and for most, each day is a new fight for survival. This situation further aggravates their oppression and suffering. Socially, they have lost an important connection with their loved ones which makes them feel that their lives are empty. This affects their cultural identity because when Timorese people lose a person in their family, they lose a part of their social and cultural history. Without confirmation of their loved ones’ whereabouts, families are unable to say goodbye and hold candlelight remembrance ceremonies – acts which are essential in their grieving process. This prevents the missing person’s presence or spirit from moving on and leaves the victims’ families in a

kind of limbo with this shadow over their lives and homes. Many relatives of the disappeared are left in despair if justice will ever be achieved.

### Attempts at finding justice

In the aftermath of independence, the government established several mechanisms in a bid to understand and address the violations and suffering of the people. In 2002, the Commission for Reception, Truth, and Reconciliation (CAVR – *Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste*) was created to uncover the truth. During its three years of operation, CAVR interviewed more than 10,000 people including victims, combatants, and witnesses of the conflict and human rights abuses. This process created a strong expectation that justice will be achieved – i.e., the perpetrators will be held accountable and the victims will regain their dignity. As a result, the victims demonstrated enthusiasm and enormous courage in sharing their stories with the public, regardless of the circumstance of the crime.

The outcome of CAVR was a step forward with many positive recommendations, including one particularly relating to the missing children. The CAVR recommended that Indonesia and Timor-Leste should continue to uphold the Memorandum of Understanding (MOU) signed in December 2004. Facilitated by the UNHCR, the MOU guarantees children's right to freely access information about their families in order for the children to determine their future without any intimidation. According to the MOU, both countries must help vulnerable people living in rural areas and children who were separated from their families and who are now likely in their adulthood, find information as to the whereabouts of each other, and give assistance to unify them.

In 2003, the UN Special Panel for Serious Crimes issued an indictment against Ex-General Wiranto. The issuance encouraged high hopes among the Timorese. This was considered a particularly significant moment because General Wiranto was the top Indonesian official responsible for security before and after the popular consultation referendum was held in 1999. However, because of formal procedures and a lack of political will from the governments of Timor-Leste and Indonesia as well as the UN Security Council, Wiranto was never arrested and this indictment was never pursued.



*A grief-stricken lady, embracing a picture of a disappeared loved one, represents the collective pain of Timor-Leste's families of the disappeared.*

Without UN's political will and an effective mechanism for addressing crimes against humanity in Timor-Leste, an environment of impunity persists in Timor-Leste and Indonesia.

Shortly after, Indonesia established the almost-farcical *Ad Hoc* Human Rights Tribunal for Timor-Leste, which proved to be little more than a thinly-veiled attempt by Indonesia to demonstrate to the international community that it was serious in addressing human rights violations. In 2005, the Governments of Indonesia and Timor-Leste created the Commission of Truth and Friendship (CTF). The CTF, however, focused more on establishing good relations between the two countries rather than prioritizing accountability. Therefore, while it recognized the existence of human rights violations towards its victims, failure to identify the perpetrators, once again, denied justice to the victims.

The final reports of both CAVR and CTF which were handed to the National Parliament recommended the need to gather information about the whereabouts of the disappeared. Since then, minimal concrete action has been taken to implement these reports' recommendations.

Then in 2009, Timor-Leste's *Provedoria dos Direitos Humanos e Justiça* (PDHJ – Ombudsman for Human Rights and Justice) and Indonesia's *Komisi Nasional Hak Asasi Manusia* (Komnas HAM – National

Commission on Human Rights) signed another MOU on the issue of enforced disappearances and the border between East and West Timor. Without serious follow-up, the MOU expired.

The presidential and parliamentary elections which took place in 2012 once again brought new hope for justice to the victims and their families—that finally an end to their long-standing pain and suffering is possible. During his campaign for the presidency, Taur Matan Ruak often referred to the lamentation of the widows and orphans as his reason for running by declaring that he wanted to play his part in putting an end to their tears. It was this connection to the people that led to his election as the fifth President of the Democratic Republic of Timor-Leste.

As the president, Taur Matan Ruak holds substantial power to push forward the legislative process to dignify the victims; but this will not be an easy process. Politics and government machinery present considerable impediments to real progress.

It was viewed as a positive sign that the President, who was a former veteran and head of the National Defence Force (FFDTL), was willing to openly criticize the veterans' pension scheme. This scheme has resulted in social injustice and inequality, especially for human rights crime victims who similarly sacrificed for the freedom of Timor-Leste.

However, his criticism on the attitude of greed and hunger for money among veterans is a clear signal that human rights organizations, in their advocacy, must emphasize that victims' reparation is about giving dignity, not mere financial compensation to the victims, with the hope of improving their situation.

After more than six months, hope is beginning to wane. Little tangible action has been taken to change or improve the situation of the victims. Their remaining hopes rest on a set of draft laws outlining the establishment of a Memorial Institute and a reparation system. These were generally passed by Parliament but have not yet undergone the detailed article-by-article consideration required before being passed.

### **Supporting the victims and their families**

In light of this, it is important that victims and families form a unified voice to advocate justice so that decision-makers and the public will not forget these horrific crimes and that these crimes

will never be repeated. To this end, AFAD's partner and member in Timor-Leste, the *Asosiasaun HAK (Hukum Hak Asasi dan Keadilan – Law, Human Rights and Justice)*, has been working, since 2001, to organize the victims of all past crimes.

The HAK has engaged in the following activities to support the victims: held discussions with families, commemorated the massacre days, took petitions to government, made statements, and held demonstrations to make the voices of the families heard. In addition to this, the HAK has worked to identify vulnerable victims. The HAK initiated activities with other partners in organizing the victims, building their skills, seeking educational opportunities, and establishing livelihood projects such as sewing, selling of local products, and other enterprises.

In 2009, together with the International Center for Transitional Justice (ICTJ), the HAK held a national congress of victims. The congress established the National Association of Victims with sub-associations in every district of Timor-Leste. The purpose of the association is to support victims in their advocacy efforts and help meet their everyday needs.

One success story is that of Eliza dos Santos from Liquiça, whose husband is still missing. For Eliza, every day was a struggle during the time when the HAK first met her. Now, she serves as coordinator of the Victims' Association in her district and leads



*In a predominantly Catholic country of Timor-Leste, victims' families light candles in the hope against hope of finding the truth and attaining justice.*

## BEYOND TEARS AND BORDERS: TRACKING ENFORCED DISAPPEARANCES



*Activists and families of victims join hands as they continue to remember the dark past and build a future of peace springing from the wells of justice.*

in organizing public discussions and memorials, and in lobbying parliament and religious leaders.

The HAK, together with other partner organizations, has been working to document enforced disappearances in order to produce a story of the past told from the perspective of the victims and their families. As part of this process, the HAK has been collecting dates and detailed information about the families of the disappeared to find out the level of involvement of state authorities in disappearance cases. To date, the HAK has collected details of 92 disappeared persons from seven massacre sites, including Marabia-Dili, Liquica Church, Ainaro, Craras in Viqueque, Mehara in Lautem, Polres Maliana in Bobonaro and Aileu.

Commemoration days provide an important opportunity for families to remember their loved ones and preserve their memories even without confirmation of their deaths yet. In 2012, the HAK organized the victims and the families to commemorate the following massacre days, during which many people disappeared and were never found: the Marabia-Dili massacre of 1980 – a tragedy which resulted in 72 disappearances; Craras-Viqueque massacre of 1983; Maliana massacre of August 1999; Tumin-Oecusse massacre of August 1999; Santa Cruz massacre of November 1991; Oedaberek-Manufahi massacre of 1975; and, Invasion Day massacre on 7 December 1975.

Such advocacy activity has contributed to increased community enthusiasm and awareness of the needs and difficulties in seeking the return of lost children. In relating with the State, advocacy is also deemed important for Parliament to approve draft laws on the Memorial Institute. Under this law, the State will be obliged to discover the whereabouts of those who disappeared under the Indonesian occupation. Under this context, it will become the responsibility of the State to fulfill the victims' rights to reparation and to conduct investigations which will come up with exact information on the disappearances, including the details of the perpetrators.

The HAK and its partners have pushed and will continue to push political leaders to pay attention to the victims and to finalize the report of the CAVR. From 2008 to 2009, the HAK was part of the steering committee which drafted the laws on Memorial Institute and reparations. The HAK, with its partners, continued to lobby individual Members of Parliament, as well as political parties and veterans, for them to understand the importance of these pending laws. The HAK has also approached religious leaders, particularly Catholic bishops, in an effort to encourage them to work towards convincing Members of Parliament, the Government, and Prime Minister Xanana Gusmao, to prioritize and approve these laws.

So far, progress is being made. The Parliament initially accepted the draft law, though it still needs

to be considered article-by-article and be voted upon. Moreover, a supportive statement from the General Commander of National Defence Force (F-FDTL) also gave further indication of a slight shift in key political support.

However, given the international nature of the issue, even if action is taken on a domestic level, justice will remain elusive without bilateral cooperation and political will.

Nonetheless, hopes of disappeared Timorese children returning to their parents remain as such. With this in mind, the HAK and its partners in Indonesia, particularly ICTJ-Jakarta, *Ikatan Keluarga Orang Hilang Indonesia* (Indonesian Association of Families of the Disappeared (IKOHI)), and Commission for the Disappeared Victims of Violence (KontraS), have been working together to lobby and pressure the Department of Foreign Affairs due to its failure to uphold the MOU between the PDHJ and Komnas in addressing border security and enforced disappearances. The said organizations continue to lobby the Minister of Foreign Affairs to fulfill its responsibility to find the disappeared children and to lead the commitment of the government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED).

It is also highly important to note that, the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID) through then Chair-Rapporteur Jeremy Sarkin and member Jasminka Dzumhur went to Timor-Leste from 7 to 14 June 2011 upon the invitation of the Government. With the purpose of reviewing the Timor-Leste government's action in addressing enforced disappearances and the collection of data needed to clarify the outstanding cases in the country, the team met various government officials including

the then President José Ramos-Horta. A report was issued citing recommendations including the adoption of the proposed law on a "framework for the national reparations programme and the draft bill establishing the public Memory Institute" and reiterated the implementation of the CAVR recommendations.<sup>1</sup>

The HAK, together with members of The Timor-Leste National Alliance for an International Tribunal or ANTI, delivered a letter to His Excellency Ban Ki-Moon, United Nations Secretary-General when the latter visited Timor-Leste in August 2012. The letter contained a specific appeal related to achieving justice for past crimes and bringing to account the perpetrators, who until now, have not faced any credible legal process that would bring justice for victims in Timor-Leste.

Importantly, from this work on past crimes, the HAK has been able to forge three additional civil society partnerships with the Judicial System Monitoring Programme (JSMP), Lao Hamutuk, and ACbit in addressing the problem of enforced disappearance. Given the linkage with these organizations, the strength of civil society's collective voice is increased and the possibility of progress is made more tangible.

The HAK is optimistic that the law on the Memorial Institute will be enacted in 2013. The stance of the Parliament has always been more in favor of the veterans than the victims. Now that the law on veterans' pensions has been passed and the issue is about administration, it is time that victims' needs are addressed. The passage of draft laws on the Memorial Institute will present a new opportunity to genuinely pursue the issue of enforced disappearances, while getting reparations for the victims may take a while longer.

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<sup>1</sup> Based on the report of the Working Group on Enforced or Involuntary Disappearances in its mission to Timor-Leste, 26 December 2011. A/HRC/19/58/Add.1

## Conclusion

The Asian Federation Against Involuntary Disappearances (AFAD), through its member-organizations, works in nine countries wherein the following estimates of disappearances have been made:

### Bangladesh

- From 1980 to 2012, there were 12 cases reported to the UN WGEID.
- From 2009 to 2013, 90 disappearance cases were documented by Odhikar.

### Jammu and Kashmir, India

- 8,000 cases of disappearances in Jammu and Kashmir (Association of Parents of the Disappeared Persons – APDP)
- Government statements on actual figures of disappearances<sup>1</sup>
  - ❖ 3,184 persons were missing (National Conference government, 2002);
  - ❖ 3,931 persons were missing (People’s Democratic Party-led government, 2005);
  - ❖ 3,429 persons missing since 1989 (present National Conference-led government, 2009);
  - ❖ 2,305 disappearance cases since 1989 (Chief Minister, 8 October 2012).
- From 1980 to 2012, there were 433 cases reported to the UN WGEID from India.

### Indonesia

- From 1965 to 1998, 260 cases of enforced disappearances were reported. (Komnas HAM Inquiry reports)
- From 1980 to 2012, there were 165 cases reported to the UN WGEID.

### Nepal

- More than 1,300 people remain missing to date. (Advocacy Forum statement)
- 1,378 persons remain missing according to the International Committee of the Red Cross (ICRC).
- From 1996 to 2006, the ICRC received reports of missing persons with the numbers reaching 1,401 persons.
- From 1980 to 2012, there were 672 cases reported to the UN WGEID.

### Philippines

- From 1971 to 2013, the Families of Victims of Involuntary Disappearances documented 2,214 cases.

<sup>1</sup> Conflicting statements on the figures of disappearance in Jammu and Kashmir prompted APDP to apply for information as provided under the Jammu and Kashmir Right to Information Act of 2009 from the State Home Department for the list of missing persons claimed by various governments.

- From 1980 to 2012, there were 782 cases reported to the UN WGEID.

### South Korea

- Approximately 3,835 citizens of South Korea were reportedly abducted since 1953 with at least 517 abductees remaining in DPRK.<sup>2</sup>
- From 1980 to 2012, there were 20 cases reported to the UN WGEID.

### Sri Lanka

- Between 1987 to 1989, there were 1,060 cases of disappearance documented by Families of the Disappeared.
- 2,285 cases were documented of victims who disappeared from the year 2008-2009 (Families of the Disappeared – FOD with local partner organizations).
- From 1980 to 2012, there were 12,473 cases reported to the UN WGEID. To note, there was a higher figure in earlier reports of the UN WGEID, but due to lack of information from the sources, owing to various circumstances such as militarization, displacement and lack of access to the UN WGEID, these cases were clarified.

### Thailand

- From March 1974 to September 1979, five persons were disappeared (Haberkorn, T., *An Unfinished Past: Assassination and the 1974 Land Rent Control Act in Northern Thailand*).
- In 1992, officials reported 175 persons remained missing (Amnesty International, *The Massacre in Bangkok*).
- From the events in May 1992, the UN WGEID received 31 cases of enforced disappearances.
- 59 enforced disappearance cases were reported by the Justice for Peace Foundation (JPF).
- From 1980 to 2012, there were 78 cases reported to the UN WGEID.

### Timor-Leste

- From 1975 to 1999, approximately 186,000 to 250,000 persons were killed or disappeared with the whereabouts of approximately 853 still unknown.

- 4,500 children were abducted by the Indonesian military. The children were brought to Indonesia under the *Tenaga Bantuan Operasi* labor support operation.
- From 1980 to 2012, there were 504 cases reported to the UN WGEID.

The crippling effects of enforced disappearances are witnessed by families of the disappeared and civil society groups working for their complete eradication. These groups, as member organizations of AFAD, continue to review current contexts of the crimes in their countries.

### Enforced disappearances as a continuing practice

The past year provided varying challenges for victims' families and human rights defenders in the nine countries under review.

Cases of enforced disappearances as documented by AFAD member organizations occurred in periods wherein state suppression of dissenting voices was manifested through the crackdown on civil society activists which resulted in a multitude of human rights violations, with enforced disappearance as among the perennial resorts.

Due to varying challenges in data collection in each country, the exact figures of enforced disappearance cases are difficult to ascertain. Such challenges include among other things:

- Family members of the disappeared lack access to documentation when cases occurred, especially during conflict situations and their lack of access to national organizations working on the issue;
- Family members of the disappeared do not have adequate resources and information to access human rights organizations, which likewise have limited resources for a nationwide documentation.
- The difficult security situations especially in South Asian countries which are in conflict and post conflict situations, make it difficult for human rights organizations to document.

<sup>2</sup> South Korean Ministry of Unification, White Paper, 141 (2012) (Korean ver.); South Korean Ministry of Unification, White Paper, 117- 8 (2010).

Civil society organizations set estimates of actual disappearance cases and allege a higher number of cases than government released figures.

According to statistics of cases released by the UN WGEID from 1980 to 2012, Sri Lanka has the highest reported cases of disappearance among the countries where AFAD is presently working, reaching 12,473 cases wherein 156 are female victims, and the second highest reported cases of disappearances based on 107 states.<sup>3</sup> After Sri Lanka, the Philippines has the next highest reported cases with 782 cases reported, in which 93 victims are female.

**Table 1. Statistical summary of cases submitted to the UN WGEID from the 1980 to 2012**

Countries	Reported cases to the UN WGEID	Female	Outstanding cases	Female
1. Sri Lanka	12, 473	156	5,676	88
2. Philippines	782	94	621	74
3. Nepal	672	72	458	56
4. Timor-Leste	504	36	428	28
5. India	433	12	353	10
6. Indonesia	165	2	162	2
7. Thailand	78	5	71	5
8. Democratic People's Republic of Korea	20	8	20	8
9. Bangladesh	12	2	11	1

The UN Working Group on Enforced or Involuntary Disappearances (UN WGEID) receives communications on disappearances cases, reviews and transmits cases to states requesting governments to launch investigations and similarly informs of actions taken and investigation results.<sup>4</sup>

Realities in each country in terms of actual number of enforced disappearances often cannot be sufficiently established. Based on previously mentioned statistics from various sources e.g., civil society organizations, government agencies, truth commissions among others, the actual reported cases at the level of the UN WGEID remain small compared to the estimates and country figures.

Families of the disappeared victims experience the turmoil and difficulties arising from the disappearance of a family member. As the fate and whereabouts of their disappeared remains unknown, the families experience psychological and emotional trauma as a result of the pain and longing to discover the truth behind the disappearance and the well-being of their loved ones. The continuing nature of enforced

disappearance prolongs the families' agony until such period wherein the truth is uncovered. Economically, disappearances paralyze a family, most particularly for cases wherein the disappeared victim is the breadwinner or designated as the family's sole hope out of an impoverished life.

#### **Impunity and the respect for the rule of law**

In the countries under review, the extent by which perpetrators are held accountable does not equate with the actual magnitude of the disappearances committed against persons.

The Association of Parents of Disappeared Persons in Kashmir, India, in a report entitled *Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir*, sought to identify perpetrators of human rights violations including enforced disappearances. 500 individual perpetrators were identified in the report with the breakdown as follows: 235 cases of army personnel, 123 paramilitary personnel, 111 Jammu and Kashmir police personnel and 31 government-backed militants/associates.

3 Iraq ranks the highest with 16,548 reported cases to the UN WGEID during the same period.

4 The UN WGEID works through its mandated procedures such as urgent procedures, urgent appeals, standard procedures, general allegations and prompt interventions to address communications on cases, persecution of families and supporters, and the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance.

Cases of perpetrators provided with recognition through promotions and awards among others, were also noted. The APDP report states such situations in Jammu and Kashmir.

In Indonesia, four members of the Rose Team of Kopassus who engaged in the disappearances in 1997-1998 received military promotions.<sup>5</sup>

In the Philippines, the key military official in which the disappearance of disappeared agriculturist, Jonas Burgos, was associated with, was promoted to the rank of the Armed Forces of the Philippines (AFP) chief of the Intelligence Service.<sup>6</sup>

Mechanisms for reparations and remedies for the victims' families are scarce. Among the four recommendations issued in 2009 by the Indonesian Parliament regarding the disappearances during 1997-1998, include the rehabilitation and compensation of the families of the disappeared. Unfortunately this recommendation is yet to be fully implemented.

It is worth commending, though, that in Indonesia, families of victims of the 1998 disappeared student activists were given certificates of recognition by the Indonesian government on 3 November 2011. Said certificates contain the following:

- That (true victim's name, place and date of birth) is a victim of enforced disappearance in 1997 and 1998 based on pro-justice investigation of the National Commission on Human Rights;
- That all government institutions responsible for the commission of the victims' disappearance have to immediately search for the victims and ensure the punishment of perpetrators.

Based on the National Reconciliation Commission recommendation, the government provided compensation amounting to 100,000 baht to a

small number of cases which occurred in Southern Thailand. In another recommendation issued by the Committee for Compensation of People Affected by Unrest in Southern Border Provinces, the government was again recommended to pay for reparation for a number of cases which occurred in January 2004 to 30 September 2011. However, a similar process has not been extended to cases that occurred in other regions of the country.

The past years brought forth renewed calls for the enactment of pieces of national legislation that criminalize enforced disappearance amidst calls for states to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED). Article 4 in the said treaty states that: "Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law."

The reporting of disappearance cases at the law enforcement level is often a challenge for victims' families as reflected in the situation of Nepal during and after the conflict period. Local police authorities would, in some cases, refuse to file First Information Reports (FIRs).

The Nepal experience showed the families' fear of reprisal and prevented them from filing FIRs. Successfully lodged FIRs are usually facilitated by strong support from civil society organizations as well as court petitions for investigation.

In the absence of a law criminalizing the act, organizations lodged cases of disappearances under local criminal laws and judicial remedies available. In the landmark case of the PICOP 6 workers in the Philippines, Corporal Rodrigo Billones was convicted on 11 July 2008 as an accomplice for the kidnapping and serious illegal detention. The corresponding penalties extend to a minimum of 9 years in prison for each victim.<sup>7</sup>

5 Infantry Captain Fausani Syahril Multhazar promoted to Commander of Military District Command 0719/Jepara with the rank of Lt. Colonel; Infantry Captain Untung Budi Harto promoted to Commander of Military District Command 1504/Ambon with the rank of Lt. Colonel; Infantry Captain Dadang Hendra Yudha promoted to Commander of Military District Command 0801/Pacitan with the rank of Lt. Colonel; and Infantry Captain Djaka Budi Utama promoted to Infantry Battalion Commander 115/Macan Lauser.

6 A case was filed by the victim's mother, Edita Burgos, against Brig. Gen. Eduardo M. Año, claiming the official's accountability over the direct supervision of the team which was witnessed to be the group who disappeared the victim. Source: <http://www.interaksyon.com/article/49423/officer-tagged-in-jonas-burgos-case-to-take-oath-before-pnoy-as-new-isafp-chief>

7 Hon. Judge Dante Luz Viacrucis gave credence to the version of the prosecution, which he considers as positive, straightforward and credible and convicted the accused for the crime charged but as an accomplice only sentencing him for a minimum of 9 years of imprisonment for each of the victims to a maximum of 15 years.

In the context of Bangladesh, the country's Criminal law, like in many other Asian countries, does not criminalize enforced disappearances. Thus, a case can be filed under the crime of abduction, wrongful confinement or grievous hurt.

Another case wherein perpetrators were brought to justice are disappearances in Indonesia wherein perpetrators were brought before a military court. 11 members of the Rose Team of Kopassus who perpetrated the disappearances in 1997-1998 were imprisoned for the kidnapping of the nine surfaced victims. The commander of the Rose Team Major Bambang Kristiono was penalized with a 22-month imprisonment and dismissal from the military service.<sup>8</sup>

On 21 December 2012, the Anti-Enforced Disappearance Act of 2012 was enacted in the Philippines.<sup>9</sup> The Republic Act No. 10353, with the full title Anti-Enforced or Involuntary Disappearance Act of 2012 contains primarily key provisions that strengthen the families' and advocates' pursuit of the truth about the fate of their disappeared family members with perpetrators tried before a court of law. The law generated a new surge of hope among family members of the disappeared and advocates against enforced disappearances.<sup>10</sup>

Proposed pieces of legislation to investigate enforced disappearance cases and other human rights violations are being advocated by AFAD member organizations.

In Timor-Leste, the HAK Association is actively lobbying for a proposed law on Memorial Institute and reparation under which the government shall seek to establish the whereabouts of the disappeared during the Indonesian occupation. The Parliament received the draft law. A statement of support for the draft was issued by the General Commander of the National Defence Force (F-FDTL).

For Nepal, Sri Lanka and Timor-Leste, which underwent periods of conflict and war, truth commissions and commissions of inquiries were created to ascertain the truth behind the fate of the victims of human rights violations and abuses, to ascertain identities of perpetrators and establish concrete pieces of evidence leading to prosecution of alleged perpetrators and to issue corresponding recommendations.

Under the Commission for Reception, Truth and Reconciliation (CAVR), more than 10,000 people were interviewed.<sup>11</sup> The recommendations of the Commission included the recognition of the Memorandum of Understanding by both Indonesia and Timor-Leste in December 2004 which gives importance to reunifying the 4,500 disappeared Timorese children with their families.

The Sri Lankan government formed series of Commissions of Inquiry with which recommendations led to the issuances of temporary death certificates and some measly amounts of financial assistance for the families.

Based on the Comprehensive Peace Accord (CPA) in Nepal, a Commission was formed by the government for the same reason of investigating disappearance cases. However, the Commission to date has not been established. The CPA and the Interim Constitution of Nepal in 2007 included provisions to create a Truth and Reconciliation Commission and a Commission of Inquiry of the Disappeared. In August 2012, both commissions were integrated by the government into one commission with an intent to grant perpetrators amnesty and false reconciliation with the victims. The Truth and Reconciliation and Enforced Disappearance Bill which the government wanted to be merged into an ordinance, elicited strong opposition from civil society groups and currently remains pending before the president of the country.

8 However, while such perpetrators are penalized, the Indonesian government promoted four of the perpetrators.

9 Implementing Rules and Regulations passed on 12 February 2013.

10 By finally criminalizing the practice of enforced disappearances, previous cases shall be duly reviewed and perpetrators brought before the judiciary to account for the disappearance. In a similarly preventive aspect, the provisions provided under the landmark law create an environment wherein individuals will still remain under the protection of the law, regardless of any circumstances.

11 Figures include victims, witnesses and combatants.

### **Civil society efforts to combat enforced disappearances**

While the suffering of the families continues in the situations of the nine countries, families of the disappeared continue to organize and mobilize themselves and to elicit solidarity from supporters and networks of human rights defenders at home and abroad. Such efforts attempt to transcend the paralysis and trauma caused by the act of enforced disappearances in the families' homes and the society at large.

Existing networks of families of the disappeared and organizations working against enforced disappearances were renewed and new formations of human rights defenders and organizations of families are strengthened.

In Sri Lanka, human rights defenders have intensified efforts to organize families in the war-stricken North and East. The formation and convening of the Mannar Citizens' Committee and the Association of the Families Searching for the Disappeared Relatives, with joint campaign actions demanding for state accountability and documentation and reporting work, were a result of unified stance against enforced disappearances.

In Timor-Leste and Indonesia, reunification work is building momentum as the HAK Association reaches to the Indonesia's Komnas HAM to aid in the search for the disappeared children in Timor-Leste who were brought to Indonesia for illegal adoption. AFAD member organizations KontraS, IKOHI and the HAK Association are intensifying efforts to locate and start reuniting the victims with their biological families.

Continuing documentation, monitoring and reporting of cases continue in the member organizations' work in their respective countries. Odhikar distributes on a regular basis the Human Rights Monitoring Report and Fact-finding mission reports on enforced disappearances as well as other human rights violations committed in Bangladesh.

The Citizens' Alliance for North Korean Human Rights in South Korea maintains engagements with the UN WGEID on the 16 case submissions sent. The UN WGEID communicated the said cases to the DPRK, in which there were several responses refusing to recognize the cases as enforced disappearances, evading the information and providing counter-accusations.

Other efforts of organizations include the continued search for the victims; organizing of families of the disappeared and consolidating and expanding their formations at the country as well as at the regional level. Member organizations and their partners conduct the advocacy work at the country and international levels through the dissemination of information in public events to mobilize and generate moral, material and political support. An important content of their advocacy is the lobbying efforts for respective states to sign and ratify the ICPAPED with the recognition of the UN CED competence. With the necessity to provide psycho-social support to the families, AFAD member organizations continue to engage government authorities for the provision of such support as well as the creation of measures allowing the families access to government assistance.

Beyond the pain and the geographical boundaries, the victims' families and human rights defenders remain determined to reveal the victims' fate. Through the documentation, monitoring and reporting of cases of enforced disappearances, the victims and member organizations are provided with space to demand state accountability in addressing the victims' plight.

### **Corresponding Recommendations**

#### **To civil society organizations:**

1. Document old and new cases of enforced disappearances and submit these to the AFAD office and to the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID) and other relevant UN bodies. Systematize statistics classified according to gender, occupation, geographical location, alleged perpetrators, age, and steps taken to resolve the case.

Corollary to this is the documentation of families' profiles, taking into consideration economic status, political and religious affiliation, effects of the disappearance, gender and interventions needed. Verify the sources of information on the said documentation. Taking DNA samples are encouraged for future use in identifying disappeared persons and facilitating their return, alive or dead.

2. Periodically establish trends and analysis of enforced disappearances in each country and in the region, taking into consideration the context; the conduct by which these are done; the alleged perpetrators; effects on the families; response of governments and interventions of civil society organizations at home and abroad as well as the response of the United Nations.
3. Form organizations and networks of families of the disappeared and civil society organizations at the local level and ensure their continuing consolidation and expansion. Facilitate their ties with the Asian Federation Against Involuntary Disappearances, the International Coalition Against Enforced Disappearances and other regional and international bodies.
4. Devise relevant and programmatic campaign and lobby strategies for truth, justice, reparation, reconstruction of the historical memory of the disappeared taking into consideration particular situations at the local level and learning from best practices in other countries. Particularly, devise strategies to campaign and lobby for accession by Asian states to the United Nations Convention for the Protection of All Persons from Enforced Disappearance and the recognition of the competence of the UN Committee on Enforced Disappearance. Learn lessons from the Philippine experience of campaigning for the enactment of a strong anti-enforced disappearance law and share the use of existing local mechanisms in the fight against enforced disappearances.
5. Conduct thematic researches on specific issues vis-à-vis enforced disappearances and make use of these researches as important bases in the campaigns against enforced disappearances and in the continuing empowerment of the victims' families.
6. Establish a witness protection mechanism, file test cases in courts with families of victims as the main actors with the support of organizations and individuals at the local, regional and international levels.
7. In view of the magnitude of the crime of enforced disappearances in Asia, mainstream the campaign against enforced disappearances by involving other national and regional human organizations to work on the issue. Explore possibilities of maximizing existing inter-governmental bodies in the Southeast and South Asian levels.
8. Devise holistic and gender-sensitive interventions for the families of the victims, taking into consideration multiple needs, e.g. documentation of cases, search for the victims, legal aid, psychosocial support, economic support, raising their level of consciousness towards holistic empowerment. Ensure first and foremost their security vis-à-vis repression and harassments which are possible consequences to their participation in the campaign against enforced disappearances in particular and human rights violations in general.
9. Strengthen international work through the forging of a relevant and systematic global solidarity, lobby, campaign and public information strategies in order to elicit maximum moral, political and material support from the international community.

**To governments:**

1. Incorporate in their national human rights action plans provisions on comprehensive interventions for victims of human rights violations, such as victims of enforced disappearances and their families, including but not limited to legislation criminalizing enforced disappearances; providing for compensation for families of victims of enforced disappearances, providing for state services that will assist the victims and/or their families in dealing with the emotional, psychological, financial and other effects brought about by enforced disappearance.
2. Strengthen national human rights institutions as independent entities with the legal mandate to investigate reports and cases of human rights violations, including enforced disappearances and facilitate prosecution of perpetrators.
3. Establish where there is none, and/or strengthen existing witness protection programs for victims, their families and for witnesses in order to ensure their safety and ensure the successful prosecution of the perpetrators.

4. Conduct transparent investigations to determine the extent of enforced disappearances and hold the perpetrators accountable.
5. Ensure the independence of the judiciary and strengthen legislative branch of government to enable a system of effective checks and balances that will oversee and initiate the enactment and effective implementation of laws, and ensure access to justice of the victims, towards ending impunity.
6. Support the work of civil society organizations and victims and survivors' groups by doing studies and researches which serve as the basis for drafting human rights policies and laws, including laws criminalizing enforced disappearances.
7. Sign, ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the UN Committee on Enforced Disappearances.
8. Respond positively to requests for official invitations by the United Nations Working Group on Enforced or Involuntary Disappearances. For those countries already visited, make concrete efforts to implement the recommendations of the Working Group as results of their visits.
9. Recognize and address comprehensively the problems and ills of society, such as economic and social inequality in the access and distribution of wealth, discrimination and marginalization, to be able to address the roots rather than the symptoms of enforced disappearances through comprehensive programs that aptly respond to poverty and social injustice while eradicating impunity through various measures to find truth, justice, reparation and guarantees of non-recurrence.

Annex 1

**Statistical summary: cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2012**

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Afghanistan	3	-	3	-	-	-	-	-	-	-	-	-
Albania	1	-	1	-	-	-	-	-	-	-	-	-
Algeria	3 033	19	3 005	18	9	19	10	10	8	-	-	-
Angola	10	1	-	-	7	-	-	-	7	3	-	-
Argentina	3 449	773	3 271	734	124	52	30	5	141	-	-	-
Bahrain	5	-	1	-	-	4	2	2	-	-	-	-
Bangladesh	12	2	11	1	1	-	1	-	-	-	-	-
Belarus	3	-	3	-	-	-	-	-	-	-	-	-
Bhutan	5	-	5	-	-	-	-	-	-	-	-	-
Bolivia (Plurinational State of)	48	3	28	3	19	1	19	-	1	-	-	-
Brazil	63	4	13	-	46	4	1	-	49	-	-	-
Bulgaria	3	-	-	-	3	-	-	-	3	-	-	-
Burkina Faso	3	-	-	-	3	-	-	-	3	-	-	-
Burundi	53	-	52	-	-	1	1	-	-	-	-	-
Cambodia	2	-	-	-	-	-	-	-	-	-	2	-
Cameroon	19	-	14	-	5	-	4	1	-	-	-	-

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Central African Republic	3	-	3	-	-	-	-	-	-	-	-	-
Chad	34	-	23	-	3	8	9	1	1	-	-	-
Chile	908	65	801	64	83	23	2	-	104	-	-	-
China	119	14	30	4	77	12	52	35	2	-	-	-
Colombia	1 255	125	969	95	218	68	159	24	103	-	-	-
Congo <sup>59</sup>	114	3	88	3	-	-	-	-	-	-	-	-
Democratic People's Republic of Korea	20	8	20	8	-	-	-	-	-	-	-	-
Democratic Republic of the Congo	53	11	44	11	6	3	9	-	-	-	-	-
Denmark	1	-	-	-	-	1	-	1	-	-	-	-
Dominican Republic	4	-	1	-	2	-	2	-	-	-	1	-
Ecuador	26	2	4	-	18	4	12	4	6	-	-	-
Egypt	69	-	41	-	8	20	5	23	-	-	-	-
El Salvador	2 662	332	2,271	295	318	73	196	175	20	-	-	-
Equatorial Guinea	8	-	8	-	-	-	-	-	-	-	-	-
Eritrea	54	4	54	4	-	-	-	-	-	-	-	-

<sup>59</sup> The Working Group determined that two cases were duplicated and were subsequently eliminated from its records.

BEYOND TEARS AND BORDERS:  
TRACKING ENFORCED DISAPPEARANCES

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Ethiopia	119	2	112	1	3	4	2	5	-	-	-	-
France	1	-	1	-	-	-	-	-	-	-	-	-
Gambia	2	-	1	-	-	1	-	-	-	-	-	-
Georgia	1	-	1	-	-	-	-	-	-	-	-	-
Greece	3	-	1	-	-	-	-	-	-	-	2	-
Guatemala	3,155	390	2,899	372	177	79	187	6	63	-	-	-
Guinea	28	-	21	-	-	7	-	-	7	-	-	-
Haiti	48	1	38	1	9	1	1	4	5	-	-	-
Honduras	209	34	129	21	37	43	54	8	18	-	-	-
India	433	12	353	10	68	12	51	7	22	-	-	-
Indonesia	165	2	162	2	3	-	3	-	-	-	-	-
Iran (Islamic Republic of)	537	103	518	102	14	5	8	2	9	-	-	-
Iraq	16 548	2 311	16 401	2 294	117	30	122	16	9	-	-	-
Israel	3	-	2	-	-	1	-	-	-	-	-	-
Japan	4	3	-	-	-	-	-	-	-	-	-	-
Jordan	2	-	2	-	-	-	-	-	-	-	-	-
Kazakhstan	2	-	-	-	-	2	-	-	-	-	-	-
Kenya	40	-	40	-	-	-	-	-	-	-	-	-
Kuwait	1	-	1	-	-	-	-	-	-	-	-	-
Lao People's Democratic Republic	7	1	1	1	-	5	-	4	1	1	-	-
Lebanon	321	19	313	19	2	6	7	1	-	-	-	-
Libya	17	1	9	1	-	8	6	2	-	-	-	-

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Malaysia	2	-	-	-	-	-	1	-	1	-	-	1
Mauritania	3	-	3	-	-	-	-	-	-	-	-	-
Mexico	505	42	327	32	134	28	77	18	67	16	16	-
Montenegro	16	1	-	-	1	-	-	1	-	14	14	1
Morocco	286	28	53	6	160	52	142	16	54	21	21	-
Mozambique	2	-	2	-	-	-	-	-	-	-	-	-
Myanmar	8	5	1	-	7	-	5	2	-	-	-	-
Namibia	3	-	3	-	-	-	-	-	-	-	-	-
Nepal	672	72	458	56	135	79	153	60	1	-	-	-
Nicaragua	234	4	103	2	112	19	45	11	75	-	-	-
Nigeria	6	-	-	-	6	-	6	-	-	-	-	-
Pakistan	151	2	99	2	42	9	34	14	3	-	-	-
Paraguay	23	-	-	-	20	-	19	-	1	3	3	-
Peru	3 009	311	2 371	236	253	385	450	85	103	-	-	-
Philippines	782	94	621	74	126	35	108	19	29	-	-	-
Romania	1	-	-	-	1	-	1	-	-	-	-	-
Russian Federation	483	27	471	25	2	10	12	-	-	-	-	-
Rwanda	24	2	21	2	-	2	1	1	-	1	1	-
Saudi Arabia	10	-	4	-	2	2	1	3	-	2	2	-
Serbia	1	-	-	-	1	-	1	-	-	-	-	-
Seychelles	3	-	3	-	-	-	-	-	-	-	-	-
Somalia	1	-	1	-	-	-	-	-	-	-	-	-
South Africa	11	1	-	-	3	2	1	1	3	6	6	-
South Sudan	1	-	1	-	-	-	-	-	-	-	-	-

BEYOND TEARS AND BORDERS:  
TRACKING ENFORCED DISAPPEARANCES

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Spain	5	-	3	-	2	-	-	-	2	-	-	-
Sri Lanka <sup>60</sup>	12 473	156	5 676	88	6 535	40	103	27	6 445	-	-	-
Sudan	383	37	173	5	205	4	209	-	-	-	-	-
Switzerland	1	-	1	-	-	-	-	-	-	-	-	-
Syrian Arab Republic	121	5	72	3	15	34	26	17	6	-	-	-
Tajikistan	9	-	4	-	3	2	1	-	4	-	-	-
Thailand	78	5	71	5	2	-	1	1	-	2	-	-
Timor-Leste	504	36	428	28	58	18	51	23	2	-	-	-
Togo	11	2	10	2	-	1	1	-	-	-	-	-
Tunisia	19	1	2	-	12	5	1	16	-	-	-	-
Turkey	182	11	60	2	72	49	71	24	26	1	-	-
Turkmenistan	3	-	1	-	2	-	-	2	-	-	-	-
Uganda	22	4	15	2	2	5	2	5	-	-	-	-
Ukraine	6	-	4	-	2	-	1	-	1	-	-	-
United Arab Emirates	7	-	5	-	2	-	2	-	-	-	-	-
United Kingdom of Great Britain and Northern Ireland	1	-	-	-	-	-	-	-	-	-	-	-
United Republic of	2	-	-	-	2	-	2	-	-	-	-	-

<sup>60</sup> The Working Group determined that eight cases were duplicated and were subsequently eliminated from its records.

States/entities	Cases transmitted to the Government				Clarification by:				Status of person at date of clarification			
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	
	Cases	Female	Cases	Female								
Tanzania												
United States of America	1	-	-	-	1	-	-	-	-	-	-	-
Uruguay	31	7	19	2	11	1	5	4	3	-	-	-
Uzbekistan	20	-	8	-	11	1	2	10	-	-	-	-
Venezuela (Bolivarian Republic of)	14	2	10	1	4	-	1	-	3	-	-	-
Viet Nam	2	-	1	-	1	-	-	-	-	-	-	-
Yemen	160	-	2	-	135	9	66	5	73	14	-	-
Zambia	1	1	-	-	-	1	-	1	-	-	-	-
Zimbabwe	6	1	4	1	1	1	1	-	1	-	-	-
State of Palestine	3	-	3	-	-	-	-	-	-	-	-	-

**Annex 2: Status of UN WGEID requests for visits** *(Based on the UN WGEID 2012 Report)*

Country	Request for a visit	Government response	Status
<b>India</b>	Invitation was requested on 16 August 2010.	Communication acknowledged the receipt of the letter on 18 August.	Follow up reminder letter was sent on 18 August 2011. In response, the government issued a communication stating that the letter was forwarded to relevant government authorities in the country. A reminder letter was forwarded by the UN WGEID on 8 November 2012.
<b>Indonesia</b>	Invitation was requested on 12 December 2006.	The Indonesian government communicated to the UN WGEID that it is not possible to welcome the UN WGEID in 2007 but noted that, "greater benefit will be derived from a visit at a later date."	Reminder letters were issued on 16 August 2010, 18 August 2011 and 8 November 2012. No response received from the government.
<b>Nepal</b>	Invitation was requested on 12 May 2006 wherein a follow-up visit was expressed by the UN WGEID. A reminder letter was forwarded to the government on 20 July 2009.	The government replied on 2 October 2009 that, "due to the limited capacities of the country and other engagements, it was unable to extend an invitation".	Another reminder letter was sent on 30 June 2011. No response from the government.
<b>Philippines</b>	Invitation was requested on 24 May 2006.	No response from the government.	Communications sent as a reminder were issued on 16 August 2010 and 18 August 2011.
<b>Sri Lanka</b>	Invitation for a request was communicated on 16 October 2006.	The government responded, citing that a visit is impossible during the recommended dates and that due consideration of UN WGEID interest will be provided.	Follow up reminder letters were submitted to the government on the following dates, 20 August 2009, 16 August 2010, 20 July 2011 and 8 November 2012.
<b>Thailand</b>	Invitation for a request was sent on 30 June 2011.	The Thai government on 17 October 2011, responded that additional communication will be issued to the WGEID for an agreeable schedule.	A reminder letter was forwarded to the government on 8 November 2012.

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The Asian Federation Against Involuntary Disappearances (AFAD) is a regional federation of organizations working directly on the issue of involuntary disappearances in Bangladesh, Indonesia, Jammu and Kashmir-India, Nepal, Philippines, South Korea, Sri Lanka, Thailand and Timor Leste. Founded in 1998 to promote solidarity, lobby, communications, networking and advocacy among its member organizations and network, the Federation works with international, regional and national formations from other countries.

AFAD also serves as the Focal Point of the International Coalition Against Enforced Disappearances (ICAED).

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To You,  
AFAD DEDICATES BEYOND TEARS AND BORDERS

*To all desaparecidos,  
Plucked from the bosom of your families  
By state agents who profess to provide protection  
of law;  
You whose multiple rights were trampled upon;  
Deprived of freedom...  
Whose ordeal is beyond our knowledge,  
Whose cry we cannot physically hear,  
But still penetrates deeply into our very soul,  
Whose memory will never be obliterated,  
Despite the passage of time  
And amidst the nagging insistence of forgetting,  
For the sake of false reconciliation and  
unprincipled peace.  
Your lives were offered on the altar of freedom  
Wherever you are, your memories are like  
shadows  
always there within us.*

*To you, the AFAD dedicates  
Beyond Tears and Borders  
A book whose substance is enriched by your  
sacrifices;  
Whose stubborn call for an end to disappearances  
Reverberates in every nook and cranny  
Of edifices of governments;  
A humble tribute on the occasion of the  
International Day of the Disappeared;  
A sign of hope that one day,  
Your tears of pain will be wiped away  
And tears of joy will flow like torrents  
For small and great triumphs*

*Towards the dawning of the day  
Where truth is revealed,  
Justice is attained,  
Reparation is duly provided for,  
And historical memory be reconstructed,  
For the realization of our dream so cherished,  
The world without desaparecidos.*

*To the families you left behind,  
Living in anxiety and agonizing in pain  
Suffering from your physical absence  
Their lives devastated  
Uncertain as to your fate  
They organize,  
They cry for you and with you,  
They protest,  
They demand for Truth,  
They struggle for Justice,  
They call for your return.  
Amidst stigmatization by society,  
And persecution of governments,  
And inspired by your spiritual presence*

*To them, we equally offer this book.  
As we reverberate their cry,  
Honor their pain, echo their calls,  
Accompany them in the journey  
To transform tears to courage,  
As they go beyond frontiers and borders,  
In the conviction that in the strength of our  
solidarity,  
We shall overcome.*



ASIAN FEDERATION AGAINST INVOLUNTARY  
DISAPPEARANCES (AFAD)